Model Law Review Initiative
Models for Review by the Property and Casualty Insurance (C) Committee

As part of the NAIC’s Model Law Review Initiative, the Property and Casualty Insurance (C) Committee has been asked to review two model laws: Medical Professional Liability Closed Claim Reporting Model Law (#77) and Credit Personal Property Insurance Model Act (#365). The Model Law Review Initiative seeks to review the relevance and adoption rates of existing models. The Property and Casualty Insurance (C) Committee is being asked to recommend whether these models be retained as a model law, revised, converted to a guideline or deleted entirely.

Medical Professional Liability Closed Claim Reporting Model Law (#77)

- Two states have adopted.
- Twenty-seven states have related activity.

Credit Personal Property Insurance Model Act (#365)

- Two states have adopted.
- Thirteen states have related activity.

Under the NAIC’s Procedures for Model Law Development, the model law development criteria requires a two-pronged test:

1. The issue that is the subject of the Model Law necessitates a minimum national standard and/or requires uniformity amongst all states; and
2. Where NAIC Members are committed to devoting significant regulator and association resources to educate, communicate and support a model that has been adopted by the membership.

The state of Washington desires to maintain the Medical Professional Liability Closed Claim Reporting Model Law (#77) as a model law due to the reasons attached. The Credit Personal Property Insurance Model Act (#365) will become an NAIC guideline unless there is objection.
Significance or Reason Why the NAIC Medical Professional Closed Claim Reporting Model Law (#77) Should Be Retained

Submitted by the Washington State Office of the Insurance Commissioner
September 26, 2016

a. Is this model still relevant to the current regulatory environment?

Yes, absolutely. With more physicians obtaining professional liability insurance coverage through the hospitals with which they are affiliated, the market continues to change. Policymakers, along with the medical community and the insurance industry, continue to speculate on the effect the Affordable Care Act will have on medical malpractice lawsuits and the frequency and severity of medical professional liability claims. There have also been ongoing discussions about creating specialized courts to deal with medical malpractice claims. In this environment it is vitally important for insurance regulators to have complete and accurate data on medical professional liability claims, so they will understand not only the claim frequency and severity trends of the insurers they regulate, but also the magnitude of loss adjustment expenses, the medical specialties that have the most claims, the manner in which claims are settled, and what’s transpiring in alternative risk mechanisms such as risk retention groups, surplus lines insurance, and self-insurance. Without such information, state insurance regulators and policymakers would find it difficult to identify problems and devise solutions.

b. Does this issue require uniformity among the states?

Yes. The issue requires as much uniformity as possible among the states, as uniformity yields the greatest efficiency for reporting entities that are reporting closed claim data to more than one state. There are, however, many reporting entities (self-insurers, public entities, and some mutual insurers, for example) that have operations in only one state and thus report data to only one state. The model law, as adopted by the NAIC, contains a little “wiggle room” in some areas. But as the model was being developed, every effort was made to write a model that provided for as much uniformity as possible.

c. Is this an issue that requires legislative action at the state level?

Yes. If there were an adequate medical professional liability closed claim database at the national level, available to state insurance regulators, this model law might not be needed. Some have proposed just using data from the National Practitioner Data Bank, but this database lacks some significant information, such as loss adjustment expense amounts, that is essential to regulators. Given this situation, it is necessary to have legislation (not just rulemaking or bulletins) at the state level, because in order to have complete data the insurance department must have authority (granted by the legislature) to collect data from entities with which it does not ordinarily interact.
d. Would reopening this model be controversial?

Yes. One interested party has suggested to the Affordable Care Medical Professional Liability (C) Working Group that this model law should be reopened and revised to create more uniformity. While endorsing the uniformity concept, other interested parties have not been so vocal on the idea of reopening this model law. Some states would oppose reopening this model law because they do not see what has changed in the last ten years to make agreement among the states on a higher level of uniformity any more likely.

e. Is this model currently being considered for revision in the near future?

No. Though this model law has been discussed in meetings of the Affordable Care Act Medical Professional Liability (C) Working Group, and though the NAIC is aware that at least one interested party would like the NAIC to consider revising it, there is currently no NAIC group that is actively considering this.

f. Are state insurance departments or state legislatures currently considering adopting this model? If not, why not?

We are not aware of any state insurance departments or state legislatures that are currently considering this model. We believe this results, in large part, from the fact that the market for medical professional liability insurance has been relatively “soft” for more than a decade now. This model law was developed in response to the market crisis in the early 2000s, when insurers were reporting substantial increases in incurred losses and raising rates accordingly. Regulators wondered whether those reserve increases were real. What happened, in fact, was that insurers later found themselves to have been significantly over-reserved, and the release of those reserves into profits in subsequent years led to a prolonged soft market, with rates at first decreasing and then generally flattening out. In such a soft market, it is difficult to generate interest in enacting this model law. Regulators and legislators have other fires to put out.

g. Other concerns or comments about this model?

When the medical professional liability insurance market hardens again, as it surely will, there is likely to be renewed interest in enacting this model law in the states that do not yet have a similar law. When that occurs, it is important that this model still be called a model law rather than a guideline, because the term “model law” carries much more weight with legislators. This model should be retained as a model law at least until we see what happens in the wake of the next hard market for medical professional liability insurance.