



# AMERICAN ACADEMY *of* ACTUARIES

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July 8, 2008

Mr. John Purple, Chair  
Casualty Actuarial and Statistical (C) Task Force  
National Association of Insurance Commissioners

Dear Mr. Purple:

Thank you for the opportunity to provide possible suggestions on the data elements to include in the model guideline that is currently being drafted by the Casualty Actuarial and Statistical Task Force (“CASTF”) to support the proposed Medical Professional Liability Closed Claim Reporting Model Law. The Medical Malpractice Subcommittee (“the Subcommittee”) of the American Academy of Actuaries<sup>1</sup> is pleased to offer these comments pursuant to your request.

Attached please find the subcommittee’s 2005 white paper on the use of closed-claim databases. The considerations discussed in this paper are applicable to the design of such databases and the subcommittee recommends that you take this paper under consideration as you develop the model guideline and refine the accompanying model law. The subcommittee also has several additional points to which it would like to draw your attention:

1. There is limited reference to exposure information in the subcommittee’s white paper, which was focused on the claims information itself. For closed claim data to be optimally useful, it is important that information regarding the underlying exposure be collected along with the data on the claim itself. So, in addition to the specialty and geographic location requested in the model law, the type of policy (occurrence versus claims made, etc.), type of risk (doctor, other provider, etc.), and other demographic characteristics would be helpful to include in the database to assist in the aggregation and evaluation of the data.
2. There are also a few details of the model law itself that the subcommittee would like to bring to your attention. This is by no means a comprehensive list, as it was based on a fairly high-level review of the current draft.
  - a. The subcommittee suggests that the definition of “claim” be reviewed and potentially revised. The current definition may be confusing, as it seems to use the same word to refer to either a demand for payment or an actual payment. This leaves unclear whether the demand or the payment or some other event triggers the existence of a claim. It could also allow for erroneous interpretation that could exclude demands (or other events) that do not result in payment. If it is the

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<sup>1</sup> The American Academy of Actuaries’ mission is to serve the public on behalf of the U.S. actuarial profession. The Academy assists public policymakers on all levels by providing leadership, objective expertise, and actuarial advice on risk and financial security issues. The Academy also sets qualification, practice, and professionalism standards for actuaries in the United States.

desire to include both demands and any events resulting in payments as “claims,” then the subcommittee suggests the following modification:

*Claim* means an event that meets any of the following criteria:

- (1) A demand for monetary damages for injury or death caused by medical malpractice whether or not monetary payments are made; or
- (2) A voluntary monetary payment for injury or death caused by medical malpractice.

- b. The definition of self-insurer could be clarified with a note that the entity is retaining risk for *its own* liability.
- c. Section 4.A.(2) may be difficult to enforce. In many cases, the reporting entity will not have full information regarding all of the other payments made on the incident. Coordination between these different insurers, risk retention groups, and self-insured entities could prove prohibitively difficult. Ultimately, many claims may go unreported (or double-reported). The subcommittee suggests consideration be given to establishing instead some form of unique, cross-referenceable claim and/or incident identifier that will allow all of the insurers and other interested parties to mark the records. Then each entity can report its own payments. For redundancy (and for the reporting of losses paid by carriers exempt from reporting), there could be fields included for a reporting entity to also report “payments made to the claimant on behalf of the defendant by other insuring entities.” The claim or incident identifier could be established by the primary insurer (with responsibility for this allocated in a manner similar to the procedure described in the Model Statute 4.A.(2), (3), and (4)) and disseminated to the other carriers while the claim is still open. Once such an identifier is attached to each record, the analyst utilizing the database will be able to aggregate the various payments that have been made in connection with the incident. However, this may be difficult to accomplish as well. This portion of the reporting requirement might be better served with further thought and input by regulators, industry representatives, and other interested parties so as to develop practical guidance in accomplishing the intended reporting.
- d. Item 5.J.(4) should be expanded to read, “Whether settlements occurred before or after verdict, if a trial occurred” to reflect the fact that settlements do not only occur before or after a trial; they can also occur *during* trial. There is a wide range of detail that can be captured by these codes. It would be helpful if the CASTF could obtain a sufficient amount of data with these codes to allow the resulting submissions to be adequately studied. On the other hand, it would be useful for the task force to avoid the establishment of an unduly burdensome system of recordkeeping by companies. The key is to ensure that the claim disposition codes are mutually exclusive and exhaustive and that the disposition

of any individual claim can be coded using one and only one code that will be clear given its circumstances.

The subcommittee hopes that you will find this input helpful and again thanks you for the opportunity to comment on the model guideline being developed in support of the model law. The subcommittee would be pleased to assist CASTF in the finalization of its proposed model law and accompanying model guideline. If you have any questions, please feel free to contact Lauren Pachman, the Academy's Casualty Policy Analyst at [pachman@actuary.org](mailto:pachman@actuary.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Bingham". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Kevin Bingham, ACAS, MAAA  
Chairperson, Medical Malpractice Subcommittee  
American Academy of Actuaries

Enclosure