AMERICAN ACADEMY of ACTUARIES

The Honorable Betsy Markey
U.S. House of Representatives
Longworth House Office Building, 1229
Washington, DC 20515-0604

The Honorable Tom Perriello
U.S. House of Representatives
Longworth House Office Building, 1520
Washington, DC 20515-4605

February 16, 2010

Dear Sir and Madam:

As you prepare to introduce legislation aimed at eliminating the antitrust exemption for health insurers, we the undersigned chairs of four Subcommittees of the Casualty Practice Council of the American Academy of Actuaries'[1] wish to address comparable legislative efforts that would impact medical professional liability insurers. We appreciate the opportunity to share our perspective on this legislative endeavor and its possible consequences on the risks insured under a variety of types of property/casualty insurance policies, including not only medical professional liability policies but also motor vehicle, workers' compensation, and property insurance policies.

Last year, a member of the Academy testified before the House Judiciary Subcommittee on Courts and Competition Policy concerning similar legislation, H.R. 3596, "The Health Insurance Industry Antitrust Enforcement Act of 2009." This letter reinforces the comments made in that testimony and specifically includes discussion of the:

1. Use of aggregate industry data in property/casualty insurance markets today; and
2. Potential consequences of the proposed legislation.

Use of Aggregate Industry Data in Property/Casualty Insurance Markets Today

In general, as a condition of being licensed, property/casualty insurance companies are required to designate an entity to which they will report data. Probably the most well-known of these entities is the Insurance Services Office (ISO). ISO is approved by most states to collect and analyze insurance claim data and make aggregated results available to participants and others, subject to state regulations.

These analyses of aggregated claim costs serve several purposes; those purposes align with the original intent of the McCarran-Ferguson Act and assist state regulators overseeing the pricing of insurance coverage and solvency of insurers. These purposes include:

[1] The American Academy of Actuaries ("Academy") is a 16,000-member professional association whose 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.

1. To provide statistically accurate data for estimating the cost of future claims.
2. To enhance price competition by providing aggregate industry claims information to insurance companies, thereby reducing the uncertainty associated with determining the cost of claims.
3. To maintain a healthy competitive environment by providing reliable claim cost information to companies entering new markets, newly-formed companies, or self-insurers.
4. To guide companies and regulators in assessing the likelihood of insolvency.
5. To facilitate the management and regulation of residual markets for medical professional liability, workers' compensation, and motor vehicle insurance.

Consequences of the Bill

Our principal concern relates to the strong possibility that the proposed legislation may constrain or prohibit current efforts to aggregate industry data discussed immediately above. The original text of H.R. 3962 explicitly permitted "information gathering and rate setting activities of a State insurance commission or other State regulatory entity with authority to set insurance rates," but that language has since been removed from the bill.

To the extent that existing data aggregation activities are constrained or prohibited by the bill, we foresee the following adverse consequences to the property/casualty insurance market:

Property/casualty insurance premiums will not be reduced.
It is our understanding that one stated purpose of the proposed legislation is to reduce insurance premiums. In our view, this bill is more likely to have the opposite effect in property/casualty markets.

Without statistically accurate and reliable estimates of claim costs across a broad spectrum of risk, insurers would be more cautious, if not unwilling, to assume new exposure or expand coverage. Their willingness and ability to price coverages in order to compete in the marketplace could also be lessened, with the possible adverse consequence that the price of insurance could rise as the uncertainty of estimating costs increases.

The number of insurers willing to insure high-risk ventures could decrease.
Fewer insurance companies would be willing to insure high-risk occupations or drivers. For example, without the National Council of Compensation Insurance aggregating industry claims data for the approximate 600 industrial job classification codes, only large or existing specialty insurance companies would have the resources to provide insurance to high-risk markets. If any of these insurers has financial difficulty, the market's ability to attract new capital in order to fill the void will be greatly diminished without the ability to rely upon independent aggregations of industry claim costs.

The number of uninsured drivers and small businesses could increase.
Eliminating the ability of insurance companies to access industry aggregate claims cost data will disrupt the industry's ability to provide insurance through state residual markets for motor vehicle insurance, medical professional liability insurance, and workers' compensation. The

residual markets for these lines of insurance take many forms across the country, but all residual markets focus on the policy objective of ensuring the availability of coverage for risk that is considered “uninsurable” in the primary market.

The costs associated with providing insurance to these “uninsurable” segments of the population are shared across all companies providing coverage voluntarily. The method of allocating financial shares to each company is based on the industry’s aggregate claims costs associated with these risks. Prohibiting the aggregation of claim costs and their use in evaluating residual market exposures would likely increase the number of uninsured drivers, physicians, and businesses.

For example, the majority of employers that obtain insurance through the workers’ compensation residual market in Massachusetts are small businesses. Without this mechanism, these businesses would either have to operate without insurance or pay considerably higher premiums for coverage in the voluntary market.

As these examples illustrate, the end result of the enactment of such a bill is likely to be reduced availability with fewer willing insurers, less vigorous competition among those that do write the coverage, and higher costs to consumers and businesses.

Conclusion

In summary,

1. Implementation of a medical professional liability proposal will not assure lower premiums; it may, in fact, increase them.
2. Collection, aggregation, and analyses of claims cost data is an important element of the property/casualty insurance market; it supports better decisions, promotes competition, and aids in protecting solvency, particularly for new and/or smaller competitors.

We hope that you will find these comments helpful. If you have any questions, please feel free to contact Lauren Pachman, the Academy’s casualty policy analyst, at pachman@actuary.org. Again, thank you for this opportunity to comment on the proposed legislation.

Sincerely,

Kevin Bingham, ACAS, MAAA
Chair, Medical Professional Liability Subcommittee
American Academy of Actuaries

Cara Blank, FCAS, MAAA
Chair, Automobile Insurance Subcommittee

Brian Clancy, FCAS, MAAA
Chair, Workers’ Compensation Subcommittee

Jeff Kucera, FCAS, MAAA
Chair, Property and All Other Lines Subcommittee