



STATE OF CONNECTICUT

INSURANCE DEPARTMENT

CONNECTICUT INSURANCE DEPARTMENT REVIEW OF PROFESSIONAL LIABILITY INSURANCE RATES

February 26, 2009

I. Summary of Findings and Conclusion

- Across the medical malpractice insurance market, the frequency (the number) of claims has decreased, while the values of claims either awarded or settled have increased.
- Medical malpractice insurance rates are remaining stable, and in some cases decreasing, but the Insurance Department expects them to increase in 2009.
- The rates charged for medical malpractice insurance coverage are reasonably related to the costs of writing the policy.
- Given the conclusions outlined in this report, the Department does not think it is necessary to form a working group at this time, but stands ready to work with interested parties on the issues facing the medical malpractice insurance market.

II. Introduction and Scope of Review

Pursuant to Conn. Gen. Stat. § 38a-676a, the Connecticut Insurance Department (the “Department”) hereby submits its review of professional liability insurance rates to the Governor and the Legislature.

As required by law, the Insurance Commissioner (the “Commissioner”) is charged with reviewing professional liability insurance rates in Connecticut for physicians and surgeons, hospitals, advanced practice registered nurses and physician assistants. Specifically, the purpose of this review is to determine whether:

- (1) the amount or frequency of insured awards and settlements against the [the professionals listed above] have decreased since October 1, 2005, (2) such rates reflect any such decrease, and (3) such rates bear a reasonable relationship to the costs of writing such insurance in this state.

If the Department finds that medical malpractice rates have not decreased and such rates are not reasonably related to the cost of writing such insurance, the Commissioner is required to convene a working group to recommend appropriate revisions to the law. See, Conn. Gen. Stat. § 38a-676a.

In accordance with the spirit of the law, the Department endeavored to gather as much information as possible to present a comprehensive report to the Governor and the Legislature. However, the Department’s efforts were somewhat limited by state and federal law. Specifically, the federal Risk Retention Act that prevents the Department from exerting its regulatory

authority as it relates to rate and form filings over hospitals and doctors who use risk retention groups (RRGs) to insure their risks. Also, the Department lacks the statutory authority to review the rates of captive insurers and other self-insurers. In total, captives, risk retention groups and self-insurers make up 53% of the Connecticut market. In addition, the Department lacks statutory authority to approve the rates set by excess and surplus lines carriers, consisting of 7% of the market.

The Department's analysis is further limited by the small sample of closed claim data that it has available to consider over a relatively short period of time.¹

For purposes of completing this analysis, the Department was able to gather the following information.

- The rates of licensed insurers, which are on file with the Department (40% of the market),
- Information contained in the Department's closed-claim database (99% of the market),
- Interviews with licensed insurers, surplus lines insurers, captive insurers, risk managers, and self-insured hospitals,
- Claim information gathered from the National Practitioner Data Bank (NPDB).

III. Analysis

- **Have the amounts or frequency of insured awards and settlements against physicians and surgeons, hospitals, advanced practice registered nurses and physician assistants decreased since October 1, 2005?**

While the values of claims are generally trending upward, the frequency of claims with indemnity payments has decreased.

In coming to this conclusion, the Department first examined its closed claim database, which it is required to maintain pursuant to Conn. Gen. Stat. § 38a-395. This database includes closed claims from fourth quarter of 2005 through the third quarter of 2008 and contains the data of 99% of the market. The data displayed in Exhibit 1 shows that the number of claims with indemnity payments have decreased in the last two years.² While amounts paid to patients for each claim fluctuated from year to year and are often distorted by one or more very large claims, generally, the amount of insured awards and settlements has increased during this reporting period.

In an effort to be as comprehensive as possible and to obtain more historical claim data than that which is reported to the Department, the Department accessed the National Practitioner Data Bank's ("NPDB") Public Use Data File. While the NPDB does not include claims against hospitals, the Department was able to determine total payments, the number of claims reported

¹ In compiling this report, the Department used 12 quarters of data, which was extracted from its closed claim database.

² It should be noted, however, that the claims closed in the last three years represent incidents that occurred on average 40 months before and thus do not represent the frequency of new lawsuits.

and their average annual value from 1992 through the third quarter of 2008 for physicians and surgeons in Connecticut. As can be seen on Exhibit 2, the number of claims reported has been decreasing. It also shows that average claim amounts have been generally increasing over time. In fact, claim values have increased at an average rate of approximately 7% per year since 1992. Thus, the information extracted from the NPDB tends to confirm the Department's conclusion that while claim frequency is decreasing, claim severity – or the value of the claim – is increasing.

- **Do the rates charged by insurers reflect any such decrease in amount or frequency of insured awards and settlements against physicians and surgeons, hospitals, advanced practice registered nurses and physician assistants?**

Based on the information available, the Department believes that the rates in the current market have remained stable or have decreased.

Since the passage of Conn. Gen. Stat. § 38a-676a, only two companies have made requests for rate changes. In 2006, the Department disapproved a request for a 5.5% rate increase from one company. In 2007, another company that had previously sought to reduce their exposure by raising their rates by 89% in Connecticut while continuing to write in other states, returned to the Connecticut market after experiencing a change of ownership. This ownership change (along with a change in appetite for writing medical malpractice insurance) resulted in their decision to file for a 24% decrease in rates, which was approved by Department staff. Also in 2007, a new company was licensed to write business in Connecticut.

As referenced above, the Department's statutory authority over the rates of 60% of our market is limited. These entities include certain self-insurers who utilize captives or RRGs, as well as excess and surplus lines carriers. Therefore, in an effort to fulfill our statutory obligation, the Department conducted interviews with various professional liability insurance providers to understand their experience with medical malpractice insurance.

Based on the Department's interviews, the following conclusions were reached.

- Commercial insurers. These companies represent approximately 40% of the market based on 2007 premiums. For them, base rates have generally not changed since 2005. A combination of a decrease in the frequency of claims along with an increase in the value of settlements and awards has resulted in an overall loss component for rates that has decreased slightly. On average, some individual doctors have seen decreases in the premiums they pay as a result of an increase in the use of rate credits, for example, years of claim-free experience. During this time period, reinsurance costs have moderated which has also helped ease rate pressure.
- Excess & Surplus lines insurers. These companies provide insurance to doctors that are unable to obtain coverage in the commercial market or excess coverage over the amount which the insured agrees to pay before a claim can be filed with an insurer, commonly known as "deductibles." They represent approximately 7% of the market. For these insurers, rates have been decreasing since late 2006.

- Captives, risk retention groups and self-insured hospitals. These insurers (which self-insure their professional liability exposures) represent the remaining 53% of the market, with captives and RRGs comprising 42% and self-insurers 11 %. While there are variations by hospital, or for certain types of medical specialty, claim costs have generally stayed flat or decreased slightly.
- **Do such rates bear a reasonable relationship to the costs of writing such insurance in Connecticut?**

Yes. The rates being charged by insurers today reflect the following realities of the medical malpractice insurance marketplace.

First, the potential for the high cost awards causes insurers to price their policies in a more conservative manner. While claim costs have moderated, Connecticut is still viewed by insurers, reinsurers, and doctors as a very difficult legal climate for medical malpractice liability insurance. Connecticut has the highest average value of claims in the country (based on NPDB data through March of 2007) due a number of large claims. The average claim in Connecticut was \$470, III compared to the countrywide average of \$323,266. Further, based on closed claim data from the Department's March, 2008 annual report, claims greater that \$1 million accounted for approximately 15% of claims, but represented two-thirds of the total indemnity payments (see Exhibit 3).

Second, given the limited number of carriers writing physicians and surgeons medical malpractice insurance, companies are not incented to reduce their rates or write new business. The potential for large claims increases the uncertainty in pricing and raises the cost of reinsurance while decreasing its availability. It also discourages the entrance of new insurers that would provide additional competition and drive rates lower.

IV. Conclusion

As stated throughout this report, based on the information available to the Department, medical malpractice insurance rates have in some cases decreased and claim costs have stayed level or decreased slightly. Since rates have moderated or decreased slightly and since the rates available are reasonably related to writing the risk (due to the volume of high insured awards and settlements in Connecticut), the Department does not recommend formation of the working group in accordance with subsection (c) of 38a-676a.

It is important to note, that even though costs have moderated or decreased slightly, the average cost per claim is still among the highest in the nation.

In addition, the recent financial crisis is going to have a significant impact on hospitals that self-insure or rely on captive insurers for their insurance programs. These entities have seen their investments deteriorate significantly and the earnings they had in previous years will not be available to partially offset claim costs in the future. The impact of the reduction in investment income for the commercial and surplus lines companies will likely be less, but will still cause

upward pressure on rates. In summary, the Department expects prices for medical professional liability insurance to increase in 2009.

For this reason, the Department stands ready to work with all interested parties and policy makers to address the underlying issues related to the high costs of medical malpractice insurance premiums, particularly the lack of competition that exists in the medical malpractice market today.

Connecticut Department of Insurance
 Indemnity Payments
 All Insurers
 Connecticut Experience only

| Year (1) | Total Number of Closed Claims (2) | Number of Claims with Indemnity payment (3) | Number of Claims without Indemnity payment (4) = (2) - (3) | Total Indemnity Payments (5) | Average Indemnity Payments (6) = (5) / (3) |
|--------------------------|---|--|---|------------------------------------|--|
| 2005 (Qtr 4 only) | 206 | 105 | 101 | \$60,079,766 | \$572,188 |
| 2006 | 712 | 315 | 397 | \$229,547,071 | \$728,721 |
| 2007 | 588 | 264 | 324 | \$168,964,554 | \$640,017 |
| 2008 (Qtr 1, 2 & 3 only) | 434 | 201 | 233 | \$142,141,903 | \$707,174 |

Connecticut Department of Insurance
Connecticut Experience only

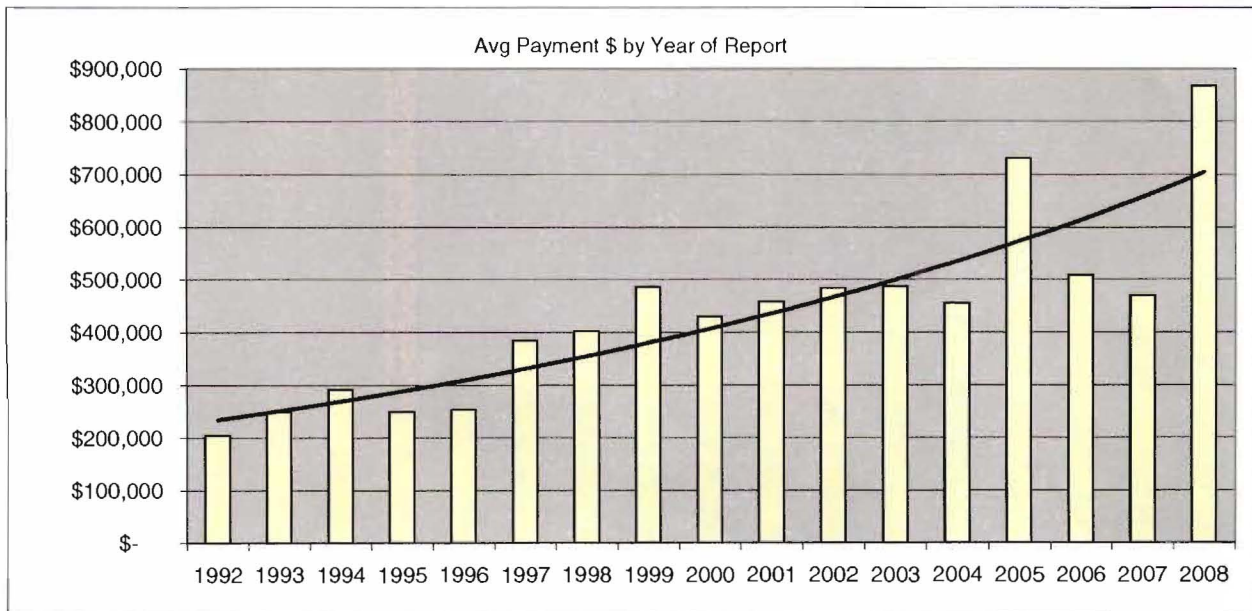
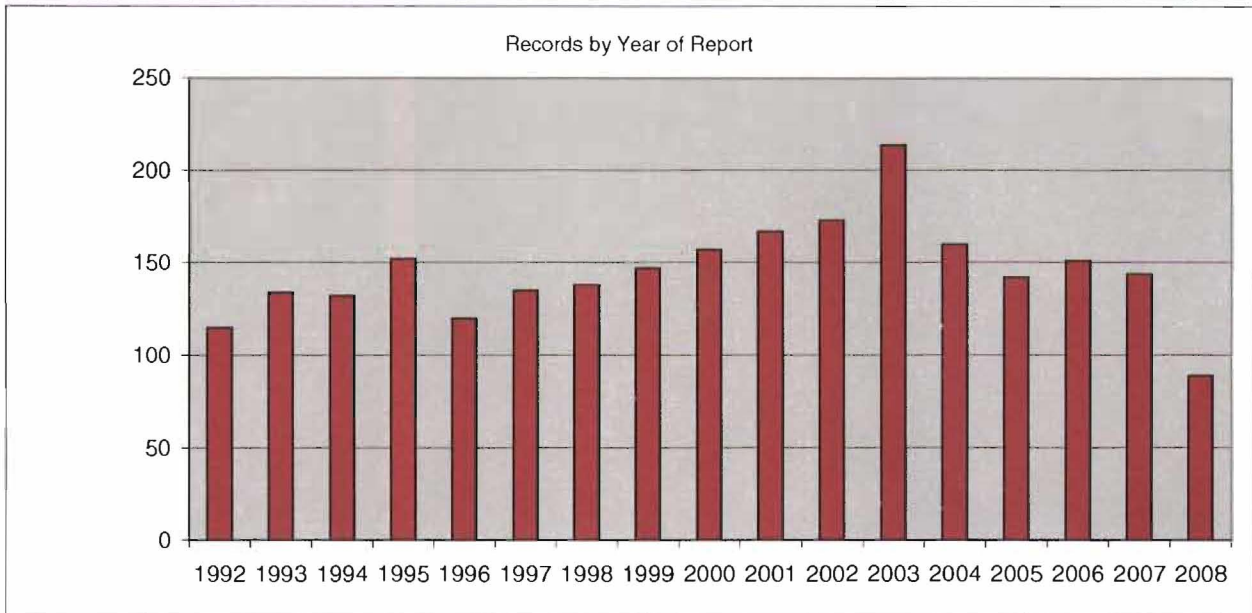
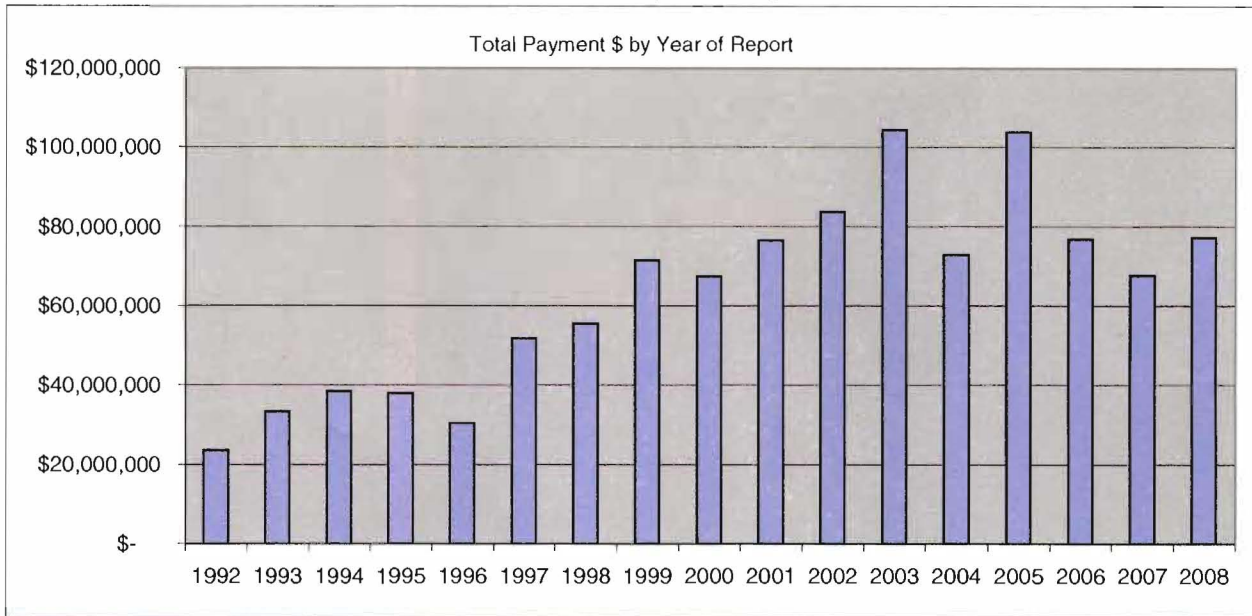


EXHIBIT 3

Connecticut Department of Insurance
Indemnity Payments for Claims
All Insurers



2005 - 2007 Aggregate

| <i>Indemnity Payment</i> | <i>Number of Claims with Indemnity Payments</i> | <i>Percent of Claims with Indemnity Payments</i> | <i>Total Indemnity Payments</i> | <i>Average Indemnity of Paid Claims</i> | <i>Percent of Total Indemnity Payments</i> |
|--------------------------|---|--|---------------------------------|---|--|
| <i>(1)</i> | <i>(2)</i> | <i>(3)</i> | <i>(4)</i> | <i>(5)</i> | <i>(6)</i> |
| \$1 - \$99,999 | 281 | 41.1% | \$10,922,842 | \$38,871 | 2.4% |
| \$100,000 - \$199,999 | 70 | 10.2% | \$10,704,918 | \$152,927 | 2.3% |
| \$200,000 - \$299,999 | 45 | 6.6% | \$11,463,291 | \$254,740 | 2.5% |
| \$300,000 - \$399,999 | 46 | 6.7% | \$16,310,001 | \$354,565 | 3.6% |
| \$400,000 - \$499,999 | 36 | 5.3% | \$16,780,917 | \$466,137 | 3.7% |
| \$500,000 - \$599,999 | 13 | 1.9% | \$7,160,000 | \$550,769 | 1.6% |
| \$600,000 - \$699,999 | 17 | 2.5% | \$11,059,923 | \$650,584 | 2.4% |
| \$700,000 - \$799,999 | 31 | 4.5% | \$23,600,718 | \$761,313 | 5.1% |
| \$800,000 - \$899,999 | 19 | 2.8% | \$16,197,500 | \$852,500 | 3.5% |
| \$900,000 - \$999,999 | 26 | 3.8% | \$25,599,184 | \$984,584 | 5.6% |
| \$1,000,000 and Over | 100 | 14.6% | \$308,792,097 | \$3,087,921 | 67.3% |
| Total | 684 | 100.0% | \$458,591,391 | \$670,455 | 100.0% |

(3)=(2) for each range/(2) total

(5)=(4)/(2)

(6)=(4) for each range/(4) total

Thursday, March 27, 2008

Report 4

EXHIBIT 4



statehealthfacts.org
Your source for state health data

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Payments on Medical Malpractice Claims, 2007

Bar Graph | Table | Map | Map & Table

Rank by: Average Claims Payments

Rank Order: ▲ ▼

| Rank | | Total Dollars in Paid Claims | Average Claims Payments ▲ |
|------|----------------|------------------------------|---------------------------|
| | United States | \$3,710,443,850 ¹ | \$323,266 ² |
| 1 | Kansas | \$14,473,750 | \$132,787 |
| 2 | Michigan | \$55,265,000 | \$133,490 |
| 3 | South Dakota | \$3,350,000 | \$159,524 |
| 4 | Texas | \$87,298,750 | \$162,265 |
| 5 | North Dakota | \$3,230,000 | \$170,000 |
| 6 | Louisiana | \$48,650,500 | \$172,520 |
| 7 | South Carolina | \$34,001,250 | \$178,954 |
| 8 | Nebraska | \$11,377,000 | \$203,161 |
| 9 | New Mexico | \$22,705,250 | \$214,200 |
| 10 | Iowa | \$14,241,500 | \$226,056 |
| 11 | Idaho | \$5,257,500 | \$228,587 |
| 12 | California | \$214,115,050 | \$231,726 |
| 13 | Indiana | \$47,849,750 | \$240,451 |
| 14 | Missouri | \$52,683,800 | \$260,811 |
| 15 | Rhode Island | \$16,399,500 | \$264,508 |
| 16 | Oklahoma | \$42,674,750 | \$266,717 |
| 17 | Mississippi | \$23,113,000 | \$268,756 |
| 18 | Colorado | \$27,715,000 | \$269,078 |
| 19 | Alabama | \$7,556,250 | \$269,866 |
| 20 | Tennessee | \$40,995,100 | \$278,878 |
| 21 | Alaska | \$2,535,000 | \$281,667 |
| 22 | Montana | \$16,266,250 | \$285,373 |
| 23 | Florida | \$226,487,600 | \$289,256 |
| 24 | West Virginia | \$17,135,750 | \$290,436 |
| 25 | Hawaii | \$7,407,750 | \$296,310 |
| 26 | Utah | \$19,978,750 | \$298,190 |
| 27 | Washington | \$46,961,550 | \$308,958 |
| 28 | Arkansas | \$14,162,000 | \$314,711 |
| 29 | Oregon | \$29,458,050 | \$327,312 |
| 30 | North Carolina | \$44,136,750 | \$329,379 |
| 31 | Maine | \$10,885,000 | \$329,848 |
| 32 | Ohio | \$71,774,000 | \$335,393 |
| 33 | Maryland | \$60,624,500 | \$352,468 |
| 34 | Vermont | \$3,527,500 | \$352,750 |

EXHIBIT 4

| | | | |
|----|----------------------|---------------|-----------|
| 35 | Nevada | \$25,511,500 | \$359,317 |
| 36 | Arizona | \$67,975,250 | \$363,504 |
| 37 | Kentucky | \$42,591,000 | \$367,164 |
| 38 | Minnesota | \$30,505,550 | \$367,537 |
| 39 | Pennsylvania | \$282,611,000 | \$368,463 |
| 40 | Delaware | \$5,745,000 | \$383,000 |
| 41 | New Hampshire | \$16,642,500 | \$405,915 |
| 42 | Virginia | \$48,346,000 | \$409,712 |
| 43 | Georgia | \$101,219,500 | \$416,541 |
| 44 | District of Columbia | \$9,772,500 | \$424,891 |
| 45 | New Jersey | \$196,876,250 | \$432,695 |
| 46 | New York | \$674,683,750 | \$441,547 |
| 47 | Wisconsin | \$27,028,000 | \$458,102 |
| 48 | Connecticut | \$67,696,000 | \$470,111 |
| 49 | Massachusetts | \$148,669,500 | \$530,963 |
| 50 | Illinois | \$215,890,000 | \$634,971 |
| 51 | Wyoming | \$8,342,000 | \$641,692 |
| | Puerto Rico | \$10,968,000 | \$54,030 |
| | Virgin Islands | \$470,000 | \$235,000 |
| | Guam | NA | NA |
| | Residence Unknown | \$381,067,400 | \$316,764 |

Notes: U.S. total includes claims for territories, including 4 claims in the Armed Forces (totaling \$3,295,000) and Micronesia (\$245,000). Data for 2007 updated as of September 30, 2008. Data limited to those payments made during 2007 for medical malpractice claims for allopathic physicians (MDs), allopathic interns and residents (MDs), osteopathic physicians (DOs), and osteopathic interns and residents (DOs). Payments are based on physician's work state.

Sources: Kaiser Family Foundation analysis of data from the National Practitioner Data Bank (NPDB), Public Use Data File (NPDB0803.POR), accessed 11/17/08. <http://www.npdb-hipdb.com/PUBLICDATA.HTML>

Definitions: Allopathic Physicians practice allopathic medicine (sometimes called conventional medicine): the system of medical practice which treats disease by the use of remedies which produce effects different from those produced by the disease under treatment. Osteopathic Physicians practice osteopathic medicine which focuses primarily on the manipulation of the musculoskeletal system and emphasizes preventive medicine while taking a holistic approach to health. An osteopathic physician is licensed to perform surgery and prescribe medication. An osteopath completes four years of medical school and can choose to practice in any specialty of medicine.

NA: Data are not available.

Footnotes:

1. U.S. figure includes total payments for the Armed Forces in Europe (\$980,000), Armed Forces in the Americas (\$2,150,000), Armed Forces in the Pacific (165,000) and Micronesia (\$245,000).

2. U.S. figure includes average payments for the Armed Forces in Europe (\$490,000), Armed Forces in the Americas (\$2,150,000), Armed Forces in the Pacific (\$165,000), and Micronesia (\$245,000).