



**STATE OF VERMONT
GENERAL ASSEMBLY
STATE HOUSE**

August 20, 2008

Commissioner Kevin McCarty
Commissioner Thomas R. Sullivan
Property and Casualty Insurance (C) Committee
National Association of Insurance Commissioners
2301 McGee Street, Suite 800
Kansas City, MO 64108-2662

Re: Medical Professional Liability Closed Claim Reporting Model Law ("Model Law")

Dear Commissioners McCarty and Sullivan:

Thank you for your letter of August 5, 2008 responding to the concerns we raised regarding the development of the Model Law. In addition, thank you for your efforts since your discussions with Herb Olson on June 2 allowing Vermont an opportunity to comment on the Model Law and setting up the upcoming August 25, 2008 conference call for interested parties.

With respect to the points you raised regarding the development procedures, while we understand that this Model Law has been the subject of discussion in the NAIC's Statistical Information (C) Task Force for quite some time, we also understand that the language to which Vermont has raised objections was added only in January 2008, so we continue to believe that putting the Model Law on the agenda for the June 2008 NAIC plenary session was over-hasty. We note that you indicate that there were "open conference calls" of the Task Force in February and March of 2008; however, it is not clear that this new language was part of the agendas for those calls or if they were held to address the confidentiality issue or possibly technical reporting issues.

As to your comment that captives and risk retention groups have voluntarily disclosed closed-claim information, we do not believe that Vermont's requested amendment to the Model Law would prevent future voluntary disclosure. Vermont's concern is that the

current language of the Model Law encourages a Commissioner to sue a non-resident captive or risk retention group that may not be willing to voluntarily comply. Vermont views this type of litigation as an unnecessary distraction given the clear legal precedents that indicate that risk retention groups and captive insurers are not subject to this type of regulation by a non-domicile regulator. This is why Vermont supports language that removes the reference to litigation and authorizes a Commissioner in an enacting state to obtain closed claim information directly from the health care provider if such provider is insured by an out-of-state captive insurer or risk retention group that has refused to comply with a request for voluntary disclosure.

Again, thank you for allowing Vermont to provide its comments on the language of the Model Law and setting up the August 25 conference call for your committee to review this issue. We look forward to a mutually agreeable resolution of this matter.

Sincerely,




Sen. Ann E. Cummings



Rep. Kathleen C. Keenan



Rep. Warren Kitzmiller



Rep. Virginia Milkey