

MEMO

TO: Member of the Medical Malpractice Interim Legislative Committee  
FROM: Susan E. Voss, Commissioner  
RE: Medical Malpractice Information Request  
DATE: November 1, 2005

The following information is provided as per your request of October 5, 2005.

**1. Provide a list of average rates of different specialties. (Specifically those states surrounding Iowa.)**

According to the October 2005 issue of Medical Liability Monitor: "...states in the upper Midwest still enjoy the lowest premiums. Wisconsin, Minnesota, Iowa, Nebraska and North and South Dakota consistently have lower rates for all specialties than most other states."

The lowest 2005 rates reported for the following specialties in Iowa and other states surrounding Iowa were:

State	Internal Medicine	General Surgery	Ob/Gyn
Iowa	\$6272	\$23,171	\$43,407
Minnesota	\$3375	\$11,306	\$19,643
South Dakota	\$3697	\$12,569	\$21,072
Wisconsin	\$5147	\$18,015	\$23,677
Illinois (Cook Co.)	\$38,424	\$101,940	\$143,040
Illinois (other)	\$19,740	\$51,500	\$72,048
Missouri (KC)	\$11,808	\$31,626	\$52,288

Nebraska has been omitted because of the Patient Compensation Fund which makes rate comparisons invalid.

**2. Insurer Claim/Settlements/Lawsuit Data**

Year	#of Lawsuits	# of other claims	total number of claims	# of claims settled	Number of Trials by Insured	Trials Won	Trials Loss
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2001	44	42	86	7	0	0	0
2002	97	63	160	28	0	0	0
2003	146	129	275	18	5	5	0
2004	120	198	318	6	11	11	0
2005	72	116	188	2	23	19	4

(Only one company responded to survey.)

### **3. Reflections of Investment Income on Rates**

Investment income is often incorporated in rate filings as an offset to the profit and contingencies load. Several acceptable methods exist. Therefore, there is not one particular model/method that all companies follow. The methodology is attached to the rate filing so that the Division's actuary can review the method at the time of the rate filing.

**4. # of Cases filed. See # 2 above.**

### **5. Using Income from Surplus in Ratemaking (515F.4, subsection 5.)**

The Division is unaware of why there exists a ban on the use of surplus income for purposes. Should this prohibition be struck from the section, would rates decrease? This is difficult to predict. There are many factors that go into the premium rate for each company. You have credit and reinvestment risk of the portfolio along with what types of investments they are investing in.

Credit risk is the risk in who they are investing in defaults on their obligations. Reinvestment risk is that the company will not receive income equal to or greater than what they were getting for the same credit risk. This should not happen for a while since interest rates are currently increasing. The type of investments they are investing in reflects greatly upon the amount of income.

We cannot say with certainty that by eliminating the last sentence of the code subsection that rates would drop significantly. And, it may not be that accurate. In many instances companies could still file what they thought were appropriate rates. Most of the companies are too small to develop rates based upon their own data anyway. It would more than likely be a one-time drop as the income would fluctuate yearly so rates would go up and down with the income.

In addition, a review of rating laws in other states show that each is worded slightly different. They appear to be consistent in requiring that rates not be excessive, inadequate, or unfairly discriminatory. This requirement ties directly to the actuarial principles.

Iowa's existing laws do not prohibit an insurer from developing rates in accordance with actuarial principals; rather they require an insurer to abide by the ratemaking principals. Rates for medical malpractice insurance must be approved before use. See Iowa Code section 515F.5.

An actuary reviews every rate filing for compliance with this statute. Considerations in determining whether a rate filing is excessive, inadequate, or unfairly discriminatory are delineated in the Casualty Actuarial Society's Statement of Principles Regarding Property and Casualty Insurance Ratemaking. There is no one set of factors or one ratemaking methodology that is appropriate for all companies or for determining all rates. The methodologies and factors used for each individual filing are reviewed for compliance.

Per Iowa Administrative Code 191-5.9(505), "no rate filing shall include any adjustment designed to recover underwriting or operating losses incurred out of state." Per the statement of principles, a rate must be "an actuarially sound estimate of the expected value of all future costs associated with an individual risk transfer." Rates reflect prospective costs and should not be used for recouping losses.

In order to determine whether proposed rates are in compliance with Iowa laws, additional information and support are frequently requested of insurers. Sometimes revisions to filings are required. Filings that

are not in compliance with Iowa laws, including that rates not be excessive, inadequate or unfairly discriminatory are disapproved and we ask the companies to review their information and revise them accordingly.

## **6. Mechanism for public review of rates prior to approval**

It is possible that a system similar to workers compensation could be put in place. In the area of workers compensation, proposed changes in bureau rates must be published in the Iowa Administrative Bulletin. Publication could take up to a month depending upon receipt dates and submission deadlines. Fifteen days are allowed for someone to request a hearing. Existing laws allow for a thirty day review period to be extended an additional fifteen days, but do not require that amount of time before approval. Typically reviews of filings do not take that long. Keep in mind that Iowa uses a rating agency (NCCI) for workers compensation which provides a different type of system. Carriers are allowed to adjust their rates up or down 15% from the filed NCCI rate. Medical malpractice insurance does not have a similar system.

The major medical malpractice insurers currently file their proposed rate well in advance of the proposed effective dates. Changing the date that filings are considered public record could cause some disruption in lines of business where insurers frequently review each other's filings. Perceived restrictions added to the current regulatory process could discourage insurers from writing business in the state. If insurers believe they cannot adjust rates quickly when needed, they may be reluctant to write the business or only be willing to write at higher rate levels to compensate for the risk of not being able to adjust rates as needed.

## **7. Medical malpractice trends vs. CPI**

According to the U.S. Department of Labor's CPI Detailed Report, the Consumer Price Index for All Urban Consumers for medical care costs increased 4.9% from December 2003 to December 2004 with professional services increasing 4.0% and hospital and related services increasing 5.2%. Medical care costs rose 4.2% from June 2004 to June 2005.

Historical data with appropriate adjustments for expected changes in claim costs and frequencies can be used to help in determining prospective rates. Many factors influence trends including but not limited to the specific company's book of business, any changes in underwriting and claims handling, policy provisions, deductibles and limits, changes in policyholder activities and safety. A sampling of filings shows that the major writers of medical malpractice insurance in Iowa have included loss (including adjustment expense) trends ranging from around 4% to 6% over the last couple of years.

(For an historical number, according to an article in Medical Economics, from 1991-2003, the CPI rose 35% and the cost of medical care services rose 73%.)

## **8. Expanding the market place in Iowa**

Overall marketing of Iowa is necessary. (I.E., high ranking by U.S. Chamber of Commerce as good place to do business with low litigation expenses.) In addition, the legislature could consider tax breaks for new companies doing business such as a 5-year premium tax abatement. This was done for HMOs in their infancy to encourage their entrance into the Iowa market.

## **9. Certificate of Merit**

The Division facilitated a meeting of representatives of the Iowa Medical Society, the Iowa Hospital Association, the Iowa Osteopathic Medical Association, the Iowa Trial Lawyers and the Iowa Bar Association. A discussion was held about Certificate of Merit and whether such a program would be appropriate in Iowa. Members of the Iowa Trial Lawyers and the Iowa Medical Society have been in discussions for approximately 18 months to discuss ways to expedite medical malpractice issues. Included in their discussions has been a process of providing additional time to review a possible medical malpractice case prior to the statute of limitations tolling.

There is a Principals of Cooperation between the Iowa Medical Society and the Iowa Bar Association that was executed in 1992. This document provides guidelines for the purposes of filing certain legal actions. There is discussion about revisiting this document for possible revision and updating.

The Division will defer to the Iowa Medical Society for greater discussion and explanation of the above information. (It is my understanding they will be testifying on November 7, 2005.)

## **10. Recent Rate Changes-why have they stabilized?**

Rates have been trending down or leveling off. Rates specific to Iowa appear to have remained stable over the 2004-2005 period with most increases in 0%-5% range. The outlook for 2006 both nationally and for Iowa suggests that rate changes will be moderate. In Iowa, the leveling off of rates is due in part to large rate increases in recent years to more appropriately reflect the risks of the Iowa business. Interest rates have begun to increase after several bad years and the market has begun to adjust to the exit of St. Paul.

## Insurer Claim / Settlement / Lawsuit Data

Insurer A

Year	Physician claims & suits reported *	Hospital claims & suits reported *	Total claims & suits reported *	
2000	151	17	168	
2001	155	20	175	
2002	175	34	209	
2003	182	31	213	
2004	140	38	178	
2005 as of 9/30/05	68	20	88	

\* The numbers reflect only formal claims and lawsuits reported in the policy years shown. They do not include potentially compensable events. They include cases reported on tail coverage (even though coverage for those cases would actually fall back into the year the tail policy was purchased).

Insurer B

Year	# of Lawsuits	# of other claims	Total number of claims	# of claims Settled	Number of Trials by Insured	Trials Won	Trials Loss
2000	1	1	2	1	0	0	0
2001	44	42	86	7	0	0	0
2002	97	63	160	28	0	0	0
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Insurer C

	2000	2001	2002	2003	2004	2005	Total
File open	0	0	3	0	13	4	20
Settled Before Filing	1	0	2	5	1	0	9
Settled During Discovery	2	4	4	4	0	0	14
Summary Judgment							
Defense	0	0	0	1	0	0	1
Defense Verdict	0	0	3	0	2	0	5
Lack of Activity	0	3	0	0	1	0	4
Claim Denied, No Further Activity	1	0	1	0	1	0	3
Claim dropped before filing	0	0	0	0	1	0	1
Claim Dismissed After Filing	6	2	3	7	6	0	24
Claim dismissed against insured, settled by Owner	0	0	2	1	0	0	3
Other	0	0	1	2	1	0	4
<b>Total</b>	<b>10</b>	<b>9</b>	<b>19</b>	<b>20</b>	<b>26</b>	<b>4</b>	<b>88</b>