



# The State of New Hampshire Insurance Department

21 South Fruit Street, Suite 14  
Concord, NH 03301  
(603) 271-2261 Fax (603) 271-1406  
TDD Access: Relay NH 1-800-735-2964

Christopher R. Nicolopoulos  
Commissioner

David J. Bettencourt  
Deputy Commissioner

## Competitive Market Determination Regarding Medical Professional Liability Insurance For Physicians, Surgeons, and Hospitals

Docket: INS No. 21-056-AP

### ORDER

#### Background

An important purpose within RSA 412<sup>1</sup> is to ensure competitive rates of property and casualty insurance products within the New Hampshire insurance market. Pursuant to RSA 412:13, a competitive market is presumed to exist unless the Commissioner, after a hearing, determines that a reasonable degree of competition does not exist in the market and the Commissioner issues a ruling to that effect. Such ruling expires 2 years after issue unless the Commissioner renews the ruling after a public hearing and

---

<sup>1</sup> RSA 412:1:

The purpose of this chapter is:

- I. To protect policyholders and the public against the adverse effects of excessive, inadequate or unfairly discriminatory rates.
- II. To promote price competition among insurers so as to provide rates that are responsive to competitive market conditions.
- III. To cause the provision of price and other information to enable consumers to purchase insurance suitable for their needs and to foster competitive insurance markets.
- IV. To improve availability, fairness, and reliability of insurance. . .

continued finding as to a lack of a reasonable degree of competition. See RSA 412:13. RSA 400-A:17 provides that the Commissioner has authority to hold hearings for any purpose within the scope of the insurance code, (Title XXXVII), as he may deem advisable or if required by any provision within that code.

In 2019, after notice and a public hearing, the Commissioner, on November 8, 2019, issued an Order, Docket No. 19-023-AP, (“November 8, 2019 Order”) finding that a competitive market for medical professional liability insurance covering physicians, surgeons, and hospitals did not exist in New Hampshire. On or about September 2, 2021, the Department published notice of an October 22, 2021 hearing on the Department’s website and sent notice of the hearing to the top twelve (12) licensed writers of medical professional liability insurance in the state. In addition, the Department published additional notices of this hearing in eleven (11) New Hampshire daily newspapers on October 8, 2021 and October 15, 2021. The public hearing was held, as scheduled, on October 22, 2021 at 10 am at the New Hampshire Insurance Department (Department) to determine whether the November 8, 2019 Order should be extended another two years.

### **Findings**

Christian Citarella, the Department’s Chief Property & Casualty Actuary, testified at the October 22, 2021 hearing. There were no other witnesses who testified or presented evidence at this hearing. Mr. Citarella presented testimony and exhibits to address the following considerations



with regard to competitiveness within the New Hampshire medical malpractice insurance market, as outlined within RSA 412:14(II):

- (a) The extent to which the largest insurer groups control the insurance marketplace.
- (b) Whether the total number of companies writing the form of insurance in this state is sufficient to provide multiple options to the public.
- (c) The extent to which insurer entries and exits, considered over several years, suggest the presence or lack of entry or exit barriers or both.
- (d) The degree to which the insurance products offered to consumers are homogenous in nature and, thus, comparable.
- (e) The availability of insurance coverage in all geographic areas. A review of changes in residual market shares, if applicable, may be used as an indication of availability.
- (f) The overall rate level which is not excessive, inadequate, or unfairly discriminatory.
- (g) The trend in price level for each type of insurance.
- (h) The profitability of each form of insurance over a period of several years.
- (i) The level of knowledge of market participants and the extent to which comparative pricing information has been made readily available to consumers.
- (j) The extent to which the market for each type of insurance is growing.
- (k) The presence of conditions indicating reverse competition.
- (l) Any other factors customarily reviewed and considered relevant.

As was the case two years ago, Mr. Citarella testified that the market is highly concentrated for admitted insurers based on the Herfindahl-Hirshman Index (HHI). As in 2019, the regulated market continues to be dominated by just three (3) large insurers and a few large non-regulated entities continue to gain market share. In addition, several insurers continue to rely on each other's rate filings to justify or produce their own data and rates. As a result, Mr. Citarella testified that these circumstances support the need for the Department to continue to review and ensure that the data and methodology

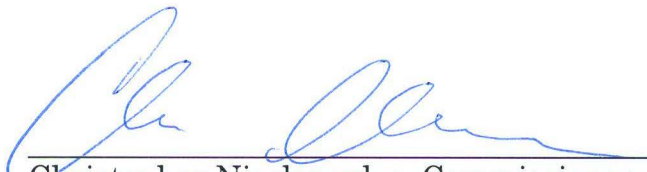
relied upon by insurers in this market for rates are reliable. In sum, Mr. Citarella's testimony and exhibits at the hearing support the conclusion that (1) there has not been significant change in the New Hampshire market over the past two years with respect to the factors outlined within RSA 412:4 (II) and (2) there is not a reasonable degree of competition in the medical professional liability insurance marketplace.

### Conclusion

After reviewing the testimony and exhibits presented at the hearing, I find that there continues to be substantial evidence in support of the conclusion that the medical professional liability insurance market for physicians, surgeons, and hospitals is not a competitive market<sup>2</sup> in New Hampshire. As such, (1) rate filing procedures and standards as outlined within RSA 412:15, 412:16, and 412:19, specific to a noncompetitive market continue to apply to medical professional liability insurance market for physicians, surgeons, and hospitals and (2) this Order will expire two years from the date this Order is signed.

SO ORDERED.

Date: 11-8-2021

  
\_\_\_\_\_  
Christopher Nicolopoulos, Commissioner

---

<sup>2</sup> RSA 412:3(VI) "Competitive market" means a market that has not been found to be noncompetitive pursuant to RSA 412:13.