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Inquiries Related to Topics of the Special Session

1) Compare medical liability insurance premium rates, by specialty, between Wyoming and surrounding states.

2) Briefly summarize the 1988 Wyatt report concerning a liability compensation account, or "pool." Define a "joint underwriting association" (JUA), and summarize the 2003 Wyoming Health Care Commission's JUA report and relevant findings. Within this discussion, define "excess" and "primary" coverage.

3) Identify and briefly explain measures that have been implemented in other states related to medical malpractice, beyond capping damages. Specifically, include a summary of the laws imposed in Nebraska.

Answers:

1) Defensible, comparable data is limited with regard to medical liability premiums. None of the insurance departments in surrounding states compile this information in any comparable fashion. Therefore, LSO has contacted several companies directly requesting this information and has supplemented its research with a purchase of 2003 data from a specialty research firm. Complicating matters, there are in excess of 190 different specialties (as categorized by some insurance firms) and dozens of potential insurance providers.

Two products will ultimately be prepared. First, we will provide 2003 rate comparisons by all major carriers in surrounding states (and North Dakota) for three major specialties – internal medicine, general surgery, and OB/Gyn. LSO 04FS013, included with this correspondence provides our first summary of available data. It is preliminary in nature, and additional review may allow LSO to further refine and expand the analysis.

Second, presuming continued cooperation from the major carriers in Wyoming, we will prepare a summary of 2004 premium data for a much larger sample of specialties for all states in which major medical liability insurance companies are also doing business in Wyoming. For example, this will allow Legislators to identify UMIA rates in Wyoming compared to surrounding states. At present, this information has not been completed.

2) Wyoming's medical liability compensation account has been in statute for decades. (W.S. 26-33-101 et seq) Presently, statute requires that "a qualified physician shall be insured in a minimum amount of $50,000 against a claim for malpractice." Then, in the event successful claims are made against a qualifying physician, any awards in excess of $50,000 shall be paid by the medical liability compensation
account. Payments from the account "shall not exceed $1,000,000 in any calendar year for one or more awards or settlements against an individual physician." The account is currently not operating, and according to executive branch sources, there is no indication that the account has been implemented. The funds to support the account shall be collected through an annual surcharge on physicians as per current statute. (W.S. 26-33-105(c))

This medical liability compensation account is an example of excess coverage. *Excess coverage* is coverage that would apply to claims above (or in excess of) commercially purchased insurance, or self-insurance. In the case of the Wyoming medical liability compensation account, coverage is provided in excess of the minimum $50,000 required to be obtained independently by all physicians. Alternatively, *primary coverage* is first dollar coverage. In the above example, the $50,000 of physician coverage would be termed *primary coverage*.

Unrelated to a medical liability compensation account, a joint underwriting association (JUA) is an organization of insurance companies formed with statutory approval to provide a particular form of insurance.¹ Within the umbrella of JUAs (as well as other insurance constructs), multiple designs exist. For example, a JUA might provide insurance to a market of last resort to those physicians who could not obtain insurance elsewhere. More broadly, a JUA could provide insurance to physicians with very few (or no) restrictions. Assessments to support the insurance could conceivably be paid by just insurance companies providing medical malpractice insurance in the state, all property/casualty insurance companies in the state, or even participating physicians. It would depend upon its design.²

**Studies.** A 1988 Watson Wyatt study responded to 1988 Laws, Ch. 89, Sec. 044, Footnote 1. It concluded, "a pooling arrangement in Wyoming would be feasible." Essentially, the "pooling" referred to in this study refers to a medical liability compensation account where the insurance is primary, not excess coverage. It made no mention of the medical liability account currently in statute at the time of the study and presently. Further, the report appears to have made a serious error in baseline facts by presuming specific legislation in Wyoming had been successful, when in fact it had failed. In short, the report presumes the existence of $5,000,000 state appropriation that would be available to fund the account – this assumption combined with potential for administrative cost efficiencies appears to be the source of the anticipated savings in the magnitude of eight percent of premiums. The Joint Judiciary Committee recommended, "that no legislation be passed implementing a Medical Liability Compensation Account" in 1989, a year after the Wyatt report was completed. A minority report disagreed with this conclusion.

In 2003, the Legislature required the Wyoming Health Care Commission (WHC) conduct a study to assess the feasibility of establishing a JUA for medical liability insurance. (2003 Laws, Ch. 151) Within the statutory charge, the legislation specifically required that the study shall also "evaluate the feasibility of revising and using the medical liability compensation account provided by W.S. 26-33-101 through 26-33-111." With respect to the medical liability compensation account, the WHC concluded, "the existing statute would need major revisions and would be useless in an emergency situation where insurers have left the market." Further, depending upon the structure, the report concluded that a JUA might be expected to cost 30 to 75 percent more than commercial insurance, before accounting for pending rate increases.

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¹ Rupp's Insurance & Risk Management Glossary
² For purposes of this discussion, medical liability insurance is specifically discussed in this memo; however, JUA's are by no means limited to this line of insurance.
In a more recent news release from June 7, 2004, WHC updated its recommendations. Notably, recommendation 3C states, "A temporary state-sponsored or state-supported mechanism may need to be created to provide medical liability insurance coverage for Wyoming physicians who cannot obtain coverage in the commercial market because they practice in high-risk but essential specialties." The release adds, "...an emergency JUA is a possible option." WHC notes the potential need for subsidies under this arrangement due to the anticipated higher rates compared to commercial insurance.

More information. If you would like more information, I can provide you with a hard copy of the 1988 Wyatt report. The WHC’s JUA report and the updated June 7 press release is available electronically at www.wyominghealthcarecommission.org, and my complete Research Memo: Medical Liability Compensation Account – Comparison of Studies (04RM007).

3) I have provided a summary of all surrounding state legislation related to medical liability reform as requested by Management Council, and more recently, directly by you. This information is based upon work originally prepared by the National Conference of State Legislatures (NCSL), with more recent updates by the American Medical Association (AMA). LSO has reviewed and verified the information, added appropriate statutory citations, updated the information, where applicable, and corrected minor errors in fact. Included with this correspondence as 04FS012.

In addition, I will fax you a short summary of the malpractice provisions in Nebraska, per your request.