



June 13, 2012

The Honorable John H. Lynch
Office of the Governor
State House
107 North Main Street
Concord, NH 03301

Re: New Hampshire SB 406 – Early Offer Legislation

Dear Governor Lynch:

I write on behalf of ProSelect Insurance Company (“ProSelect”), the largest medical professional liability writer in New Hampshire, to share our concerns with SB 406 (the “early offer” bill) and to respectfully urge you to veto the legislation.

Although we submit this letter in opposition to SB 406, the Company has long supported meaningful reform that would help reduce the cost of medical professional liability insurance as a factor of the high cost of health care delivery in the country. This bill does not accomplish this goal.

Despite its stated goal of providing “the option of a simple, clear process” and “prompt and sure recovery of all economic losses associated with meritorious claims,” SB 406’s proposed process, replete with an adjustable workers compensation-modeled payment schedule based on class of injury severity, provision of on-going weekly wage payments, and hearing process, is neither simple nor clear. We anticipate that the proposed payment scheme will be costlier than the current system, thus increasing costs to health care providers, and because of its on-going nature, will also significantly complicate the current reporting obligations of any participating medical professional liability insurer to the National Practitioner Data Bank, the Center for Medicare & Medicaid Services, and the New Hampshire Board of Medicine. In addition, by authorizing Supreme Court-appointed hearing officers to resolve disputes and conduct hearings in the early offer option context, the bill effectively creates a parallel process to the current pre-trial screening panels established under RSA 519-B.

Contrary to the “long waits for parties” cited in SB 406 as a reason for the legislation, it has been ProSelect’s experience that medical professional liability claims generally close faster in New Hampshire than in many of our other states of operation; in fact, ProSelect’s New Hampshire claims generally close within two or so years compared to the four or so years we see in other jurisdictions.

Additionally, by permitting claimants to seek damages from one health care provider with no regard to other providers’ proportionate responsibility, SB 406 puts an unreasonable onus on the

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MHA Insurance Company Washington Casualty Company*



named provider who must seek contribution from other responsible parties with “reasonable” cooperation from the claimant.

In prior comments to members of the State Legislature, we recommended that the bill is sufficiently complex and controversial to merit further study. Indeed, we continue to question the somewhat unseemly haste in which SB 406 was passed despite significant concerns from various stakeholders - which concerns have been largely dismissed or purportedly “addressed” by amendments adopted at the legislative level.

Although it has been stated that enactment of SB 406 would pose no major issues for the medical professional liability insurance market, that is not true. In fact, traditional medical professional liability insurers cannot accommodate the early offer program as set forth in SB 406. Consequently, the bill favors non-traditional insureds and the alternative market, a member of which as you probably know developed the legislation in the first place. We believe that an early offer law should work for the entire insurance industry rather than just one segment and that doing otherwise could cause traditional insurers to reconsider entering or writing business in the state.

Lastly, the stated goals of the bill do not necessarily require legislation. As an example of a company-specific reform, ProSelect’s early disclosure and compensation program, REACT, available in New Hampshire and other states, did not require legislation. Similar to other such programs throughout the country, the program assists insured health care providers and their patients who experience adverse medical events to achieve a swift resolution and preserve the patient-physician relationship.

For these and other reasons, ProSelect opposes SB 406 and urges you to veto the legislation. While the current legal system for resolving medical professional liability claims may not be perfect, the bill’s proposed payment scheme alone is significantly more complicated than what is now in place and will cost more to insurers, thus increasing the cost to New Hampshire health care providers.

Thank you for considering our comments, which we trust will be helpful to you. We are available to serve as a resource to you as you consider this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Gregg L. Hanson". The signature is stylized and includes a long horizontal line extending to the right.

Gregg L. Hanson
President and CEO