

# Arizona Department of Insurance 2009 Market Monitoring

Volume 7, Issue 3

Nursing Home Liability

May, 2009

	Index:	Page
I	Rate System	1
II	Market Monitoring Methodology	1
III	National/Arizona Comparison	1
IV	Survey Responses	1
V	Major NHL Trends	2
VI	Conclusions	2

For purposes of this document "nursing home" includes all of the types of facilities identified in Section IV.

## I. Rate System:

Arizona's "open competition" law, applicable to nursing home liability ("NHL") insurance, prohibits insurers from charging excessive, inadequate or unfairly discriminatory rates or rates that will have the effect of destroying competition or establishing a monopoly. As a matter of law, the Department cannot find a rate to be excessive if "a reasonable degree of price competition" ("RDPC") exists at the consumer level. The law presumes a competitive market exists unless the Director, after a public hearing, determines that a RDPC does not exist in the market.

## II. Market Monitoring Methodology:

To monitor NHL, the Arizona Department of Insurance ("ADOI") primarily relies upon, insurers' responses to an annual ADOI survey and current trade press articles. Survey responses provide insurers' input about their activity in and their perception of the market. ADOI collects and analyzes all information, identifies trends and summarizes its findings.

The purpose of market monitoring is twofold: to assist the Director in determining whether competition exists; and, assists consumers with their questions and concerns about the availability of NHL insurance.

## III. National/Arizona Nursing Home ("NH") Comparison:

The Centers for Medicare and Medicaid Services (CMS) conducted a five star rating system which rates the quality of NHs. The CMS based the ratings in this system on criteria such as performance and staffing. There were 133 Arizona NHs that participated in this rating program. Some key findings are:

- Twenty-nine Arizona NHs received a one star rating (the lowest rating), or 22% (the same percentage nationally).
- Nineteen Arizona NHs received a five star rating (the highest rating), or about 14% (slightly better than the national average of 12%).
- Arizona NHs received an average score of 2.85 stars, just above the national average of 2.81.

## IV. Survey Responses:

Of the 207 insurers that responded to the ADOI's 2009 survey, only three insurers, under extremely limited conditions will write any new business in the following classes.

Skilled or intermediate care facilities – GuideOne Specialty IC writes this class.

Assisted living facilities with on premises care – Church Mutual IC and GuideOne Specialty IC write this class.

Rest homes with health care – no admitted insurers write this class.

Personal care facilities or residential homes with skilled care or other health care including adult foster homes – Church Mutual IC and First National IC of America write this class.

Convalescent homes with continuous nursing or other medical care – no admitted insurers write this class.

Continuing care retirement communities with a NH on campus – no admitted insurers write this class.

Any other adult extended care facility that provides nursing or other medical care – no admitted insurers write this class.

## V. NHL Market Trends:

**Trend # 1:** Competition is non-existent in the admitted NHL market. Those insurers willing to write coverage will not write all classes of nursing homes and wrote fewer policies in 2008 when compared to 2007. Coverage for some categories of nursing homes is simply not available.

**Trend # 2:** Most insurers, while possessing the authority to write NHL, are choosing not to write it at any price. Admitted insurers wrote only 16 NHL policies in 2008, compared to 22 in 2007. Of the 16 policies, only one skilled or intermediate care facility was written.

**Trend # 3:** Self-imposed moratoriums is the primary reason for insurers' exit/non-entry in the Arizona NHL market. The most common reason insurers gave for their decision to not seek new business is because of their self-imposed moratoriums. The Arizona 2008 admitted market NHL combined ratio decreased to 2.2% from 130.1% 2007, while the direct written premium continued to drop (\$555,450, 2004; \$285,669, 2005; \$243,328, 2006; \$226,019, 2007; \$172,319, 2008). With minimal NHL writings, one loss can dramatically impact an insurer's combined ratio.

**Trend # 4:** It is unlikely that admitted insurers will consider entering the NHL market in the near future. No admitted insurers entered the NHL market in 2008. As insurers responded in the survey that they will not change their underwriting stance in 2009, it is unlikely a meaningful number of insurers will enter the NHL market.

**Trend # 5:** Reinsurance is not problematic. The majority of insurers responded in a neutral fashion as to whether obtaining reinsurance is problematic.

**Trend # 6:** Alternative markets for NHL. Risk retention groups, captive insurers and surplus lines insurers provide alternative markets for NHL. While we do not have any way to determine how much of the NH market is self-insured, it is another way that some NHs address their NHL exposures.

## VI. Conclusions:

The NHL market remains extremely stressed. Only three admitted insurers will write NHL under very limited conditions. Coverage for some categories of NHL is simply not available in the admitted market. Presently, most insurers with the authority to write NHL choose not to write it. NHL loss experience has driven insurers to implement self-imposed moratoriums, which will likely deter new insurers from entering the market in the immediate future.

Alternative markets provide viable liability insurance options for nursing homes in Arizona.