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November 30, 2017

The Honorable Judith Williams Jagdmann
The Honorable James C. Dimitri
The Honorable Mark C. Christie
Commissioners
Virginia State Corporation Commission
c/o Document Control Center
P.O. Box 2118
Richmond, Virginia 23218

ATTN: Joel H. Peck, Clerk

**Subject: Case No. INS-2017-00202
Proposed Amendments to 14 VAC 5-335**

Dear Commissioners Jagdmann, Dimitri, and Christie:

On behalf of PIAA and our medical professional liability and healthcare professional liability (MPL/HPL) insurers that conduct business in the Commonwealth of Virginia, I would like to thank the Virginia State Corporation Commission for giving us an opportunity to share our perspective on the potential impact of the amendments to the “Rules Governing Claims-Made Liability Insurance Policies” (14 VAC 5-335; “Rules”) on the MPL/HPL insurance community.

PIAA is the insurance industry trade association that represents a full range of entities doing business in the MPL/HPL arena, including MPL/HPL insurance companies, risk retention groups, captives, trusts, and other entities. PIAA members include MPL/HPL enterprises owned and/or operated by physicians, hospitals, health systems, dentists and oral maxillofacial surgeons, podiatrists, chiropractors, and healthcare providers such as nurse practitioners, nurse midwives, CRNAs, and many others, as well as insurance carriers with a substantial commitment to the MPL/HPL line. PIAA members insure more than two-thirds of America's physicians in private practice, as well as dentists, nurses and nurse practitioners, and other healthcare providers, and they insure more than 2,000 hospitals nationwide.

PIAA appreciates the Commission’s desire to modernize regulations impacting commercial lines of insurance and clarify those regulations for regulators and insurers. While we recognize the Commission’s motivation for making changes to the rules governing claims-made liability insurance policies, the proposed amendments fail to adequately consider some of the unique business practices of MPL/HPL insurers. Below is a section by section summary of concerns that we have with the proposed amendments.

14 VAC 5-335-20. Definitions. (Page 2)

Section 20 defines key terms used in the proposed amendments, including “medical malpractice insurance.” Over the past decade, the physician and insurance communities have deliberately replaced

the term “medical malpractice” with “medical professional liability insurance” to recognize that a suboptimal medical outcome is not necessarily the result of negligence or bad behavior. In recent years, the National Association of Insurance Commissioners (NAIC) has also adopted this change in vernacular for the same reason. Consequently, we recommend replacing the term “medical malpractice insurance” with “medical professional liability insurance.”

Additionally, the definition of “medical malpractice insurance” ties liability coverage to claims arising from “negligence in rendering or failing to render professional service by any provider of healthcare.” While MPL/HPL insurers provide indemnity payments for claims associated with lawsuits where an insured has been found to be negligent, MPL/HPL insurers also provide indemnity payments for claims that have been settled by both parties without any admission of fault, as well as for claims where the defendant ultimately prevails in court. We recommend editing the definition of “medical malpractice insurance” to read “alleged negligence” to cover the varying scenarios in which MPL/HPL insurers indemnify their insureds.

14 VAC 5-335-40. Supplemental extended reporting period requirements, Subsection A (Page 5)

Section 40, Subsection A would require MPL/HPL insurers to offer an unlimited supplemental extended reporting period with unimpaired limits of liability that is effective on the same day as the termination of the policy. For the same reason stipulated above, we recommend that the Commission use the term “medical professional liability” in lieu of “medical malpractice” in Paragraph 1. Additionally, the meaning of the term, “unimpaired limits of liability”, in Paragraph 1 is unclear. We recommend that the Bureau include a definition for “unimpaired limits of liability” in Section 20, or consider using clearer verbiage.

14 VAC 5-335-45. Requirement to provide loss information. (Page 6)

For policies that are issued with an aggregate limit, Section 45 would require an insurer to provide loss information when sending a notice of cancellation or nonrenewal of a claims-made policy to an insured. This requirement is burdensome, redundant, and unnecessary for several reasons. It is not uncommon for insureds to be delayed in paying their premium, thus triggering a cancellation notice which subsequently results in full payment. In such circumstances, there is no benefit to anyone in providing loss information. Furthermore, even when the policy will be cancelled or nonrenewed, the insureds do not always have an interest in reviewing loss information, and thus would not utilize the information if it was sent. Consequently, we believe that it would be more efficient for all parties involved to only require an insurer to submit loss information upon the insured’s request.

Section 45 would also require that the loss information that is submitted to an insured include the “aggregate amount of payments and reserves subject to the aggregate limit for any closed claims, open claims, or notices of occurrence for the period to which the aggregate applies.” We recommend the requirement to include “reserves” for open claims be removed. Open reserves are considered proprietary information by insurance companies as they reflect a company’s current assessment of the loss. Open reserves can change over time and are maintained as confidential by most companies. If open reserve information was openly shared, it could adversely impact the handling and resolution of a claim.

Finally, during the November 2nd hearing, the Bureau clarified that this requirement would only apply to loss information for the current policy-year term that is being cancelled or nonrenewed. We recommend

that the Bureau incorporate this clarification explicitly into Section 45 to further avoid any future confusion.

In closing, PIAA appreciates this opportunity to provide input regarding the amendments to the “Rules Governing Claims-Made Liability Insurance Policies.” Please do not hesitate to contact me at (301) 947-9000 should you need any further information.

Sincerely,

A handwritten signature in blue ink that reads "BK Atchinson". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Brian K. Atchinson
President & CEO