November 2, 2016

VIA EMAIL
The Honorable Teresa D. Miller
Chair
Property and Casualty Insurance (C) Committee
National Association of Insurance Commissioners
1100 Walnut Street, Suite 1500
Kansas City, MO  64106-2197

Dear Commissioner Miller:

On behalf of PIAA and the medical professional liability (MPL) community, I would like to urge the Property and Casualty (C) Committee to recommend that the Medical Professional Liability Closed Claim Reporting Model Law (MDL #77) be reclassified as a guideline.

As you are aware, PIAA is the insurance industry trade association that represents a full range of entities doing business in the MPL arena. These include domestic MPL insurance companies, risk retention groups, captives, trusts, and other entities. PIAA members include MPL 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 line. PIAA members insure more than two-thirds of America's private practicing physicians as well as dentists, nurses and nurse practitioners, and other healthcare providers, and insure more than 2,000 hospitals.

PIAA shares the NAIC's interest in promoting uniformity with regard to MPL closed claim reporting across states. Uniformity reduces the burden on insurers – all of whom are required to report paid claims to the National Practitioner Data Bank (NPDB), and many of whom are required to file additional reports with their state regulator(s). The difference between these federal and state requirements already pose a significant burden for insurers, one which is only compounded for companies that are required to file in multiple states which maintain different data reporting obligations. Even those states that are substantially in compliance with MDL #77 lack true uniformity and thus place additional burdens on insurers. While PIAA agrees that where claims reporting exist uniformity is needed, we do not believe that this model law has advanced the cause of uniformity nor is there reason to believe that it would achieve this goal in the future.

Under criteria set forth in the NAIC's Procedures for Model Law Development, the NAIC had three years from the date when this model act was approved to persuade a majority of states to adopt the
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model law. Based on an analysis conducted by the NAIC earlier this year, just two states have passed legislation to adopt the model law. While, five states have passed reporting laws that have been deemed by the NAIC to be substantially in compliance with the NAIC model law, 18 states maintain differing claims reporting requirements, and half of the states have declined to maintain any claims reporting requirements at all. These results indicate that states have largely rejected the model law as it was developed.

Furthermore, proponents of the MDL #77 claim that the states’ lack of interest in adopting it is merely a result of the fact that the MPL insurance industry has been experiencing a soft market for more than a decade. They predict that there is likely to be renewed interest among the states in enacting this model law if or when the MPL insurance market hardens in the future. This is purely speculative. While it is possible that the demand for claims reporting uniformity may rise at some point in the future, when that will happen and how states will wish to respond is simply conjecture. Even then, as they have done now, states will likely adopt claims reporting requirements that either completely deviate from the model law or will only be deemed *substantially in compliance* with the model law, thereby guaranteeing that there will be no uniformity amongst the states in the future.

Given the model law’s inability to promote MPL closed-claims reporting uniformity to date, and the reduced demand for mandatory MPL closed-claims reporting in recent years, PIAA respectfully urges this committee to recommend that MDL #77 be reclassified as a guideline. While the guideline would not require uniform adoption or the level of dedicated resources from the NAIC for implementation, it would be available as a resource to states wishing to collect data in the future. Should the day come when there is increased demand for uniform claims reporting amongst the states, PIAA will gladly work with this committee and the NAIC to create a model law that truly promotes and achieves uniform MPL closed claims reporting across the nation.

In closing, PIAA appreciates your attention regarding the NAIC’s reevaluation of MDL #77. We look forward to continuing to work with you to ensure that state regulators are efficiently able to access complete and accurate data for their research endeavors at the least burden to MPL insurers. Please do not hesitate to contact me should you need any further information.

Sincerely,

Brian K. Atchinson
President & CEO

cc: Members of the NAIC Property and Casualty (C) Committee
    NAIC Staff: Aaron Brandenberg, Kris DeFrain, and Eric Nordman