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January 31, 2017

The Honorable James C. Dimitri
The Honorable Mark C. Christie
The Honorable Judith Williams Jagdmann
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-2016-00265
Proposed Amendments to 14 VAC 5-400**

Dear Commissioners Dimitri, Jagdmann, 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 Unfair Claim Settlement Practices" (14 VAC 5-400; "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 shares the Commission's interest in adopting an efficient insurance claim settlement process that protects consumers without being overly burdensome on insurers. While we recognize the Commission's desire to enhance consumer protections, 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 5-400-40. Misrepresentation of Policy Provisions, Subsection D (Page 5)

Section 40, Subsection D would prohibit an insurer from denying a claim based on a claimant's late notification. This subsection fails to draw a distinction between the two types of MPL/HPL policies --

occurrence policies and claims-made policies. While it may make sense to subject an occurrence policy to this requirement, it would be unfair to subject an expired claims-made policy that lacks a reporting endorsement to this requirement since an insurer has no obligation to provide coverage for such a policy after the expiration date. We recommend that the Commission add an exemption to this subsection for claims-made policies that expire without a reporting endorsement.

14 VAC 5-400-50. Acknowledgement of Pertinent Communications, Subsection B (Page 6)

Section 50, Subsection B would require an insurer to provide a complete response to any inquiry from the Commission with respect to a claim within 14 calendar days of receipt. It is important to note that the MPL/HPL line of insurance is significantly different from other lines of insurance. MPL/HPL claims often involve multiple parties, and may also involve a lengthy and complex chain of events that led up to the outcome which resulted in the claim. Consequently, the MPL/HPL claim review process can be equally complex. For this reason, we believe that the proposed 14-day response requirement would pose an undue burden on insurers. Instead, we recommend that the Commission maintain the 15-working day response deadline that is currently in effect. Alternatively, the Commission should consider adding a provision giving insurers the option of requesting an extension to the deadline.

14 VAC 5-400-50. Acknowledgement of Pertinent Communications, Subsection C (Page 6)

Section 50, Subsection C would require an insurer to respond within 10 calendar days to all other pertinent communications from a claimant. As previously stated, the MPL/HPL claim review process differs significantly from the claim review process in other lines of insurance. There are numerous, legitimate scenarios for a MPL/HPL claims professional to take more than 10 calendar days to respond to a claimant's communication. Therefore, we recommend that the required deadline to respond to a claimant's communication be amended to 15 calendar days or 10 business days. Alternatively, the Commission should consider adding a provision that requires insurers to notify a claimant of any anticipated delays in providing a thorough response to a communication. In addition, we believe that Subsection C should be limited to only first-party claims, as communications directly from an insurer to a third-party claimant may be deemed improper in certain circumstances.

14 VAC 5-400-50. Acknowledgement of Pertinent Communications, Subsection D (Page 6)

Section 50, Subsection D would require that an insurer promptly provide necessary claim forms, instructions, and reasonable assistance to comply with the policy conditions and the insurer's reasonable requirements. Unfortunately, this requirement does not take into account the relationship between a MPL/HPL insurer and a third-party claimant and how both parties interact following a MPL/HPL claim. While a MPL/HPL insurer can and should promptly provide documentation to a first-party claimant (healthcare provider), such documentation is wholly unnecessary when dealing with a third-party claimant (patient). Therefore, we recommend applying this subsection to just first-party claims pursuant to the current regulation.

14 VAC 5-400-60. Standards for Prompt Investigation of Claims, Subsection A (Page 6)

Section 60, Subsection A would require an insurer to notify a first-party claimant whether the submitted claim has been approved or denied within 10 calendar days of the insurer's receipt of proof of loss. Following the filing of a MPL/HPL claim, the MPL/HPL insurer will review the third-party claimant's medical records to better understand the activities that transpired leading up to the claim filing. The

MPL/HPL insurer will also interview the parties involved in the claim to gain a clearer picture of the chain of events. This entire review process may take more than 10 calendar days depending on the claim. Therefore, we recommend that the Commission maintain the 15-working day investigation deadline that is currently in effect. Alternatively, the Commission may want to consider restricting the application of this subsection to personal lines of business.

14 VAC 5-400-70, Claims Settlement Standards Applicable to All Insurers, Subsection B (Page 7)

Section 70, Subsection B states that an insurer must provide a reasonable, written explanation for the basis for any claim denial, and that the written explanation must reference a specific provision, condition or exclusion in the policy. This requirement fails to take into consideration the difference between a MPL/HPL claim review process and the claims review process utilized in other lines of insurance. In the MPL/HPL insurance business, a claim is most likely to be denied based on the MPL/HPL insurer's review of the insured's liability, as opposed to the insurer's review of policy provisions. In almost all cases the policy provisions are irrelevant to a third-party claimant, making the proposed Subsection B unworkable for MPL/HPL insurers. Consequently, we strongly believe that this requirement should be restricted to first-party claims only.

While the Bureau of Insurance states that the amendments proposed to Chapter 400 of Title 14 of the Virginia Administrative Code "are necessary to conform the Rules to the National Association of Insurance Commissioner's Unfair Claims Settlement Practices Act (MDL-900) , Unfair Property/Casualty Claims Settlement Practices Model Regulation (MDL-902, and Unfair Life, Accident and Health Claims Settlement Practices Model Regulation (MDL-903)," in each of the instances mentioned above the proposed changes would actually make Chapter 400 far more restrictive than any of these guidance documents. We urge the Commission to alter the proposals in accordance with our recommendations to ensure that the Commonwealth's regulations more closely reflect the intent of the NAIC model provisions.

In closing, PIAA appreciates this opportunity to provide input regarding the amendments to the "Rules Governing Unfair Claim Settlement Practices." In the meantime, please do not hesitate to contact me should you need any further information.

Sincerely,



Brian K. Atchinson
President & CEO