



February 25, 2010

Via U.S. Mail

Hon. Thomas B. Considine
Commissioner
Department of Banking and Insurance
20 West State Street
P.O. Box 325
Trenton, NJ 08625-0325

Re: Request to Extend MIIX Notice of Claim Date

Dear Commissioner Considine:

NJ Physicians is an advocacy group that represents physicians throughout New Jersey. The organization was established to help improve the NJ healthcare system, and to try to ensure that all our citizens have affordable access to high quality physicians and care. We would appreciate an opportunity to meet with you to discuss issues vital to physicians and patients in New Jersey and to begin a dialogue with you and your staff at your convenience.

While awaiting that opportunity we do wish to address the issue of the extension of the MIIX Notice of Claims Date (bar date). We request that your office consider petitioning the Mercer County Superior Court to request an extension of the bar date so that former MIIX-Insured physicians can continue to receive protection under the NJ Property Liability Insurance Guaranty Association (PLIGA). The reasons for this request are as follows:

- 1) The Justifications for The Original Request to Extend the Bar Date Have Not Changed (see attached). Specifically:

Due to the unique nature of medical malpractice, unknown claims may continue to be filed.

A number of claimants may still be left without adequate relief, and physicians still face an increased risk of personal exposure.

We assume that there will be little or no additional operating costs associated with the extension.

Very truly yours,
NJ Physicians
1000
1000
1000
1000
1000



An extension should have no impact on “Excluded Claims.”

2) The Justification Given to Limit the Extension to One Year Failed to Address Certain Issues Unique to Medical Malpractice Insurance

Extending the bar date one year did in fact give most physicians the additional time necessary to evaluate whether they needed to purchase “Gap” coverage over MIIX claims. However, only physicians actively insured with a select number of carriers were able to purchase such coverage. Please note:

- Physicians that were retired, or have moved out of state may have been unable to procure gap coverage.
- Gap coverage for corporations is generally unavailable, so many practices face potential “vicarious liability” for physicians that may no longer be associated with them.
- Hospital-insured physicians, or others, may simply not have the ability to purchase gap coverage.

3) Overall Monetary Impact

Based on numerous conversations with attorneys, brokers, and other representatives, we believe that only a small number of unreported cases will ultimately be filed after April 9, 2010. Therefore, the cost to PLIGA should be negligible in comparison to what has already been paid out, and negligible to the overall PLIGA fund. By contrast, the cost to an individual practitioner, without PLIGA protection, could be devastating. Each impacted physician is faced with personal liability, an attack on his or her assets, and even bankruptcy.

PLIGA is not paid by taxpayer dollars, but by policy surcharges, which are paid in part by these same physicians that PLIGA protects.

4) All Affected Physicians Were “Prudent” Insureds

The population we seek to protect is comprised only of those physicians who purchased at least \$1 million in coverage, and would otherwise be covered by MIIX were it still solvent. Ironically, these physicians generally prefer coverage from “admitted” carriers due in large part to the protection provided by PLIGA.



5) Uniqueness of Medical Malpractice

PLIGA covers virtually every other claim related to insolvencies of admitted NJ carriers, but three issues combine put physicians at unique risk.

- Due to the “discovery” exception to the statute of limitation on negligence cases, medical malpractice claims may not be filed for years after treatment ends.
- Physicians are sued personally, and do not benefit from corporate protection.
- Due to the occurrence-type policies offered by MIIX, this coverage could not be replaced when MIIX went into runoff.

For all of the reasons stated, we urge you to take action. If we can be of any further assistance, please feel free to contact us anytime.

Respectfully Submitted,

Steven I. Kern
General Counsel, New Jersey Physicians