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November 19, 2010

Robert J. Melillo, Chief
Legislative and Regulatory Affairs
Department of Banking and Insurance
20 West State Street
P.O. Box 325
Trenton, NJ 08625-0325

RE: PRN 2010-226

Dear Mr. Melillo:

Thank you for the opportunity to offer these comments in support of PRN 2010-226, the proposed amendment to N.J.A.C. 11:1-43.3 that would provide that the “unusual hardship” rules account for the tolling of the statute of limitations for medical malpractice cases involving minors. As the Department correctly notes in its Economic Impact statement, this change corrects an existing oversight in which providers could have personal liability resulting from lawsuits that would have been eligible for PLIGA coverage, but the plaintiff was a minor at the time of the final date issued by the court.

While there is a potential for an increase in PLIGA payments and therefore a potential for an increase in the premium surcharge used to fund the Association, we agree that this potential is de minimis in comparison to the protection it affords our members—particularly specializing in obstetrical or pediatric care—by ensuring that those members enjoy the same protections that PLIGA provides to the rest of medicine.

Having said that, we would like to note that P.L. 2004 c.17 requires medical malpractice actions for birth injuries that accrue after July 7, 2004 to be filed by a minor’s 13th birthday. The Department’s proposal, as we understand it, extends the unusual hardship exemption to any plaintiff who was “less than 18 years of age at the time of the issuance of the notice..., the claimant’s parent or guardian was unaware of the alleged malpractice prior to the due date..., and the claimant is no older than 20 years of age.” While we are uncertain that the proposed amendment on its own could expose the Association to claims that would not otherwise survive the statute of limitations provided in N.J.S.2A:14-2, we do ask that the Department consider if such clarification is necessary.

In summary, MSNJ supports the Department’s proposal assuming that the revised statute of limitations for minors is not impacted, and we thank the Department for its consideration of the potential harm that the current disparate application of the PLIGA protection means to certain providers.

Sincerely,

A handwritten signature in black ink, appearing to read "Lawrence Downs", written in a cursive style.

Lawrence Downs,
General Counsel, Medical Society of New Jersey