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May 27, 2011

Administrative Letter 2011-03

To: All Licensed Property and Casualty Insurance Companies Writing Medical Malpractice Insurance in Virginia

Re: Amendments to § 8.01-581.15 of the Code of Virginia - Notice May Be Required by § 38.2-231 When the Insurer Increases the Policy's Liability Limits

During the 2011 Session of the Virginia General Assembly, Senate Bill 771 and House Bill 1459 amended § 8.01-581.15 of the Code of Virginia. Effective July 1, 2012, this amendment increases the total amount recoverable for any injury to, or death of, a patient to \$2.05 million, and each year thereafter, the amount recoverable is increased \$50,000 until it reaches the maximum of \$3 million on July 1, 2031.

The amendment to § 8.01-581.15 does not require insurers to issue or amend policies that provide medical malpractice liability limits that are equal to the limits set forth in the statute. However, it is important to note that if an insurer chooses to increase a policy's liability limits in response to § 8.01-581.15, there may be some situations when the insurer will be required to provide the notice set forth in § 38.2-231 L of the Code of Virginia.

Section 38.2-231 L requires insurers to issue a notice when an *insurer-initiated increase* results in the renewal premium being increased greater than 25% of the expiring policy's premium. Administrative Letter 2006-12 provides examples of insurer-initiated increases. The following should also be considered when determining if the **premium increase greater than 25% is insurer-initiated**:

- When an insurer increases the insured's liability limit at renewal, the increase would be considered an insurer-initiated increase.
- If an insurer issues policies containing a condition that increases the policy limits automatically as the recoverable amount increases, the premium increase associated with the change in the liability limit would be considered an insurer-initiated increase.

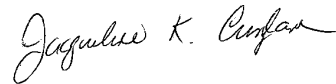
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- It is **not** considered an insurer-initiated increase when the insurer has documentation in its underwriting files to show that the **insured has requested the insurer** to increase the liability limit as the recoverable amount increases. Additionally, the insurer's applications or renewal questionnaires may include a statement, signed by the insured, **requesting** the insurer to increase the liability limit as the recoverable amount increases.

If you have any questions regarding this administrative letter, please contact Melinda Willis, Supervisor of the Commercial Casualty Rates and Forms Section, at (804) 371-9667.

Cordially,

A handwritten signature in cursive script, reading "Jacqueline K. Cunningham".

Jacqueline K. Cunningham
Commissioner of Insurance