

INSURANCE

DEPARTMENT OF BANKING AND INSURANCE

DIVISION OF INSURANCE

Unusual Hardship for Covered Claims Under the New Jersey Property-Liability Insurance

Guaranty Association and New Jersey Surplus Lines Insurance Guaranty Fund

Unusual Hardship

Adopted Amendment: N.J.A.C. 11:1-43.3

Proposed: September 20, 2010 at 42 N.J.R. 2197(a).

Adopted: June 9, 2011 by Thomas B. Considine, Commissioner, Department of Banking and Insurance.

Filed: June 9, 2011 as R. 2011 d. 189, **without change**.

Authority: N.J.S.A. 17:1-8.1, 17:1-15e, 17:22-6.70 et seq. and 17:30A-1 et seq.

Effective Date: July 5, 2011.

Expiration Date: July 30, 2013.

Summary of Public Comments and Agency Responses:

The Department of Banking and Insurance (Department) timely received written comments from the Medical Society of New Jersey and from MBI Gluck Shaw (providing the identical comment from the Medical Society of New Jersey).

COMMENT: The commenters supported the proposed amendment. In addition, the commenter noted that P.L. 2004, c. 17 requires that medical malpractice actions for birth injuries that accrue after July 7, 2004 be filed by a minor's 13th birthday. The commenters stated that it is their understanding that the proposed amendment extends the unusual hardship exemption to any

plaintiff who was “less than 18 years of age at the time of 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.” The commenters stated that while it is uncertain that the proposed amendment on its own could expose the New Jersey Property-Liability Guaranty Association (Association) (and, although not stated, presumably the Surplus Lines Insurance Guaranty Fund (Fund)) to claims that would not otherwise survive the statute of limitations as provided in N.J.S.A. 2A:14-2, it requested that the Department consider if such clarification is necessary.

RESPONSE: The Department appreciates the support of its proposal. With respect to the commenters’ concern, the Department notes that the purpose of the proposed amendment is to provide the ability to seek coverage from the Association or the Fund, as applicable, for certain claims involving minors that may be filed against them after the due date for filing such claims. The Department notes that the statute cited by the commenters relates only to injuries sustained at birth, and that other statutes may also apply with regard to other causes of action. In any event, the Department expressly states that it was not its intent nor does it have the authority to extend the statute of limitations that may be applicable to medical malpractice liability insurance claims involving minors in any particular case. If a claim were barred by the applicable statute of limitations, no claim to the Association or the Fund would inure.

Federal Standards Statement

A Federal standards analysis is not required because the adopted amendment is not subject to any Federal requirements or standards.

Full text of the adoption follows:

TEXT