



MEDICAL PROFESSIONAL
LIABILITY ASSOCIATION

January 27, 2023

The Honorable Steven Seitz
Director
Federal Insurance Office
1500 Pennsylvania Ave, NW
Washington, DC 20220

RE: *Potential Federal Insurance Response to Catastrophic Cyber Incidents*

Dear Director Seitz:

On behalf of the Medical Professional Liability (MPL) Association and its more than 50 medical professional liability insurer members, I am writing to share our industry's thoughts about the Federal Insurance Office's (FIO) request for comment regarding a "Potential Federal Insurance Response to Catastrophic Cyber Incidents."

The MPL Association is the leading trade association representing insurance companies, risk retention groups, captives, trusts, and other entities owned and/or operated by their policy holders, as well as other insurance carriers with a substantial commitment to the MPL line. MPL Association members insure more than 2.5 million healthcare professionals around the world—doctors, dentists, oral surgeons, nurses and nurse practitioners, podiatrists, and other healthcare providers. MPL Association members also insure more than 3,000 hospitals and 50,000 medical facilities and group practices globally.

As FIO explores what role, if any, the federal government has in developing an insurance response to catastrophic cyber incidents, we believe the most critical first step is to gain a thorough understanding of the greatest threats and risks to the health and safety of the citizens of the United States. As demonstrated during the recent pandemic, the nation's healthcare system is what every citizen relies upon for their well-being and survival. The cyber threats to the nation's healthcare delivery system could render it inoperable and compromise the health and care of all Americans. The risks associated with such dangers are inherently uninsurable.

The current cyber insurance market would be woefully inadequate to address the risks of a major cyber threat to the nation's healthcare delivery system. As you are aware, cyber coverage is provided in a variety of ways, including as stand-alone coverage or, in the case of many MPL insurers, as part of a more comprehensive insurance package. Having a full understanding of what coverage is currently available and what its limits are (both in terms of finances and breadth of coverage), will be crucial in determining if there are gaps which may be appropriate for the federal government to fill. We encourage you to begin your efforts by

working directly with insurers, insurance trade associations, and the National Association of Insurance Commissioners to collect comprehensive information in this regard.

As part of this effort, it will also be necessary to gain a thorough understanding of how the nascent cyber insurance market fits with other, more established lines of coverage. As we have seen with numerous questions about the applicability of business interruption insurance with regard to the impact of the COVID-19 pandemic, understanding the full extent of an insurance line's applicability is crucial in determining where deficiencies in coverage may or may not exist. This is especially important for MPL insurers as a cyber incident that disrupts healthcare operations may have a direct impact on patient care and thus on patient outcomes—outcomes which could result in allegations of negligence even when the health professionals and facilities involved provided the highest level of care available.

MPL insurers are committed to not just defending healthcare professionals and facilities, and providing compensation to those who have been injured when care did not meet the standard we all expect, but they are also committed to ensuring that patient safety is advanced as much as possible. As such, we hope that you, too, recognize the inherent risk to patient safety posed by cyber threats and the need to ensure that those threats are met head on through an appropriate insurance mechanism—whether that mechanism is provided by the private sector alone or through public/private partnerships.

We appreciate this opportunity to comment on the Federal Insurance Office's request for comment regarding "Potential Federal Insurance Response to Catastrophic Cyber Incidents." Should you have any questions or need further information, please do not hesitate to contact me at batchinson@MPLassociation.org or 240.813.6128, or our Government Relations Department at governmentrelations@MPLassociation.org or (301) 947-9000.

Thank you.

Sincerely,

A handwritten signature in blue ink that reads "B. K. Atchinson". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Brian K. Atchinson
President & CEO