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Patient's Compensation Fund

From:	Krylova, Anna, OSI <dletherer@theamp.net>
Sent:	Wednesday, October 16, 2019 3:25 PM
To:	Polanco, Kourtnie, OSI
Subject:	RE: [EXT] Pinnacle 2018 Acturarial Study - Deficits and Expected Surcharge levels
Categories:	Daily Communication

Memo: To: Patient's Compensation Fund
Attn: Kourtnie Polanco, PCF Docketing Manger
1120 Paseo De Peralto, PO Box 1689,
Santa Fe, New Mexico, 87504 - 1689

I am D J Letherer, and my background is that of an insurance Executive and Former New Mexico Superintendent of Insurance. The dissertation following is meant to be informative as to: 1) The methods used by States with Patient Compensation Funds (PCFs) for dealing with periodic crises resulting from severe losses sustained in one year and 2) Personal recommendations regarding the July, 2019 Pinnacle Actuarial Study for the year ending December 31, 2018, including participant Health Care Providers surcharges for the coming year.

A major increase in PCF surcharges in one year could drive NM health care providers out of the PCF and into the private insurance market (with coverage on a claims made basis). Private insurance companies have responded to excessive claims in the past by either raising premiums substantially or exiting from the market entirely. Private insurers operate on the profit motive and are not a reliable source for professional liability insurance to maintain coverage at a reasonable level when faced with higher than expected claim losses.

States with PCFs are known to have lower costs for medical liability insurance for health care providers than States without PCFs, especially when PCFs are coupled with a limitation on excessive claims. PCFs, by definition, are State sponsored insurance entities which offer insurance for medical liability that exceeds a specified threshold amount covered by the insured's primary insurance carrier.

As a foundation to this dissertation, following is a review of the three methods used by States with PCFs to determine how future surcharges by the PCF are determined.

1) The standard method used by insurance companies is referred to an "experience rating plan" (and used by some PCF States which base future rates on past experience). Insurance companies include profit, expenses including commissions, incurred but no yet recorded claims (IBNR) factor and a risk margin including reinsurance costs. Private insurers do not include interest earned from reserves in calculating their losses. PCF Funds are government controlled insurance funds, and do not require a profit projection or commission expenses. Any interest earned by reserve funds remain with the PCF Fund.
2) The second method used to calculate future PCF rates is referred to as a "cash basis" or "pay as you go" plan, which assumes that PCF Revenues for each year are used to fund all losses paid in that year, without regard to the date in which the claim occurred. The cash basis rates make no provision for IBNR claims incurred in the previous or current years which will need to be paid in subsequent years.
3) The third method used to calculate future PCF rates is a "hybrid" of the first two methods above. The hybrid method is simply a combination
method using the two methods above wherein actuarial studies are used as a guide to determine appropriate future surcharges, influenced by current circumstances. New Mexico is required by the MMA statute to have an actuarial study every two years "based on New Mexico experience, if available". However, New Mexico has a small population, and consequently a small base of health care providers on which to base a study and severe losses in one year (batch claims) can skewer an actuarial study to unrealistic results. As an example, as a NM

Superintendent in the year 2000, I was advised by the Miller & Associates Actuarial study, that there was a $22 million deficit which required a some 20% rate increase. To avoid a traumatic increase in one year, we decided on a 10.5% increase. With one other minor increase for the next 12 years, the New Mexico PCF fund had a surplus. (On a present value basis, using a 3.5% discount for interest earned.)

Incidentally, Indiana, whose MMA New Mexico copied in 1976, uses the cash basis (pay as you go) method and reported for the year 2017, $141million in Surcharges, a Surplus of $25 million and a $171 million PCF Balance January 1, 2018. Indiana law does not require an actuarial study. (Indiana's statute includes ALL health care providers and has a population three times larger than New Mexico).

The current MMA limit of $600K is now threatened in a case before the New Mexico Supreme Court. However, the current PCF layer of $400K makes it highly unlikely, with the 2018 PCF cash balance of some $87 million (plus additional surcharges in 2019), that the PCF would be threatened with insolvency before surcharges could be increased to generate additional revenue.

The purpose of this dissertation, is to recommend the OSI be moderate in proposing PCF surcharge increases for physicians. A large surcharge increase for physicians in the coming year would affect both physicians and hospitals. Hospitals, by reported estimates, may have as many physicians employed as are in private practice, and therefore Hospitals would consequently receive increases based on the determination of surcharges for the number of physicians employed at the same rate used for individual practicing physicians.

There is a serious need to redo the MMA, if not in the 2020 Legislature, certainly by the 2021 Legislature. (Unless the N M MMA is destroyed by a New Mexico Supreme court negative ruling). If the MMA is revised, it will require an increase in the tort limit and based on future actuarial studies would result in a major increase in surcharges for all categories of health care providers. Thus, this is another reason to constrain a major increase for the coming year.

These pragmatic arguments are not meant to demean the Pinnacle or interfere with the final decision of the Office of the Superintendent in the face of a difficult situation. These are thoughts from an opinionated independent consultant, who represents no other entity than the "People of New Mexico".

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