



PATIENT'S COMPENSATION FUND

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NM Superintendent of Insurance, as Custodian of the Patient's Compensation Fund, Issues Statement

The Patient's Compensation Fund ("PCF"), which was established by the New Mexico Medical Malpractice Act of 1976 ("MMA"), provides an excess layer of professional liability coverage for its member healthcare providers. The PCF is administered by the New Mexico Superintendent of Insurance.

During the past year, the PCF implemented numerous changes to improve processes and transparency. The PCF also launched a new website with a newsletter function, and adopted rules to govern Qualified Health Provider ("QHP") admissions, rulemaking and hearings.

Recently the PCF published its biennial actuarial study. In response to the study, the PCF conducted its first public hearing to set surcharges for individual physicians and provider groups. The PCF also proposed adopting a rating plan to set surcharges for hospitals and outpatient facilities. On December 27, 2019, an "Order" was issued setting provider surcharge rates and adopting the proposed hospital and outpatient facility rating plan. Despite the order, some PCF stakeholders have expressed doubts about the actuarial opinions underlying the Order.

On January 1 of this year Russell Toal succeeded John Franchini as the PCF Custodian and Superintendent of Insurance. Mr. Toal, as PCF Custodian and as Superintendent of Insurance, will take all appropriate actions to protect the continued health of the PCF and to promote its mission. The PCF ensures that funds are available to pay for all required medical care and compensation for pain and suffering for patients injured by an act of medical malpractice committed by a QHP. The PCF also plays a critical role in New Mexico's ability to recruit and retain physicians.

To address stakeholder concerns, and ensure that the PCF will collect appropriate surcharges moving forward, Mr. Toal announced today that he will commission a "second look" actuarial study to determine the soundness of the actuarial analysis underlying the December 27 Order. If the "second look" study finds any material deficiencies in the prior analysis or conclusions, he, as the PCF Custodian, will suspend implementation of the new rates pending the publication of a new comprehensive actuarial study of the PCF.

Over the past twelve months, PCF stakeholders have also raised concerns about the continued viability of the PCF. Mr. Toal believes that physicians, hospitals, healthcare consumers, health insurers and their policyholders, patient advocates, attorneys and the PCF itself would all benefit from understanding how changing the types of providers who can participate in the PCF, the MMA damages cap, or base coverage requirements may impact the availability and cost of healthcare, the cost of health insurance and the recruitment and retention of physicians. With such information, PCF stakeholders can best advocate for changes that are in the best interest of all New Mexicans.

To facilitate informed discussion, Mr. Toal will commission a second actuarial study to address these questions:

1. Whether, and how, expanding or narrowing the types of providers who can participate in the PCF may impact the availability and cost of healthcare in New Mexico, the cost of healthcare insurance, and the financial viability of the PCF;
2. Whether, and how, increasing the damages cap under the MMA, or increasing the amount of underlying coverage a QHP must maintain, may impact the availability and cost of healthcare in New Mexico, the cost of healthcare insurance, and the financial viability of the PCF;
3. Whether, and how, expanding or narrowing the types of providers who can participate in the PCF, increasing the damages cap under the MMA, or increasing the amount of underlying coverage a QHP must maintain, will impact QHP surcharges; and
4. The viability of separate PCF funds for different provider types.

Ensuring access to quality healthcare for all New Mexicans depends on our ability to attract and retain quality healthcare providers. Significant factors in provider retention and recruitment are the cost of malpractice protection and exposure to potentially uninsured risks. Mr. Toal anticipates that the larger actuarial study will also address how changes to the PCF and MMA will impact malpractice exposures and coverage rates relative to those exposures and rates in other states.

The PCF Custodian is currently in the process of preparing a scope of work to obtain bids from qualified actuaries for conducting this study, which will be shared with the PCF Stakeholders and legislators and made available to the public on the website of the PCF (www.pcf.osi.state.nm.us).

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