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October 18, 2021

Superintendent Russell Toal  
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 c/o Freya Tschantz, PCF Records and Docketing  
 Via email to [Freya.tschantz2@state.nm.us](mailto:Freya.tschantz2@state.nm.us)

Re: Comments Regarding Proposed PCF Rule Amendments

Dear Superintendent Toal:

I represent the New Mexico Hospital Association and write to submit comments on its behalf, in accordance with the Notice of Proposed Rulemaking, Docket No. 21-0005-PCF, on the proposed rules 13.21 NMAC Parts 1, 2, 3, 4 and 5, published by OSI on September 14, 2021, and which are the subject of a public hearing on October 18, 2021. The NMHA appreciates the opportunity to comment.

13.21 Part 1:

13.21.1.7.G – add “means” after “Slot Coverage” to be consistent with the other definitions.

13.21.1.12 – The Superintendent retains ultimate authority, so we recommend revising the first part of the first sentence to read “The TPA, with the approval of the Superintendent, may prescribe forms...”

13.21 Part 2:

13.21.2.9 – The regulations should acknowledge that demonstration of financial responsibility is required of hospitals and outpatient facilities applies only during the time that hospitals and outpatient facilities remain in the fund, currently through December 31, 2026. Thus, we recommend that section B(2) be revised to read “shall, except for a hospital or outpatient health care facility for so long as such hospital or outpatient health

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care facility participates in the fund, be on an occurrence coverage form approved by the superintendent;”

13.21.2.14 – In situations where a claim is brought against an individual provider employed by a qualified health care provider that is an entity, and where the Medical Malpractice Act includes the entity’s employees in the definition of qualified health care provider, the regulations should make it clear that the employees are also covered by the order of admission and that the employees are entitled to copies of the order to prove their status as a qualified health care provider. Thus, we recommend that language be added to subparagraph A(1) such that that subparagraph reads “(1) identify the health care providers who have been admitted and where the provider being admitted is an entity, specify that the provider’s employees are also covered by the order of admission, in accordance with the definitions in 41-5-3 of the Medical Malpractice Act;”

13.21.2.16 – Any decision to terminate admission of a QHP should be made by the Superintendent, not the TPA. The TPA may make a recommendation to terminate, but should not be permitted to terminate on its own authority. Thus, we recommend that the language in subparagraph B that authorizes the TPA to terminate be revised to read “Upon written notice to a health care provider, or such provider’s authorized representative, the TPA may recommend that the Superintendent terminate, and the Superintendent may terminate, a health care provider’s admission to the fund ...” In addition, we recommend that the first sentence in subparagraph C be revised to read “If the superintendent terminates a health care provider’s admission to the fund, the TPA shall notify the provider within 15 days of receipt of the cancellation or termination.”

Part 3: No comments

Part 4: See comments on Part 5, which also apply to Part 4.

Part 5 (entirely new section on rate surcharge setting):

13.21.5.25 – The word “party,” used in the first sentence of this section is not defined in the regulations. Elsewhere the word “party” appears to refer to individuals or entities made a party to the hearing proceedings through intervention. See, e.g., 13.21.5.11 (noting that only a person made a party may be represented in the surcharge rate proceeding and that the party’s representative must enter an appearance); 13.21.5.12(E) (requiring parties to seek concurrence from other parties prior to filing a motion). The use of the word “party” throughout Part 5 appears to refer to those who actively participate in the surcharge rate proceeding. By using the word “party” in 13.21.5.25, without definition or clarification, to identify who may appeal a surcharge, the regulations would prohibit any person or entity that is affected by surcharges from appealing unless they enter an appearance and participate in the surcharge rate setting proceeding. Requiring every qualified health care provider and any patient potentially affected by the setting of surcharges to enter an appearance and actively participate in the proceeding in order to


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challenge the ultimate surcharge on appeal will result in an unwieldy number of parties to the proceeding or deprive persons with a genuine interest in the surcharge rates from being allowed to challenge them after they are set. Thus, we recommend that the word "party" be changed to "person."

The NMHA appreciates the Superintendent's consideration of these comments and would be happy to provide clarification or further discuss these comment as part of the rulemaking process. Please feel free to contact me with any questions.

Very truly yours,

SUTIN, THAYER & BROWNE  
A Professional Corporation

By 

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cc: Troy Clark, NMHA (via email)