

BEFORE THE NEW MEXICO SUPERINTENDENT OF INSURANCE
AS CUSTODIAN OF THE PATIENT’S COMPENSATION FUND

FILED

October 30, 2021 at 10:45 P.M.

Patient’s Compensation Fund

IN THE MATTER OF DETERMINING)
PATIENT’S COMPENSATION FUND)
SURCHARGE RATES)
_____)

Docket No. 21-0004-PCF

FINAL ORDER

THIS MATTER comes before the New Mexico Superintendent of Insurance as Custodian of the Patient’s Compensation Fund (hereinafter referred to as the “Custodian”) upon his receipt of the Patient’s Compensation Fund (“PCF”) Advisory Board’s Proposed Findings, Conclusions and Recommendations filed October 26, 2021 after the PCF Advisory Board conducted a properly noticed public hearing on PCF surcharge rates on October 20, 2021. The Proposed findings, Conclusions and Recommendations of the PCF Advisory Board are incorporated into this Order by reference. The Custodian, having reviewed the PCF Advisory Board’s Proposed Findings, Conclusions and Recommendations, having reviewed the evidence from the hearing, and being otherwise fully advised in the premises, **HEREBY FINDS AND CONCLUDES:**

1. The findings made by the PCF Advisory Board are accepted by the Custodian as his own except the statement in finding no. 34 wherein the PCF Advisory Board finds that "Section 41-5-25(E) does not require independent provider QHPs to extinguish their proportionate share of the deficit in any particular time period and are therefore not required to extinguish their share of the deficit in five years.”

2. Instead, the Custodian finds that Section 41-5-25(F) provides that “Beginning in 2021, the surcharges shall be set with the intention of bringing the fund to solvency with no projected deficit by December 31, 2026” and the Custodian concludes that Section 41-5-25(F) requires all independent providers to extinguish, by December 31, 2026, the share of the deficit not allocated to hospitals and outpatient health care facilities.

3. Additionally, the Custodian finds that the ERP should be eliminated this year for the reasons found on page 23 of Exhibit B.

4. House Bill 75 from the 2021 Regular Session of the New Mexico Legislature, entitled *Clarifying and Modernizing the Medical Malpractice Act* (“HB 75”), increases costs for all Qualified Health Care Providers (“QHPs”). Most significantly, HB 75 requires QHPs to eliminate the PCF deficit within five years. Because hospitals have not participated in the fund for as long as independent providers, hospitals are responsible for less than twenty percent of the deficit. To extinguish the remainder of the deficit within five years requires imposing an annual deficit reduction surcharge, in addition to the base surcharge, that will increase annual surcharge obligations more than fifty percent on independent providers. HB 75 also increases the future claim funding obligations of the PCF. It is estimated that the increased damages caps require increasing base surcharges on all QHPs by at least eight percent. Finally, HB 75 requires the PCF to engage the services of an independent administrator, and to conduct an annual actuarial study. The expenses associated with these requirements will increase base surcharges annually by 2.5 percent. While hospitals and outpatient health care facilities may be able to withstand (or pass on) steep cost increases, independent providers would likely find the cost of participation in the PCF as recommended by the actuary and the PCF Advisory Board to be prohibitive and leave the PCF, or worse, leave the state. This would increase the cost of reducing the deficit to the remaining QHPs in the PCF, potentially leading to a cascade of participants leaving the PCF.

5. The Custodian adopts the PCF Advisory Board’s Recommendations except Recommendations B, E, F and G.

IT IS THEREFORE ORDERED:

A. The PCF shall not implement the ERP for 2022 rates. The Office of Superintendent of Insurance (“OSI”) and the PCF third-party administrator shall study the ERP and determine whether to eliminate it in future years.

B. The PCF shall not adopt the PCF Advisory Board's recommendation that base surcharge increases for independent providers be set in a manner which would result in a 19.7 percent increase over 2021 surcharge assessments. The Custodian takes administrative notice that adopting this recommendation would likely result in decreased provider participation in the PCF and, potentially, a decrease in the number of providers who deliver services to New Mexicans. Such an outcome would be an unintended and unacceptable consequence of HB 75.

C. The Custodian has reason to believe that the Legislature, in an effort to reduce provider costs, reduce the PCF deficit, and retain independent providers in the state, will appropriate in the upcoming legislative session approximately \$30 million to eliminate the deficit costs associated with the PCF Advisory Board's finding no.12. Accordingly, any appropriation to the PCF shall be used to reduce the deficit and adjust independent provider base surcharges.

D. Based on the anticipated Legislative appropriation, the Custodian orders that the 2022 base surcharge increases for independent providers be set at a 12.2 percent increase over 2021 surcharge assessments. PCF surcharges for entities owned by independent providers shall be assessed at 10 percent of the cumulative individual independent provider surcharges for all providers who practice within the entity.

E. Base PCF surcharges for hospitals and outpatient health care facilities shall be assessed at the central confidence level resulting in a 3.6 percent increase for hospitals and outpatient health care facilities. Because HB 75 eventually eliminates hospital and outpatient health care facility participation in the PCF and requires all qualified hospitals and outpatient care facilities to cure any fund deficit attributable to hospitals and outpatient health care facilities by December 31, 2026, the assigned confidence level and associated percentage increases shall be reevaluated for PCF 2023 rates.

F. The risk classifications set out on pages 17 through 20 of Exhibit C shall be adopted for use by the PCF.

G. For hospitals and outpatient health care facilities, the PCF shall adopt the proposed deficit reduction plan and apply the deficit reduction assessments recommended on page 26 of Exhibit C.

H. Hospital and outpatient health care facility surcharges shall be assessed according to the rating plan that appears on page 26 of Exhibit C, plus the surcharge and deficit reduction amounts for employed providers as specified in page 16 of Exhibit C, plus the entity surcharge for each contracted agent entity.

I. These changes shall become effective January 1, 2022.

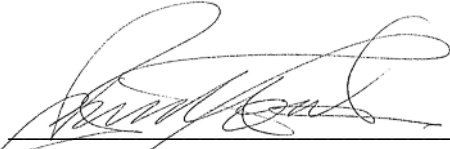
J. The Custodian expresses his appreciation to the Governor and the Legislature for their assistance in reducing the deficit amounts that were not the fault of currently enrolled QHP providers.

K. The Custodian recommends that all parties address all the unintended consequences of HB 75 in the next full legislative session in early 2023.

L. A copy of this Final Order shall be sent to all persons as indicated on the attached Certificate of Service and distributed through the PCF Newsletter.

M. This docket is now closed.

DONE AND ORDERED at Santa Fe, New Mexico, this 30th day of October, 2021.



RUSSELL TOAL
Superintendent of Insurance, as
Custodian of the PCF

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Final Order* was sent by email to the following individuals, as indicated below, on this 30th day of October, 2021.

Bryan E. Brock, General Counsel
Office of Superintendent of Insurance
P.O. Box 1689, Santa Fe, NM 87504-1689
bryan.brock@state.nm.us

William Ritchie, M.D., Chairman
PCF Advisory Board
ritchiew1@nmortho.net

Kathleen J. Love, Vice Chair
PCF Advisory Board
kathy@mcginnlaw.com

Ray M. Vargas II, Member
PCF Advisory Board
ray@vargaslawfirmabq.com

Troy Clark, Member
PCF Advisory Board
tclark@nmhsc.com

Mike Dekleva, Member
PCF Advisory Board
mdekleva@phs.org

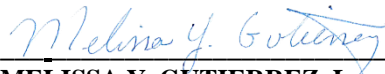
Karen L Carson MD, Member
PCF Advisory Board
ksaltermd@msn.com

Tanya Rodarte, Member
PCF Advisory Board
TanyaRodarte@gmail.com

Ezra Spitzer, Member
PCF Advisory Board
Ezra.spitzer@gmail.com
Ezra.spitzer@Nmcan.org

Alfonso B. Martinez, Jr., Member
PCF Advisory Board
alfonsomrtz25@gmail.com

Superintendent Russell Toal
Office of Superintendent of Insurance
P.O. Box 1689, Santa Fe, NM 87504-1689
Russell.toal@state.nm.us



MELISSA Y. GUTIERREZ, Law Clerk
Office of Legal Counsel
Office of Superintendent of Insurance