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

IN THE MATTER OF ADOPTION OF RULES FOR THE PATIENT'S COMPENSATION FUND	))))	**Docket No. 21-0005-PCF**

FINAL ORDER

THIS MATTER comes before the Superintendent of the New Mexico Office of Superintendent of Insurance ("Superintendent" or "OSI"), in his capacity as Custodian of the New Mexico Patient's Compensation Fund ("PCF" or "Fund"), following a public hearing for comment pursuant to the Notice of Proposed Rulemaking ("NOPR") filed in this docket and published as required by law.

Having considered the proposed rule amendments and applicable law, the comments submitted in this rulemaking, and the recommendations of the Hearing Officer assigned to this matter,

THE SUPERINTENDENT FINDS AND CONCLUDES:

1. The Superintendent has jurisdiction over these proceedings pursuant to the New Mexico Medical Malpractice Act, NMSA 1978, §§ 41-5-1 et seq. ("MMA").

2. Statutory authority for the proposed rule amendments is found in § 41-5-25 of the MMA.

3. The purpose of the rule making is to bring the current PCF rules into conformity with the House Bill 75 amendments to the MMA that were adopted in the Regular Session of the 2021 Legislature.

4. Pursuant to the NOPR, the Superintendent proposed to repeal and replace Parts 1 and 2 of 13.21 NMAC, amend Parts 3 and 4 of 13.21 NMAC, and adopt a new Part 5 of 13.21 NMAC.

5. Proper legal notice of the rule making proceedings was given by publishing the NOPR in the Albuquerque Journal on September 14, 2021, and in the New Mexico Register on September 14, 2021. The OSI also posted the NOPR on the OSI's PCF website and distributed the NOPR via OSI's PCF newsletter.

6. The NOPR provided notice of a public hearing to accept oral comments on the proposed rule amendments from interested parties.

7. The NOPR informed the public of the process by which the Hearing Officer would conduct the hearing and how the public could make comments on the proposed rule amendments and have them considered.

8. The NOPR further provided that a copy of the full text of the proposed rule amendments was available on the OSI's PCF website or the New Mexico Sunshine Portal, or by requesting a copy from the OSI.

9. The Superintendent appointed Robert J. Desiderio as Hearing Officer for the rule making proceedings. Mr. Desiderio held a public hearing on October 18, 2021.

10. Written comments were filed by Thomas M. Landrigan, Corporate & Regulatory Counsel for MedPro Group, Annie Jung, Executive Director, New Mexico Medical Society ("NMMS") and Deborah E. Mann, Esq., Sutin, Thayer & Browne, PC, representing the New Mexico Hospital Association ("NMHA")

11. R. Alfred Walker, Legal Counsel for OSI, Craig Sherbonby, Vice President of MedPro Group, Thomas M. Landrigan of MedPro Group, and Nick Autio, Esq., representing NMMS provided oral comment at the hearing.

12. The Hearing Officer considered all oral and written comments and prepared a Report on the rule making proceedings, making recommendations on the comments made. The Hearing Officer filed the Report in the docket on November 18, 2021.

SUPERINTENDENT'S FINDINGS AND CONCLUSIONS RELATED TO PUBLIC COMMENTS AND THE RECOMMENDATIONS OF THE HEARING OFFICER

13. **Rule 13.21.1.7 (G)**. NMHA recommended that the word "means" be added after the term "Slot coverage" as the word "means" appears to have been inadvertently omitted from the definition. The Hearing Officer agreed with this recommendation. The Superintendent finds that the modification is necessary and appropriate and adopts the change.

14. **Rule 13.21.1.8 (I)**. NMMS recommended that the following language be added to the end of the rule: "and obtain approval from the superintendent or superintendent's designee before entering into an agreement involving." The Hearing Officer agreed with adding this language, opining that the Superintendent should have final approval of settlements of claims against the Fund. The Superintendent finds that requiring his prior approval of a settlement involving the Fund supports his fiduciary duties and responsibilities as PCF Custodian. The Superintendent finds, therefore, that the modification is necessary and appropriate and adopts the change.

15. **Rule 13.21.1.8 (M)**. NMMS recommended that the following language be added at the beginning of the rule: "Subject to approval from the superintendent…" The Hearing Officer agreed with adding this language, opining that the Superintendent should have final approval of any methodology of allocating liability for any fund deficit among health care providers. The Superintendent finds that the modification is necessary and appropriate and adopts the change.

16. **Rule 13.21.1.9**. NMMS recommended that the PCF advisory board should be included as persons whose expenses are borne by the fund. NMMS proposed that the rule should state:

"All expenses incurred for, by, or on behalf of the superintendent, the TPA, or the PCF advisory board in the administration, operation and defense of the fund shall be borne by the fund." The Hearing officer agreed with this recommendation, opining that advisory board members should be reimbursed for their expenses that are related to fund responsibilities. The Superintendent does not agree with the recommendation of the Hearing Officer and finds that the modification is not necessary because the MMA provides the expense reimbursement available to the members of the advisory board. The Superintendent does not adopt the change proposed by NMMS.

17. **Rule 13.21.1.12**. NMHA recommended that the rule be amended to provide that the superintendent approve the forms the TPA will use to carry out requirements of the rules. NMHA proposed that the rule should read: "The TPA, with the approval of the superintendent, may prescribe forms…" The Hearing Officer agreed with the proposal, opining that the Superintendent should have final approval of the forms. The Superintendent does not agree with the recommendation of the Hearing Officer and finds that the modification is not necessary. Development of forms is an administrative task that can and should be handled by the TPA without the input of the Superintendent. The Superintendent does not adopt the change proposed by NMHA.

18. **Rule 13.21.2.8 (C) (1)**. MedPro recommended deletion of "qualified" before "healthcare provider" in the first line of the rule. MedPro's reason is that "qualified health care provider" is not defined, and it appears unclear whether "qualified health care provider" has a different meaning from "health care provider." The Hearing Officer did not agree with the proposed amendment. The Hearing Officer opined that "Qualified health care provider" is defined in Rule 13.21.1.7 (E), which adopts the definition in § 41-5-3 (A) of the MMA and ends with "who is admitted to the fund…" § 41-5-5 of the MMA then specifies the requirements for a "qualified

health care provider." The Hearing Officer concluded, therefore, that a qualified health care provider is a health care provider as defined in § 41-5-3 (C) of the MMA, who is "qualified" under § 41-5-5 of the MMA. The Superintendent agrees with the Hearing Officer and does not adopt the deletion proposed by MedPro.

19. **Rule 13.21.2.8 (C) (1), (C) (2)**. NMMS recommended deleting both Rule 13.21.2.8 (C) (1) and Rule 13.21.2.8 (C) (2). Its reasoning is that the definition of an independent provider only includes individual health care providers, not health care providers that are qualified under § 41-5-5 of the MMA. Its conclusion is that a qualified independent provider may be admitted to the PCF irrespective of whether any of its individual health care providers are qualified. MedPro also commented on the rule provisions. MedPro accepts that at least one of the individual health care providers must be a qualified health care provider, although others may not be qualified. MedPro, however, would remove the mandate that health care providers who are not covered by an independent provider's malpractice liability policy will prevent the independent provider from being eligible for admission to the Fund. The Hearing Officer opined that the issue is not whether all members or employees of an independent provider must be qualified health care providers, but whether such a requirement is consistent with the MMA. The Hearing Officer's opinion is that the MMA does not require members or employees of an independent provider to be qualified health providers. The Hearing Officer stated that § 41-5-3 (C) of the MMA includes within the definition of a health care provider a New Mexico business entity "that provides health care services primarily through natural persons identified in this subsection"; that is, the specified individual health care providers. § 41-5-3 (E) of the MMA adds that an "independent provider" is a business entity "that employs or consists of members" who are specified, licensed individual health care providers. § 41-5-5 (A) of the MMA then details the conditions for a

health care provider to be "qualified" without adding that an independent provider must employ or consist of qualified health care providers. The Hearing Officer concludes that the MMA does not prescribe that an independent provider must employ or have members that are qualified health care providers. The Superintendent does not agree with the Hearing Officer. The Superintendent takes administrative notice of the longstanding practice of the PCF to require a business entity to have all of its qualifiable health care providers or employees admitted to the Fund to have the business entity eligible for Fund coverage, recognizing that it is irresponsible and unlawful to provide the benefits and protections of PCF coverage to a business entity for the malpractice committed by one of its qualifiable providers or employees who chose not to enroll in the Fund. The Superintendent will not adopt the proposal to delete Rule 13.21.2.8 (C) (1) and Rule 13.21.2.8 (C) (2).

20. **Rule 13.21.2.9 (B) (2)**. NMHA recommended that Rule 13.21.2.9 (B) (2) be amended to provide that the exception for hospitals and outpatient health care facility be: "for so long as such hospital or outpatient health care facility participates in the fund". NMHA's reasoning is that "demonstration of financial responsibility required of hospitals and outpatient facilities applies only during the time the hospitals and outpatient facilities remain in the fund, currently through December 31, 2026." The Hearing Officer did not agree with this proposed amendment, opining that Rule 13.21.2.9 (B) (2) as written merely reflects that a hospital or outpatient health care facility is not required to acquire a "per occurrence" policy. § 41-5-5 (A) (1) of the MMA, on the other hand, states that a hospital or outpatient health facility "may use any form of malpractice insurance." Rule 13.21.2.9 (B) (2) does not address what if any financial responsibilities hospitals and outpatient health care facilities have after December 31, 2026. *See* § 41-5-5 (C) of the MMA (indicating that hospitals and outpatient health care facilities must

meet the financial responsibilities after December 31, 2026 to enjoy the other provisions of the MMA, most importantly the limitation on damage recovery). The Superintendent agrees with the Hearing Officer and does not adopt the amendment proposed by NMHA.

21. **Rule 13.21.2.11 (A)**. NMMS recommends that Rule 13.21.2.11 (A) be changed to read:

> The superintendent shall perform a risk assessment for each applicant hospital or outpatient health care facility seeking participation in the fund. As part of the risk assessment process, each applicant hospital or outpatient health care facility shall provide, at a minimum, the hospital's or outpatient health care facility's direct and indirect cost information as reported to the federal centers for Medicare and Medicaid services for all self-insured malpractice claims, including claims and paid loss detail, and the claims and paid loss detail for any professional liability insurance carriers for each hospital or outpatient health care facility and each employed health care provided for the last eight years to the third-party actuary.

NMMS's reason for the change is to accord the rule with § 41-5-25 (D) of the MMA.

The Hearing Officer agreed with the proposed change because § 41-5-25 (D) of the MMA requires that direct and indirect cost information reported for Medicaid and Medicare services be submitted to the Superintendent. The Hearing Officer, however, recommended that the following additional language be added at the end of the rule language proposed by NMMS:

> The superintendent may also consider the information and documents that the applicant submitted to its insurer, all of which, if requested by the superintendent, shall be provided to the superintendent by, or on behalf of the applicant, along with all other information that the superintendent has or requests of the applicant.

The Superintendent does not agree with the recommendation of the Hearing Officer. Rule 13.21.2.11 (A) addresses the required performance of a risk assessment. The language proposed by NMMS repeats the language in the MMA addressing the required actuarial study, which is separate and distinct from the required risk assessment. That language is, therefore, inapplicable to 13.21.2.11 (A) and the Superintendent does not adopt the amendment proposed by NMMS.

22. **Rule 13.21.2.11 (B)**. NMMS recommended that "from New Mexico claims and lost expenses" be added in the last line of the rule before the word "among". NMMS reasoned that

under § 41-5-25 (D) of the MMA, the actuarial data must be collected from "New Mexico claims and loss expenses." The Hearing Officer agreed with the recommended language, opining that it is consistent with § 41-5-25 (D) of the MMA. The Superintendent does not agree with the Hearing Officer's recommendation. The MMA requires the utilization of sound actuarial principles in the performance of the actuarial study of the PCF. The language provided in the proposed amendment enables the consulting actuary to find and use data necessary to do so. The Superintendent does not, therefore, adopt the amendment proposed by NMMS.

23. **Rule 13.21.2.11 (E)**. NMMS recommended that the application by a hospital or outpatient health care facility for admission to the fund be submitted by March 1 of the year prior to first admission to the fund, not April 1 as provided in the rule. The Hearing Officer did not agree with the proposed change, opining that the Superintendent is in the best position to decide the amount of time necessary for the complete analysis of an application. The Superintendent agrees with the recommendation of the Hearing Officer and does not adopt the change proposed by NMMS.

24. **Rule 13.21.2.14 (A) (1)**. NMHA recommended that the order of admission for an entity health care provider should state that the employees of the entity are also covered by the order. The Hearing Officer did not agree with the adoption of this proposed change, opining that the rule as written requires that all health care providers who have been admitted to the fund be identified. Employees who are qualified health care providers admitted to the fund, therefore, must be identified. The Superintendent agrees with the recommendation of the Hearing Officer and does not adopt the amendment proposed by NMHA.

25. **Rule 13.21.2.16 (B)**. NMMS recommended that the superintendent have the authority to terminate a healthcare provider, not the TPA, after a recommendation from the TPA for

termination. The Hearing Officer agreed with the suggested change to the rule. The Hearing Officer opined that under Rule 13.21.2.4, the superintendent, not the TPA, admits a healthcare provider to the fund, and therefore the superintendent should also make the decision to terminate that health care provider. The Superintendent does not agree with the recommendation of the Hearing Officer. The failures that will lead to termination of a health care provider's admission to the Fund are clearly stated in the rule. Termination is an administrative decision and task that can and should be handled by the TPA without the input of the Superintendent. The Superintendent does not adopt the change suggested by NMMS.

26. **Rule 13.21.2.17 (A), (B)**. NMMS recommended that in the second line of paragraph (A) and the first line of paragraph (B), the word "may" should be changed to "shall". The Hearing Officer agreed with the recommended change, indicating that § 41-5-25 (B) of the MMA includes the mandatory "shall," and not the permissive "may". The Superintendent does not agree with the recommendation of the Hearing Officer. While the MMA requires the hiring of an actuary to complete an annual assessment of the Fund, the rule as written provides the Superintendent the ability to employ or hire actuaries to advise him, the PCF advisory board or the TPA for purposes *in addition to* the performance of the annual study. The rule as written also provides the Superintendent necessary discretion related to what he can ask the actuary to evaluate. The rule as written is necessary and reasonable and the Superintendent does not adopt the change recommended by NMMS.

27. **Rule 13.21.5.9 (A)**. NMMS recommended that the "or" be deleted in the last line and the following language be added at the end of that line: "or may designate a non-board member to preside as the hearing officer." NMMS also recommended that similar changes should be included throughout 13.21.5.9 to effectuate the advisory board's ability to designate a non-board

member to preside as hearing officer. The Hearing Officer agreed with the recommendations, opining that the advisory board should be able to determine the most efficient manner to conduct a surcharge rate hearing, including designating a non-board member to preside. The Superintendent does not agree with the recommendation of the Hearing Officer and finds that the modification is not necessary or appropriate because the MMA does not provide for such delegation. The Superintendent does not adopt the changes proposed by NMMS.

28. **Rule 13.21.5.9 (E)**. NMMS recommended that the rule should begin: "If the advisory board or any number of its members presides over a surcharge hearing." NMMS further recommended the addition of the following two sentences at the end of the rule to outline the process to be followed if the advisory board designates a non-board member to preside:

> If the advisory board designates a non-board member to preside as the hearing officer over a surcharge rate hearing, the hearing officer shall provide the hearing officer's recommended decision to the advisory board and the superintendent on or before October 11 of each year. The hearing officer shall base his or her determination upon substantial evidence in the whole record. The advisory board shall meet to discuss the hearing officer's recommended decision and provide the superintendent with the advisory board's advice on the surcharges by no later than October 21 of each year.

The Hearing Officer recommended adoption of the proposed language. The Superintendent does not agree with the recommendation of the Hearing Officer for the same reason expressed in paragraph 27, above. The Superintendent does not adopt the changes proposed by NMMS.

29. **Rule 13.21.5.10 (C)**. NMMS recommended adding "or its designee" after "advisory board" in the second line. The Hearing Officer agreed with the recommendation, opining that it is consistent with NMMS's recommended change to 13.21.5.19 (A) to permit the advisory board to designate a non-board member as its hearing officer. The Superintendent does not agree with the recommendation of the Hearing Officer for the same reason expressed in paragraph 27, above. The Superintendent does not adopt the change proposed by NMMS.

30. **Rule13.21.5.25**. NMHA recommended that any "person", and not just a "party" should have the right to appeal a surcharge rate hearing. The Hearing Officer did not agree with the recommendation. The Hearing Officer stated that, under NMSA 1978, Section 14-4-2 (B), a "person" includes all individuals, entities and political subdivision and corporations. A "party", on the other hand, is a person allowed to enter a surcharge rate hearing and "made a party" pursuant to Rules 13.21.5.10 (1) and 13.21.5.11 (A). The Hearing Officer also opined that allowing any person to appeal without having intervened is unwieldy and noted that persons affected by the surcharge have the opportunity to express their concerns on the record before an appeal. The Superintendent does not agree with the recommendation of the Hearing Officer. Instead, the Superintendent adopts the following language:

> **13.21.5.25 APPEALS FOLLOWING HEARING:** Any person who is adversely affected by a final order or decision in a surcharge rate proceeding may appeal pursuant to the provisions of Section 39-3-1.1 NMSA 1978. Each order issued by the superintendent after a surcharge rate proceeding shall include information about the appeal process for the type of case at issue. Once the appeal is filed in the appropriate court, the appealing party shall promptly provide a court-endorsed copy of the appeal to the superintendent so that the OSI records manager can prepare and submit the proper record.

31. MedPro requested that "the PCF rules clarify that solo corporations may share malpractice insurance limits with the entity's sole provider." MedPro's position is that the PCF's website and its representations are inconsistent as to whether policy limits may be shared. The Hearing Officer expressed that he has insufficient information to evaluate the proposal and, therefore, has no recommendation. The Superintendent does not adopt the MedPro request. The request is not a logical outgrowth of the proposed rules and shared limits policies are not compliant with the MMA.

IT IS THEREFORE ORDERED:

A. The Superintendent adopts or rejects the recommendations of the Hearing Officer as provided in the above findings and conclusions.

B. The Superintendent repeals rules 13.21.1 NMAC and 13.21.2 NMAC and adopts replacement rules as provided in Exhibit A hereto.

C. The Superintendent adopts the proposed amendments of 13.21.3 NMAC and 13.21.4 NMAC as provided in Exhibit A hereto.

D. The Superintendent adopts proposed rule 13.21.5 NMAC as provided in Exhibit A hereto.

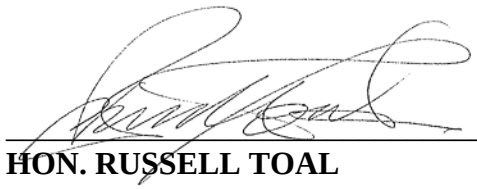
E. OSI shall submit the rules as adopted to the New Mexico Register on or before December 2, 2021 for publication on December 14, 2021.

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

G. This Final Order is effective immediately.

H. The docket shall close upon publication of the final rule.

DONE AND ORDERED at Santa Fe, New Mexico, this 1st day of December, 2021.



HON. RUSSELL TOAL
SUPERINTENDENT OF INSURANCE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing *Final Order* was delivered to the following individuals, as indicated, this 1st day of December, 2021.

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EXHIBIT A

TITLE 13 INSURANCE
CHAPTER 21 PATIENT'S COMPENSATION FUND
PART 1 GENERAL PROVISIONS

13.21.1.1 ISSUING AGENCY: New Mexico Superintendent of Insurance (the superintendent).
[13.21.1.1 NMAC –Rp, 13.21.1.1 NMAC, 01/01/2022]

13.21.1.2 SCOPE: The rules of Chapter 21 provide for and govern the organization, administration, and defense of the New Mexico Patient's Compensation Fund (the fund).
[13.21.1.2 NMAC –Rp, 13.21.1.2 NMAC, 01/01/2022]

13.21.1.3 STATUTORY AUTHORITY: Section 41-5-25 NMSA 1978;
[13.21.1.3 NMAC –Rp, 13.21.1.3 NMAC, 01/01/2022]

13.21.1.4 DURATION: Permanent.
[13.21.1.4 NMAC –Rp, 13.21.1.4 NMAC, 01/01/2022]

13.21.1.5 EFFECTIVE DATE: January 1, 2022, unless a later date is cited at the end of a section.
[13.21.1.5 NMAC –Rp, 13.21.1.5 NMAC, 01/01/2022]

13.21.1.6 OBJECTIVE: The rules of Chapter 21 are adopted and promulgated to ensure that the *Patient's Compensation Fund* is organized, administered, and operated on a financially and actuarially sound basis so as to achieve the purpose for which it was established. The rules adopted in Chapter 21 shall be construed, interpreted, and applied to achieve the purposes and objectives for which the fund was established.
[13.21.1.6 NMAC –Rp, 13.21.1.6 NMAC, 01/01/2022]

13.21.1.7 DEFINITIONS: This chapter adopts the definitions found in Section 41-5-3 NMSA 1978, in Section 14-4-2 NMSA 1978, in Chapter 59A, Article 1, NMSA 1978, and in 1.24.1.7 NMAC. In addition:

A. **"Base coverage"** means the medical malpractice liability coverage, as required by the MMA or as determined by the superintendent for a hospital or outpatient health care facility, that must be provided by an insurance policy issued to a health care provider;

B. **"Insured"** means a health care provider insured under a medical malpractice liability insurance policy;

C. **"MMA"** means the New Mexico Medical Malpractice Act, Sections 41-5-1 through 41-5-29 NMSA 1978;

D. **"Occurrence coverage"** means malpractice liability insurance for medical malpractice that occurs during the policy term, regardless of when the claim was reported;

E. **"Qualified health care provider"** or **"QHP"** means a health care provider, as defined in Subsection A of Section 41-5-1 NMSA 1978, who is admitted to the fund pursuant to these rules;

F. **"Self-insured"** means a person who satisfies, or seeks to satisfy, the requirements for becoming a "qualified health care provider" by depositing funds with the superintendent;

G. **"Slot coverage"** means prohibited coverage for more than one part-time health care provider on a "full-time equivalency" (FTE) basis calculated on how many hours, collectively, the part-time health care providers would be working during the period of coverage and calculating the premium as comparable to the one full-time health care provider's premium; and

H. **"Third-party administrator" or "TPA"** means the third-party administrator identified in Section 41-5-25 NMSA 1978.
[13.21.1.7 NMAC –Rp, 13.21.1.7 NMAC, 01/01/2022]

13.21.1.8 RESPONSIBILITIES OF THE THIRD-PARTY ADMINISTRATOR: The third-party administrator shall demonstrate its qualifications through prior experience fulfilling responsibilities similar to those set forth herein and have the responsibility to

A. receive and process health care provider requests for admission to the fund;

B. determine whether applicants for admission satisfy the standards of financial responsibility and possess the other qualifications for admission specified by these rules;

C. timely collect surcharges from, or paid by insurers on behalf of, health care providers;

D. certify periods of admission of qualified health care providers;

E. process claims against qualified health care providers or the fund in accordance with the MMA and these rules;

F. collect and maintain claims experience and surcharge data;

G. purchase insurance for the fund and its obligations;

H. retain actuarial, legal and claim adjusting services for the fund;

I. negotiate reasonable and appropriate compromises and settlements of the fund's liability respecting any claim against the fund and obtain approval from the superintendent or the superintendent's designee before entering into an agreement involving PCF funds;

J. pay judgments, settlements, arbitration awards, and medical expenses for which the fund is responsible;

K. at the direction of the superintendent, develop and maintain a website linked to the office of superintendent of insurance website;

L. provide an annual audit of the fund to the superintendent;

M. subject to approval from the superintendent, develop methodology for allocating liability for any fund deficit among health care providers; and

N. discharge and perform such other duties, responsibilities, functions, and activities as are expressly or impliedly imposed on the TPA by the MMA, as directed by the superintendent or as specified by these rules.

[13.21.1.8 NMAC –Rp, 13.21.1.8 NMAC, 01/01/2022]

13.21.1.9 EXPENSES OF ADMINISTRATION AND DEFENSE: All expenses incurred for, by, or on behalf of the superintendent or the TPA in the administration, operation, and defense of the fund shall be borne by the fund.

[13.21.1.9 NMAC –Rp, 13.21.1.9 NMAC, 01/01/2022]

13.21.1.10 REFERENCE TO OTHER DOCUMENTS: When a rule issued by the superintendent relating to the MMA or the fund refers to another rule, regulation, statute, or other document, the reference, unless stated specifically to the contrary, is continuous and intended to refer to all amendments of the rule, regulation, statute, or document.

[13.21.1.10 NMAC –Rp, 13.21.1.10 NMAC, 01/01/2022]

13.21.1.11 INTERPRETATION OF TERMS: Unless the context otherwise requires:

A. Singular/plural. Words used in the singular include the plural; words used in the plural include the singular;

B. Gender. Words used in the neuter gender include the masculine and the feminine. The personal pronoun in either gender may be used in these rules to refer to any person, firm or corporation.

C. Permissive/mandatory. May is permissive; shall and must are mandatory.

[13.21.1.11 NMAC –Rp, 13.21.1.11 NMAC, 01/01/2022]

13.21.1.12 USE OF PRESCRIBED FORMS: The TPA may prescribe forms to carry out certain requirements of Chapter 21 of these rules. Prescribed forms must be used when a form exists for the purpose, unless these rules state otherwise or the TPA waives this requirement. The TPA shall accept filings made on photocopies of prescribed forms, provided they are legible.

[13.21.1.12 NMAC –Rp, 13.21.1.12 NMAC, 01/01/2022]

13.21.1.13 ADDRESS FOR FILING DOCUMENTS: The TPA shall post filing and contact information on the Patient's Compensation Fund website.

[13.21.1.13 NMAC –Rp, 13.21.1.13 NMAC, 01/01/2022]

13.21.1.14 SEVERABILITY: If any provision of Chapter 21 of these rules, or the application or enforcement thereof, is held invalid, such invalidity shall not affect other provisions or applications of Chapter 21

these rules which can be given effect without the invalid provisions or applications, and to this end the several provisions of Chapter 21 of these rules are hereby declared severable.
[13.21.1.14 NMAC –Rp, 13.21.1.14 NMAC, 01/01/2022]

History of 13.21.1 NMAC:
13.21.1 NMAC – General Provisions, filed 4/30/2019, was repealed and replaced by 13.21.1 NMAC – General Provisions, effective 01/01/2022.

TITLE 13 INSURANCE
CHAPTER 21 PATIENT'S COMPENSATION FUND
PART 2 QUALIFICATIONS AND ADMISSIONS

13.21.2.1 ISSUING AGENCY: The New Mexico Superintendent of Insurance.
[13.21.2.1 NMAC –Rp, 13.21.2.1 NMAC, 01/01/2022]

13.21.2.2 SCOPE: The rules in this part govern the qualification and admission of health care providers to the Patient's Compensation Fund (the fund).
[13.21.2.2 NMAC – Rp,13.21.2.2 NMAC, 01/01/2022]

13.21.2.3 STATUTORY AUTHORITY: Section 41-5-25 NMSA 1978.
[13.21.2.3 NMAC – Rp,13.21.2.3 NMAC, 01/01/2022]

13.21.2.4 DURATION: Permanent.
[13.21.2.4 NMAC – Rp,13.21.2.4 NMAC, 01/01/2022]

13.21.2.5 EFFECTIVE DATE: January 1, 2022, unless a later date is cited at the end of a section.
[13.21.2.5 NMAC – Rp,13.21.2.5 NMAC, 01/01/2022]

13.21.2.6 OBJECTIVE: The rules in this part are intended to ensure that health care providers are qualified for and admitted to the fund on a financially and actuarially sound basis.
[13.21.2.6 NMAC – Rp,13.21.2.6 NMAC, 01/01/2022]

13.21.2.7 DEFINITIONS: This rule adopts the definitions found in Section 41-5-3 NMSA 1978, in Section 14-4-2 NMSA 1978, in Chapter 59A, Article 1 NMSA 1978, in 1.24.1.7 NMAC, and in 13.21.1.7 NMAC.
[13.21.2.7 NMAC – Rp,13.21.2.7 NMAC, 01/01/2022]

13.21.2.8 BASIC QUALIFICATIONS FOR ADMISSION TO THE FUND:

A. To be eligible for admission to the fund, a person shall:

(1) be a health care provider, as defined by the MMA or by these rules, who is engaged in the provision of health care services within the state of New Mexico, and is not organized solely or primarily for the purpose of qualifying for admission to the fund;

(2) demonstrate and maintain, to the satisfaction of and in the manner specified by the superintendent and in accordance with the standards prescribed by these rules, or as otherwise provided by law, financial responsibility for, and with respect to, malpractice or professional liability claims asserted against the person or institution;

(3) apply for admission pursuant to these rules; and

(4) pay the applicable surcharges and assessments to the fund.

B. Part-time health care providers and locum tenens may be enrolled individually in the fund, paying their class surcharge on a pro rata basis.

C. An independent provider that is a business entity, including solo corporations:

(1) must have at least one qualified health care provider as a member or employee of the entity;

(2) must have all qualifiable health care provider members or employees admitted to the fund to have the business entity eligible for fund coverage; and

(3) shall pay an applicable business entity surcharge to the fund.

D. Slot coverage is not permitted.

E. A health care provider who is a natural person may be qualified as a member or employee of more than one business entity, with the appropriate surcharges paid pro rata. The underlying medical malpractice liability insurance may be provided by different insurers.
[13.21.2.8 NMAC – Rp,13.21.2.8 NMAC, 01/01/2022]

13.21.2.9 FINANCIAL RESPONSIBILITY -- INSURANCE:

A. To establish and maintain financial responsibility using insurance, the health care provider, or authorized representative of the health care provider, shall submit proof that the health care provider is or will be insured under a policy of malpractice liability insurance with indemnity limits of $250,000 per occurrence.

B. To be acceptable as evidence of malpractice liability insurance, an insurance policy:

(1) shall be issued by an insurer licensed and admitted in New Mexico by the superintendent or by a licensed risk retention group;

(2) shall, except for a hospital or outpatient health care facility, be on an occurrence coverage form approved by the superintendent;

(3) if on a claims made form issued to a hospital or outpatient health care facility, shall be on a claims made form approved by the superintendent and must include an extended reporting endorsement or equivalent tail to maintain indefinite coverage;

(4) shall provide for the insurer's assumption of the defense of any covered claim, without limitation on the insurer's maximum obligation respecting the cost of defense;

(5) shall, for an independent provider, provide coverage for not more than three separate occurrences; and

(6) shall be nonassessable.

C. Admitted carriers and risk retention groups desiring to provide malpractice liability insurance policies for the qualification of health care providers under the MMA must apply for approval from the superintendent by submitting a copy of the proposed policy forms and proposed rates to the superintendent.

D. The proof required by Subsection A of this section shall be issued and executed by an officer or authorized agent of the applicant health care provider's insurer and shall specifically identify the policyholder, the named insureds under such policy, the policy period, and the limits of coverage. Upon request by the superintendent or the TPA, such certification shall be accompanied by a certified true copy of the policy, or identification of the SERFF numbers of the specific policy form(s) previously filed with and approved by the superintendent.

E. The occurrence coverage required by this rule to demonstrate the requisite financial responsibility for qualification with the fund shall be deemed to be continuing without a lapse in coverage by the fund, provided that the health care provider meets the premium payment conditions of the underlying coverage and timely meets the surcharge payment conditions of these rules, as applicable.

[13.21.2.9 NMAC – Rp,13.21.2.9 NMAC, 01/01/2022]

13.21.2.10 FINANCIAL RESPONSIBILITY -- SELF-INSURANCE: An independent provider may qualify for admission to the fund by having continuously on deposit the sum of $750,000 in cash, as long as the following conditions are met:

A. The deposit shall be conditioned only for, dedicated exclusively to, and held in trust for the benefit and protection of and as security for the prompt payment of all medical malpractice claims arising or asserted against the health care provider.

B. A self-insured health care provider shall be required to execute a pledge agreement for the money on deposit prescribed and supplied by the superintendent.

C. Sums on deposit with the superintendent pursuant to this rule shall not be assigned, transferred, mortgaged, pledged, hypothecated, or otherwise encumbered by the health care provider nor shall any such deposit be subject to writ of attachment, sequestration, or execution except pursuant to a final judgment or court-approved settlement issued or made in connection with and arising out of a malpractice claim against the health care provider.

D. To maintain financial responsibility for continuing qualification with the fund, a self-insured health care provider shall at all times maintain the sum on deposit provided for by this rule at not less than $750,000. The value of the health care provider's deposit shall be deemed impaired when any portion is seized or released pursuant to judicial process.

E. In the event that a self-insured health care provider's deposit provided for by this rule becomes impaired, the superintendent shall give written notice of such impairment to the self-insured health care provider, and the self-insured health care provider shall, unless a longer period is provided for by the superintendent, have five days from receipt of such notice to make such additional deposit as will restore the minimum deposit value prescribed by this rule. A self-insured health care provider's qualification with the fund shall terminate on and as of the later of the last day set by these rules or, if applicable, by the superintendent, if the self-insured health care provider has not on or prior to such date restored the minimum deposit value prescribed by this rule. In the case of multiple self-insured health care providers approved by the superintendent to post one deposit, as set forth in Subsection B of this section, the admission to the fund of each member of the group or each related entity shall terminate on and as of the last day set by these rules or, if applicable, by the superintendent, if the self-insured health care provider has not on or prior to such date restored the minimum deposit value prescribed by this rule.

F. A self-insured health care provider shall, within 120 days of receiving notice of a request for review of a malpractice claim, submit a report to the superintendent and the TPA of the anticipated exposure to the fund and

the self-insured health care provider and containing sufficient details supporting the anticipated exposure. In addition, said self-insured heath care provider shall provide updates to the superintendent and the TPA when significant changes in anticipated exposure occur.

G. A self-insured health care provider who has evidenced financial responsibility pursuant to this rule may withdraw the deposit prescribed by this rule upon authorization of the superintendent. All money shall remain on deposit and pledged to the fund during the term of the health care provider's admission as a self-insured health care provider with the fund and for the longer of a three-year period following termination of such admission or as long as any medical malpractice claim is pending, whether with the medical review commission or in a court of competent jurisdiction. After this time period, authorization may be given when the health care provider files with the superintendent and the TPA, not less than 30 days prior to the date such withdrawal is to be effected, a certificate signed by the health care provider, certifying:

(1) the date the health care provider terminated admission to the fund as a self-insured health care provider;

(2) that there are no medical malpractice claims pending with the medical review commission or in a court of competent jurisdiction;

(3) that there are no unpaid final judgments or settlements against or made by the health care provider in connection with or arising out of a malpractice claim; and

(4) that there are no unasserted medical malpractice claims which are probable of assertion against the health care provider.

H. Effective as of the date on which a self-insured health care provider's deposit is withdrawn pursuant to this rule, the health care provider's admission to and qualification with the fund shall be terminated.

I. The deposit with the superintendent shall provide coverage for not more than three separate occurrences, and the limit that shall be paid from the deposit for each occurrence is $250,000.

J. The acceptance by the superintendent of the self-insurance deposit described in this rule does not create in the superintendent, the TPA, or the fund a duty to defend any health care provider making a deposit under this rule.

[13.21.2.10 NMAC – Rp,13.21.2.10 NMAC, 01/01/2022]

13.21.2.11 ADDITIONAL QUALIFICATIONS FOR HOSPITALS AND OUTPATIENT HEALTH CARE FACILITIES:

A. The superintendent shall perform a risk assessment for each applicant hospital or outpatient health care facility. If the hospital or outpatient care facility will establish and maintain financial responsibility with medical malpractice liability insurance, the superintendent may consider as the risk assessment the information and documents that the applicant submitted to its insurer, all of which shall be provided to the superintendent by, or on behalf of, the applicant, along with all other information that the superintendent has or requests of the applicant. If the hospital or outpatient care facility will be self-insured, the risk assessment shall be based on information requested by the superintendent upon forms prescribed and supplied by the superintendent. The superintendent may request and consider any additional information pertinent to a risk assessment.

B. The superintendent shall arrange for an actuarial study before determining base coverage or deposit and surcharges. If the data available for a hospital or outpatient health care facility is insufficient for actuarial analysis, due to sample size or similar inadequacies, the actuarial study may aggregate data among similar hospitals or outpatient health care facilities to achieve actuarial significance.

C. Based on the risk assessment and actuarial study the superintendent shall determine each hospital’s or outpatient health care facility’s base coverage and coverage terms, or, if self-insured, the required deposit, pursuant to the procedures of this section.

D. The risk assessment and actuarial study for each hospital or outpatient health care facility shall be required when the hospital or outpatient health care facility applies the first time for admission to the fund, and may be required at any other time the superintendent deems it necessary or advisable.

E. A hospital or outpatient health care facility seeking admission to the fund must apply by April 1 of the year prior to their first admission to the fund.

[13.21.2.11 NMAC – Rp,13.21.2.11 NMAC, 01/01/2022]

13.21.2.12 CONFIDENTIAL INFORMATION: Information from any health care provider who seeks qualification and admission to the fund shall be kept confidential pursuant to the requirements of Paragraph D of Section 41-5-25 NMSA 1978.

[13.21.2.12 NMAC – Rp,13.21.2.12 NMAC, 01/01/2022]

13.21.2.13 ADMISSION PROCEDURE:

A. An application for admission to the fund shall be made to the third-party administrator through the patient's compensation fund website, which shall require the applicant to provide a legal name; professional license, certification, or registration number; information relating to the nature and scope of the applicant's practice sufficient to identify the class or category of the practitioner; information on malpractice claims previously concluded or then pending against the applicant; and such other information as the superintendent or the TPA may require.

B. The application shall be accompanied by evidence of financial responsibility in the form prescribed by these rules and the applicable surcharge as determined by the superintendent with the advice of the advisory board.

C. The advisory board will provide advice to the superintendent and carry out its additional obligations as set forth in Paragraph E of Section 41-5-25.1 NMSA 1978.

D. If the third-party administrator determines that an applicant does not meet the qualifications for admission to the fund set forth in the MMA and these rules, the third-party administrator shall issue a notice to that effect and notify the applicant within 15 days of receipt of the completed application. The applicant may within 15 days of receipt of the notice, appeal the determination to the superintendent by delivering a notice of appeal to the superintendent. The provisions of 13.21.4 NMAC shall apply to the appeal.

[13.21.2.13 NMAC – Rp,13.21.2.13 NMAC, 01/01/2022]

13.21.2.14 ORDER OF ADMISSION:

A. Periodically, after health care providers have been approved for admission into the fund, the TPA shall notify the superintendent, who shall issue an order of admission to the fund, which shall:

(1) identify the health care providers who have been admitted;

(2) state that the health care providers have qualified for admission to the fund pursuant to Section 41-5-5 NMSA 1978;

(3) specify the effective date and term of each admission; and

(4) for a hospital or outpatient health care facility for whom a base coverage or surcharge has been set, the amount of the base coverage or surcharge.

B. Duplicate or additional orders of admission shall be available to and upon the request of a qualified health care provider or the qualified health care provider's attorney, or professional liability insurance underwriter, when such certification is required to evidence admission to or qualification with the fund in connection with an actual or proposed malpractice claim against the health care provider.

C. A copy of each order of admission shall be available for public inspection at the main office of the superintendent on the day it is issued, and a copy of the order shall be posted on the patient's compensation fund website as soon as practicable. Posting the order on the Patient's Compensation Fund website shall constitute delivery to the health care provider and any other interested person. Any person aggrieved by the admission of any qualified health care provider to the fund or by the conditions of the health care provider's admission may, within 15 days of issuance of the order, appeal the admission to the superintendent by delivering a notice of appeal to the superintendent. The filing of an appeal shall not operate to stay the order of admission or suspend the conditions of admission. The provisions of 13.21.4 NMAC shall apply to the appeal.

[13.21.2.14 NMAC – Rp,13.21.2.14 NMAC, 01/01/2022]

13.21.2.15 EXPIRATION OF ADMISSION AND RENEWAL OF ADMISSION:

A. Admission to the fund expires:

(1) as to a health care provider evidencing financial responsibility other than by self-insurance, on and as of:

(a) the effective date and time of termination or cancellation of the policy of the health care provider's malpractice liability coverage; or

(b) the last day of the applicable period for which the prior annual surcharge applied in the event that the annual surcharge for renewal coverage is not paid by the health care provider to the insurer on or before 30 days following the expiration of the prior admission period.

(2) as to a self-insured health care provider on and as of:

(a) the effective date and time of termination, cancellation or impairment of the health care provider's financial responsibility; or

(b) the last day of the applicable period for which the prior surcharge applied in the event that the surcharge for renewal coverage is not paid by the health care provider to the superintendent on or before 30 days following the expiration of the prior admission period.

B. Admission to the fund must be renewed by each qualified health care provider on or before expiration of the admission period in accordance with these rules.
[13.21.2.15 NMAC – Rp,13.21.2.15 NMAC, 01/01/2022]

13.21.2.16 TERMINATION OF ADMISSION:

A. A health care provider's admission to the fund shall terminate:

(1) as to a health care provider evidencing financial responsibility by proof of insurance pursuant to these rules, on and as of the effective date of cancellation of the health care provider's insurance coverage;

(2) as to a self-insured health care provider on and as of any date on which:

(a) the health care provider ceases to maintain financial responsibility in the amount and form prescribed by these rules; or

(b) the health care provider fails, within the allowed time after notice by the TPA, to provide additional security for financial responsibility when existing financial responsibility security is impaired as provided in these rules.

(3) on any date that the health care provider's professional or institutional license, certification, or registration is suspended or revoked or that the health care provider ceases to be a health care provider as defined by the MMA or these rules or otherwise ceases to be eligible for admission to the fund.

B. Upon written notice to a health care provider, or such provider's authorized representative, the TPA may terminate a health care provider's admission to the fund, effective 30 days following the mailing by registered or certified mail, return receipt requested, or giving of such notice in the event that a qualified health care provider has failed or refused to timely provide any reports or submit any information or data required to be reported or submitted by these rules. If, within 30 days of receipt of such a notice, a health care provider furnishes to the TPA any and all delinquent reports, information, and data, as specified by such notice, the health care provider's admission to the fund may be continued in effect, provided that the health care provider remains otherwise qualified for admission to the fund.

C. If the TPA 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. The health care provider may, within 15 days of receipt of the notice, appeal the determination by delivering a notice of appeal to the superintendent. The provisions of 13.21.4 NMAC shall apply to the appeal.
[13.21.2.16 NMAC – Rp,13.21.2.16 NMAC, 01/01/2022]

13.21.2.17 PATIENT’S COMPENSATION FUND ACTUARY:

A. In accordance with the provisions of law applicable to contracting for personal, professional, or consulting services, the superintendent, in consultation with the advisory board, may employ or hire one or more qualified and competent actuaries to advise and consult the superintendent, the advisory board, and the TPA on all aspects of the administration, operation, and defense of the fund which require application of actuarial science.

B. An actuary may be asked to evaluate or recommend:

(1) the claims experience data required for risk assessments;

(2) the establishment, maintenance, and adjustment of reserves on individual claims against the fund and the establishment, maintenance, and adjustment of reserves for incurred but not reported claims;

(3) surcharges, rated and classified according to the classes or risks against which the fund provides compensation, that shall reasonably ensure that the fund is sufficiently funded so as to be and remain financially and actuarially capable of providing the compensation for which it is organized;

(4) each hospital’s or outpatient health care facility’s base coverage and coverage terms upon initial admission into the fund, and whether additional charges need to be made for initial admission to the fund; and

(5) any other actuarial questions affecting the administration, operation, and defense of the fund.
[13.21.2.17 NMAC – Rp,13.21.2.17 NMAC, 01/01/2022]

13.21.2.18 ANNUAL ACTUARIAL STUDY:

A. Annually, as required by Section 41-5-25 NMSA 1978, the superintendent shall cause an independent actuary to perform an actuarial study of the fund, and of the surcharges necessary and appropriate to ensure that it is and remains financially and actuarially sound.

B. In the performance of the actuarial study, the independent actuary shall employ sound actuarial principles.
[13.21.2.18 NMAC – Rp,13.21.2.18 NMAC, 01/01/2022]

13.21.2.19 SURCHARGES:

A. For a health care provider other than a hospital or outpatient care facility, the superintendent, with the advice of the advisory board, shall determine surcharges based on classifications and categories of medical malpractice liability risks underwritten by the fund with respect to practice type or specialties as determined and specified in the annual actuarial study pursuant to this rule.

B. For a hospital or outpatient care facility, the superintendent, with the advice of the advisory board, shall determine surcharges based on the annual actuarial study using the information specified in Paragraph D of Section 41-5-25 NMSA 1978.

[13.21.2.19 NMAC – Rp,13.21.2.19 NMAC, 01/01/2022]

13.21.2.20 PAYMENT OF SURCHARGES:

A. An insured health care provider must pay the applicable surcharge to the medical malpractice liability insurer within 30 days of the inception of coverage, and within 30 days of the inception of each period of renewal coverage.

B. A self-insured health care provider must pay the applicable surcharge within 30 days of the requested date for admission into the fund, and within 30 days of the inception of each renewal period.

[13.21.2.20 NMAC – Rp,13.21.2.20 NMAC, 01/01/2022]

13.21.2.21 ADMISSION DATE:

A. A health care provider who applied for admission to the fund prior to the effective date of these rules, and who was approved for admission prior to the effective date of these rules, shall be admitted to the fund as of the date of the prior application.

B. A health care provider whose first application for admission to the fund is made after the effective date of these rules, and who is approved for admission pursuant to these rules, will be admitted to the fund as of the date of initial application.

C. Under Sections A and B of this Section, the admission date for an insured health care provider who applies to participate in the fund, and who pays all applicable surcharges to the fund, within 60 days of the inception of the base coverage, shall relate back to the inception date of the base coverage.

D. The admission of all health care providers in the fund as of December 31, 2021 shall expire at the end of December 31, 2021. The admission of any health care provider renewed or admitted to the fund on or after January 1, 2022 shall expire at the end of December 31 of the year of renewal or admission.

[13.21.2.21 NMAC – Rp,13.21.2.21 NMAC, 01/01/2022]

History of 13.21.2 NMAC:

13.21.2 NMAC, Qualifications and Admissions, effective 3/1/2019.

History of Repealed Material:

13.21.2 NMAC, Qualifications and Admissions, filed 3/1/2019 was repealed and replaced by 13.21.2 NMAC, Qualifications and Admissions, effective 4/30/2019.

13.21.2 NMAC, Qualifications and Admissions, filed 4/30/2019 was repealed and replaced by 13.21.2 NMAC, Qualifications and Admissions, effective 01/01/2022.

This is an amendment to 13.21.3 NMAC, Sections 2, 6, 7, and 11, effective 01/01/2022.

13.21.3.2 SCOPE: This rule applies to all proceedings relating to the [~~PCF~~] Patient's Compensation Fund (the fund) in which the superintendent adopts rules as required by law.
[13.21.3.2 NMAC – N/E, 3/01/2019; Rp, 13.21.3.2 NMAC, 4/30/2019 A, 01/01/2022]

13.21.3.6 OBJECTIVE: To provide procedural rules for public rule hearings for use by the superintendent consistent with the State Rules Act in the organization, administration, and defense of the[~~PCF~~] fund and to facilitate public engagement with the superintendent's rulemaking process in a transparent, organized, and fair manner.
[13.21.3.6 NMAC – N/E, 3/01/2019; Rp, 13.21.3.6 NMAC, 4/30/2019; A, 01/01/2022]

13.21.3.7 DEFINITIONS: This rule adopts the definitions found in Section 41-5-3 NMSA 1978, in Section 14-4-2 NMSA 1978, in Chapter 59A, Article 1 NMSA 1978, in 1.24.1.7 NMAC, and in 13.21.1.7 NMAC. In addition:

A. "Final order" also means "concise explanatory statement" as described in Section 14-4-5.5 NMSA 1978;

B. "Logical outgrowth" occurs when a final rule differs from the proposed rule if interested parties should have anticipated that the change was possible, and thus reasonably should have filed their comments on the subject during the notice-and-comment period;

C. "Recommended decision" means the written decision of any designated hearing officer which contains a description of the rulemaking proceeding, a summary of any written comments submitted to the superintendent, a summary of any oral comments made at the public hearing, any analysis or conclusions of the designated hearing officer, and recommendations to the superintendent concerning adoption, rejection, or amendment of the proposed rule.
[13.21.3.7 NMAC – N/E, 3/01/2019; Rp, 13.21.3.7 NMAC, 4/30/2019 A, 01/01/2022]

13.21.3.11 WRITTEN COMMENT PERIOD:

A. The public comment period must be at least 30 calendar days, beginning after publication of the notice in the New Mexico register and issuance of the rulemaking notice. The superintendent shall not adopt a proposed rule before the end of the public comment period.

B. As long as the public comment period is at least 30 calendar days, the public comment period will close for initial comments at 4:00 p.m. on the day of the public hearing, or on the last day of the public hearing if the public hearing extends for more than one day. For purposes only of responses to written comments or oral comments at the public hearing, the public comment period will extend at least 10 calendar days beyond the public hearing or close of the 30 day comment period, whichever is later, unless the necessity of adopting or publishing the rule by a certain date makes the extension of the public comment period impractical.

C. A person may submit, by mail or in electronic form, written comments or responses to comments on a proposed rule, and those comments or responses shall be made part of the record. Written comments may be submitted through the end of the public comment period, and responses to comments may be submitted for an additional 10 days, unless the necessity of adopting or publishing the rule by a certain date makes a response period impractical.

D. The superintendent may decide to amend the comment period, or response period, if the superintendent provides to the public, as defined in Section 14-4-2 NMSA 1978, notice of the changes.

E. The superintendent shall post all written comments and responses on the [~~PCF~~] Patient's Compensation Fund website, as soon as practicable, and no more than three business days following receipt to allow for public review. All written comments and responses received by the superintendent shall also be available for public inspection at the main office of the superintendent.
[13.21.3.11 NMAC – Rp, 13.21.3.11 NMAC, 4/30/2019 A, 01/01/2022]

This is an amendment to 13.21.4 NMAC, Sections 2, 7, 8, 9, 11, 13, 15, 19, 25, and 26, effective 01/01/2022.

13.21.4.2 SCOPE: Except as otherwise provided, the rules in this part govern every adjudicatory proceeding, [~~and every~~] except any surcharge rate proceeding conducted pursuant to a notice of hearing issued by the superintendent on any matter delegated to the superintendent under the Medical Malpractice Act (MMA) or the rules adopted in Chapter 21 of Title 13 of the New Mexico Administrative Code, and to any request for hearing submitted to the superintendent, unless a more specific statutory or regulatory provision applies to the specific hearing type being conducted.
[13.21.4.2 NMAC – N/E, 3/01/2019; Rp, 13.21.4.2 NMAC 4/30/2019; A, 01/01/2022]

13.21.4.7 DEFINITIONS: This rule adopts the definitions found in Section 41-5-3 NMSA 1978, in Section 14-4-2 NMSA 1978, in 1.24.1.7 NMAC, and in 13.21.1.7 NMAC. In addition:

A. "Attorney" means only an individual who is licensed to practice law in New Mexico or who has requested temporary licensure under the New Mexico supreme court's *pro hac vice* rules.

B. "Day or Days" shall be interpreted as follows, unless otherwise specified:

(1) "Business day" means Monday through Friday, excluding any days that state offices are officially closed;

(2) one to five days means only business days; and

(3) six days or more means calendar days, including weekends and state holidays.

C. "Hearing" means an on-the-record adjudicatory proceeding [~~or surcharge rate proceeding~~] before the superintendent or the before a hearing officer appointed by the superintendent.

D. "Hearing officer" is the superintendent, or a person designated by the superintendent, to serve as a neutral decision maker in a proceeding.

E. "Order" means any directive, command, determination of a disputed issue, or ruling on a disputed matter issued by the superintendent or a hearing officer in a proceeding governed by these rules.

F. "OSI" means the New Mexico office of superintendent of insurance.

G. "Party" means an entity who participates in a proceeding governed by these rules by order of the superintendent.

H. "Pleading" means any written request, motion, or proposed action filed by a party in a docketed proceeding, as set forth in 13.21.4.10 NMAC.

I. "Proceeding" means any formal adjudicatory [~~or surcharge rate~~] proceeding, case, or hearing conducted by the superintendent pursuant to these rules.

J. "Request for hearing" means a formal written request for an opportunity to appear before the superintendent and offer testimony, to call witnesses, present evidence and ask questions, that is submitted by a person with respect to a particular matter where the superintendent has statutory or regulatory authority to conduct an adjudicatory [~~or surcharge rate~~] proceeding.

K. "Sua Sponte" means any determination of the superintendent or of his designee made without prompting of the parties.

L. "Superintendent" means the superintendent of insurance, the office of superintendent of insurance, or employees of the office of superintendent of insurance acting within the scope of the superintendent's official duties and with the superintendent's authorization.
[13.21.4.7 NMAC – N/E, 3/01/2019; Rp, 13.21.4.7 NMAC 4/30/2019; A, 01/01/2022]

13.21.4.8 REVISION OF STANDING ORDERS: The superintendent may issue or withdraw standing procedural orders addressing general practice issues and filing protocols for the handling of matters to be adjudicated before the superintendent. Such standing orders will be available for public inspection at OSI office facilities, on the [~~PCF~~]OSI website, and in any applicable information provided with a notice of hearing. Parties appearing before the superintendent are expected to comply with standing orders.
[13.21.4.8 NMAC – N/E, 3/01/2019; Rp, 13.21.4.8 NMAC 4/30/2019; A, 01/01/2022]

13.21.4.9 REQUESTING A HEARING:

A. Written request required. Any person seeking a hearing before the superintendent shall file a written request for a hearing [~~using the form available on the PCF website~~] to the OSI's electronic docket or as otherwise directed by the superintendent. The request shall include all of the following:

(1) a brief summary identifying the nature of the dispute;

(2) the applicable statute, rule, bulletin, or order in dispute in the matter;

(3) a statement of the jurisdictional basis for the superintendent to adjudicate the matter;

(4) the triggering action of the superintendent, such as an order, denial, suspension, revocation, penalty, fine, rule, or interpretative publication;

(5) the requestor's reason for challenging that action or inaction; and

(6) the mailing address of the requestor.

B. Request rejected. The superintendent may reject any request for hearing if the superintendent lacks jurisdiction to adjudicate the matter; the matter is moot; or the request for hearing is procedurally or substantively deficient.

(1) If a request for hearing is rejected, the superintendent will [~~notify the requestor in writing with a brief~~] issue an order denying the request with an explanation [~~of the rejection~~].

(2) If the request for hearing is deficient for any reason other than lack of subject matter jurisdiction of mootness, the requestor may correct any deficiency and resubmit the request for hearing.

C. Designation of hearing officer [~~and docket~~]. Upon receipt of a request for hearing that contains all information required by Subsection A of this section and over which the superintendent has jurisdiction, the superintendent may designate a hearing officer to preside in the matter based on the knowledge, expertise, experience, efficiency, and staffing needs of the office. The superintendent may subsequently reassign the matter to a different hearing officer, if necessary. The superintendent shall assign a docket number to be referenced in all subsequent communications and filings concerning the matter.

D. Intervenors. Any person who claims an interest relating to the subject of a notice of hearing, and is so situated that the hearing may impair or impede the person's ability to protect that interest, may apply to intervene in the proceeding.

(1) In determining whether to allow or deny intervention, the superintendent shall consider the nature of the claimed interest of the applicant, the potential impact of the superintendent's decision on the applicant's ability to protect that interest, the timeliness of the application, the potential disruption of the proceedings and prejudice to existing parties if intervention were allowed.

(2) Whether to allow intervention at the sole discretion of the superintendent.

(3) OSI staff may intervene in any proceeding as a matter of right by filing a notice of intervention.

[13.21.4.9 NMAC – N/E, 3/01/2019; Rp, 13.21.4.9 NMAC 4/30/2019; A, 01/01/2022]

13.21.4.11 ELECTRONIC DOCKET AND FILING OF PLEADINGS:

A. Electronic docket. Individuals or their counsel may access OSI's free electronic docket to view cases and filed pleadings. Registration of a free user account is required to file pleadings into a docket or to request a hearing. Every written document that is submitted to a hearing officer or exchanged between parties for consideration, including pleadings, such as motions, responses and objections, all evidentiary documents and any other filings shall include the caption and shall be filed to the electronic docket.

[~~A~~]**B. Opening the docket.** A docket shall be opened [~~in the PCF records management system immediately upon the superintendent's determination that the requestor shall be granted a hearing.~~] by the superintendent at the superintendent's discretion or by request for hearing filed in the OSI's electronic docket.

[~~**(1)** The superintendent shall direct that the requestor's original request for hearing be filed to the docket.~~

~~**(2)** The superintendent shall establish the caption for the docket, which caption shall be used thereafter for any matters pertaining to the hearing. The caption shall establish the nature of the matter and shall include the docket number.~~

~~**(3)** Every written document that is submitted to the superintendent or exchanged between the parties for consideration, including pleadings such as motions, responses and objections, all evidentiary documents and any other filings shall include the caption and shall be filed to the docket.~~]

[~~B~~]C. Public access. Unless otherwise determined by the superintendent upon consideration of a request by a party for confidentiality, all dockets shall be open for public inspection.

[~~C~~]**D. Filing restrictions and service.**

(1) [~~The PCF will accept filings through mail, facsimile, or electronic mail~~] The OSI docket administrator will review all filings for compliance with these rules. Non compliance with filings will be returned to submitter for correction..

(2) [~~Any item that is filed to the docket shall also be contemporaneously served upon all parties of record and on the hearing officer~~.]

The OSI's electronic docket does allow for electron service. All parties of record shall be listed on the initial request for hearing and shall be selected for service with each additional filing.

(3) All filings shall include a certificate of service that documents the method of service used. A represented party shall only be served through counsel.

(4) **[**~~Electronic and in-person~~] In-person filing shall be accepted on business days between 8:00 am. and 4:00 pm. [~~Pleadings~~] In-person pleadings will be marked as filed on the business day that the [~~PCF~~] OSI receives the pleading.

D. Filing requirements.

(1) All motions, except motions made on the record during the hearing or a continuance request made in a genuine unforeseen emergency circumstance (such as an unexpected accident, force majeure, or major medical emergency occurring in such close proximity to the date of the scheduled hearing that a written motion could not be completed), shall be in writing and shall state with particularity the grounds and the relief sought.

(2) Absent any order to the contrary, no pleading shall exceed 10 pages, excluding the caption and certificate of service, of double-spaced (except for block quotations), 12-point font. Only relevant excerpts of a motion exhibit shall be filed, with the pertinent portions highlighted, underlined, or otherwise emphasized. All exhibits and attachments shall identify the total number of pages, and consecutive page numbers (*e.g.*, "Page 1 of 10"). Only single-sided documents will be accepted for filing or into a record at a hearing.

E. Request for concurrence. Before submission of any motion, request for relief or request for continuance, the requesting party should make reasonable efforts to consult with each other party about that party's position on the motion unless the nature of the pleading is such that it can be reasonably assumed the requested relief would be opposed. The moving party shall state the position of each other party in the pleading.

F. Responses to pleadings.

(1) Unless a different deadline has been established by the hearing officer, each non-moving party shall have 10 calendar days to file a written response to a pleading.

(2) If a deadline for filing falls on a non-business day, the deadline falls on the next business day.

(3) The hearing officer has the discretion to extend or shorten the response deadline.

(4) Failure to file a response in opposition may be presumed to be consent to the relief sought.

(5) The hearing officer is not required to make a default ruling on any motion if the relief sought could be contrary to the facts or law on the issues.

G. In the event of a procedural defect or other error with the manner, method, or content of a submitted pleading, the hearing officer or records manager may communicate such error to the filing party and withhold filing of the pleading until the moving party remedies the procedural defect. Examples of a procedural defect include, but are not limited to, failure to certify service, failure to comply with the page limitations, failure to confer with other parties, failure to use the form or follow the specific filing method required by the [~~PCF~~] OSI, submission of double-sided documents, failing to properly number pages, failure to use the correct caption of reference the assigned docket number, or failure to comply with an applicable standing order.

[13.21.4.11 NMAC – N/E, 3/01/2019; Rp, 13.21.4.11 NMAC 4/30/2019; A, 01/01/2022]

13.21.4.13 HEARING LOCATION, TIME AND PLACE, NOTICE OF HEARING:

A. Location.

(1) In the absence of any statutory requirements to the contrary, all hearings conducted by the superintendent shall occur in Santa Fe, at the office of superintendent of insurance, unless the hearing officer orders the parties to appear at another location in New Mexico.

(2) The parties may express a mutual preference for location of the hearing in their request for hearing.

(3) In selecting a location other than Santa Fe, the hearing officer shall consider and give weight to the location and wishes of the parties, witnesses, access for a hearing officer with expertise in the matter, and the scheduling and staffing needs of the [~~PCF~~] OSI,

(4) If selecting a location other than Santa Fe would cause an unreasonable, undue burden to any party, that party may file a written objection to the selected location within 10 days of issuance of the notice of hearing, articulating the reasons supporting the objection. The hearing officer will promptly review the objection and, upon a showing of an unreasonable, undue burden, may move the hearing to another more reasonable location and the superintendent may designate another hearing officer if necessary.

B. Notice. The superintendent will notify the parties to the hearing of the date, time and place scheduled for the hearing at least seven days before the scheduled hearing. This notice will be directed to the party's attorney, or to the last known address of any unrepresented party. Notice will be sent via US mail unless the parties have requested an alternate method of notification that is acceptable to the superintendent.
[13.21.4.13 NMAC – N/E, 3/01/2019; Rp, 13.21.4.13 NMAC 4/30/2019; A, 01/01/2022]

13.21.4.15 CONTINUANCES:

A. At the request of a party, a witness, or upon the hearing officer's own determination, a hearing may be continued for good cause. The hearing officer shall consider only written continuance requests made at least three working days prior to the scheduled hearing absent extraordinary, unforeseen circumstances that the requesting party or witness could not have known earlier. An order to grant or deny the request may be issued prior to the scheduled hearing or if there is insufficient time to issue an order prior to the scheduled hearing, the hearing officer may grant or deny the request on the record at the hearing. No continuance request may be granted unless there is adequate time to provide notice to the parties, subpoena witnesses and conduct the rescheduled hearing before expiration of any statutory jurisdictional deadline.

B. Within the jurisdictional time limits set by statute, the superintendent or hearing officer may *sua sponte* continue any matter as necessary to address [~~PCF~~] OSI, staffing needs, to ensure efficient and adequate use of state resources, and to manage the hearing docket. To this end, the hearing officer may contact the parties to inquire about the status of a scheduled case.

C. No case shall be continued, even with a showing of good cause or an emergency circumstance, beyond any mandatory, applicable jurisdictional time limit on the case.
[13.21.4.15 NMAC – N/E, 3/01/2019; Rp, 13.21.4.15 NMAC 4/30/2019; A, 01/01/2022]

13.21.4.19 HEARING OFFICER POWERS AND RESPONSIBILITIES:

A. General authority. The superintendent may preside over [~~PCF~~] OSI, hearings or may designate a hearing officer to preside instead.

B. Duties of the hearing officer. The hearing officer shall conduct fair and impartial hearings, take all necessary action to avoid delay in the proceedings and maintain order. The hearing officer shall have the powers necessary to carry out these duties, including the following:

(1) to administer or have administered oaths and affirmations;

(2) to cause depositions to be taken;

(3) to require the production or inspection of documents and other items;

(4) to require the answering of interrogatories and requests for admissions;

(5) to rule upon offers of proof and receive evidence;

(6) to regulate the course of the hearings and the conduct of the parties and their representatives therein;

(7) to issue a scheduling order, schedule a prehearing conference for simplification of the issues, or any other proper purpose;

(8) to schedule, continue and reschedule hearings;

(9) to consider and rule upon all procedural and other motions appropriate in proceeding, including qualification of expert witnesses and admission of exhibits;

(10) to require the filing of briefs on specific legal issues prior to or after the hearing;

(11) to cause a docket to be opened and a complete record of a hearing to be made;

(12) to make and issue decisions and procedural orders;

(13) to issue subpoenas in the name of the superintendent;

(14) if acting on behalf of the superintendent, to issue a recommendation to the superintendent regarding the final resolution of the matter; and

(15) to appropriately sanction, up to exclusion, indecorous, obstinate, recalcitrant, obstreperous, unethical, unprofessional or other improper conduct that interferes with the conduct of a fair and orderly hearing or the development of a complete record.

C. Independence of the hearing officer. In the performance of these functions, the hearing officer shall not be responsible to or subject to the direction of any other officer, employee or agent of OSI or the [~~PCF~~] TPA, except that a hearing officer appointed by the superintendent shall be subject to the direction of the superintendent.

D. Ex parte communication. In the performance of these functions, the hearing officer is prohibited from engaging in any improper *ex parte* communications about the substantive issues with any party on any matter.

An improper *ex parte* communication occurs when the hearing officer discusses or otherwise communicates regarding the substance of a case without the opposing party being present, except that it is not an improper *ex parte* communication for the hearing officer to go on the record with only one party when the other party has failed to appear at a scheduled hearing.

E. Final order. After a thorough review of the record and any recommendation prepared by a designated hearing officer, the superintendent shall issue a final order. No party or member of OSI or [~~PCF~~]TPA staff shall engage in any *ex parte* communication with the superintendent in an attempt to influence his final decision.

[13.21.4.19 NMAC – N/E, 3/01/2019; Rp, 13.21.4.19 NMAC 4/30/2019; A, 01/01/2022]

13.21.4.25 APPEALS FOLLOWING HEARING: Any party who has exhausted all administrative remedies available under these rules and who is adversely affected by a final order or decision in an adjudicatory proceeding [~~or surcharge rate proceeding~~] may appeal pursuant to the provisions of Section 39-3-1.1 NMSA 1978. Each order issued by the superintendent after an adjudicatory proceeding [~~or surcharge rate proceeding~~] shall include information about the appeal process for the type of case at issue. Once the appeal is filed in the appropriate court, the appealing party shall promptly provide a court-endorsed copy of the appeal to the superintendent so that the [~~PCF~~] OSI records manager can prepare and submit the proper record.

[13.21.4.25 NMAC – N/E, 3/01/2019; Rp, 13.21.4.25 NMAC 4/30/2019; A, 01/01/2022]

13.21.4.26 REQUESTING COPIES OF EXHIBITS, AUDIO, OR THE ADMINISTRATIVE RECORD: Any party may access and copy any written document filed to the docket. Copies of an audio recording or written transcript of the proceeding shall be arranged through the stenographic service. The [~~PCF~~] OSI may charge a reasonable fee for copies made, consistent with OSI's fee schedule under the Inspection of Public Records Act. The superintendent may also require the requesting party to submit a computer storage device, such as a compact disc, dvd disc, blu-ray disc, or usb drive, or other tangible device for copying of any audio or video recording that is part of the administrative record.

[13.21.4.26 NMAC – N/E, 3/01/2019; Rp, 13.21.4.26 NMAC 4/30/2019; A, 01/01/2022]

TITLE 13 INSURANCE
CHAPTER 21 PATIENT'S COMPENSATION FUND
PART 5 SURCHARGE RATE HEARINGS

13.21.5.1 ISSUING AGENCY: New Mexico Superintendent of Insurance.
[13.21.5.1 NMAC – N, 01/01/2022]

13.21.5.2 SCOPE: Except as otherwise provided, the rules in this part govern every surcharge rate proceeding conducted pursuant to Paragraph D and Paragraph F of Section 41-5-25 NMSA 1978.
[13.21.5.2 NMAC – N, 01/01/2022]

13.21.5.3 STATUTORY AUTHORITY: Section 41-5-25 NMSA 1978.
[13.21.5.3 NMAC – N, 01/01/2022]

13.21.5.4 DURATION: Permanent.
[13.21.5.4 NMAC – N, 01/01/2022]

13.21.5.5 EFFECTIVE DATE: January 1, 2022, unless a later date is cited at the end of a section.
[13.21.5.5 NMAC – N, 01/01/2022]

13.21.5.6 OBJECTIVE: The purpose of this rule is to provide procedures to govern surcharge rate hearings required by the Medical Malpractice Act.
[13.21.5.6 NMAC – N, 01/01/2022]

13.21.5.7 DEFINITIONS: This rule adopts the definitions found in Section 41-5-3 NMSA 1978, in Section 14-4-2 NMSA 1978, in Chapter 59A, Article 1 NMSA 1978, in 1.24.1.7 NMAC, in 13.21.1.7 NMAC, and in 3.21.4.7 NMAC.
[13.21.5.7 NMAC – N, 01/01/2022]

13.21.5.8 REVISION OF STANDING ORDERS: The superintendent may issue or withdraw standing procedural orders addressing general practice issues and filing protocols for the handling of surcharge rate hearings. Such standing orders will be available for public inspection at OSI office facilities, on the *Patient's Compensation Fund* website, and in any applicable information provided with a notice of hearing. Parties appearing at surcharge rate hearings are expected to comply with standing orders.
[13.21.5.8 NMAC – N, 01/01/2022]

13.21.5.9 ADVISORY BOARD AS HEARING OFFICER:

A. General authority. The advisory board is the hearing officer for surcharge rate hearings. The advisory board may conduct any hearing *en banc*, may designate any number of members less than its whole to conduct any hearing, or may designate a single member to conduct any hearing.

B. Duties of the advisory board. The advisory board shall conduct fair and impartial hearings, take all necessary action to avoid delay in the proceedings and maintain order. The advisory board shall have the powers necessary to carry out these duties, including the following:

(1) to administer or have administered oaths and affirmations;

(2) to cause depositions to be taken;

(3) to require the production or inspection of documents and other items;

(4) to require the answering of interrogatories and requests for admissions;

(5) to rule upon offers of proof and receive evidence;

(6) to regulate the course of the hearings and the conduct of the parties and their representatives therein;

(7) to issue a scheduling order, schedule a prehearing conference for simplification of the issues, or any other proper purpose;

(8) to schedule, continue and reschedule hearings;

(9) to consider and rule upon all procedural and other motions appropriate in the proceeding, including qualification of expert witnesses and admission of exhibits;

(10) to require the filing of briefs on specific legal issues prior to or after the hearing;

(11) to cause a complete record of a hearing to be made;

(12) to make and issue decisions and procedural orders;

(13) to issue subpoenas in the name of the superintendent;

(14) to issue a recommendation to the superintendent regarding the final resolution of the matter; and

(15) to appropriately sanction, up to exclusion, indecorous, obstinate, recalcitrant, obstreperous, unethical, unprofessional or other improper conduct that interferes with the conduct of a fair and orderly hearing or the development of a complete record.

C. Independence of the advisory board. In the performance of these functions, the advisory board shall not be responsible to or subject to the direction of any officer, employee or agent of OSI or the TPA. Pursuant to Paragraph A of Section 41-5-25.1 NMSA 1978, OSI shall provide staff services to the advisory board to assist in the administration of the hearing.

D. Ex parte communication. In the performance of these functions, the advisory board is prohibited from engaging in any improper *ex parte* communications about the substantive issues with any party on any matter. An improper *ex parte* communication occurs when the advisory board, or any of its members, discusses or otherwise communicates regarding the substance of a case without the opposing party being present, except that it is not an improper *ex parte* communication for the advisory board to go on the record with only one party when the other party has failed to appear at a scheduled hearing.

E. Recommended decision. Upon conclusion of the surcharge rate hearing, the advisory board, or a quorum thereof, shall meet to determine the surcharge rates to recommend to the superintendent. The advisory board shall base its determination upon substantial evidence in the whole record. The advisory board shall provide a written recommended decision to the superintendent on or before October 21 of each year, which shall set forth the recommended surcharge rates and a summary of the evidence supporting those rates.

F. Final order. After a thorough review of the record and the recommendation prepared by the advisory board, the superintendent shall issue a final order. No party or member of OSI or TPA staff shall engage in any *ex parte* communication with the superintendent in an attempt to influence a final decision. The superintendent may seek counsel from OSI's office of legal counsel.

[13.21.5.9 NMAC – N, 01/01/2022]

13.21.5.10 INITIATION OF THE SURCHARGE RATE HEARING:

A. Selection of actuary. No later than March 1 of each year, the advisory board shall meet with the superintendent to consult on the selection of an independent actuary to perform the independent actuarial study of the fund. The actuarial study is to be completed by August 1 of the year in which the actuary is selected.

B. Opening the docket. No later than March 15 of each year, the superintendent shall open a docket in OSI's electronic docket system for that year's surcharge rate hearing. A docket number shall be assigned and referenced in all subsequent communications and filings concerning the surcharge rate hearing.

(1) The superintendent shall file an initial order setting the surcharge rate hearing between September 15 and September 30 of each year.

(2) The superintendent shall establish the caption for the docket, which caption shall be used thereafter for any matters pertaining to the hearing. The caption shall state the nature of the matter and shall include the docket number.

(3) Every written document that is submitted to the superintendent or advisory board or exchanged between the parties for consideration, including pleadings such as motions, responses and objections, all evidentiary documents and any other filings shall include the caption and shall be filed to the docket.

C. Designation of advisory board as hearing officer. The superintendent's initial order shall designate the advisory board as the hearing officer in the surcharge rate hearing.

D. Intervenors. Any person who claims an interest relating to the surcharge rate hearing, and is so situated that the hearing may impair or impede the person's ability to protect that interest, may apply to intervene in the proceeding.

(1) In determining whether to allow or deny intervention, the advisory board shall consider the nature of the claimed interest of the applicant, the potential impact of the advisory board's decision on the applicant's ability to protect that interest, the timeliness of the application, the potential disruption of the proceedings and prejudice to existing parties if intervention were allowed.

(2) Whether to allow intervention is at the sole discretion of the advisory board.

[13.21.5.10 NMAC – N, 01/01/2022]

13.21.5.11 REPRESENTATION AT HEARING, FORMAL ENTRY OF APPEARANCE, SUBSTITUTION OF COUNSEL, AND WITHDRAWAL FROM REPRESENTATION:

A. Representation. Unless otherwise expressly authorized by statute, only a person made a party or a bona fide majority owner if the party is a business entity, or that person's attorney may represent the person in the surcharge rate proceeding.

B. Entry of appearance. Any attorney wishing to represent a party must file a formal written entry of appearance in the docket of the proceeding. The entry of appearance must list the attorney's mailing address, phone and fax number (if any), and an email address (if any). Any attorney wishing to substitute in for a previous attorney must file a substitution of counsel containing the same information required in the initial entry of appearance.

C. Withdrawal. An attorney who intends to withdraw from representation of a party must do so in accordance with the rules of professional conduct.

(1) Withdrawing counsel must file in the docket a written request to withdraw from representation that indicates when counsel notified the party of the withdrawal, and of the date and time of the scheduled hearing.

(2) The advisory board may deny a request to withdraw from representation only when withdrawal would have a clear, materially adverse effect on the represented party's interests and impede the conduct of a full, fair, and efficient hearing.

[13.21.5.11 NMAC – N, 01/01/2022]

13.21.5.12 ELECTRONIC DOCKET AND FILING OF DOCUMENTS:

A. Electronic docket. Individuals or their counsel may access OSI's free electronic docket to view cases and filed pleadings. Registration of a free user account is required to file pleadings into a docket. Every written document that is submitted to a hearing officer or exchanged between parties for consideration, including pleadings, such as motions, responses and objections, all evidentiary documents and any other filings shall include the caption and shall be filed to the electronic docket

B. Public access. Unless the document contains information protected under Paragraph D of Section 41-5-25 NMSA 1978, all documents filed in the docket for the surcharge rate proceeding shall be open for public inspection. Any protected information will be filed under seal or redacted in publicly available documents, in a manner ensuring the greatest possible public access to non-confidential information.

C. Filing restrictions and service.

(1) The OSI docket administrator will review all filings for compliance with these rules. Non-compliance with filings will be returned to submitter for correction.

(2) The OSI's electronic docket does allow for electron service. All parties of record shall be listed on the initial request for hearing and shall be selected for service with each additional filing.

(3) All filings shall include a certificate of service that documents the method of service used. A represented party shall only be served through counsel.

(4) In-person filing shall be accepted on business days between 8:00 am and 4:00 pm. In-person pleadings will be marked as filed on the business day that the OSI receives the pleading.

D. Filing requirements.

(1) All motions, except motions made on the record during the hearing or a continuance request made in a genuine unforeseen emergency circumstance (such as an unexpected accident, force majeure, or major medical emergency occurring in such close proximity to the date of the scheduled hearing that a written motion could not be completed), shall be in writing and shall state with particularity the grounds and the relief sought.

(2) Absent any order to the contrary, no pleading shall exceed 10 pages, excluding the caption and certificate of service, of double-spaced (except for block quotations), 12-point font. Only relevant excerpts of a motion exhibit shall be filed, with the pertinent portions highlighted, underlined, or otherwise emphasized. All exhibits and attachments shall identify the total number of pages, and consecutive page numbers (*e.g.*, "Page 1 of 10"). Only single-sided documents will be accepted for filing or into a record at a hearing.

E. Request for concurrence. Before submission of any motion, request for relief or request for continuance, the requesting party should make reasonable efforts to consult with each other party about that party's position on the motion unless the nature of the pleading is such that it can be reasonably assumed the requested relief would be opposed. The moving party shall state the position of each other party in the pleading.

F. Responses to filings.

(1) Unless a different deadline has been established by the advisory board, each non-moving party shall have 10 calendar days to file a written response to a pleading.

(2) If a deadline for filing falls on a non-business day, the deadline falls on the next business day.

(3) The advisory board has the discretion to extend or shorten the response deadline.

(4) Failure to file a response in opposition may be presumed to be consent to the relief sought.

(5) The advisory board is not required to make a default ruling on any motion if the relief sought could be contrary to the facts or law on the issues.

G. In the event of a procedural defect or other error with the manner, method, or content of a submitted filing, the advisory board or records manager may communicate such error to the filing party and withhold filing of the pleading until the moving party remedies the procedural defect. Examples of a procedural defect include, but are not limited to, failure to certify service, failure to comply with the page limitations, failure to confer with other parties, failure to use the form or follow the specific filing method required by the Patient's Compensation Fund, submission of double-sided documents, failing to properly number pages, failure to use the correct caption of reference the assigned docket number, or failure to comply with an applicable standing order.
[13.21.5.12 NMAC – N, 01/01/2022]

13.21.5.13 PREHEARING CONFERENCES, STATUS CONFERENCES, AND STATUS CHECKS:

A. Purpose of prehearing conferences. The advisory board may direct representatives for all parties to meet together or with the advisory board present for a prehearing conference to consider any or all of the following:

(1) simplify, clarify, narrow or resolve the pending issues;

(2) stipulations and admissions of fact and of the contents and authenticity of documents;

(3) expedition in the discovery and presentation of evidence, including, but not limited to, restriction on the number of exhibits and expert, economic or technical witnesses;

(4) matters of which administrative notice will be taken; and

(5) such other matters as may aid in the orderly and expeditious disposition of the proceeding, including disclosure of the names of witnesses and the identity of documents or other physical exhibits which will be introduced in evidence in the course of the proceeding.

B. Conduct of prehearing conferences.

(1) Prehearing conferences conducted by the advisory board may be electronically, but not stenographically, recorded. Should a party request that the recording be transcribed, that party shall pay any costs of transcription.

(2) The advisory board may issue a written order that recites the results of the conference. Such order shall include rulings upon matters considered at the conference, together with appropriate directions to the parties. The order shall control the subsequent course of the proceeding, unless superseded by a subsequent order.

C. Status conferences.

(1) The advisory board may require the parties to submit a written report of any conference ordered to be conducted between the parties updating the status of the proceeding in light of the conference.

(2) The advisory board may conduct a status conference upon the request of either party or on the advisory board's own initiative, at which time the advisory board may require the parties, attorneys, or authorized representatives, to provide information regarding the status of a proceeding.
[13.21.5.13 NMAC – N, 01/01/2022]

13.21.5.14 HEARING LOCATION, TIME AND PLACE, NOTICE OF HEARING:

A. Location.

(1) In the absence of any statutory requirements to the contrary, all hearings conducted by the advisory board shall occur in Santa Fe, at the office of superintendent of insurance, unless the advisory board orders the parties to appear at another location in New Mexico.

(2) The parties may express a mutual preference for location of any hearing.

(3) In selecting a location other than Santa Fe, the advisory board shall consider and give weight to the location and wishes of the parties, witnesses, and access for members of the advisory board.

(4) If selecting a location other than Santa Fe would cause an unreasonable, undue burden to any party, that party may file a written objection to the selected location within 10 days of issuance of the notice of

hearing, articulating the reasons supporting the objection. The advisory board will promptly review the objection and, upon a showing of an unreasonable, undue burden, may move the hearing to another more reasonable location.

B. Notice. Except for the evidentiary hearing to establish surcharge rates set by the superintendent's initial order (unless the advisory board determines to change the date of that hearing), the advisory board will notify the parties to the hearing of the date, time and place scheduled for any hearing at least seven days before the that hearing. This notice will be directed to the party's attorney, or to the last known address of any unrepresented party. Notice will be provided in a manner calculated to provide actual notice.

[13.21.5.14 NMAC – N, 01/01/2022]

13.21.5.15 TELEPHONIC, VIDEOCONFERENCE AND OTHER EQUIVALENT ELECTRONIC METHOD HEARINGS:

A. If not otherwise prohibited by statute, rule, or court ruling, the advisory board may conduct any hearing in person or by telephone, videoconference, or other equivalent electronic method. The advisory board shall cause a stenographic or audio recording to be made of all proceedings involving the presentation of evidence, points, authorities or argument pertaining to the merits of the matter before the advisory board.

B. If the hearing is to be conducted by telephone, videoconference or other equivalent electronic method, the notice shall so inform the parties. Either party may file a written objection to conducting the hearing by telephone, videoconference, or other equivalent electronic method within 10 days of the notice of hearing. Failure to timely object to the conduct of a telephone, videoconference, or other equivalent electronic method hearing constitutes consent to the hearing proceeding in that manner and waiver of any other applicable statutory in-county hearing requirement.

C. Upon receipt of a timely objection, the advisory board shall consider the applicable legal requirements, the location of the parties and witnesses, the complexity of the particular matter, the availability of necessary electronic equipment for conduct of a full and fair hearing by telephone, videoconference, or other equivalent electronic method, and the basis of the objection in determining whether the hearing should occur at a specific location rather than via telephone, videoconference, or other equivalent electronic method.

D. Provided that the requesting party has not previously demanded an in-person hearing or otherwise objected to conducting the matter via telephone, videoconference, or other equivalent electronic methods, any party may request to appear directly or have a witness on their behalf appear via telephone, videoconference, or alternative electronic means by filing a request at least three business days before the scheduled hearing. The filing of a request to appear via telephone, videoconference, or other alternative electronic method shall be deemed as a total and complete waiver of any in-person, in-county hearing requirement and deemed as consent for all parties, all witnesses, and the advisory board to appear via telephone, videoconference, or other equivalent electronic methods.

E. All parties appearing via telephone, videoconference, or other electronic method shall provide the advisory board with a working email address or facsimile number for the exchange of all documentary evidence before or during the hearing.

F. Failure to follow the advisory board's instructions for participating in the hearing via telephone, videoconference, or other equivalent electronic method will be treated as a non-appearance at the hearing.

G. Any technical issues shall be promptly reported to the advisory board.

H. In the event that technical or other computer problems prevent a hearing by videoconference or other electronic method from occurring or otherwise interfere with maintaining or developing a complete record at the hearing, the parties agree and consent that the advisory board may continue the matter to a different time before expiration of the statutory deadline, may order the parties to appear for an in-person hearing, or may conduct the remaining portion of the hearing via telephone.

I. If the advisory board determines during the course of the hearing, either *sua sponte* or upon argument of a party, that an in-person hearing is necessary to adequately complete the record, address credibility issues, or is otherwise necessary to ensure a full or fair hearing process, the advisory board may recess a hearing occurring by telephone, videoconference, or other equivalent electronic method and reconvene the proceeding as an in-person hearing.

[13.21.5.15 NMAC – N, 01/01/2022]

13.21.5.16 CONTINUANCES:

A. At the request of a party, a witness, or upon the advisory board's own determination, a hearing may be continued for good cause. The advisory board shall consider only written continuance requests made at least three working days prior to the scheduled hearing absent extraordinary, unforeseen circumstances that the requesting party or witness could not have known earlier. An order to grant or deny the request may be issued prior to the

scheduled hearing or if there is insufficient time to issue an order prior to the scheduled hearing, the advisory board may grant or deny the request on the record at the hearing. No continuance request may be granted unless there is adequate time to provide notice to the parties, subpoena witnesses and conduct the rescheduled hearing before expiration of any statutory deadline.

B. Within the time limits set by statute, the superintendent or advisory board may *sua sponte* continue any matter as necessary to address OSI or TPA staffing needs, to ensure efficient and adequate use of state resources, and to manage the hearing docket. To this end, the advisory board may contact the parties to inquire about the status of a scheduled case.

C. No case shall be continued, even with a showing of good cause or an emergency circumstance, beyond any mandatory, applicable time limit on the case.

[13.21.5.16 NMAC – N, 01/01/2022]

13.21.5.17 ATTIRE AT HEARING: All attorneys and other authorized representatives must be attired in a dignified, professional manner at all times during the hearing. Witnesses shall dress in a respectful manner. No attire or dress so flamboyant, disheveled, inflammatory, obscene, offensive or revealing as to create a distraction to the orderly conduct of the hearing will be permitted.

[13.21.5.17 NMAC – N, 01/01/2022]

13.21.5.18 BURDEN OF PROOF, PRESENTATION OF CASE, EVIDENCE:

A. Burden of proof. Unless otherwise specified by statute, the burden of proof in a proceeding is the preponderance of evidence.

B. Presentation order. The party with the burden of proof in the case will ordinarily present their case first, followed by the opposing party, if any, unless the advisory board makes reasonable exceptions related to the availability of the witnesses and representatives or other scheduling concerns.

C. Opening statements. The advisory board may require or allow opening statements as the circumstances justify. Opening statements are not ordinarily evidence, but without objection, may be adopted as evidence by sworn oath of the party-witness who made the opening statement.

D. Testimony under oath. All testimony must be given under oath and will be subject to questioning of each other party. The advisory board may also ask questions of the witness as appropriate. At the advisory board's discretion, redirect and re-cross may be allowed.

E. Closing arguments. The parties may make closing arguments, either orally at the conclusion of the case or, upon order of the advisory board, in writing after conclusion of the hearing.

F. Post-hearing briefs. The advisory board may also order the parties to submit further briefing on any issue in the case, and to submit proposed findings of fact and conclusions of law. The advisory board will establish a timeline for submission of any post-hearing pleadings, including time for the parties to exchange briefs, as the advisory board finds necessary. No decision-writing deadline commences until the parties have submitted any ordered post-hearing briefing or submission.

G. Rules of evidence.

(1) Formal rules of evidence and civil procedure shall not apply in a proceeding unless otherwise expressly and specifically required by statute, regulation, or order of the advisory board.

(2) Relevant and material evidence shall be admissible. Irrelevant, immaterial, unreliable, or unduly repetitious evidence may be excluded.

(3) A party may offer exhibits, such as records of transactions.

(a) The party shall have the exhibits numbered by the stenographer prior to the hearing.

(b) The party shall provide copies of the evidence to the stenographer, all parties and to the advisory board.

(c) Exhibits must be introduced and explained by a witness, who must be prepared to answer questions from the parties and the advisory board.

(d) The advisory board shall be asked by the party offering an exhibit to accept the exhibit into evidence. The advisory board may be asked to consider all exhibits introduced by a witness at the conclusion of that witness's testimony or at the conclusion of that party's case.

(e) The stenographer shall retain copies of all exhibits that are admitted and shall make them a part of the record.

(4) The advisory board shall consider and give appropriate weight to all relevant and material evidence admitted in rendering a final decision on the merits of a matter.

H. Hearsay evidence. Hearsay evidence may be admitted in a proceeding.

I. Taking notice.

(1) The advisory board may take administrative notice of facts not subject to reasonable dispute that are generally known within the community, capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably disputed, or as provided by an applicable statute.

(2) The advisory board may take administrative notice at any stage in the proceeding, whether *sua sponte* or at the request of a party.

(3) A party may dispute the propriety of taking administrative notice, including the opportunity to refute a noticed fact.

J. Objections.

(1) A party objecting to evidence, qualifications of an expert, a line of questioning, or the response shall timely and briefly state the grounds for the objection.

(2) Rulings on objections may be addressed on the record at the time of the objection, reserved for ruling in a subsequent written order, or noted as a continuing, ongoing objection for which ruling is reserved to later in the proceeding.

K. Audio or video evidence. Any party wishing to submit a video or audio recording into the record must provide a complete tangible, playable copy that can be retained as part of the record.

L. Size of exhibits. In general, documentary evidence should be no larger than 8.5 inches by 11 inches unless expressly allowed by the advisory board. The advisory board may admit larger documentary exhibits presented at hearing, provided the proponent of such exhibits provides the advisory board with a copy of the exhibit reduced to 8.5 inches by 11 inches. After the hearing at which the exhibit was admitted, the reduced copy shall be substituted for the larger exhibit and made part of the record of the hearing. Arrangements to provide a reduced copy of a large exhibit shall be undertaken in advance of the hearing. Failure by the proponent to provide a reduced copy shall be deemed a withdrawal of the exhibit.

M. Substitutions for objects. In lieu of the introduction of tangible objects as exhibits, the advisory board may require the moving party to submit a photograph, video, or other appropriate substitute such as a verbal description of the pertinent characteristics of the object for the record.

[13.21.5.18 NMAC – N, 01/01/2022]

13.21.5.19 WITNESSES, EXPERT WITNESSES, AND INVOCATION OF THE RULE:

A. Use of witnesses. Any person having relevant, material knowledge related to one of the issues in a hearing may testify as a witness under oath in a proceeding. Upon affirming the oath, the witness may be questioned by any party and by the advisory board.

B. Method of appearance. Unless a more specific provision applies, witnesses are ordinarily expected to appear in the same manner or by the same method as the parties in a proceeding, absent express preapproval of the advisory board allowing an appearance by a different method. For example, if the hearing is scheduled to be conducted in person in a specific place, the witnesses are also ordinarily expected to appear in person at that same place; however, if the matter is set to occur by telephone or videoconference, then the witnesses may ordinarily appear by telephone of videoconference.

C. Advisory board as a witness. The current or previously assigned advisory board in a matter shall not be called and shall not be a witness in the proceeding.

D. Use of expert witnesses.

(1) If either party intends to call and treat a particular witness as an expert witness in the proceeding, the party must identify the purported expert to the other parties and to the advisory board at least seven days before the scheduled hearing, or with sufficient time before completion of the discovery deadline specified in a scheduling order to allow for deposition.

(2) The party shall include the scope of that expert's purported testimony relative to the proceeding, the expert's credentials, and a listing of any materials the expert reviewed as part of reaching his or her expert opinion.

(3) The opposing party may file a response in opposition before the hearing or challenge the designation of the witness as an expert during the course of the hearing.

E. Use of exclusionary rule. At the hearing, any party can invoke the exclusionary rule, excluding all witnesses other than the real party in interest, their representative, one main case agent, and any designated expert witness from the proceeding until the time of their testimony. If the rule has been invoked, the witnesses shall not discuss their testimony with each other until the conclusion of the proceeding. When the rule has been invoked, any witness who remains in the hearing after conclusion of their testimony may not be recalled as a witness in the

proceeding, except that any witness may observe the testimony of an expert witness and be recalled to provide any subsequent rebuttal testimony.

F. OSI staff as experts.

(1) The advisory board may request one or more members of OSI staff to be present at the hearing to assist the advisory board with any matters within the expertise of the staff person.

(2) The staff person may be called as a witness by the advisory board and examined by the parties and the advisory board.

(3) Any party may call the staff person as a witness.

(4) Each other party will have the opportunity to cross-examine a staff person who is called as a witness. In the discretion of the advisory board, the advisory board may permit re-direct or re-cross examination of the staff person.

(5) The advisory board shall not discuss the case with the staff person outside the hearing or off the record.

(6) Any staff person requested to be present by the advisory board shall not be subject to the exclusionary rule.

[13.21.5.19 NMAC – N, 01/01/2022]

13.21.5.20 CLOSED OR PUBLIC HEARING, SEALED RECORDS, AND DELIBERATIVE NOTES OF ADVISORY BOARD:

A. Closed hearings. Unless otherwise provided by law, ordered by the advisory board for good cause, or required to prevent disclosure of confidential information, all hearings and the record are open to the public. Any party to a proceeding may submit a written request to close the hearing and the record to the public, which shall be granted if authorized by statute, regulation, to preserve confidentiality or to protect a party from harassment or reprisal.

B. Open hearings. If the hearing is open to the public, members of the public and the media may attend the hearing so long as they do not interrupt, interfere with, or impede the orderly, fair, and efficient hearing process. With prior consent of the advisory board, media members may record the proceeding from a fixed location in the hearing room. The advisory board may direct any member of the public, including media members, to leave the proceeding if they engage in any conduct that interferes with the advisory board's ability to maintain order, develop the record, and provide a fair and efficient hearing process. The proceedings shall be made available telephonically to members of the public, including the media, upon prior request.

C. Sealed records. Upon request of any party, and upon a showing of good cause, the advisory board may seal a particular exhibit, document, or portions of a witness's testimony from public disclosure if such items contain statutorily-protected confidential information, privileged information, or otherwise contain private identification information of a party or third party that is immaterial to a substantive issue in the proceeding or if its materiality is substantially outweighed by the prejudice of public release of the information. Upon issuance of an order sealing such documents or exhibits, these records will remain under seal throughout the proceeding and shall be returned to the submitting party at the conclusion of the appeal period or the appeal. The opposing party shall be entitled to promptly review these documents in preparing for the hearing, and may rely on those documents during the hearing as necessary to ensure a fair hearing process; however, the opposing party shall not maintain its own copy of the sealed document after conclusion of the hearing nor reveal, discuss, or disclose the contents of these sealed documents to any other party outside of the hearing process.

D. Notes of deliberation. The advisory board's notes taken during the course of the hearing, notes generated during the decision-making process, and any draft orders or draft decisions are confidential as part of the deliberative process and are not subject to public disclosure.

[13.21.5.20 NMAC – N, 01/01/2022]

13.21.5.21 SUBPOENAS: Any request for issuance of subpoenas in matters subject to these rules shall be guided by Rule 45 of the rules of civil procedure for the district courts of New Mexico, except where provisions of that rule conflict with the powers of the superintendent. Any subpoena issued shall be in the name of the superintendent. The party requesting the subpoena shall prepare a proposed subpoena, submit the proposed subpoena to each other party and to the advisory board for approval, and shall timely and reasonably serve the subpoena on the person or entity subject to the subpoena. Unless good cause is shown for a shorter period, a subpoena shall provide at least 10 days-notice before compelled attendance at a hearing or deposition, and at least 10 days-notice before compelled production of materials. All returns or certificates of service on served subpoenas

shall be filed in the docket of the proceeding, copied to the opposing party, and shall be made part of the record of the proceeding.
[13.21.5.21 NMAC – N, 01/01/2022]

13.21.5.22 LANGUAGE INTERPRETERS: A party to a proceeding who needs language interpreter services for translation of one language into another is responsible for arranging such service for the hearing. While the person serving as an interpreter need not be a court-certified interpreter in order to provide interpretation at a hearing, any person serving as an interpreter in a matter before the superintendent must be approved by the advisory board and must affirm the interpreter's oath applicable in New Mexico courts. Upon reasonable notice by the party, any interpreter required to be provided under the Americans with Disabilities Act shall be provided for by the superintendent.
[13.21.5.22 NMAC – N, 01/01/2022]

13.21.5.23 FAILURE TO APPEAR:

A. Entry of default order. If a party fails to appear for a properly noticed hearing, either in person, through a permissible representative or telephonically with prior approval of the advisory board, the person waives the right to protest or challenge any action that is the subject of the hearing notice. The matter shall go on the record for the limited purpose of addressing notice and non-appearance, and the advisory board shall enter an appropriate order based on the waiver of the hearing by failing to appear.

B. Evidence of notice. In considering the non-appearance and whether the person received appropriate notice necessitating issuance of the order, the advisory board may consider the contents of the docket, information conveyed to or known by the advisory board, information related to mailing, including mail tracking, returned receipt information, and notes written on returned envelopes of the United States postal service or other mail tracking services, and arguments offered by any present party, all of which may be addressed on the record of the hearing or in any subsequent order.

C. Written order required. Oral rulings based on a party's failure to appear are not final until reduced to writing. The advisory board may issue a different written order as new information arises after the hearing regarding whether the notice of hearing was properly sent to the correct address or otherwise properly served.
[13.21.5.23 NMAC – N, 01/01/2022]

13.21.5.24 RECONSIDERATION:

A. Time to file. A party may file a motion for reconsideration within 15 days after the date of the final order. Any other party may file a response no more than 15 days after the motion for reconsideration was filed. Motions for reconsideration that are not filed within this deadline may be denied automatically. A timely filed motion for reconsideration should be decided based on the merits, whether or not a response is filed.

B. Posture. The prevailing party shall not file a motion for reconsideration. However, if a requested action is granted in part and denied in part, either party may file a motion for reconsideration.

C. Basis for motion. Motions for reconsideration shall not endeavor to present new evidence previously available, or discoverable through reasonable diligence, to the parties before the hearing. Motions for reconsideration shall not reargue the weight of evidence already ruled upon and shall not reiterate legal arguments already ruled upon. However, a motion for reconsideration may address gross factual or legal errors or omissions contained in the final decision and order.
[13.21.5.24 NMAC – N, 01/01/2022]

13.21.5.25 APPEALS FOLLOWING HEARING: Any person who is adversely affected by a final order or decision in a surcharge rate proceeding may appeal pursuant to the provisions of Section 39-3-1.1 NMSA 1978. Each order issued by the superintendent after a surcharge rate proceeding shall include information about the appeal process for the type of case at issue. Once the appeal is filed in the appropriate court, the appealing party shall promptly provide a court-endorsed copy of the appeal to the superintendent so that the OSI records manager can prepare and submit the proper record.
[13.21.5.25 NMAC – N, 01/01/2022]

13.21.5.26 REQUESTING COPIES OF EXHIBITS, AUDIO, OR THE ADMINISTRATIVE RECORD: Any party may access and copy any written document filed to the docket. Copies of an audio recording or written transcript of the proceeding shall be arranged through the stenographic service. The OSI may charge a

reasonable fee for copies made, consistent with OSI's fee schedule under the Inspection of Public Records Act. The superintendent may also require the requesting party to submit a computer storage device, such as a compact disc, dvd disc, blu-ray disc, or usb drive, or other tangible device for copying of any audio or video recording that is part of the administrative record.
[13.21.5.26 NMAC – N, 01/01/2022]

History of 13.21.5 NMAC: [RESERVED]