1 Patient's Compensation Fund
2 Advisory Board
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7 Moderated by Chairman William Ritchie, M.D.
8 Tuesday, October 4, 2022
9 2:02 MDT
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12 Remote Proceeding
13 Santa Fe, New Mexico 87501
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18 Reported by: Lawrence Oliver
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1 A P P E A R A N C E S

2 List of Attendees:

3 William Ritchie, MD, Chairman

4 Kathy Love, Vice Chairman

5 Troy Clark

6 Michael DeKleva

7 Karen Carson, MD

8 Ellen Stevens

9 Exra Spitzer

10 Alben Martinez

11 Vince Ward, Counsel to the Board

12 Barry Berenberg, Counsel to Superintendent of

13 Insurance, New Mexico

14 Russell Toal, Superintendent of New Insurance,

15 New Mexico

16 Debbie Luera, OSI Department of Insurance, New Mexico

17 Louella Pacheo, New Mexico OSI

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1 P R O C E E D I N G S
2 DR. RITCHIE: Let's go ahead and start
3 it with the rollcall.
4 MS. LUERA: Chairman Ritchie.
5 DR. RITCHIE: Here.
6 MS. LUERA: Vice Chair Love has been
7 detailed in a depo. Dr. Carson?
8 DR. CARSON: Here.
9 MS. LUERA: Mr. Clark?
10 MR. CLARK: Present.
11 MS. LUERA: Mr. DeKleva. Mr. Martinez?
12 MR. MARTINEZ: I'm here.
13 MS. LUERA: Mr. Spitzer.
14 MR. SPITZER: Yes, present. Thank you.
15 MS. LUERA: Ms. Stevens?
16 MS. STEVENS: Here.
17 MS. LUERA: And Mr. Vargus?
18 MR. VARGUS: I'm here.
19 DR. RITCHIE: Was Mr. DeKleva here?
20 MS. LUERA: He's joining right now.
21 DR. RITCHIE: Ah-hah. Okay.
22 Excellent. Well, thank you, everyone. Welcome to
23 hopefully the last of these meetings on short notice,
24 to come up with recommendations. This -- we were
25 tasked. We had a meeting and a continuation of that

1 meeting last couple weeks, hearings to discuss the
2 findings on the actuarial studies, and then a small
3 group, four people, from the Board, met or basically
4 each contributed to a proposed findings, conclusions
5 and recommendations draft.
6 That draft has just recently been
7 circulated to the rest of the Board, and so we're
8 going to give them just a few minutes to continue to
9 digest that. So as far as introductions go, I think
10 we've introduced everyone on the Board in the past, so
11 I don't know that we need to introduce the Board
12 anymore. And I will ask for, you know, approval of
13 the agenda. People have had a chance to look at the
14 agenda.
15 DR. CARSON: I'll move for approval.
16 DR. RITCHIE: Do I hear a second?
17 MR. CLARK: This is Troy. I'll second
18 it.
19 DR. RITCHIE: Any negatives? We will
20 approve that by acclimation. An approval of the
21 meeting minutes, meeting minutes. Ms. Luera, did we
22 have -- we had the minutes from the last meeting, but
23 not the continuation; correct?
24 MS. LUERA: Correct.
25 DR. RITCHIE: So I believe we did

1 approve -- actually, I'm not sure. Were we ever able
2 to get -- we were able to get the minutes from the
3 first part of the hearings, but not in time to approve
4 them. So is there a motion to approve the minutes
5 that we do have?
6 DR. CARSON: I'll move to approve the
7 minutes that we currently have.
8 DR. RITCHIE: Thank you. Any second?
9 MR. CLARK: This is Troy. I'll second
10 that.
11 DR. RITCHIE: Thank you. Okay. Anyone
12 in opposition to that? Then we will approve the
13 meeting minutes then.
14 We're on to the meat of the meeting,
15 the discussion regarding the evidence presented, and
16 then the Advisory Board's recommended decision.
17 So, as I was saying, there was a small
18 group of us that met or didn't meet, but virtually
19 worked on the recommendations. These have been
20 circulated to the rest of the committee, and I will
21 now open the floor up to any comments on what was in
22 the proposal, in the draft, and then we can discuss
23 after that the actual recommendations to come from
24 that draft.
25 So anyone have any comments or

1 questions on the draft that has been submitted?

2 MR. CLARK: This is Troy. I apologize

3 only partway, so I've got to scroll back into it. On

4 Page 2, scroll up to find out the reference here.

5 Give me a second. Item No. 7, Subpoint B.

6 DR. RITCHIE: Yes.

7 MR. CLARK: Someone added in red, which

8 may be you, Dr. Ritchie. I can't quite -- comments

9 over -- is it stated anywhere that there is an intent

10 for on the independent physicians to be at a deficit

11 neutral position within five years? I don't recall

12 where that is located, or if that ever being said? I

13 believe all comments were only around the hospital

14 being deficit neutral by five years by point of their

15 exodus, so --

16 DR. RITCHIE: And I'll be honest, I put

17 that in because I've had people tell me that there was

18 that intent after discussions, but you're correct. I

19 am not aware of -- certainly as we say, it's an

20 intent, so I'm not aware of anything written for that,

21 and so that is certainly a point of discussion for the

22 committee.

23 MR. CLARK: I think it's the intent to

24 get the entire PCF solid, but I don't know that there

25 was ever a date attached to the independent

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1 physicians, so I wouldn't want to put in the -- I
2 guess my concern is putting in the letter something
3 stating a fact that I do not believe is a fact, unless
4 I'm missing something.
5 MR. VARGUS: This is Ray Vargus. I
6 think Troy is right. When we were discussing the
7 amendments to the Act, there was a date certain for
8 the hospitals to get to deficit neutral, but there was
9 not a date certain for the physicians. I mean,
10 obviously, it's a goal that everybody is working
11 towards, but I don't think there's a deadline for that
12 particular goal, when we're talking about the
13 independent physicians.
14 MR. BERENBERG: This is Barry
15 Berenberg. The statute, Section 41-5-25, Paragraph F,
16 states that beginning in 2021 the surcharges shall be
17 set with the intention of bringing the fund to
18 solvency with no projected deficit, by December 31,
19 2026. So that doesn't refer to hospitals. And the
20 next sentence, all qualified and participating
21 hospitals and outpatient healthcare facilities, shall
22 cure any fund deficit attributable to hospitals and
23 outpatient healthcare facilities, by December 31,
24 2026.
25 I'm not sure how you read those two

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1 sentences together. The first one says get rid of the
2 overall deficit, and the second one is targeted
3 towards hospital and outpatient healthcare facilities,
4 in particular.
5 MR. CLARK: Somebody -- generic
6 comment.
7 DR. RITCHIE: I'm sorry? Troy?
8 MR. CLARK: I guess there is a generic
9 comment that did tie into a date. I did not realize
10 that, so thank you, Barry.
11 DR. RITCHIE: I think that's where the
12 comments I had heard came from, exactly, those two
13 lines in the statute.
14 MR. CLARK: Next comment I've got then
15 -- I'm not sure how you want to deal with that one.
16 If we leave it as is, that's fine. Item No. 12, the
17 first comment is correct that says, "As of December
18 31st, 2021, the PCF balance is 125 million." That's
19 the balance in reserves in cash, however you --
20 whatever terminology you want to use. It's not
21 deficit. And so I think the following comment that
22 says we struck out the amount, enclosing the 30
23 million -- actually, the item struck out is correct.
24 The following statement, I think, that was added, if
25 the $30 infusion of funds that was approved during the

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1 2020-21 legislative session, is included, the balance
2 becomes 95 million. That's actually backwards. I
3 think that's thinking of the deficit position,
4 reducing the deficit.
5 This is the reserve or cash. So I
6 don't know that I think -- I don't agree that we
7 should include the changed language. I think the
8 intent was to try and identify whether -- and it gets
9 confusing, but this is the PCF fund reserve cash, call
10 it what you want, balance, not the deficit. The
11 deficit gets reduced by adding that $30 million to it,
12 but I think we're mixing apples and oranges in those
13 two, so I would recommend putting back in there the
14 struck portion, which is accurate as far as the cash
15 balance, as opposed to the deficit.
16 DR. RITCHIE: And I will take ownership
17 of that. You know, I was trying to -- you're right.
18 I was not stating it in a clear way, that the 30
19 million decreases the deficit, and the 95 million is
20 referred to several times within the report.
21 MR. CLARK: Correct.
22 DR. RITCHIE: But you have to read it
23 properly, whether it's the deficit or balance. So you
24 propose to leave in this amount, includes the 30
25 million infusion of funds that was approved during the

1 2021 legislative session?
2 MR. CLARK: I think if that's left in,
3 it is a correct statement about the cash reserve
4 balance, which is the PCF Fund balance, then it is a
5 correct statement, and it doesn't mix the two, and we
6 remove the added statement that's been added in red
7 there, which mixes in the deficit discussion, not a
8 reserve position.
9 DR. RITCHIE: Okay. I will admit also
10 that I am not -- with editing Word, and so who can we
11 get to scribe this, to change this? Do we want to
12 change this document as it reads, as we speak in this
13 committee? And if so, who can do that? Vince, do you
14 know if we can do that, if that's something that is
15 okay for us to do?
16 MR. WARD: Yeah, I don't think there's
17 any problem with that, and I think if I have access to
18 the document -- let me just see. I'm looking at it
19 right now, and let me just to make sure that I have
20 the editing privilege right here.
21 DR. RITCHIE: I believe I did grant --
22 MR. WARD: Just give me one second.
23 Hold on, let me just get back to --
24 MS. LUERA: Dr. Ritchie, would you like
25 me to share the document on the screen?

1 DR. RITCHIE: Yes, that would be fine.
2 I'm sorry. I was doing it on my own, and I split
3 mine, so I apologize for not thinking of that. There
4 we go.
5 MR. WARD: I think I'm going to be able
6 to have -- just give me one second here. I apologize.
7 I think I will be able to get this up, so that I can
8 just edit, and what you sent around in the Share
9 Point, Dr. Ritchie.
10 DR. RITCHIE: But the problem is,
11 Debbie, will you be able to then -- will he be able to
12 edit what you are sharing?
13 MS. LUERA: No, but he should be able
14 to share his screen, if you think -- that's probably
15 the most logical way to do it.
16 DR. RITCHIE: I think that's the way we
17 need to do it.
18 MS. LUERA: Okay, let me stop sharing
19 then.
20 MR. WARD: Yeah. Except the only thing
21 is, what I'm editing on, isn't what I'm on Zoom on.
22 That's the only problem.
23 MS. LUERA: I mean, if you all are okay
24 with it, I can do my best.
25 MR. MARTINEZ: So this is like a living

1 document, so if you open up the Word document and
2 allow it to all of us, pretty much anybody can go in
3 there and make any changes necessary, and it shows up
4 in real time.
5 MR. WARD: Right.
6 DR. RITCHIE: So what we need to do is
7 grant permission for you, Debbie, to have access to
8 that document, and then you, in turn, could display
9 it, and it would show the corrections in real time?
10 MS. LUERA: I do have edit access, so
11 what if I go ahead and share again and I will do my
12 best to make the edits in real time.
13 DR. RITCHIE: Well, I believe anyone
14 could do it, so Vince could be doing it also.
15 MR. WARD: Yeah, let's see here. The
16 only thing -- and so I'm in it right now, so let's go
17 to the first -- so 7-B; correct? So with respect to
18 7-B, what was the decision here with respect to the
19 language?
20 DR. RITCHIE: It was --
21 MR. WARD: We going to come back to it,
22 or are we going to remote it?
23 DR. RITCHIE: Oh, actually we had not
24 decided on that.
25 MR. CLARK: Right.

1 DR. RITCHIE: Does someone else have a
2 comment on 7 B real quickly?
3 MR. CLARK: Just a question that
4 outstands on that. I was bringing up that I thought
5 that the word the intent, on -- position should be
6 left out, but based on what Barry shared with us, and
7 the language of 41-525 (f), do we need any of the
8 statement, because now what's in black, the first
9 sentence is now consistent with what was put in, and
10 maybe you add the reference of 41-5-25(e) and (f), and
11 then that clarifies it, and there's no need for the
12 additional nomenclature, about intent or being
13 mandated.
14 MR. WARD: I'm just curious. Can
15 anybody see that I just made an edit into the
16 document, by the way?
17 DR. RITCHIE: I saw it.
18 MR. WARD: Okay, great. So this is
19 going to work.
20 MS. LUERA: I can see it, so I can
21 share; right?
22 MR. BERENBERG: I think that (e) needs
23 to be removed. I think the reference should be to
24 just (f).
25 MR. WARD: And I'm just doing real

1 time. We can always go back and change, by the way.
2 I'm just keeping track.
3 MR. BERENBERG: The quotation comes
4 from Paragraph (f), not (e).
5 MR. CLARK: If that's the case, do we
6 need that second sentence of "four independent
7 physicians and hospitals being the intent of mandate?"
8 Does that even need it?
9 MR. VARGUS: I don't think it's
10 necessary.
11 MR. BERENBERG: Well, I think the
12 important point is that -- I'm not sure if the
13 sentence, as it stands, really though, made the
14 distinction. It's to bring the fund to solvency --
15 it's to bring the portion of the fund, due to the
16 hospital deficit, to solvency, by December 31. That's
17 kind of mandated. And then the portion for the
18 independent physicians, that's an intent, but it's not
19 mandated, because they're going to remain in the fund.
20 So I'm trying to figure out how to get
21 that across.
22 MR. WARD: Barry, this isn't you. I'm
23 trying to pull up the statute currently, but is there
24 a way to just quote the additional language in (f) to
25 make that point, as opposed to paraphrasing it?

1 MR. BERENBERG: You could quote the
2 second two sentences of Paragraph (f). The second
3 sentence says, "It's the intent to bring the fund to
4 solvency by December 31, 2026," and the third sentence
5 says that "The hospital and outpatient facility shall
6 cure their fund deficit," so I think if you quote
7 those two sentences, that gets both in there.
8 The current quotation comes from the
9 second sentence, but it leaves out the portion that
10 includes the word intention, so you would expand the
11 quotation of the second sentence, and then quote the
12 entire third sentence.
13 DR. RITCHIE: And that all comes from
14 Section (f) or (e)?
15 MR. BERENBERG: Paragraph (f).
16 DR. RITCHIE: Paragraph (f). Thank
17 you.
18 MR. WARD: Why not, just for
19 consistency sake though, I mean, we could just quote
20 the entire Paragraph (f), Barry.
21 MR. BERENBERG: That would be fine,
22 too.
23 MR. WARD: Why don't I, since everyone
24 doesn't have access to that, I'm just going to type
25 this in, so you can see the language, and bear with my

1 typing, okay, as I try to do this real time.
2 DR. RITCHIE: Thank you. That sounds
3 most appropriate to me, is just put in the exact
4 language from Paragraph (f). Does anyone on the Board
5 have any trouble seeing this?
6 MR. VARGUS: Can whoever is calling the
7 Secretary of State mute their phone, or computer?
8 Thank you.
9 MR. WARD: Okay, that's the exact
10 language out of the statute. Let me just double check
11 to make sure that I did this. Barry, you should
12 double check me too, to just -- since you have it up
13 in front of you.
14 DR. RITCHIE: So we will strike though
15 that first sentence then in 7(b).
16 MR. BERENBERG: Vince added the third
17 sentence, so I think you need that first sentence in
18 there, which comes from the second sentence of the
19 paragraph. Perhaps you should go back earlier and get
20 in the language that says, "The intention of bringing
21 the fund to solvency."
22 MR. WARD: Yeah.
23 MR. BERENBERG: May say "to set
24 surcharges," and then quote, "with the intention of
25 bringing the fund to solvency."

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1 MR. WARD: I see where you're looking.
2 Okay. So you're picking up in that first sentence --
3 MR. BERENBERG: Right, and then delete
4 what's between what you just added and the quotation
5 mark, where "the fund."
6 MR. WARD: Yeah, just let me get this
7 part really quick, so that I don't screw this up.
8 Okay, so right here. So this is where it would pick
9 up right here. Got it.
10 MR. CLARK: And Mr. Chair, I think
11 that's actually more adequate or more appropriate,
12 because it's not necessarily paying off a deficit.
13 It's eliminating a deficit, which can be eliminated
14 through additional sur charge payments or, if in the
15 future, if there's a reduction in the estimate of what
16 the outstanding liabilities -- there's a number of
17 ways that that deficit can be reduced, besides just a
18 payoff.
19 DR. RITCHIE: That's a good point.
20 MR. WARD: Except right here -- let me
21 see -- yeah, I think that that's correct, and then we
22 would delete this last sentence; right?
23 MR. CLARK: Correct.
24 MR. WARD: All right. Everyone should
25 review that and make sure that it seems okay to them.

1 And Barry, that's consistent with what you were just
2 reading off; correct?
3 MR. BERENBERG: Yes, that's correct.
4 MR. WARD: All right.
5 MR. DEKLEVA: Can somebody just read
6 that out loud for us, because it's so small on my
7 screen, that I'm having trouble seeing it. It might
8 just be helpful if it's read out loud by Vince or
9 somebody.
10 MR. WARD: Yeah, I can do it. So
11 Subparagraph (b) reads, "To set surcharges, 'with the
12 intention of bringing the fund to solvency with no
13 projected deficit, by December 31, 2026, all qualified
14 and participating hospitals and outpatient healthcare
15 facilities shall cure any fund deficit attributable to
16 hospitals and outpatient healthcare facilities, by
17 December 31, 2026,'" and then it cites the statute.
18 So that's a direct quote from the statute.
19 DR. RITCHIE: All right. I think that
20 accomplishes what I was thinking, and it certainly
21 comes straight out of the statute, so can't argue that
22 point. Any other questions on that, or comments?
23 Okay, let's go on to the next portion
24 that we commented on. Can you pull down --
25 MR. WARD: To 12; correct?

1 DR. RITCHIE: Yes. Just to make this
2 nomenclature proper. Sounds like the part that's
3 struck out needs to be placed back in, and then strike
4 out what was added, so that it's consistent, that the
5 balance is 125 million, which includes the 30 million
6 infusion of funds, and we're not talking about a
7 deficit here. We're talking about a balance.
8 MR. WARD: I'm just seeing if I have
9 the privilege here to be able -- let me see this. I'm
10 trying to figure out how to remove this edit. Give me
11 one second here.
12 MR. VARGUS: I think if you go to track
13 changes, Vince, you can probably -- up top here.
14 MR. WARD: No, I know, it's being kind
15 of weird. It says for me to do that, Ray, it says I
16 need to turn off track changes for others, and I'm a
17 little concerned about clicking on that, so I'm just
18 going to click on this, and I think I can return back,
19 so let me just try this.
20 DR. RITCHIE: My Word was acting very
21 funny last night, so I wouldn't be surprised if that's
22 why the track changes is not really working properly.
23 MR. WARD: No, I don't think it's you.
24 I think it's just -- oh, here we go. I'm sorry.
25 Okay, I think I have it now. Still not letting me

1 just do it like it ordinarily would, Ray. You know,
2 the easy solution here would be for me to just retype
3 it in, not to belabor this. So we would delete this
4 new language, right? If the 30 million infusion -- or
5 are we going to leave that? So we would delete that
6 and then we would keep it as -- we're basically
7 returning it to as is; correct?
8 DR. RITCHIE: Exactly.
9 MR. WARD: So interestingly, I can
10 delete -- it's just being very weird on the track
11 changes, is the challenge here. So when I tried to
12 delete it, then added it back in for some reason.
13 MR. MALLERY: I have a question
14 regarding filing my report.
15 MR. WARD: I'm just going to retype --
16 MR. BERENBERG: Peter, you need to put
17 yourself on mute.
18 MR. WARD: Kind of a cumbersome way to
19 do it, but I just added it back in. And if there's
20 going to need to be some formatting fixes here anyway,
21 it's because their fonts are somewhat off and things
22 like that, so I think this will require a little bit
23 of cleanup after we go through this process.
24 DR. RITCHIE: It will be, and the
25 numbering is off throughout most -- we have to bear

1 with that.
2 MR. WARD: Okay. I think I have a typo
3 here.
4 MR. CLARK: Quick question.
5 Superintendent Toal, since I heard you on there, was
6 it the '21 session, or was it at this past session,
7 '22, that the 30 million was approved?
8 MR. TOAL: It was this past session.
9 MR. CLARK: I think it needs to be the
10 2022 session.
11 MR. WARD: Good catch.
12 MR. TOAL: Do you have the number for
13 the upcoming session, Troy?
14 MR. CLARK: 300 million, isn't it?
15 DR. RITCHIE: I like your crystal ball.
16 MR. CLARK: Just out of curiosity now,
17 does this sentence now sound like an oxymoron, or
18 convolution, that we say, "As of December 31, the
19 balance was 125 million, which includes money that
20 wasn't allocated, the 30 million, until the '22
21 session?" Do we need to change it to say the PCF
22 balance was 95 million, instead of saying it includes,
23 but saying "added to this is $30 million of infused
24 funds approved during the 2022 session, for a total of
25 125 million?" I'm getting nitpicky here, but I don't

1 want someone coming back to us saying we don't know
2 how that correlates dates and balances.
3 DR. RITCHIE: I think if you look at my
4 comment, that's sort of what I was trying to say. I
5 just didn't say it as clearly as I should have. So as
6 of December 31, 2021, the PCF balance, was it actually
7 95 million?
8 MR. CLARK: It was, because the
9 additional 30 wasn't approved, I guess, technically,
10 till the governor signed it in whatever date she
11 signed it.
12 DR. RITCHIE: Right.
13 MR. CLARK: But that was definitely in
14 '22, so I think we can make reference to this amount
15 does not include the additional 30 million that was
16 approved during the '22 session, and then we could
17 make a statement that says that brings that fund
18 balance to a total of 125 million.
19 MR. WARD: Do you want me to start this
20 process, or did somebody -- and how do you want to do
21 this? Does somebody have some specific language that
22 they want to propose, that I'll just scribe, or how do
23 you want to do it?
24 DR. RITCHIE: That's fine, Vince, if
25 you could do that? If we can scribe to you, and the

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1 language -- I think that's appropriate. So it's 95
2 million.
3 MR. WARD: So that's the 95 million.
4 What would you like me to say next?
5 MR. CLARK: So then I think if you say
6 this amount does not include or this amount excludes,
7 is the shorter way to say it.
8 MR. WARD: The 30 million?
9 MR. CLARK: The 30 million infusion of
10 funds that was approved during the '22 legislative
11 session. Therefore, the balance of the fund,
12 including these approved amounts, is 125 million.
13 MR. WARD: Something like that?
14 MR. CLARK: I think so. That brings us
15 to where people can't nitpick the dates, between the
16 two, but it still brings out the concept that there's
17 125 million in the fund, which I think was what
18 Dr. Ritchie was trying to get to.
19 DR. RITCHIE: Yeah, I think that's the
20 point, trying to give everyone a feel for exactly how
21 much is in the fund.
22 Okay. Then the next line or next
23 point, Point 13, which I think I struck out, was do we
24 need to include that? Is that the PCF deficit as of
25 December 31, 2020, as was entered? Or December 31,

1 2021? That was actually kind of my question. Then I
2 decided to delete it entirely.
3 MR. CLARK: I think it's at 2021,
4 because that's the difference between Paragraph 11, we
5 say 203.7 million. We subtract off 125 million, you
6 get the 78.7.
7 DR. RITCHIE: That's what I thought --
8 you know, let's add that back in but correct the date.
9 MR. WARD: Okay. I wish there was a
10 way -- I don't know why it's not letting me just
11 reject the change here and then --
12 DR. RITCHIE: Change --
13 MR. WARD: that didn't work.
14 Typically, it's pretty simple and in this view, it's
15 just not working for some reason. Somebody just
16 corrected that. Is somebody else -- did somebody else
17 just do that, or was that me?
18 DR. RITCHIE: Someone just wiped out
19 "the following" at No. 14.
20 MR. WARD: Yeah, we don't want that.
21 DR. RITCHIE: No, that's not what we
22 were trying to delete. So don't do that.
23 MR. DEKLEVA: You can probably just
24 undo it.
25 MR. WARD: Yeah, I just did.

1 MR. CLARK: It might have been me. I
2 pushed a button, I changed arms and I just --
3 DR. RITCHIE: Yes.
4 MR. WARD: This paragraph though that
5 I've just highlighted, is now struck out though. We
6 don't want that.
7 DR. RITCHIE: Correct. We need to undo
8 that, as well, the strikeout.
9 MR. CLARK: I apologize. The latency
10 between -- because we've got this up and running, is
11 highlighting something else, so we may have figured
12 out something. Let me see if I can undo or reject.
13 MR. WARD: Are you doing it --
14 MR. CLARK: I'm trying, but it's not
15 letting me, so I don't know how it let me the first
16 time.
17 MR. WARD: There we go. I think I just
18 did it. Okay. I don't, on the strikeouts, I'm not
19 sure exactly why it's causing the problem, so I'm just
20 going to hand write it in, okay? I'm just going to
21 type it back in. So am I correct that we're just
22 going to include -- this language right here, that I'm
23 pointing at, we're including that, but we're going to
24 change the date to '21; right?
25 DR. RITCHIE: Correct.

1 MR. CLARK: Yeah, Item 13, yes.
2 MR. WARD: Okay, I'm on it. Usually,
3 when I would do this in the past, Ray Vargus would
4 heckle me, as I'm doing something like this. So thank
5 you, Ray, for not doing that.
6 MR. VARGUS: That's because there are
7 lots of others present.
8 DR. RITCHIE: We appreciate everyone
9 being civil today.
10 MR. WARD: I think Ray's afraid of the
11 concept of karma.
12 DR. RITCHIE: Okay. So are there any
13 objections to putting that back in, the correct date?
14 All right, hearing none --
15 Then we added and, Mr. Clark, you
16 wanted to add in -- I think it was you, the batch
17 claims, and I have no problem with that, even though
18 we did mention it before, but this is -- it was
19 mentioned again, with a different actuary, the effects
20 of the batch claims, so I have no problem putting that
21 in again. Does anyone have any comments?
22 MR. CLARK: I have no problem. It was
23 not my suggestion though. I'm not sure --
24 DR. RITCHIE: Maybe it was Mr. Vargus.
25 MR. VARGUS: I suggested putting it in,

1 because it gives context to, you know, the decision-
2 making process. I think it's an actuary.
3 MR. DEKLEVA: It's a piece of evidence
4 that I think is important to go in. I recognize last
5 year's actuarial study came to a similar conclusion.
6 I don't know if it was verbatim what this is, but I do
7 think that it's important to put in, because we have a
8 different actuarial firm that gave specific testimony
9 about the cause of the deficit, in response to
10 Dr. Ritchie's questions, and I just think for
11 completeness we should have it in.
12 DR. RITCHIE: I don't object to that at
13 all. Hearing no other objections, let's include that
14 then.
15 MR. WARD: For clarity then, 15 is
16 staying as is; right?
17 DR. RITCHIE: As is, correct.
18 MR. WARD: Okay.
19 DR. RITCHIE: Let's continue scrolling
20 down. Okay. Have you had a chance to read this?
21 We're talking about the deficits and the deficit
22 amounts assigned to independent providers, and what
23 the legislative infusion did to those. And then the
24 remainder to the hospital-employed physicians. And
25 that's straight out of this study.

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1 So that's addressing the deficits.
2 Now, going to future risk. Part of what came out of
3 the actuarial analysis was recommendation of changing
4 surcharge assessment levels, for specialties, and that
5 is part of their assignment, is to look at that, and
6 our assignment to review that and put forth a
7 recommendation on it, so besides changing a little
8 wording there on my part, I left that alone, and this
9 comes straight out of the report. However, at the end
10 I then added that due to the change in these
11 classifications, the base rate has to be increased by
12 2.1 percent, to offset the surcharge decreases that
13 came about from lowering several of the higher
14 frequency specialties to lower classes, so they're
15 paying a lower surcharge, and so the overall base rate
16 had to be increased to compensate for that. Are there
17 any questions about that?
18 Okay. So we'll add that in and get the
19 numbering straight and corrected.
20 MR. WARD: Okay, so no changes. I am
21 going to go back when I am not in this, and I'm going
22 to clean up the document.
23 DR. RITCHIE: Yes, thank you, Vince.
24 MR. WARD: So I'll leave this,
25 basically no changes. We can just continue moving.

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1 DR. RITCHIE: Correct.
2 MR. WARD: Okay.
3 DR. RITCHIE: So the next section,
4 income requirements to final projected losses, you
5 know, we start talking about, you know, income
6 requirements and I didn't think that that flowed as
7 well, or gave us as much information, on how the rates
8 were set, so that's why I had struck it out. However,
9 if anyone feels like these should be left in, then let
10 me know.
11 MR. CLARK: Are we sending -- I mean,
12 the superintendent already has a copy of the report
13 that has this detail in it, so I'm comfortable
14 removing it. I mean, it's just a restatement of what
15 is in his report, so I'm comfortable leaving it out.
16 DR. RITCHIE: And that's my point. So
17 hearing no other discussion then, let's get down to
18 the next one. I did want to make sure that, you know,
19 one of the important differences this year versus last
20 year and previous years, was the rates being affected
21 by the cost of living adjustment, due to inflation,
22 and consumer price index, and so I felt we definitely
23 needed to explain that, and its effect, and the
24 recommendation for the actuary was an additional
25 4.9 percent for independent physicians and surgeon.

1 And then down below the impact for
2 hospitals is reported. So I'm trying to keep it split
3 between independent physicians and hospitals, so this
4 is the independent physicians, and the basis for that,
5 that with the large amount of inflation we have right
6 now, the adjustment factor was 7.1 percent, increasing
7 the limits, the 750,000 limit, all the way up to
8 803,000, in one year.
9 So are there any comments on this?
10 Okay. In going forward, by rate impact for
11 independent physicians, per the actuary, was 19
12 percent at the expected level, and 28 percent at the
13 75 percent competence level, and that's without the
14 deficit surcharge. This is just going forward to meet
15 the requirements of the fund going forward, without
16 paying off any deficit.
17 Okay. So then going to the deficit
18 portion, adjusting it by 30 million, and to pay off by
19 the date we spoke of above, in 2026, then the deficit
20 surcharge -- an overall rate increase of 87.6 percent
21 at the expected level. And this is where I think our
22 recommendations to the superintendent to perhaps, you
23 know, rethink that intent, or I think that's what was
24 mentioned last year, as well, by the superintendent,
25 on this increased rate increase, is obviously not

1 sustainable or not bearable much less sustainable, for
2 physicians, and this is a large part of where that
3 would come from.
4 So this is with just the 30 million
5 that has already been allocated. This does not
6 address, if any, additional monies were allocated from
7 the legislature, for the deficit. Any comments?
8 MR. VARGUS: Mr. Chair, this is Ray
9 Vargus. Just a couple of comments. Number one, I
10 don't think any of us can predict whether the
11 legislature is going to make an additional allocation,
12 so that's probably not something we should count on in
13 making our recommendation.
14 MR. TOAL: I second that motion.
15 MR. VARGUS: Apparently the
16 superintendent agrees. And taking that into account,
17 I think, you know, part of our job today is going to
18 be to determine, number one, whether we recommend an
19 increase that includes the deficit surcharge. And if
20 so, do we use the expected level or the 75 percent
21 confidence level? And I think those are the questions
22 we need to answer at the end of the day today.
23 DR. RITCHIE: Well, I mean, right. I
24 think that there's the two parts to it. There's
25 the -- as I said, the funding of the -- they're

1 setting surcharges going forward, to find -- and
2 hopefully a zero balance level, you know, to pay for
3 the fund going forward.
4 And then there is, looking back, any
5 surcharges to help fund the deficit. And I think that
6 we do comment on both. But I have specifically
7 separated those out.
8 MR. VARGUS: Right, and I think the way
9 to ask those questions is, number one, are we going to
10 include the deficit surcharge, or are we just going to
11 go without the deficit surcharge. If we go without
12 it, then we're not satisfying the intent set forth
13 above. If we say yes, we're going to consider the
14 deficit surcharge, then is our recommendation to do so
15 at the expected level, or the 75 percent confidence
16 level? And I think if we answer those three
17 questions, we get our recommendations.
18 DR. RITCHIE: Well, the actuary itself
19 set out different levels, but those are not the only
20 two levels that can be chosen; correct?
21 MR. VARGUS: I think they only gave us
22 numbers based on the expected and based on the 75
23 percent confidence.
24 MR. CLARK: The additional numbers they
25 gave were discounted or not discounted. So there's

1 the expected level, the expected level at discount,
2 and then there was the 75th percent confidence, and I
3 think he discusses in his report the -- I don't know
4 if efficacy is the right word or if it's the
5 appropriateness within their society of using the
6 discounted rate. He has a whole section on why the
7 discounted should be used and how to use the discount,
8 so I think that's what boils it down to, in my mind,
9 kind of two.
10 It's either the discounted, expected
11 rate, or he gives the numbers for the 75th, but I
12 would add into there, Mr. Chair and Mr. Vargus, I
13 think there's really kind of a third option here, for
14 us as a Board, and that might be that in the
15 independent physicians, it could be anywhere in
16 between those two numbers, since there's not a mandate
17 that says it has to be paid off within five years.
18 It's the intent, do we assess a number that's
19 somewhere in between those two, to address part of the
20 deficit, but maybe you don't, because of the
21 implication and effect on loss of providers throughout
22 the state. Maybe you don't assess -- maybe we
23 recommend, I should say, to the superintendent, that
24 there's some start of a payback, but not a five-year,
25 even straight amortization like is proposed on the

1 hospitals.
2 MR. VARGUS: Mr. Chair, Mr. Clark, I
3 guess my concern with that approach is that we didn't
4 get any testimony on that, so we don't know what the
5 effects of that would be, whereas we got basically
6 expert testimony on what the effects of these two
7 options are.
8 MR. CLARK: So if we got expert
9 testimony, Mr. Vargus, on the two ends of the
10 spectrum, that we know what the two extremes would be,
11 something in the middle would fall between the
12 constraints of what we heard the two perspectives
13 as -- you either address none of it or all of it, or
14 something in between.
15 MR. VARGUS: I think that requires us
16 to make assumptions, without evidence.
17 DR. RITCHIE: Okay, it's interpolation
18 versus extrapolation. Okay. Any other comments?
19 There was mention that 90 percent
20 confidence level, I believe. I mean, he did not run
21 the numbers, I don't believe, for it, but the
22 actuaries had mentioned that you can do things at a 90
23 percent confidence level, so there's nothing magic
24 about the expected level and the 75 percent confidence
25 levels. We just have the most data for those;

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1 correct?

2 MR. VARGUS: I think those were the

3 levels that they gave us actual numbers for.

4 MR. CLARK: Statistically, you can run

5 the numbers at any confidence level you want. I think

6 that's -- I think Mr. Vargus is correct, those are the

7 decisions that we need to make, is what confidence

8 level are we going to recommend and what effect on the

9 deficit reduction are we going to make, as a

10 recommendation to superintendent. Ime, we're almost

11 down to that section in the review of the document

12 here, but I think that's the crux of what we need to

13 decide today and have the discussion, and be very

14 clear that, I think, some people have the

15 interpretation or thought that a 75 percent confidence

16 level means you're going to be right 75 percent versus

17 a 50 percent of the time, and that's not what the

18 statistical definition of a 75 percent confidence

19 level is. It means that 75 percent of the outcomes

20 would mean -- of the possible outcomes would mean that

21 you're overfunding, and only 25 percent would you be

22 underfunding, to meet the estimates as stated. That's

23 very different than you have a 75 percent change of

24 hitting it right.

25 The one thing you know is you're not

1 going to hit it right. It's an estimate. So I think
2 the Board needs to be very understanding of what that
3 definition of a 75 percent, or of any confidence level
4 is, as we make that decision.
5 DR. RITCHIE: And so then if we
6 adjust -- let's split the question. So without -- as
7 it says in No. 25, with considering the deficit
8 surcharge, the overall rate impact -- physicians at
9 the expected level is a 19 percent increase, and 28
10 percent at 75 percent confidence level, increase.
11 So does the Board -- are there any
12 other comments by the Board of choosing another value
13 besides one or the other of those values?
14 MR. VARGUS: Well, Mr. Chair, I think
15 it's -- before we get to whether we're choosing the
16 expected or the 75 percent, we need to answer the
17 question of are we just going to fund without deficit
18 surcharge, or are we going to fund with deficit
19 surcharge, and if the answer to that is yes, or no,
20 then we choose confidence level.
21 DR. RITCHIE: Do you think that we have
22 to have the same confidence level for both?
23 MR. VARGUS: I don't think we choose
24 both. I think we choose one or the other, and then we
25 choose confidence level, because either we're making a

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1 rate increase that's just a rate increase, or we're
2 making a rate increase that makes some deficit
3 payback, and regardless of which we choose, then we
4 have two different confidence levels to choose from,
5 but in my mind, those two, i.e., without deficit
6 surcharge versus with deficit surcharge, are mutually
7 exclusive in our decision-making process.
8 MR. DEKLEVA: Mr. Chair, this is Mike
9 DeKleva. I agree with Mr. Vargus. I think the
10 threshold question probably does have to be what Mr.
11 Vargus has outlined, that, you know, is there a
12 deficit surcharge component to the independent
13 physicians' rate increase, and then I think the
14 confidence level question follows from that.
15 DR. RITCHIE: Okay. I don't have a
16 problem doing it that way. I think it's essentially
17 the same way. It's just that I'm not sure that --
18 actually, I guess I'm saying the same thing, roughly,
19 that you've got to decide if you're just going to fund
20 going forward, surcharges going forward, or you're
21 going to fund the deficit, as well, and you're just
22 grouping them together, and I was splitting them apart
23 and saying that you do it separately.
24 However, I definitely think that as the
25 superintendent did last year, that an increase of 19

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1 percent, if that's the lowest one recommended here for
2 physicians, and then add to that some amount of
3 funding of the deficit, that that is going to be a
4 perhaps doubling of their malpractice overall cost for
5 next year, and I don't see any practice -- any
6 private, independent practice, in the state, being
7 able to withstand that.
8 And so a recommendation going forward
9 from us saying that, is -- is a recommendation I can't
10 really support, I guess is what I would say, as a --
11 knowing what I know about the independent physicians
12 in the state.
13 So that's why I was going to split that
14 question, and say, you know, looking forward, you
15 know, what would we choose, and then when it comes to
16 the deficit, and the large amount you're putting on
17 top of that, you know, do we even give a
18 recommendation, or do we say that here's exactly what
19 the actuary said, and you know, is the Board going to
20 be able to come up with a recommendation that based on
21 these two figures, either doing the expected, or the
22 confidence level, that would be in any way financially
23 fiscally responsible for practices.
24 MR. MARTINEZ: This is Alvin Martinez.
25 I just wanted to kind of chime in here a bit also.

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1 Last year, if I recall correctly, they did not take
2 our recommendation and set surcharges well below the
3 levels that we had recommended, which is kind of
4 compounding where we are right now, as far as looking
5 at our surcharges and our deficit, and not actually
6 doing anything about it last year, as well. It
7 becomes even more important this year, that the
8 recommendation that we give is strong, in addressing,
9 you know, some deficit reduction.
10 MR. VARGUS: I think Mr. Martinez is
11 correct in -- Chairman Ritchie, you added the part
12 that listed the actuaries, three reasons why we have a
13 deficit, and the number two reason is the fact that
14 surcharges have not kept pace with recommendations for
15 several years, and I feel like, you know, we're at a
16 crossroads here, where we could continue to compound
17 that problem, or we could start to do something about
18 it, and I feel like the discussion so far is leaning
19 towards compounding the problem.
20 MR. DEKLEVA: I would agree with that,
21 Mr. Chairman. This is Mike DeKleva, and also I would
22 agree with the comments by Mr. Martinez. And the
23 issue -- I mean, we're in a difficult spot, aren't we,
24 because what we're asked to do is make a
25 recommendation to the superintendent that on one hand

1 we hear, is -- is untenable and un-meetable by certain
2 independent physicians, yet as Mr. Vargus just pointed
3 out, the reason that we find ourselves in this
4 position today is the result of prior superintendents,
5 you know, making rate increases, not based on the
6 actuary results, not that Superintendent Toal has done
7 that.
8 These are all issues that predated many
9 of the physicians' participation in the fund, and it's
10 unfortunate, but I have a hard time not recommending
11 some level of surcharge increase, to address some
12 portion of the deficit.
13 The hospital part of it is pretty
14 straightforward, because the legislature has expressly
15 said that the hospitals must pay their part of the
16 deficit, within five years. So I don't know that we
17 don't have some flexibility for the independent
18 physicians. We very well might, but to not fund at
19 least part of the deficit, or recommend funding of the
20 deficit, to the superintendent, seems to me to, as
21 Mr. Vargus pointed out, sort of kick the can down the
22 road, with the problem that's been in place for quite
23 a long time, recognizing also that we're only making a
24 recommendation. Right?
25 We're not making the decision, but I do

1 think to Mr. Martinez' point, we need to make a strong
2 recommendation here.
3 And finally, I would just say, I'm not
4 suggesting we need to be completely insensitive to the
5 dilemma that you're bringing up, Mr. Chairman, with
6 regard to whether these rate increases are even
7 sustainable for independent physicians, but I do think
8 we need to strike some balance in reducing some
9 portion of the deficit, with our recommendation today.
10 MR. CLARK: Mr. Chair, if I could ask a
11 question. Mr. Vargus, just to clarify what I think I
12 heard, but I may have heard it wrong. If I was to
13 toss out a hypothetical situation of if we were to
14 approve an increase on the surcharge, for the
15 independent physicians at the 19 percent expected
16 level, is it your position or perspective, position or
17 perspective, that we could not -- you would not want
18 to assign some level of deficit surcharge, and I'll
19 make up a number of 11 percent, to come to a total of
20 30 percent increase, because the experts did not
21 testify on 11 percent number, even though that would
22 be somewhere between zero and their proposed 57.6,
23 perspective?
24 MR. VARGUS: I think to do so, we would
25 be making assumptions, because as you pointed out,

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1 it's not a direct correlation, like, you know, making
2 it 11 percent means that it's going to wipe out 11
3 percent of the deficit, but when we have confidence
4 levels, and we have resulting testimony, we know what
5 the effects are. We didn't hear any evidence on the
6 effects at other percentages. We didn't hear any --
7 nobody intervened in the case to give us any competing
8 evidence, so I think basically we would just be making
9 a blind recommendation.
10 MR. CLARK: So it would be an all or
11 nothing? We either do nothing to the deficit, or the
12 full amount of 57.6, on behalf of the independent
13 physicians, nothing in between?
14 MR. VARGUS: That's what we have
15 evidence for, and as the fact finder, we weigh the
16 evidence.
17 MR. CLARK: That's a perspective.
18 That's why I asked, just wanted to see.
19 DR. RITCHIE: In addressing this, and
20 definitely taking Mr. Vargus' comments, that's why I
21 spoke of whether we vote on the deficit surcharge
22 going forward, or rather, a surcharge to the PCF going
23 forward, at the expected level or 75 percent
24 confidence level, to prevent the deficit from becoming
25 worse, and to fully fund the PCF for what we need to,

1 going forward, with evidence and testimony backing up,
2 you know, our recommendations there.
3 And then for the second part, on paying
4 off the deficit in arrears, or what is built up, that
5 we have a choice of recommending one of these that's
6 been proposed by the actuary, or choosing some other
7 value, and to Mr. Vargus' point, we will not have
8 heard testimony supplying with the effect of some
9 other level would be, on paying off the deficit, or
10 when that might be.
11 We've already made the point that it
12 does not have to be within five years. Or do we make
13 some other recommendation, that the superintendent,
14 you know, chooses his own, or that we don't have a
15 recommendation here, because we feel that there's not
16 a recommendation based on the facts, the testimony
17 that we heard, that we feel would be tenable, to
18 independent physicians' financial situation in New
19 Mexico?
20 MR. DEKLEVA: Chairman Ritchie, here's
21 another thought that I wanted to throw out. This is
22 Mike DeKleva. And if we accept Mr. Vargus' position,
23 which is I think very well thought out, that we can
24 only base our decision on the evidence, then we're
25 really faced with the decision to levy an

1 unsustainable and unworkable result, if we fund the
2 deficit through a deficit surcharge increase on
3 independent physicians.
4 So there's a couple thoughts that come
5 to my mind, based on this. One is whether Vince has
6 an opinion about how much discretion we do have in
7 terms of, you know, considering a middle ground. The
8 other would be, you know, we would be facing making a
9 decision, I think, without funding a deficit surcharge
10 for independent physicians, but with the clear mandate
11 that the next actuarial process needs to explicitly
12 map out, you know, maybe a longer payment period for
13 the deficit for independent physicians. In other
14 words, let's see what that looks like spread out over
15 15 years, instead of five.
16 Perhaps the legislature would fund
17 another amount. I don't know. We can't count on
18 that. But so that's one thought.
19 The other thought would be if Vince
20 could just advise the Board whether we have more
21 discretion, because I'm not convinced we have more
22 discretion than what Mr. Vargus has outlined. I think
23 he, you know, makes a compelling point, that we have
24 to base it on evidence, but if as a Board we have some
25 discretion, maybe there is some flexibility there.

1 So, Vince, I don't know what your thought would be on
2 that?
3 MR. WARD: Yeah, I'm happy to address
4 this issue. I think what you guys need to think about
5 this is in two ways.
6 One is an issue of discretion, but also
7 the other is with respect to defensibility of your
8 recommendation that you provide. And I think if you
9 look at it on a spectrum, that if you make a
10 recommendation that does not correlate specifically
11 with evidence that was provided to you by the expert,
12 then I think that you get lower on the scale of your
13 defensibility in terms of supporting the
14 reasonableness of your decision, if that makes sense.
15 I think that you guys are being
16 diligent and thoughtful. What I would be concerned
17 about, if I were you, as a Board, is when I make a
18 recommendation, I want to be able to point out
19 directly which evidence I'm relying on, if it were to
20 be challenged. And when you're picking -- when you're
21 choosing among the results that the expert, who is
22 qualified, wasn't challenged, lays out for you, then
23 the defensibility issue is a very easy one.
24 When you're pointing to numbers that
25 are not specifically laid out, even if they do fall

1 within the spectrum, then I think it creates more of a
2 gray area for you, in terms of the defensibility of
3 your decision. I'm not saying that it isn't
4 defensible, but I think that it's not as solid as
5 going with the options that are laid out for you.
6 Does that make sense?
7 MR. MARTINEZ: I'm sorry. My question
8 with that though, can we take the entire pinnacle
9 actuarial report as a whole, as being part of our
10 evidence, or do we just have to go with each exhibit,
11 as they were pointed out?
12 MR. WARD: I don't think it's that
13 rigorous. I think that the point here is, is that you
14 acted as an evidentiary body in terms of taking
15 evidence in order to make a decision. I think you
16 absolutely have flexibility with respect to how you
17 interpret and give weight to that evidence.
18 I think that the key that you want to
19 have is when you're making a decision, I think that I
20 agree with Mr. Vargus in the sense that you want to be
21 able to link your decision to the evidence that's
22 before you. I don't think it's mathematical. I don't
23 think it's -- you know, I don't think -- you have to
24 take sort of this here, and then, you know, match it
25 there, but what you have is you have -- you had a

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1 witness who presented evidence. He was qualified as
2 an expert, and this particular expert provided a very
3 specific type of work for you, where he quantified the
4 work that you all are doing, and I think that you guys
5 need to keep that in mind, as you act on this, because
6 you know, I think that if you start sort of trying to
7 pick and choose out of particular buckets, maybe there
8 weren't questions that were asked specifically of the
9 expert with respect to some of those things, and I
10 think you start to open yourself up to some questions
11 as, you know, with respect to the defensibility of
12 your recommendation that you're going to provide.
13 DR. RITCHIE: Here's a question,
14 Vince. So for the future, could we hear from other
15 witnesses, say experts on the cost of practice in New
16 Mexico, and the cost of, or the effect of the cost of
17 medical malpractice on overhead, and sustaining a
18 medical practice? Would that be evidence that we
19 would be able to admit and hear, and so have actual,
20 you know, information on the effects of the rate
21 increases, beyond just the deficit, but the effects on
22 the people paying the surcharges.
23 MR. WARD: Like, you have to be -- so
24 in answer to your question, remember that under this
25 process, because you're having a specific hearing,

1 there is the opportunity for other parties to
2 intervene, to offer evidence. And in this situation
3 there weren't any other parties who intervened.
4 But I think you have to remember what
5 the mandate of the statute is, with respect to your
6 cast. And as a Board, what I would tell you is that I
7 think you could have the discussion about what
8 evidence you take, that allows you to meet the
9 requirements of the act and what your duty is under
10 the act.
11 And then I think the other thing is,
12 you know, there is -- I think another recommendation I
13 would have is at the end of today, there is the
14 opportunity to talk about the study and to provide
15 feedback with respect to the study, and I think one of
16 the things that you can bring up at that point is from
17 the experts' perspective, are there other aspects of
18 the analysis that weren't included, that maybe you
19 guys think should be, because what I would want to
20 make sure is are these other things that you're
21 brining up, Dr. Ritchie, from the actuary's
22 perspective, are those things relevant to the analysis
23 that he's doing, and does that match with what the
24 requirements are under the act? You know, I think
25 that's how I would help frame the discussion for you

1 guys to have among yourselves, if you think, for
2 example, that the study that's being prepared is too
3 narrow and you'd like to expand it.
4 DR. RITCHIE: Okay. So what you're
5 saying is, for instance, I believe I did hear
6 something about the effects of if more and more
7 physicians left the fund, that it would become -- the
8 burden of the fund would fall on fewer and fewer
9 people, and the costs would go up, and that would be a
10 spiral to the bottom, or it would make the fund
11 unsupportable. I believe that was testimony that was
12 given. And is that what you're referring to?
13 MR. WARD: Yeah. I don't recall that
14 specific dialogue with the expert, but what I would
15 want to know is, I would want to ask the expert the
16 question of how is this relevant to your analysis that
17 you're preparing, you know, what impact does that
18 have, and then I think as the Board, what you need to
19 do is balance that information that's coming out
20 through your witness, with what your mandate is under
21 the statute, because as we talked about today, there's
22 some pretty specific guidance, right, under the
23 statute, and you just want to make sure that when
24 you're exercising your discretion, and you're taking
25 evidence, that you're doing so within the mandate that

1 the legislature has given you.

2 DR. RITCHIE: Excellent. Any other

3 comments on this line? Okay. So then, I mean, Mr.

4 Vargus, Mr. Clark, Mr. DeKleva, I think all of you

5 made comments on this. I mean, would you lump the two

6 together, as you were saying, or would you -- you

7 know, we talk about the going forward, and our

8 recommendation for, you know, funding going forward,

9 and making a decision there, and then entertaining a

10 discussion on funding the deficit, as it stands, and

11 what our recommendation is on that, and having two

12 separate recommendations?

13 MR. VARGUS: Mr. Chair, as I said, I

14 think the number one question is, are we going to

15 include any deficit surcharge or not, and if the

16 answer to that is no, then we say are we just going to

17 do the 19 percent, or the 28 percent, because that's

18 what we have evidence for.

19 If the answer is yes, we are going to

20 include deficit surcharge, and we have evidence about

21 two different levels of deficit surcharge rate

22 increases, one at the expected level and one at the 75

23 percent level, and so I think those are the questions

24 we have to answer today.

25 And hearing Mr. Ward, we didn't have

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1 any interveners that came and testified, to give us
2 any other perspective, and following the limited
3 mandate from the legislature, I mean, I think those
4 are the questions we answer and make recommendations
5 based upon, and as we all know, the superintendent is
6 free to do whatever he decides in his discretion,
7 after that, but we're here to make recommendations
8 based on the evidence we heard.
9 MR. CLARK: Mr. Chair, I might add to
10 Mr. Vargus' comment there, and I think there is a
11 third deficit reduction number that we do have
12 evidence testifying on by the expert, and that is a
13 2.3 percent increase for reduction of deficit. He
14 tied that to an amount that would be allocated to an
15 additional $30 million infusion, and while we've all
16 discussed that we don't know if that is attainable or
17 if that is successful, on how that 30 million got
18 there, we do have expert testimony of what the impacts
19 of a 2.3 percent increase for deficit reduction would
20 be. So I believe if we stick to the line of thought
21 of what do we have evidence for, there's actually
22 three numbers. That would be zero, if we do no
23 deficit reduction, 2.3 percent if we have an effort to
24 reduce the deficit, meaning an end number that happens
25 to be $30 million less than it is currently, or a 57.6

1 percent surcharge, that would result in the deficit
2 being paid off over five years.
3 DR. RITCHIE: That's an excellent
4 point, Mr. Clark. That number was asked of the
5 actuary and so evidence was given to that effect, so
6 we do have evidence presented, and facts to rely on,
7 on what would happen, if we counted on that 30
8 million.
9 MR. VARGUS: Right, and I understood
10 that testimony to be conditional, that if there were a
11 $30 million infusion, then the 2.3 percent would be an
12 appropriate increase, so kind of not putting the cart
13 before the horse, you have to have the 30 million
14 first, in order for that testimony to flow.
15 MR. CLARK: Well, that's correct, that
16 that's the basis. The mathematical impact of a 2.3
17 percent reduction. Still we have the expert testimony
18 on what the impact would be, if stated another way,
19 what's not stated in the report though, but if the
20 legislature did not approve the additional 30 million,
21 the mathematic result would be it would get you to a
22 payoff of the deficit, with the exception of that $30
23 million. So there is mathematical calculations done
24 by the expert on what the impact of a 2.3 percent
25 reduction would be. I'm sorry, 2.3 percent increase.

1 And again, somebody's got their line
2 off of mute.
3 DR. RITCHIE: That's another data
4 point. That's right, that is mathematical data point,
5 that has been presented to us in testimony.
6 MR. VARGUS: Yeah, but I think we're
7 over-simplifying it, because that, again, assumes that
8 the 30 million gets paid this year, and with this
9 year, if we we were to drop 30 million into it this
10 year, then yeah, 2.3 percent going forward, would be
11 appropriate, but if we're going to get to 30 million
12 later, or we're not going to get it, then the 2.3
13 percent, it doesn't flow, as it assumes the paydown
14 occurring at an earlier point in time, and we're
15 talking about assessing future surcharges, that not
16 only cover the expected claims, but the expected
17 deficit, and because we're not taking 30 million away
18 from the expected deficit, the 2.3 by itself, it's not
19 a direct logical correlation.
20 MR. CLARK: I would agree, it's still
21 an estimate, just like using 7.1 percent of an
22 inflation factor, as an estimate, that we don't know
23 that that's going to carry on forward. Mr. Vargus has
24 a point, but I will tie it back to we do have numbers
25 calculated on what the impact of 2.3 percent

1 additional load are, if -- and maybe I'm curious what
2 Mr. Ward's advice to the counsel is, if we were trying
3 to hard evidence for a calculated number, supported by
4 our experts, to tie our recommendations to.
5 MR. WARD: Sorry, I'm trying to get off
6 of mute. I think that if you have evidence that
7 you've taken, that that is the basis of your starting
8 point. So I think that the conversation that you're
9 having is totally within your discretion.
10 The point that I would make though is
11 that I think that the variable of a legislative
12 allocation, is different than an inflationary number,
13 and so -- but I think my role as your counsel is to
14 just tell you that I think you are having a
15 conversation that falls within your discretion,
16 because you're having a conversation about stuff that
17 is in the record.
18 MR. CLARK: Well, I'm going to raise
19 the issue because I don't think I have the bias that
20 maybe some -- to have, I'm not the representative of
21 independent physicians, but from a social standpoint
22 and the social good for our state, we have to, as this
23 PCF Advisor Board, recognize the impact on access to
24 care, and what the implications of having an 87.6 or
25 103.4 percent increase, on malpractice rates will do,

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1 to providers in this state.
2 We are already at a deficit. And so
3 I'll throw it out there. It's not my bias. It.s not
4 who I represent. I represent the hospitals, but I
5 think all of our job is to represent the impact on the
6 state of the decision of the recommendation we make,
7 and having an impact on a near doubling or over-
8 doubling of a malpractice rate, on independent
9 providers, will have a reduction in access to our
10 state, and we're already in a deficit. So I think
11 that's where the tension on this lies.
12 I absolutely -- and I guess that's a
13 little bit of my frustration is I think if we know the
14 two ends of the extreme, making a decision in between
15 somewhere, that helps solve the problem, and not
16 totally kick the can down the road, you know, we
17 didn't ask for numbers to be run at a 51 percent
18 confidence in the 62 and a half percent confidence and
19 a 71 and a half percent confidence level, to get all
20 the options out there, but if we know what the two
21 extremes are, and we have this other factor that
22 applies to our state, and the ability to get
23 healthcare for our citizens, I can't see how we're not
24 impacted by that in our decision making, as well.
25 MR. DEKLEVA: And this is Mike DeKleva,

1 Mr. Chair, and I would echo many of the points that
2 Mr. Clark made. And again, speaking from a somewhat
3 nonpartisan vantage point, in that I don't represent
4 independent physicians, and I know that we don't have
5 record evidence about how the larger rate increases
6 would affect independent physicians, but I would
7 suggest one path forward that would in my mind, at
8 least, be based on the evidence, that we could
9 consider, would be the following recommendation, that
10 we, you know, let's just say we're going to work from
11 the expected confidence level, for the sake of the
12 discussion that I'm having with the rest of the Board
13 members. That would be a 19 percent increase for the
14 independent physicians.
15 And then I believe the number that
16 Mr. Clark pointed out to us as record evidence for the
17 deficit surcharge increase, tied to legislative
18 funding, was 2.3.
19 So then we have a 21.3 percent
20 increase, which would fund the deficit, admittedly
21 presuming upon the legislature taking action and
22 funding another $30,000 to the benefit of the
23 independent physicians.
24 But -- and we don't have evidence
25 whether the legislature is going to do that or not.

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1 We have anecdotal comments made at the hearing about
2 that by some of the Board members. But if we were to
3 have a result like that, we would also need to have, I
4 think, a recommendation to the Superintendent of
5 Insurance that the next actuarial report needs to
6 consider some other things, and it could include, as
7 you said, Mr. Chairman, you know, some sort of
8 analysis of rate increases on independent providers,
9 if actuarial analysis can be done on that.
10 The other thing that it could do is ask
11 the actuary to create different percentage increases
12 to fund the deficit by independent providers,
13 stretched out over a longer period of time, because
14 we're being hamstrung today, by the fact that the
15 actuary tied the rate increase for independent
16 providers on the deficit side, to five-year payback.
17 And, you know, a lot is going to happen
18 in a year, right. I mean, we may realize another
19 30,000 -- or $30 million influx of money on behalf of
20 independent physicians, which changes the analysis
21 dramatically.
22 So we're not really kicking the can
23 down the road, if we're doing something like that.
24 What we're doing is we're making the best decision
25 possible, based on the evidence we have, to try to

1 serve the greater good, as Mr. Clark is pointing out,
2 while at the same time recognizing that we're making
3 an imperfect recommendation, and we're going to be
4 asking the actuary to do some additional work, or
5 rather ask the superintendent to get the actuary to do
6 some additional work next time on, you know, laying
7 that payback period out over 15 years, for example, or
8 ten years.
9 So I mean, that's a far from perfect
10 suggestion that I'm making, that may be susceptible to
11 some comments about why we shouldn't go that route,
12 but it's the only thing I can think of, at this point
13 in time, based on the evidence we have.
14 MR. VARGUS: And Mr. Chairman, this is
15 Ray Vargus. Mr. DeKleva's comments gave me yet
16 another thought, and that would be recommending kind
17 of a conditional rate increase, one that says the 19
18 plus 2.3, but then if the legislature does not provide
19 additional funds, then it would increase to what was
20 recommended by the actuary. And I think that maybe
21 has an added benefit of maybe everybody coming
22 together and calling their legislatures, to help get
23 that appropriation. Just another thought.
24 MR. CLARK: Mr. Chair, just because
25 people have picked up on this, just to be clear the

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1 way the math works, you don't add 19 and 2.3 together
2 to get 21.3. It's actually a 2.3 percent increase on
3 top of the 19 percent increase, so the actual number
4 is a 21.7 percent increase. Just so we're all talking
5 about the same thing.
6 MR. VARGUS: My thought was a
7 conditional lower increase, that if the condition
8 isn't satisfied, we go with what we have the evidence
9 on.
10 MR. CLARK: Mr. Vargus and Mr. Ward, I
11 guess I would ask -- again, it's a recommendation that
12 we're making, and the superintendent makes the
13 decision, but does he have the ability to actually
14 implement a conditional, where he would assess
15 surcharges from January through March or April, and
16 then make an adjustment to those for the remainder of
17 the year, if the -- I mean, I like the idea, because
18 it -- it also throws out there that this is a done
19 decision, as we work together with the legislatures to
20 say here's the impact if we don't do this, here's what
21 happens, as opposed to you take the first step, we
22 take the first step, but does the superintendent have
23 that ability to change surcharge allocations three,
24 four, five months, whatever the timing is of the
25 signing of the governor, of said legislation takes

1 place and occurs, for the remainder of the year?
2 MR. WARD: The superintendent is on.
3 Is that something you can address?
4 MR. TOAL: With the permission of the
5 chair.
6 DR. RITCHIE: Yes, please, Mr. Toal,
7 because I had that question very much in my mind.
8 MR. TOAL: I think the answer is it
9 might be possible, but it is not something I would
10 recommend. You know, we're in a market right now,
11 with respect to malpractice insurance, that it's
12 shaky, at best, and I think the insurers who are
13 offering coverage want some degree of confidence and
14 security about what the rates and surcharges are going
15 to be. So I'll simply say it's my intent to make the
16 decision as to what the rates should be, and that
17 those rates would apply all through 2023.
18 Now, let me be quick to say, the
19 legislature, of course, on such matters, can weight
20 in, and if they decide the rates need to be lowered or
21 increased, you know, they can pass legislation to that
22 effect. But I intend to make a decision before the
23 end of this week, as to what the surcharge rates
24 should be.
25 DR. RITCHIE: Thank you very much, Mr.

1 Superintendent. That's going to be my impression too.
2 That didn't sound like something that was really very
3 palatable to the insurance companies. They want
4 security. They want set rates, and we ask them to set
5 rates for three months out of a year. We've had
6 pushback -- we've had dealings with them about things
7 like that, and that's very difficult to get them to do
8 something like that.
9 So I kind of like the idea, mostly
10 because it hopefully inspires people to get involved
11 in some advocacy, and speak to their legislatures,
12 about doing something to help mitigate this deficit.
13 I think that is the best part of that recommendation.
14 So Mr. Vargus, I mean, we've heard
15 Mr. DeKleva -- I mean, he had a pretty solid
16 recommendation there. Mr. Vargus, do you have a
17 recommendation or what would you say otherwise?
18 MR. VARGUS: I mean, I think if
19 everybody is inclined to go with the lower level, then
20 I would recommend the higher confidence level. So we
21 go with 28 plus the 2.3 that Mr. Clark recommended.
22 DR. RITCHIE: So it would be that you'd
23 go the higher confidence level of the deficit
24 surcharge going forward, the rate impact going
25 forward, to fund, so the 28 percent at the 75 percent

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1 confidence level?

2 MR. VARGUS: Correct.

3 DR. RITCHIE: And the 2.3 percent, I'm

4 sorry, I do not have it in front of me. Was that at

5 the expected, or is that at the 75 percent confidence

6 level?

7 MR. VARGUS: I understood that just to

8 be that if the legislature gave us $30 million.

9 Mr. Clark, did you understand that any differently?

10 MR. CLARK: No, I don't understand -- I

11 believe, and I'd have to go back through. I believe

12 the conversation around the 75th or the 50th, or the

13 expected level on confidence, is actually around

14 creating what the deficit or the actual expected

15 losses are, which creates the deficit. I don't

16 believe there's a difference in what the repayment of

17 the deficit is, based upon one or the other.

18 I think the deficit repayment amount is

19 a set amount, and the varying amounts is really on the

20 surcharges to accomplish an expected, or a 75 percent

21 confidence level, if I could talk. So that's my

22 understanding.

23 DR. RITCHIE: And I believe you're

24 exactly correct, Mr. Clark, so it was between 19

25 percent, plus the 2.3. However that adds together, or

1 the 28 percent, plus the 2.3, however that adds
2 together, statistically; correct?
3 MR. CLARK: Yes, I believe that would
4 be correct.
5 MS. LUERA: This is Debbie. I have the
6 study open, and without risk margin is 21.8 percent,
7 like Mr. Clark said. With risk margin is 32 percent,
8 both factored at 2.3 percent of the surcharges.
9 MR. CLARK: That is correct. That's
10 how the math would work.
11 DR. RITCHIE: Okay. So 21.8 percent
12 and almost one-third, what was the higher level, the
13 30 --
14 MS. LUERA: 32 percent, 32.0.
15 MR. CLARK: Mr. Chair and Mr. Vargus, I
16 guess a question -- I'm trying to think through this
17 in my mind, as I ask it. Is it our perspective that
18 the confidence level should be the same at both, for
19 both the hospitals, as well as the independent
20 physicians, and I guess this is -- I'm caught here
21 because my belief is the confidence level -- that we
22 should recommend a confidence level, that's the same
23 between the two.
24 Using the higher confidence level of 28
25 percent indirectly gets to where I think the value

1 should be set by having somewhere in the middle, but
2 we've already had that discussion about what the
3 evidence presents.
4 I will tell you, I personally don't
5 think that I have a perspective that supports having a
6 75th percentile confidence level for either, based on
7 the fact that, one, when asked, the expert,
8 Mr. Walling, said that standard in the industry is to
9 use the expected, and generally to raise from the
10 expected up to the 75th, is when you're trying to
11 increase your reserves. We're in a deficit position.
12 We're not in a position to try and become more
13 conservative. We're trying to cure a deficit at this
14 point, and I think between those two, we ought to be
15 running at the industry standard. However, if we're
16 comfortable proposing two -- maybe I can say it's
17 semantics and be comfortable in this realm, using the
18 expected level, because the end result -- the ends
19 justify the means. I hate to say that, but is that a
20 position that the Board feels, that the two should be
21 the same, or not?
22 MR. VARGUS: I don't know that they
23 need to be the same, given that the hospitals are
24 definitely committed to getting it paid off within the
25 statutorily prescribed time period. I think it's more

1 of a concern with the independent physicians because,
2 number one, we don't have a statutorily prescribed
3 time period, and we're proposing, as you said, we're
4 in a deficit position, and we're proposing to charge
5 less, and that just as a matter of pure logic, doesn't
6 make sense to me.
7 And also, if we look historically, we
8 have underestimated what the potential liability has
9 been year after year, so in terms of just trying to
10 solve the problem, I think it makes more sense to not
11 go with the standard, which is historically
12 underestimated, what the future claims will be. So --
13 MR. CLARK: So if I hear you right, to
14 help me think through it and justify it in my head,
15 the reason that we would have a different confidence
16 level that we proposed, is the mandated payoff of a
17 deficit for the hospitals, versus an intent, but
18 nothing definitive, so let's have a higher confidence
19 level on the independent physicians' side, because
20 there's some ambiguity there?
21 MR. VARGUS: Not only because there's
22 some ambiguity, but because there is a deadline for
23 the hospitals. If we missed the mark this year, next
24 year's actuarial report will capture it, and will
25 result in an increase to the hospitals, even greater,

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1 because we have a drop-dead deadline, whereas with the
2 independent physicians, it's an ongoing thing. It has
3 been an ongoing thing. Historically, we have
4 undercalculated what the losses were going to be, and
5 since it's going to be a fluid thing, and we're not,
6 you know, basically holding it to the same standard
7 that we're holding the hospitals to, I think it's
8 something that we can treat them differently, in that
9 regard.
10 MR. CLARK: Mr. Chair, I thank
11 Mr. Vargus for helping me argue with myself.
12 DR. RITCHIE: I think you can make that
13 point; however, you know, I think that -- I don't know
14 what the actuary would say to that, as I don't believe
15 there was testimony you could really apply to that.
16 However, in general, you would think that you would
17 apply the same confidence level, you would think, just
18 because that's something you choose as what you're
19 comfortable with, your confidence level, and so I
20 guess what, Mr. Vargus, you're saying is you'd have
21 more confidence in the hospitals than the physicians?
22 MR. VARGUS: I am, because they have a
23 deadline, which means --
24 DR. RITCHIE: Right.
25 MR. VARGUS: Let's say the confidence

1 level is wrong for the five years. On that fifth
2 year, the hospitals are going to make it up, no matter
3 what, because there's a statutory deadline. We don't
4 have the same thing for the physicians. And I use
5 that as an example, but in reality we are doing a
6 year-to-year calculation on the hospitals, with an end
7 date. We're not doing the same year-to-year
8 calculation with an end date, on the independent
9 physicians, so I think if we judge that, and if we
10 look at history, we need the higher confidence level
11 for the physicians.
12 MR. CLARK: The way I heard it in my
13 head that makes sense, is there's another reconciling
14 tool on the hospitals that we don't have on the
15 independent physicians.
16 DR. RITCHIE: Looking at it from
17 another way though, would you look at it that you have
18 -- you have that deadline on the hospital side, but on
19 the physicians' side, you have more time, to
20 potentially do it, so that you have more time,
21 particularly if we're looking at it every year, then
22 you have more time to address it in the future, and
23 you don't have that just four-year or five-year
24 horizon.
25 MR. VARGUS: Well, the five-year

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1 horizon gives certainty, whereas the we have more
2 time, is the approach we've been taking for the last
3 15 years, and we know what the result of that is.
4 DR. RITCHIE: Okay. Well, so we have
5 not addressed the hospitals at all. We need to move
6 forward. That decision or that question right there,
7 we need to address, because it's between the hospitals
8 -- it's the hospitals and the independent physicians,
9 as part of that. I still think that could be
10 addressed with the hospital part, and so I still have
11 -- I think that as we saw last year, in the decisions
12 by the superintendent, that you do take into
13 consideration the actual what happens to the
14 recommendation and what it would mean to hospitals to
15 practices, who are paying the money, that it is not a
16 -- that there are repercussions. There are
17 consequences to the rate that is set, and that the
18 rate of, you know, 87.6 percent to 103.4 percent, 75
19 percent confidence level, that would have more than
20 likely, and I don't think anyone can really argue with
21 that, that would more than likely have significant
22 repercussions on the ability to financially practice
23 medicine, keep practices open, as a independent
24 physician in this state.
25 And so, and I think that while the

1 actuary may not have testified directly to that, that
2 there has been testimony to the fact that the rates do
3 affect the cost of doing medicine, and the potential
4 involvement or participation in the fund, and the
5 amount of participation in the fund, directly affects
6 the ability for the fund to remain solvent.
7 And so, Vince, I don't know if that's
8 skirting too near the edge, but I still think that
9 could be introduced as a basis for making some of our
10 decisions.
11 MR. VARGUS: Well, Mr. Chairman, I
12 think, you know, Mr. Clark and I have been having a
13 little bit of a back and forth, and it feels like
14 everybody recognizes that an 87.6 or 103 percent
15 increase is not sustainable, but we're looking at are
16 we going to just go with 19 percent plus 2.3, or 28
17 percent plus 2.3, and those are numbers that we have
18 testimony for. And I'm suggesting that we go with the
19 28 plus the 2.3, so that we have a higher confidence
20 level, particularly in light of the factors that we
21 discussed, and in light of our statutory mandate, and
22 I think we can do that and make that decision, and
23 then move on to the hospitals.
24 MR. TOAL: Mr. Chairman?
25 DR. RITCHIE: Yes.

1 MR. TOAL: With respect to your
2 concern, I'll just simply say that it is something
3 that I will take into consideration. I actually agree
4 with Ray, that your obligation is to make
5 recommendations, based on what's on the record. And
6 frankly, strong statements by the Advisory Board about
7 the need for getting the plan solvent, would be very
8 helpful.
9 DR. RITCHIE: Okay. I think I take
10 your subtext there, on where those statements would go
11 to. So, you know, and I agree with that, that we do
12 need to find a way to make it solvent. However, we
13 are all seeing the difficulty in doing that with the
14 surcharges that the actuary came up with, in the long
15 run, and with regard to the access -- accessibility of
16 healthcare in the state.
17 So then, I think we can vote at this
18 point on the physicians' side, the independent
19 physicians' side, with regards to, first off, is
20 everyone -- let's have a vote on the members present,
21 and Mr. Varus, you can see about Ms. Love, on going
22 and using the 2.3 percent that we have as a data point
23 for addressing the deficit, rather than using the
24 expected or 75 percent confidence level, the 87.6 and
25 103.4 percent. So Ms. Luera, can you call the roll on

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1 that vote, please?

2 MR. VARGUS: Mr. Chairman, we didn't

3 hear back from Ms. Love.

4 DR. RITCHIE: Okay. We'll call her at

5 the end.

6 MR. CLARK: Mr. Chair, to clarify on

7 what we're voting on, are we voting on just using the

8 2.3, and then your intention is to come back to a

9 decision on the 19 or the 28?

10 DR. RITCHIE: Correct, that's correct.

11 Can we take a five-minute break before we do that?

12 Yes, I understand she may have trouble coming in. So

13 yes, we certainly can. So that is going to be the

14 first vote, will be on whether to take that or not.

15 Then the second vote -- someone have a question?

16 MR. CLARK: I was just going to say, do

17 we need to have a motion and a second on that, just to

18 follow protocol?

19 DR. RITCHIE: Yes, I'm sorry. Do I

20 hear a motion for the 2.3 percent?

21 MR. CLARK: This is Troy, so moved.

22 MR. DEKLEVA: Mr. Chairman, Mike

23 DeKleva, I'll second the motion.

24 DR. RITCHIE: Thank you. We are going

25 to suspend that vote for a moment, since we have --

1 looking for Ms. Love to become available, and do I
2 hear suspend that motion, and then I would like to
3 have -- is there a motion for the expected level
4 versus the 75 percent confidence level?
5 MR. VARGUS: Mr. Chair, I'd move for
6 the 75 percent expected confidence level.
7 MR. MARTINEZ: I'll second that.
8 DR. RITCHIE: So now we have a motion
9 towards that.
10 MR. CLARK: Mr. Chair, just for the
11 record, to make sure, since I said so moved on that,
12 that is just to clarify my motion, and Mr. DeKleva can
13 decide if he wants to continue the second, that's a
14 2.3 percent increase, in reference to the deficit
15 surcharge increase, above whatever base rate we have.
16 I just want to make sure it's clear for the minutes
17 what that is.
18 DR. RITCHIE: Thank you. Thank you.
19 MR. DEKLEVA: And I understood that to
20 be Mr. Clark's motion, Mr. Chairman, so this is Mike
21 DeKleva, and again I will second that motion. Are we
22 taking a five-minute break before we actually vote on
23 these two motions?
24 DR. RITCHIE: I was trying to buy us
25 some time to see if we could get Ms. Love to come out.

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1 MR. CLARK: Mr. Chair and Mr. Vargus,
2 just out of curiosity, if we were to move forward with
3 the vote and it's not within a vote of one, does
4 Ms. Love need to be removed from the obligation, or
5 was that her request, that she did want to be part of
6 the vote?
7 DR. RITCHIE: Yeah, Mr. Vargus has the
8 answer to that. She just told me that she would not
9 be available until later. So I agree with you, and
10 Vince, do we have a quorum? What would the number be?
11 MR. WARD: Debbie, can you help me with
12 that, with seeing who all is on right now?
13 MS. LUERA: Sure. I believe everyone
14 is on the call except for Vice Chair Love.
15 MR. WARD: So I think we would have a
16 quorum, if she didn't vote.
17 DR. RITCHIE: So we have eight on then
18 without her, so we have a quorum to vote.
19 MR. WARD: I guess I would just say
20 that if Ms. Love has an intention of wanting to
21 participate, then, you know, Ray, do you know -- you
22 just can't get ahold of her right now, is that the
23 issue?
24 MR. CLARK: And to be clear, I wasn't
25 trying to exclude her. I was trying to make her life

1 more efficient --
2 MR. WARD: I understand.
3 MR. CLARK: If it's not a deciding
4 factor, let her continue on with her work.
5 MR. WARD: I appreciate that. It's
6 just that she had expressed an intent of wanting to
7 vote.
8 DR. RITCHIE: I think we've lost them
9 all. Help me here, Vince.
10 MR. WARD: I think it's your call,
11 Mr. Chair. I think it's just the -- if it's a matter
12 of a couple of minutes of her availability, I just
13 think that the proper thing to do is give her the
14 opportunity, since she's expressed waiting to do it,
15 but I think that it's within your discretion as to
16 whether you want to call the vote now or wait.
17 MR. VARGUS: She's logging on right
18 now.
19 DR. RITCHIE: The rest of this -- the
20 hospital discussion is going to have to go faster, or
21 else I'm going to have to have a recess just to plug
22 in my computer. And so I don't know, Mr. Vargus, have
23 you been able to keep Ms. Love up to speed?
24 MR. VARGUS: Yes, sir. She knows
25 exactly what we're voting on.

1 DR. RITCHIE: Okay. Has she made it on
2 yet?
3 MS. LUERA: I don't see her yet.
4 DR. RITCHIE: So then once these
5 motions have been addressed, then we'll go directly to
6 the hospital portion of it. And Mr. Clark, do you
7 have any comments on the hospital part, going forward
8 then, while we wait for Ms. Love, on what's in the
9 draft --
10 MS. LUERA: There she is.
11 MS. LOVE: Hi.
12 DR. RITCHIE: There you go. Welcome,
13 Ms. Love.
14 MS. LOVE: Thank you. Sorry I've
15 missed most of this meeting. I'm still in a
16 deposition.
17 DR. RITCHIE: Okay. So we have have
18 you for a few moments?
19 MS. LOVE: Yeah.
20 DR. RITCHIE: Then the first motion
21 before us is to go with the 2.3 percent increase
22 pertaining -- I'm sorry, will you read it actually,
23 Ms. Luera or Mr. Ward, the actual first motion?
24 MS. LUERA: It's my understanding the
25 first motion is to utilize the 2.3 percent deficit

1 surcharge as a percent of surcharge to calculate the
2 total rate increase for physicians and surgeons.
3 DR. RITCHIE: Correct, right. Okay.
4 So that is the motion before us. Now, will you call
5 the role, please, Ms. Luera?
6 MS. LUERA: Yes. Chairman Ritchie?
7 DR. RITCHIE: Yes.
8 MS. LUERA: Vice Chair Love?
9 MS. LOVE: Yes.
10 MS. LUERA: Dr. Carson?
11 DR. CARSON: Yes.
12 MS. LUERA: Mr. Clark?
13 MR. CLARK: Yes.
14 MS. LUERA: Mr. DeKleva?
15 MR. DEKLEVA: Yes.
16 MS. LUERA: Mr. Martinez?
17 MR. MARTINEZ: Yes.
18 MS. LUERA: Mr. Spitzer?
19 MR. SPITZER: Yes.
20 MS. LUERA: Ms. Stevens?
21 MS. STEVENS: Yes.
22 MS. LUERA: And Mr. Vargus?
23 MR. VARGUS: Yes.
24 DR. RITCHIE: All right, that motion
25 passes unanimously. Then the second motion was to use

1 the 75 percent confidence level for calculating the
2 portion for the independent physicians, and what's the
3 exact reading of that, Ms. Luera?
4 MS. LUERA: The indicated rate change
5 of 29 percent for physicians and surgeons, which
6 reflects a 75 percent confidence level.
7 DR. RITCHIE: Okay. Would you call the
8 role again, please?
9 MS. LUERA: Sure. Chairman Ritchie?
10 DR. RITCHIE: Yes.
11 MS. LUERA: Vice Chair Love?
12 MS. LOVE: Yes.
13 MS. LUERA: Dr. Carson?
14 DR. CARSON: Yes.
15 MS. LUERA: Mr. Clark?
16 MR. CLARK: Yes.
17 MS. LUERA: Mr. DeKleva?
18 MR. DEKLEVA: Yes.
19 MS. LUERA: Mr. Martinez?
20 MR. MARTINEZ: Yes.
21 MS. LUERA: Mr. Spitzer?
22 MR. SPITZER: Yes.
23 MS. LUERA: Ms. Stevens?
24 MS. STEVENS: Yes.
25 MS. LUERA: Mr. Vargus?

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1 MR. VARGUS: Yes.
2 DR. RITCHIE: Okay, that passes
3 unanimously, as well. And so that is then our
4 recommendation for the independent physicians, for the
5 surcharges going forward. So now let's go back to the
6 draft and address the hospital portion.
7 MR. WARD: This is Vince. Do you want
8 to just deal with the specific language going into
9 your Board findings and recommendations now, or do you
10 want to -- I know we're short on time here. I just
11 want to make sure that you guys agree on what the
12 language will be.
13 MR. CLARK: I think it's spelled out at
14 the end of the document, and so the calculated number
15 on what we just approved, between the 29 and the
16 2.3, comes out to 32.0 percent, both what I calculated
17 and what Ms. Luera calculated.
18 DR. RITCHIE: So if you scroll down to
19 the end, I believe that that is --
20 MR. CLARK: I think there's a blank to
21 fill it in at.
22 MR. WARD: Yeah, I'm looking at it
23 right now. So we're in Subparagraph (a); right?
24 DR. RITCHIE: However, we need to
25 change that, because it says at the central confidence

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1 level.

2 MR. WARD: So we need to say at the

3 75 --

4 MR. CLARK: 75 percent confidence

5 level.

6 MR. VARGUS: And then we might want to

7 put the actual percentage. Wasn't it 28.0 or what was

8 it?

9 MR. CLARK: It ends up being 32.0, by

10 the time you had the two components together.

11 MR. WARD: What do you want me --

12 MR. VARGUS: That the surcharges should

13 be assessed at the 75 percent confidence level, and I

14 think that's 28, but then I think we need to

15 separately say, plus a surcharge increase of was it

16 2.3 percent?

17 MR. CLARK: 2.3 percent for deficit

18 repayment.

19 MR. VARGUS: Correct, and that's 2.3

20 percent of the total surcharge, including the

21 increase.

22 MR. WARD: Okay. So what do you want

23 me to say there, increase of 2.3 percent --

24 MR. CLARK: For deficit reduction.

25 MR. VARGUS: Maybe 2.3 percent of the

1 total surcharge.
2 MR. TOAL: Mr. Chairman?
3 DR. RITCHIE: Yes.
4 MR. TOAL: I'm sorry, but I have to
5 chair another meeting here at four o'clock, so I'm
6 going to leave you. I want to thank the Board for
7 their deliberations, and for your recommendations, and
8 I promise you, I assure you, I'll give them full
9 consideration, and I will also make sure that you all
10 get a copy of decision, hopefully on Friday.
11 DR. RITCHIE: Thank you very much,
12 Superintendent. We really appreciate your being
13 present for this, and for your careful considerations
14 going forward. We really appreciate it in the past
15 and today. Thank you.
16 MR. TOAL: Thank you.
17 DR. RITCHIE: Does that, resulting in a
18 surcharge rate set forth, we need a total percent
19 then.
20 MR. CLARK: I just double checked my
21 math. 1.28 times 1.023, ends up in a 30.94 percent
22 increase. I had done 29 percent before. It's
23 actually 28 is the documented recommendation grossed
24 up by the 2.3 percent, is 1.3094, so it would be a
25 30.94 percent increase.

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1 MR. WARD: Well, the way this is
2 written -- look at the language though, the way it's
3 written. It must have been -- I'm wondering if last
4 year this cited back to the part of the report, as
5 opposed to spelling out a particular number, which I
6 think you can do it either way, but I just think we
7 have to change the language to make it work.
8 MS. LUERA: Exhibit 10 in the report,
9 Exhibit 10, Page 1, says 19 percent, without the risk
10 margin, 29 percent with the risk margin, which when we
11 take the 2.3 on top of both of those numbers, it's
12 21.8 or 32.0.
13 MR. CLARK: I agree with that math. I
14 guess right now documented in the document, we're
15 saying it's 19 and 28, and I think, Debbie, you're
16 saying the document says it's 19 and 29, so we just
17 need to -- we need to tie back to the actuary's actual
18 numbers. It it really 28 or is it 29 at the 75th
19 percent confidence level?
20 MS. LUERA: Exhibit 10, it's 29.
21 MR. CLARK: So then we need --
22 DR. RITCHIE: Do we need to do 29 plus
23 2.3?
24 MR. CLARK: Correct, so it should be --
25 there you go, which -- which is a 32 percent. It's

1 31.97, so that rounds up to 32.0 percent.
2 DR. RITCHIE: Surcharge writeup.
3 MR. VARGUS: And those are the numbers
4 we were discussing when we were debating it.
5 MR. WARD: You guys want to reference
6 back to the part of the report? You could say, as set
7 forth in or you could exclude it.
8 DR. RITCHIE: In Exhibit 10.
9 MR. WARD: Do we have a page number,
10 Debbie?
11 MS. LUERA: It's Exhibit 10, Page 1,
12 and it is Page -- actual Page 46 of the study.
13 Exhibit 10, excuse me, has several pages, so it's
14 Exhibit 10, Page 1, or Page 46 of the study.
15 MR. WARD: I'm okay with Exhibit 10. I
16 think it's the Board, whatever you guys want to do,
17 however you want to do it. It just needs to be clear,
18 so that we know what we're referring to.
19 MR. VARGUS: I think Exhibit 1, Page
20 10, is clear.
21 MR. WARD: Exhibit 10, Page 1?
22 MR. VARGUS: Yes.
23 MR. WARD: Okay. All right. So do you
24 guys want me to read it, and so we're all on the same
25 page, or can you all see that?

1 MR. CLARK: We can see it on the
2 screen.
3 Mr. Chair, for the hospital section, as
4 we move there --
5 MR. WARD: Hold on a second. It says
6 resulting in the surcharge rates of 32 percent.
7 DR. RITCHIE: Resulting in surcharge
8 increase.
9 MR. WARD: Rate increase of 32 percent.
10 DR. RITCHIE: That's it. Thank you.
11 MR. WARD: Okay. Is everyone
12 comfortable with that?
13 MR. CLARK: Can we saying resulting in
14 a, as opposed to the?
15 MR. WARD: Yes.
16 MR. CLARK: More grammatically correct.
17 MR. WARD: Yes.
18 DR. RITCHIE: All right. So moving on,
19 Mr. Clark, you had something?
20 MR. CLARK: Yeah, in lieu of a
21 discussion, it may prompt it if it's needed, or may
22 not. I would make a motion for the hospitals that we
23 recommend an increase at the central confidence level
24 plus the included deficit reduction calculation, per
25 the expert's report, that would be an increase of 11

1 percent for the central confidence level, with an
2 additional 15.8 percent for the deficit surcharge,
3 resulting in an increase of 38.6 percent, total for
4 the hospitals for the next year.
5 MR. VARGUS: I'll second that.
6 DR. RITCHIE: Okay, and that's going
7 back to the discussion of feeling more confident in
8 the hospitals having a finite end point, to come to a
9 zero deficit, by year five.
10 MR. CLARK: That's correct. And that's
11 my intent, that there's the additional mechanism of
12 the payoff that's calculated for that deficit to occur
13 within five years, so hence my motion, and I believe
14 Mr. Vargus has seconded it.
15 DR. RITCHIE: Okay. There is a motion
16 before us. Is there any discussion? Okay, hearing
17 none, is Ms. Love still here?
18 MS. LOVE: Yes.
19 DR. RITCHIE: Great, awesome. Could we
20 call the role please, on a vote for that?
21 MS. LUERA: Yes. Chairman Ritchie?
22 DR. RITCHIE: Yes.
23 MS. LUERA: Vice Chair Love?
24 MS. LOVE: Yes.
25 MS. LUERA: Dr. Carson?

1 DR. CARSON: Yes.
2 MS. LUERA: Mr. Clark?
3 MR. CLARK: Yes.
4 MS. LUERA: Mr. DeKleva?
5 MR. DEKLEVA: Yes.
6 MS. LUERA: Mr. Martinez?
7 MR. MARTINEZ: Yes.
8 MS. LUERA: Mr. Spitzer?
9 MR. SPITZER: Yes.
10 MS. LUERA: Ms. Stevens?
11 MS. STEVENS: Yes.
12 MS. LUERA: And Mr. Vargus?
13 MR. VARGUS: Yes.
14 DR. RITCHIE: Excellent, so that passes
15 unanimously. Thank you, Mr. Clark.
16 MR. WARD: Can we do the language
17 really quick?
18 DR. RITCHIE: Yes, please. Go down to
19 the bottom. Let's put in that language.
20 MR. WARD: That the central confidence
21 level, correct?
22 MR. CLARK: Yes.
23 MR. WARD: Then we're doing plus
24 surcharge increase.
25 MR. VARGUS: Deficit surcharge.

1 MR. WARD: Deficit --
2 MR. VARGUS: Deficit reduction
3 surcharge.
4 MR. WARD: Yeah. And that one is how
5 much, 15? I'm sorry --
6 MR. CLARK: 15.8.
7 MS. LUERA: 15.8.
8 MR. WARD: Okay. Resulting in --
9 MR. VARGUS: A surcharge increase --
10 MR. WARD: Increase of --
11 MR. VARGUS: 38.6.
12 MR. WARD: I'm just -- I'll make this
13 consistent, when I go back.
14 DR. RITCHIE: Yes, thank you.
15 MR. WARD: As set forth, and where's
16 this one?
17 MS. LUERA: It is Exhibit 14, Page 1.
18 MR. WARD: Okay.
19 MS. LUERA: And the deficit is actually
20 19.8, and the indicated rate change is 15.8.
21 MR. WARD: The vote was at
22 15.8 though; correct?
23 DR. RITCHIE: Yes.
24 MR. VARGUS: She's correct, the deficit
25 surcharge is 19.8.

1 MS. LUERA: And the rate change --
2 MR. VARGUS: The rate change at the
3 central confidence level is 15.8.
4 MR. WARD: Right, and the vote was for
5 the 75 percent.
6 MR. VARGUS: I thought it was for the
7 hospitals.
8 MR. WARD: Yeah.
9 MS. LUERA: Central.
10 MR. WARD: We'll read it and make sure
11 that it's reading the way that consistent with what
12 your understanding of the vote is.
13 MR. CLARK: Vince, I believe to make it
14 consistent both with the vote and the warning above
15 it, right after central confidence level, it needs to
16 say "a surcharge increase of 15.8 percent."
17 MR. WARD: Plus a surcharge increase?
18 MR. CLARK: Not plus, assed at the
19 central confidence level, a surcharge increase -- I
20 guess you do that plus up above -- increase --
21 MR. WARD: Oh, I see, yeah.
22 MR. CLARK: 15.8 and then where you
23 currently have the 15.8 listed below, should be 19.8.
24 MR. WARD: Okay, hold on. Let me just
25 look -- oh, because I need to do -- do I need to do

1 plus, so a surcharge increase of 15.8 percent --
2 MR. CLARK: Plus, type the word plus.
3 MR. WARD: Yeah.
4 MR. CLARK: And now change that next
5 15.8 to 19.8.
6 MR. WARD: Yep, yep, yep, yep. Got it,
7 all right. Yes, got it.
8 MR. CLARK: Consistent between A and B,
9 and the actuary's report.
10 MR. WARD: Got it. See, Ray is not
11 going to be able to help himself soon. He's going to
12 start heckling, I know it.
13 DR. RITCHIE: All right. Is everyone
14 comfortable with that language? Okay. And, of
15 course, we'll clean all this up before sending it on
16 to Mr. Toal.
17 Okay, so that would be the hospital
18 rates. So then we've already gone through that part
19 of the body of the document, but see, plus the risk
20 cost -- provider set out, on Pages -- those pages
21 should be adopted. Does anyone have any objection to
22 adopting those? I think we already said there are no
23 objections.
24 MR. VARGUS: We just need to know what
25 pages they're on in the report.

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1 DR. RITCHIE: Right.
2 MR. WARD: Debbie, can you help with
3 that? And we can do it -- I'm okay if we pick that
4 later, not to slow things down, unless you think it's
5 going --
6 MS. LUERA: Yeah. I'm looking for that
7 right now.
8 MR. CLARK: Does anyone else cross-
9 reference -- I was trying to find here. I believe the
10 percentage amount increases we just approved already
11 include those rate increases. Can anybody confirm or
12 deny that? I thought I'd fly through the report --
13 I'm not finding that.
14 DR. RITCHIE: You mean the
15 classification changes?
16 MR. CLARK: Yes. I believe that was
17 included in the base numbers that we already approved.
18 DR. RITCHIE: Yes.
19 MR. CLARK: I'm pretty sure of that,
20 that that was the testimony. I say that, just because
21 of the way the wording is in C, to be clear, that
22 there's not an additional charge to be added to what
23 we say in A, but it just should say that we say that
24 they should be adopted, and give the page numbers;
25 right?

1 DR. RITCHIE: Right, that's all we're
2 doing there is just -- because that's something
3 totally separate, is that change in risk
4 classifications. It's totally separate from setting
5 rates, from setting the deficit correction rates to
6 set rates. Just individual classes.
7 MR. WARD: That's my read of that
8 language too, is that it isn't imposing any additional
9 rate increase.
10 DR. RITCHIE: Okay. So while Ms. Luera
11 looks up the pages, let's go to Paragraph D, and this
12 is what we're already doing.
13 MR. WARD: Correct.
14 DR. RITCHIE: And so we just need to
15 look up that page number to just -- confirming or
16 reappointing that, that we're going to recommend we
17 continue to do that, as is laid out in the statute.
18 MR. WARD: While she's looking that, up
19 can I say, so this evening, Mr. Chair, I will clean
20 this up and then send to you no later by first thing
21 in the morning, and then you should be able to
22 circulate it to -- you can review, and then we can
23 circulate it to the Board. Is that okay?
24 DR. RITCHIE: That would be perfect.
25 MR. WARD: Okay.

1 MS. LUERA: The proposed cost changes
2 are on Page 17, and then there are also Exhibits 19
3 through 21, which show the impact, but the list of the
4 recommendations is concisely stated on Page 17.
5 DR. RITCHIE: Okay. Let's just make
6 that -- and just the Page 17.
7 MR. VARGUS: Mr. Chair, I just had a
8 thought about something that we might want to include
9 in the report.
10 DR. RITCHIE: Yes.
11 MR. VARGUS: And that is a statement
12 that the reason we chose the 2.3 percent deficit
13 reduction increase on independent providers is that we
14 are hopeful for an additional legislative
15 appropriation of $30 million. That way, there is a
16 definitive statement in the report that, A, that was
17 our thinking, and, B, I think we all support that
18 appropriation.
19 MR. WARD: What if we put a footnote in
20 Subparagraph A, Ray, to make that point stand out.
21 MR. VARGUS: I'm fine with that. I
22 would just like something in the report that, you
23 know, the legislators are going to see this report,
24 and it would be nice if they knew that this was
25 something that the Board considered, and we all agreed

1 upon.

2 MR. DEKLEVA: Mr. Chair, I might add to
3 that. This is Mike DeKleva. I had a similar thought
4 to Mr. Vargus' thought. I think, you know, in sort of
5 reading between the lines of the superintendent's
6 comment, we might want to make that footnote a little
7 even more emphatic, in saying that one of the things
8 this Board struggled with was the thought that the
9 independent providers weren't going to be able to
10 sustain certain rate increases to cover the deficit.
11 Even though we didn't have record evidence of it, it
12 weighed heavily on our minds, as we made the
13 determination and that because of that, you know, we
14 are hoping that the legislature would, you know,
15 apportion or appropriate an additional 30,000 to --

16 DR. RITCHIE: Million.

17 MR. DEKLEVA: 30 million, sorry. It's
18 a long meeting, right, lots of numbers. But I do
19 think that we ought to put it in there, because I
20 think that, you know, the superintendent felt he could
21 make good use of that, and it's sort of piggybacking
22 on what Ray was saying, and that would be my
23 suggestion, in any event.

24 DR. RITCHIE: I concur with that, and I
25 especially like the term "struggled."

1 MR. CLARK: Mr. Chair, do you need a
2 motion and a vote on D, or are we good --
3 DR. RITCHIE: I believe that as far as
4 D, I think we can just do that by acclamation. Does
5 anyone have -- is anyone against using D, Paragraph D,
6 as set there? Does anybody have a reason not to do
7 that?
8 Hearing no objections, then we'll
9 accept D as stated there, with a page number.
10 MR. WARD: Debbie, do you have the page
11 number?
12 MS. LUERA: So the discussion of the
13 ten percent entity surcharge is on Pages 17 and 18 of
14 the study.
15 MR. WARD: Okay.
16 MS. LUERA: So right now the entity
17 surcharge is ten percent of all of the provider
18 surcharges of that entity, so the way I read D is that
19 it should stay at ten, but then there should be an
20 additional deficit assessment of an additional ten
21 percent? Am I reading that wrong?
22 MR. CLARK: I believe if it's
23 calculated at ten percent of the total, when we make
24 the increase, it includes the deficit reduction, they
25 are getting ten percent of that new increase number,

1 so to do an additional ten percent would be a double
2 dip.
3 MS. LUERA: Right. So yeah.
4 MR. CLARK: It just has to be ten
5 percent of the new number, which already includes the
6 deficit reduction portion.
7 MS. LUERA: Right, so that should
8 probably be reworded for clarity, but the language is
9 on Page 17 and 18, Vince.
10 MR. WARD: Okay. So do we want to
11 change the language then?
12 MR. CLARK: Maybe it's ten percent of
13 the aggregate surcharge, which includes the deficit
14 assessment amount.
15 MR. VARGUS: Agreed.
16 MR. CLARK: As recommended on Pages 17
17 and 18.
18 MR. WARD: And then I think I'll just
19 add like something, of the report, or something, just
20 for clarity sake. And I'll figure that out, when I'm
21 cleaning this up.
22 MR. VARGUS: Thank you. And Vince, did
23 you get what we said about the footnote?
24 MR. WARD: Yeah, so I started it. I
25 don't want to just craft it myself. I had started

1 something for you guys to build a bug in, so let me
2 get down here. So the PCF Advisory Board's decision
3 to recommend a surcharge increase of 2.3 percent and a
4 total surcharge for deficit reduction, and then what
5 would you like me to say?
6 MR. VARGUS: I think we want to say
7 that the 2.3 percent -- I don't know, in anticipation
8 or in hopes of an additional 30 million appropriation
9 from the legislature.
10 MR. CLARK: Or is in consideration of
11 the hope of an allocation and the impacts of the
12 struggle to maintain operations for independent
13 physicians. I think Dr. Ritchie that word --
14 MR. WARD: This is where describing
15 gets a little bit hard. So Mr. Clark, do you want to
16 -- I hate to make you say that over again, but I just
17 don't want to interject my own sort of wordsmithing on
18 this. I want to make sure that it's consistent with
19 what the Board wants.
20 MR. CLARK: This one is probably better
21 if I stay out of it and let somebody else -- let me
22 not be the drafter of this one.
23 DR. RITCHIE: Mr. DeKleva, you had the
24 original statement.
25 MR. DEKLEVA: Yeah, let me see if I can

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1 try to sound this out for everybody, and for Vince.
2 Something along the lines of the 2.3 percent proposed
3 rate increase or deficit reduction for independent
4 physicians was made with the hope that the state
5 legislature would appropriate an additional $30
6 million to that deficit, to the independent physicians
7 and surgeons' portion of the deficit, as the Advisory
8 Board struggled with how to address the independent
9 physicians' portion of the deficit, while at the same
10 time having to acknowledge the burden that a large
11 rate increase would place on those independent
12 physicians. Something like that, and I will never be
13 able to say that again, Vince.
14 MR. WARD: So I have a lot of typos in
15 here, but I just didn't want to lose it, and we can
16 clean that stuff up, but --
17 MR. DEKLEVA: Okay, something like
18 that, and then, you know, when we circulate it, Mr.
19 Chair, everybody can look at it and tweak it as they
20 see fit, or however we do this next step in the
21 process.
22 DR. RITCHIE: Exactly, although I would
23 like to tweak it a little bit. What do you think
24 about saying, at least a $30 million. Let's not limit
25 ourselves. Let's shoot higher, if possible.

1 MR. DEKLEVA: I don't have a problem
2 with that.
3 DR. RITCHIE: Does anyone have a
4 problem with putting at least 30 million?
5 MR. VARGUS: No. Should we -- I don't
6 know, maybe this is going too far, but should we let
7 them know that we didn't just make that up, that
8 that's the number the actuary came up with?
9 MR. DEKLEVA: Probably, we should say
10 something about that.
11 MR. WARD: I can put it right here, as
12 recommended by the --
13 MR. VARGUS: Or based on the
14 calculation of the actuary?
15 DR. RITCHIE: Right. We didn't just
16 make up 30 million. He said if you got 30 million,
17 then 2.3 is the deficit reduction increase. The
18 superintendent reading this knows that, but the
19 legislatures reading this will not.
20 MR. WARD: Okay. Sorry about my typos.
21 My typing class -- my teacher would be upset at me.
22 Let's see. Physicians was made with the hope that the
23 legislature would appropriate at least an additional
24 30 million to the independent physicians' portion of
25 the deficit, based on the calculation of the actuary,

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1 as the Board struggled with how to address the
2 independent physicians' portion of the deficit, while
3 acknowledging the burden a large rate increase
4 would -- what did we -- would cause?
5 DR. RITCHIE: Would place on the
6 physicians' practices.
7 MR. VARGUS: Or would impact --
8 MR. WARD: Would impact the practices
9 of the independent physicians?
10 MR. DEKLEVA: And their ability to
11 sustain their practice in the state of New Mexico, I
12 think is --
13 MR. WARD: We could say would -- we
14 could just kind of be more concise. We could say
15 would impact the ability of independent physicians to
16 maintain their practice, and to offer services, right?
17 MR. DEKLEVA: Yeah, that's a better way
18 to say it, I think. Just the idea that it -- I like
19 that.
20 MR. WARD: The ability of
21 independent -- physicians to operate their practices
22 and provide services in the state?
23 MR. VARGUS: Yes.
24 MR. WARD: Is it, okay, Dr. Ritchie, so
25 we're not going to mess with the intent of any of

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1 that, but is it okay if we kind of, instead of trying
2 to make it perfect right now, that we just kind of go
3 through and edit that after when we're cleaning this
4 up?
5 DR. RITCHIE: Absolutely.
6 MR. WARD: Okay, great. All right. So
7 I think then that we have filled in everything in this
8 -- I'm just going to go through it really quick to
9 make sure we didn't miss anything here. Barry, are
10 you still on?
11 MR. BERENBERG: I am still here.
12 MR. WARD: Is there anything that you
13 wish to add as the counsel who handled the hearing,
14 with respect to anything that's in the proposed --
15 MR. BERENBERG: No.
16 MR. WARD: -- recommendation that will
17 be going?
18 MR. BERENBERG: No. Nothing in the
19 recommendation.
20 MR. WARD: Okay. All right. I don't
21 see -- I think we've caught everything, Dr. Ritchie.
22 DR. RITCHIE: I believe so. I think we
23 put a lot of effort into it today, and it took a while
24 doing it. But we took the time that was necessary, I
25 think to give Mr. Toal a good recommendation, and

1 information he could work or use, to set his rates and
2 justify them and for everyone, him, the
3 superintendent, and those of us in all our different
4 other guises, as advocates, to take to our
5 legislators, to speak towards getting more money to
6 help offset this deficit, in the upcoming session. I
7 think that's a point for all of us, to take this back
8 to our constituents and try to get more money from the
9 legislature, to help offset this, and make that 2.3
10 percent work for the physicians and prevent -- from
11 getting, you know, greater in the future, and prevent
12 it from spiraling down, losing people out from under
13 the cap, and out of the PCF.
14 So I appreciate all the work everyone
15 did on this, and their willingness to compromise.
16 So does anyone have any final comments?
17 MR. WARD: Before anyone else chimes
18 in, Dr. Ritchie, I save a copy of this, just so that
19 we don't lose all of this work. I tried to save a
20 copy to my own computer, so would you just do me a
21 favor, and just do -- somebody just as a backup, just
22 in case, that somebody also try to do a save feature
23 on this? I don't always trust the collaborative
24 technology, that it's going to save and pick up
25 everything.

1 DR. RITCHIE: I'm not the one to do
2 that. Please, someone else do that. Ms. Luera.
3 MS. LUERA: I'm trying to do that right
4 now.
5 DR. RITCHIE: Thank you. Thank you.
6 Can you put back up the agenda then? And see what
7 else -- because we're going to do this just as my
8 computer runs out of juice. This is great.
9 MS. LUERA: Just have to find it here.
10 DR. RITCHIE: So I think then, Vince,
11 if you can get this to me to look at tomorrow morning,
12 and then I can look it over, and then tomorrow
13 afternoon we can send it out to the community and have
14 everyone look at it. I know Mr. Toal wants to -- as
15 you just hear him say, he wants to have a decision
16 made by this Friday, and so, you know, so it's already
17 Tuesday. We need to get it to him very quickly.
18 So let's try to get it out to everyone
19 early tomorrow afternoon, would be my intention, so
20 everyone can look it over and make any further
21 comments. Hopefully, there really won't be anything
22 to do or say. Hopefully, we will have it tightened up
23 and we can submit it and get it to the superintendent
24 tomorrow evening, first thing Thursday morning.
25 Hopefully, tomorrow evening.

1 MR. WARD: I can get that done.
2 DR. RITCHIE: That's terrific. Then
3 real quickly, for the record, comments on the actuary
4 analysis, and feedback on it? We've already heard
5 some today on perhaps asking for analysis. It may be
6 beyond the scope. It may not. It may require the
7 third-party administrator looking a little bit further
8 afield, but actuarial analysis of rate changes, effect
9 on overhead and costs to individual practices within
10 the state. Ms. Luera, Do you see a problem with that?
11 MS. LUERA: No. In fact, I made a
12 note for, you know, when we talk to the actuary again
13 next year, to have them take a broader look at what
14 are the options to eliminate the deficit over a longer
15 period of time. I think that's something that's
16 definitely within the scope of what an actuary could
17 do for us.
18 DR. RITCHIE: Okay. I think that's
19 definitely part of it, absolutely. Mr. Berenberg, did
20 you have a comment to make?
21 MR. BERENBERG: I did have a suggestion
22 for specific feedback. I was just going to say that I
23 had brought up this particular agenda item with Vince,
24 and the idea was to give the actuary next year, you
25 know, additional items to look at, which is I think

1 what you're addressing, and Vince would have to okay
2 this, but if the Board members think of something to
3 add, as long as there's no discussion about it, I
4 think those could be sent individually to Vince or to
5 Ms. Luera.
6 MR. VARGUS: I agree.
7 DR. RITCHIE: Excellent. So I'll put
8 out an email to that effect, to remind the Board of
9 that, a little ways down the line, to remind people,
10 again, of that, to send suggestions to Vince, to the
11 office of the superintendent, Mr. Berenberg, et
12 cetera, or actually Ms. Luera, I'm sorry, it would go
13 probably to Ms. Luera, and for, you know, and can we
14 solicit those from the public, as well? Anyone see a
15 problem with that? We don't have to take them but we
16 can solicit?
17 MR. WARD: I don't want to
18 overcomplicate this issue, but what do you mean by
19 that, Dr. Ritchie?
20 DR. RITCHIE: Well, I mean, well, I
21 guess it would go through each of us. I mean,
22 constituencies may have recommendations or may have
23 suggestions, so I guess they really need to take it
24 through their representatives on the Board, and then
25 representatives from the Board can pass that on to Ms.

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1 Luera or Mr. Ward for recommendations.
2 MR. WARD: I think when the individual
3 members are sort of thinking and contemplating about
4 what, you know, what the actuary might do, I think
5 you're going to take whatever input you receive. I
6 just think that that's the best way to do it, rather
7 than contemplating some sort of -- you know, notice or
8 something like that.
9 DR. RITCHIE: Yeah. I was getting
10 ahead of myself on the agenda, with the public
11 comment. So then definitely, we need to think about
12 that, think carefully of it, and hopefully come up
13 with even better actuary analysis next year, that we
14 find more effective and will give us testimony that we
15 can use in this recommendation next year, so we don't
16 have the question of what we can use, what we can't,
17 or holes in the testimony, that we would like filled.
18 Next question is any public comment,
19 the next agenda item, I'm sorry. Any public comments?
20 Okay. Hearing none, other matters of
21 the Board? I think it was soliciting that comment
22 from the Board for other recommendations. Any other
23 matters of the Board? Anyone else on the Board have
24 anything to bring up?
25 It is getting late. And so next

1 meeting date. Last year -- I believe our next meeting
2 wasn't until -- when was it last year? And Ms. Luera,
3 you weren't even on the Board, but did you have that
4 date?
5 MS. LUERA: I believe it was March. It
6 was middle of March, was the first meeting we had in
7 2022.
8 DR. RITCHIE: Right. It was after the
9 session, after legislative session, is when we met
10 next. I don't see a need to meet before then,
11 although I do want to speak to you or Ms. Luera, now
12 that we're on board with doing this again, then we can
13 really work on getting the actuarial study going
14 faster and the report back even earlier next year than
15 this year.
16 I still felt a little cramped in time
17 this year. And in the time -- we didn't have enough
18 time, for instance, to get the minutes back for
19 meetings, before the next meeting this year. So --
20 MS. LUERA: Agreed. Yeah, I think if
21 we could space them out a little more, you know. Like
22 I mentioned, I think at the last meeting, the standard
23 time period for the court reporter to turn it around
24 is two weeks, so if we schedule meetings tighter than
25 that, then it's a problem getting the minutes. Even

1 if we agree to pay the rush, as we saw last time, so
2 yes, definitely that. And with respect to the
3 actuarial study, I would respectfully suggest that
4 when we meet for the first time in 2023, one of the
5 topics for the agenda, would be -- when we did the RFP
6 this past year, we gave the option to extend the
7 contract, so that would be a key decision for the
8 Board and the superintendent to make, is do we want to
9 continue with Pinnacle, or do we want to go out to bid
10 again.
11 DR. RITCHIE: Okay. I don't know,
12 Vince or Ms. Luera, do we know, is that a
13 recommendation from the Board, or is that just
14 strictly the superintendent's decision on extending
15 it, or doing another RFP?
16 MS. LUERA: I believe --
17 MR. WARD: My recollection --
18 MS. LUERA: -- superintendent's final
19 decision. Sorry, Vince.
20 MR. WARD: No, that's what I was going
21 to say. You know what I'd be happy to do though, is I
22 will talk with superintendent's counsel and report
23 back to the Board on that, just to be clear.
24 DR. RITCHIE: Okay. Obviously, it's
25 his ultimate decision, but I don't know if he wants

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1 any input or not. Okay. Then the next meeting date
2 to be determined, but probably not too long after the
3 session, just to get on it early enough to get this
4 whole thing going a little faster next year, so that
5 we space out the meetings more, and make them a
6 minimum of two weeks apart, if not a little bit more.
7 Any other comments? Mr. Vargus?
8 MR. VARGUS: Would there be any utility
9 in having one meeting before the session and, again,
10 I'm kind of sensitive to the idea of us expressing a
11 joint desire for that additional appropriation.
12 DR. RITCHIE: I don't know. That's up
13 to the will of the Board. I understand that
14 completely. I am very much interested in advocating
15 for a little help from the legislative body, so how do
16 people feel about that? Any feelings one way or the
17 other on that? Mr. Clark?
18 MR. CLARK: This is Troy. Is that
19 accomplished better -- I mean, us meeting and talking
20 about it amongst ourselves? I'm not sure there's a
21 lot of value unless there's strategy amongst which
22 legislators we're -- go talking about, or if it's
23 simply the reminder to get everybody collaborative, on
24 the same table? Is that more effectively done through
25 a reminder email? That would be my only point.

1 DR. RITCHIE: I think there's a point,
2 because the Board doesn't report to the legislature,
3 so really, the Board wouldn't be able to do anything
4 except recommend something to the Superintendent of
5 Insurance to take to the legislature, I guess, but I
6 don't know if that's our place to do that or not.
7 MR. WARD: This is Vince, just kind of
8 chiming in on this. I think there are just two things
9 to think about. One is you've got make sure you're
10 complying with Open Meetings Act, right. But I
11 actually don't read the statute as prohibiting the
12 Board from if it so chooses, finding some way to
13 advocate with the legislature on this issue, and I
14 think that the reason to meet -- the reason to meet
15 would just be to have sort of a discussion about
16 whether you want to do that, and how to do it. You
17 know, think about it. You guys are a legislatively
18 created Board. I understand that you have a task with
19 respect to the superintendent and what your role is in
20 terms of providing this recommendation. You guys have
21 made this recommendation now. The superintendent may
22 or may not follow it, but there is a big part of what
23 you're doing has this legislative component, and I do
24 think that there's some value in terms of setting up a
25 meeting and at least having the discussion amongst

1 yourselves about whether you see a place for that,
2 whether you want to exercise that power and role.
3 From an Open Meetings perspective, I
4 guess what I would say is I just -- I would prefer, as
5 your counsel, that if you're going to have those kinds
6 of discussions about whether that's something that you
7 want to do as part of Board, that you do it in
8 compliance with the Open Meetings.
9 MR. VARGUS: I think we're forgetting a
10 provision of the statute that created this committee,
11 and it's 41-5-25.1(e), which says the Advisory Board
12 shall convene at least twice a year or at the request
13 of the superintendent, to -- and number four is
14 prepare an annual report to the legislature on the
15 operations and financial condition of the fund, no
16 later than the first day of each year's legislative
17 session.
18 So we need to have a meeting to prepare
19 that report no later than the first day of the
20 legislative session, and so I don't remember us doing
21 that last year, but we were so new, we may not have
22 been attuned to the fact that we had a statutory
23 obligation to do so.
24 DR. RITCHIE: Thank you for reminding
25 us. You're right, that's what it reads. So we could

1 put both those items on the agenda for the next
2 meeting, and when -- really quickly, or my computer is
3 literally going to die here in a second, so if I lose
4 you, I lose you. I'm sorry. I'll get on my phone,
5 but how do people feel about that, to come up with
6 that report for the legislature and any discussion on
7 -- within that report on advocacy to the legislature?
8 Does anyone have a comment real quick?
9 MS. LUERA: Yes, Chairman, I need to
10 apologize. I went back and looked in my calendar, and
11 the first meeting was actually January 6th of this
12 year, and that was the meeting to talk about the
13 annual report.
14 DR. RITCHIE: There you go. I thought
15 I remembered one before that. So we want to try to do
16 one in December, or is that too busy? Do we want to
17 try doing right after New Year? Any thoughts from the
18 committee?
19 MR. VARGUS: Right after New Year's is
20 fine with me.
21 DR. RITCHIE: It cuts it close, but it
22 shouldn't be that difficult of discussion, or to come
23 up with a report. So then, I'll get together with
24 Ms. Luera, and we'll come up and send out a pole to
25 figure out when to do it, but probably that first week

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1 in January, and we'll pole everything far enough ahead
2 of time, so people can, you know, set the date aside.
3 Okay. I move to adjourn. I like that motion. Do I
4 hear a second?
5 MR. CLARK: Second. This is Troy.
6 DR. RITCHIE: Thank you, Mr. Clark.
7 Any objections? Hearing no objections, I thank you
8 for this long afternoon. I really appreciate you guys
9 helping out. We'll get back to you tomorrow.
10 (Whereupon, the meeting concluded at
11 4:49 p.m. MDT)
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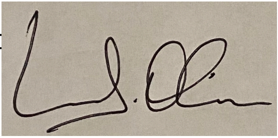

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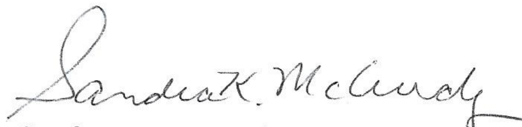
14 
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