2024 ANNUAL REPORT OF THE
PATIENT COMPENSATION FUND ADVISORY BOARD
TO THE NEW MEXICO LEGISLATURE

To: Members of the New Mexico Legislature
From: Patient Compensation Fund Advisory Board
Date: January 8, 2024
Re: Operations and Financial Condition of the Patient's Compensation Fund

The Patient Compensation Fund (PCF) Advisory Board submits this "annual report to the legislature on the operations and financial condition of the fund." A quorum of the Board met in compliance with the Open Meetings Act on January 13, April 13, July 31, August 29, October 12, October 20, October 26, December 14.

OPERATIONS OF THE FUND

Jennifer Catechis served as Interim Superintendent of Insurance until Alice Kane replaced Russell Toal as New Mexico's Superintendent of Insurance on July 11, 2023. Integrion Group, Inc., which began work as the Third Party Administrator of the PCF on January 1, 2022, continues to serve in that capacity. Its contract expires June 30, 2024, but can be renewed for an additional year, then another six months. Integrion's proposed budget for fiscal 2024 is $1,237,900 plus estimated GRT of $100,409, a total of $1,335,384.

Batch Claim Re-insurance

In 2022, OSI and Integrion purchased "re-insurance" coverage for the Fund in case of future instances of so-called "batch claims" (multiple claims against one physician and/or arising out of a similar scheme or type of procedure), like the claims against two doctors on behalf of whom the Fund paid a total of $20,100,000 in years 2012 and 2015.

Integrion, through a broker, evaluated the availability and cost of reinsurance to cover the risk of future batch claims in 2023. The options and costs were presented to the Advisory Board, and based on its assessment that the risk of future batch claims is low based on the three-occurrence limit set forth in NMSA1978, § 41-5-5, and the cost of re-insurance is high, the Board recommended that Interim Superintendent Catechis forgo future batch claim insurance. The policy was cancelled effective March 29, 2023.

Carriers

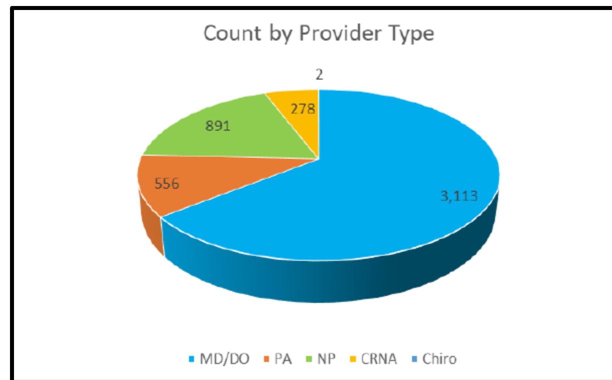
In 2022, there were 11 carriers authorized to write underlying coverage to Qualified Healthcare Providers. The three carriers that do the most underwriting in New Mexico are Coverys, AEIX and The Doctors Company. Providers who are insured by those three carriers are responsible for 88% of the surcharges collected.

Numbers of Participants

At the end of 2022, PCF Participants included:

- 15 hospitals and outpatient healthcare facilities;
- 435 group entities; and
- 4,910 individual providers.

In 2023, all hospitals renewed participation in the PCF and there were no new hospital applications. The breakdown between Individual Providers and Hospital-Employed Providers is 62% to 38%. Below is a chart created by Integrion demonstrating the breakdown of provider type among Medical Doctors/Doctors of Osteopathy (MD/DO), Physicians Assistants (PA), Nurse Practitioners (NP), Certified Registered Nurse Anesthetists (CRNA) and Chiropractors.



The top 10 physician specialties participating in the Patient's Compensation Fund in order as of the end of 2022 were:

Emergency Medicine (no major surgery)
General Practice (no surgery)
Internal Medicine (no surgery)
Hospitalists
Radiology (minor surgery)
Radiology (diagnostic)
OB/Gyn Surgery
Family Practice (no surgery)
Pediatrics (no surgery)
General Surgery

The top 10 entities participating in the Patient's Compensation Fund by number of Independent Providers as of the end of 2022 were:

Southwest Medical Associates, LLC (132 providers)
OptumCare New Mexico LLC (73 providers)
Main Street Anesthesia of New Mexico (58 providers)
APP of New Mexico ED, PLLC (58 providers)
Radiology Associates of Albuquerque PA (46 providers)
Anesthesia Associates of New Mexico PC (43 providers)
New Mexico Orthopaedic Associates PC (43 providers)
New Mexico Heart Institute LLC (36 providers)
Duke City Urgent Care (33 providers)
Eye Associates of New Mexico Ltd (27 providers)
Pathology Associates of Albuquerque PA (26 providers)

PCF Administrative Operational Expenses

The expenses to operate the Patient's Compensation Fund as of the end of the fiscal year 2022 (June 30) excluding claims paid were:

Contractual (attorney, Integrion contract, actuarial services) $926,410
Intra-agency $816,500
Personnel $136,870
Other (primarily insurance) $2,444,466
Total = $4,324,246

Tracking of Settlement Data

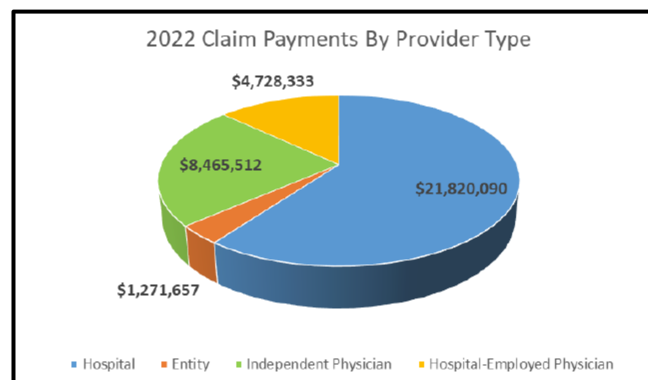
In January 2022, the Board reported to the Legislature its findings that the Patient's Compensation Fund had been mismanaged for many years, resulting in a large surcharge deficit and concerns about the Fund's sustainability. The Board found that the prior administration of the Office of the Superintendent of Insurance had collected inadequate surcharges, performed improper and inadequate risk assessments, and failed to collect and analyze appropriate loss data.

Before 2022, the PCF did not maintain data that identified how settlements were apportioned among hospitals, hospital employed providers and independent providers. This lack of data caused uncertainty as to how the deficit of the PCF should be apportioned between hospitals and independent providers and left the actuary with limited data to accurately assess risk going forward. At the Board's request, Integrion began tracking data regarding settlement payments from the Fund, so that settlement payments are properly attributed to the providers on behalf of whom they were paid.

Since it began as the Third Party Administrator in 2022, Integrion has tracked the allocation of settlements among Qualified Healthcare Providers. It reports that at the end of 2022, there had been:

67 settlements

$36,285,592 paid out for claims in accident years 2010, 2015, 2016, 2017, 2018, 2019 and 2020, with the apportionment as reflected in the following chart.



FINANCIAL CONDITION OF THE FUND

The obligations for settlement payments and the payment of judgments by the PCF are funded by annual surcharges collected from every qualified healthcare provider admitted into the PCF pursuant to NMSA 1978, § 41-5-5. NMSA 1978, § 41-5-25(D). The PCF is required to collect surcharges from:

1) independent providers based on designated classes grouped by risk;
2) entities organized by one or more individual providers, but not majority owned by hospitals;
3) hospitals (including hospital employed providers);

4) outpatient health care facilities; and
5) independent outpatient health care facilities.
NMSA 1978, § 41-5-3, NMSA 1978, § 41-5-5.

The surcharges are to be determined based on an annual independent actuarial study of the PCF which analyzes the risk for the various categories of participating qualified healthcare providers. NMSA 1978, § 41-5-25(D). The PCF Advisory Board served as Hearing Officer regarding surcharge rate setting and on September 21, 2023, September 22, 2023 and October 12, 2023 heard testimony from Gabrielle Adams, M.D., Robert Walling and Daniel Linton. Mr. Walling and Mr. Linton are actuaries from Pinnacle Actuarial Resources who provided testimony regarding the Actuarial Analysis as of December 31, 2022. The Board issued its Proposed Findings, Conclusions and Recommendations In the Matter of Determining Patient's Compensation Fund Surcharge Rates on October 30, 2023. Ex. A. The Superintendent of Insurance issued her Order Setting Patient's Compensation Fund Surcharge Rates For Calendar Year 2024 on October 31, 2023. Ex. B.

The task of the Board acting as Hearing Officer was to review the Actuarial Analysis and hear evidence from the Principal and Consulting Actuary and any Intervenors in the proceeding and to recommend to the Superintendent of Insurance:

1) 2024 surcharge rates for individual providers;
2) 2024 surcharge rates for entities organized by one or more individual providers;
3) 2024 surcharge rates for outpatient health care facilities;
4) 2024 surcharge rates for independent outpatient health care facilities;
5) 2024 surcharge rates for hospitals; and
6) To apportion responsibility for repayment of the PCF deficit.

All members of the nine-member board had the opportunity to ask questions of the actuary and OSI staff and to study the evidence.

The data sources Pinnacle used to prepare the report were PCF Financial Statement Data, Industry Rate Filings, PCF Claims Data (which, as previously discussed are problematic in that apportionment between hospitals and independent providers was not tracked prior to 2022), PCF Current Class Plan and Exposure Data. Based on the evidence presented by the actuary, the Board found that the PCF's projected losses are estimated to be greater than what was estimated through December 31, 2021. Specifically, Pinnacle found, and the Board accepted, that the losses to be paid for all claims occurring prior to December 31, 2022, are estimated to be approximately $266.8 million on a nominal basis (i.e. not including funds that may be earned on invested assets).

The Current Deficit

As of December 31, 2022, the PCF balance was $168.4 million, after reflection of the $32.5 million legislative infusion. The PCF deficit as of December 31, 2022, when estimated losses are calculated on a nominal basis, is therefore approximately $130.9 million, or $98.4 million after reflection of the $32.5 million legislative fund infusion in 2023. Reflecting reserves on a present value basis, using a 3.5% discount rate on invested assets **results in the PCF having a deficit at the end of 2022 of approximately $91.9 million**. This is an increase of $20.1 million since the prior analysis as of December 30, 2021.

The Board found that the deficit (and the fact the deficit has continued to grow despite legislative infusions and the statutory mandate to cure the deficit) is attributable, in large part, to decisions made by prior Superintendents of Insurance to not increase surcharges as recommended

by the Actuaries hired to perform actuarial studies of the PCF. Below is a chart prepared by staff at the Office of the Superintendent of Insurance demonstrating the percentage of surcharge rate increase (“rate change”) by year compared to the actuary’s recommendation (“actuarial report range”) at the Low (Central Estimate) end and the High (90% Confidence Level) end. For nearly every year that the actuary recommended an increase, the surcharge rates were raised to a level lower than the actuary’s lowest confidence recommendation.

NEW MEXICO PATIENTS COMPENSATION FUND

CY	Effective Date	Doctors' Rate Change	Actuarial Report Range		Avg Hospital Rate Change
			Low (Central Estimate)	High (90% Confidence Level)	
1986					
1987					
1988					
1989					
1990					
1991	1/1/1991	50.0%			
1992	4/1/1992	22.0%			
1993	4/1/1993	8.0%			
1994					
1995					
1996	4/1/1996	10.0%			
1997					
1998					
1999					
2000	11/1/2000	10.5%			
2001					
2002					
2003					
2004	6/1/2004	N/A			
2005					
2006					
2007	7/1/2007	9.5%	+19%	+27%	
2008					
2009	9/1/2009	9.5%	+16%	+50%	
2010			-4.6%	+18.6%	0.0%
2011					4.0%
2012			+2.8%	+27.8%	-6.4%
2013					13.7%
2014			+2.3%	+27.2%	8.0%
2015					0.0%
2016	10/1/2016	8.7%	+18.1%	+46.8%	-3.7%
2017	10/1/2017	8.7%			-5.8%
2018		0%	-17%	+0.1%	16.5%
2019					
2020		10.0%	5.5%	27.3%	4.0%
2021		9.3%	W/o changes to Rate Class relativities and Entity Surcharge, Low Ind was 13.8%	W/o changes to Rate Class relativities and Entity Surcharge, High Ind was 37.2%	4.0%
2022	1/1/2022	12.2%	+19.7% (+83.9% w deficit load)	+32.9% (+104.1% w deficit load)	8.6%
2023	1/1/2023	10%	+19% (+87.6% w deficit load)	+28% (+103.4% w deficit load)	38.7%
2024	1/1/2024		+18.9% (+57.7% w deficit load)	+28.5% (+70.4% w deficit load)	

Apportionment of the Deficit

The PCF Advisory Board, acting as Hearing Officer, asked the OSI and Pinnacle to apportion the $98.4 million deficit (before reflection of expected return on investments) among two categories: 1) independent providers, and 2) hospital employed providers and hospitals. Pinnacle allocated $31.65 million of the fund deficit to independent providers and $66.78 million

to hospital employed physicians and hospitals. The Board previously recommended to the legislature and the Superintendent of Insurance that the $32.5 million legislative infusion toward paying off the deficit should benefit providers. The Board agreed to apportion the $32.5 million infusion based on the percentage of independent providers versus the percentage of hospital employed providers. Thus, it recommended that the Superintendent allocate the $32.5 million infusion from the Legislature 62% to independent physicians and surgeons ($20.1 million), and 38% to Hospitals (for their employed physicians) ($12.35 million). The Superintendent of Insurance agreed with and ordered this apportionment.

Trends

Now that OSI is tracking settlement apportionments, it is expected that future claims history data will be increasingly more complete for assessment of risk. It is difficult to predict any trends from the data that currently exists, however, in calendar year 2022, there was better-than-expected claim experience for independent physicians and surgeons and a higher-than-expected claim experience for the hospitals.

Consumer Price Index

The Consumer Price Index (CPI) for all urban consumers was used to calculate the increase to the per occurrence limit for independent physicians and surgeons. Evaluating the index as of year-end produces an adjustment factor of 6.44 percent. The result is an increase to the per occurrence limit from $803,224 to $854,991 – widening the PCF's exposed layer from $553,224 to $604,991. See the below table demonstrating the resulting increase in the PCF cap due to the cost-of-living increase over the last two years.

Date	**PCF Cap**
Effective January 1, 2022	$750,000
Effective January 1, 2023	$803,224
Effective January 1, 2024	$854,991

Investments

The actuary and the PCF Advisory Board have recommended, and the Superintendent of Insurance already expressed an intention to work with the state investment council to take advantage of the current interest rate environment with a conservative investment strategy for the PCF to alleviate some of the fund's deficit.

Surcharge Rate Increases – Independent Providers

The surcharge rate increases recommended by the actuary for Independent Physicians were as follows:

+18.9% (central estimate) and +28.5% (75% confidence level).
+5.7 percent to support the additional exposure created by the current CPI.

The Board recommended an increase of 14.4% to reflect a reduction for the batch claim add-on that was included in the actuary's report, but that the Board agreed should be discontinued.

The recommendation at the central estimate level rather than a higher confidence level was based on balancing of a multitude of factors, including, but not limited to, the tension between the potential exodus of eligible practitioners from the PCF if surcharge rates render participation cost prohibitive and the risk of underfunding the PCF by not assessing actuary-recommended surcharge increases. The Board recommended that a deficit surcharge not be assessed against independent providers this year.

The Superintendent of Insurance adopted the PCF Advisory Board's Findings of Fact but assessed a 10% increase in surcharges for Independent Providers. The Superintendent did not assess deficit reduction surcharges against Independent Providers.

Surcharge Rate Increases – Hospitals

The surcharge rate increases recommended by the actuary for hospitals were as follows:

+11.8% (central estimate) and +20.9% (75% confidence level).
+5.7 percent to support the additional exposure created by the current CPI.

The Board recommended an increase of 7.62% to reflect a reduction for the batch claim add-on that was included in the actuary's report, but that the Board agreed should be discontinued. In addition, the Board recommended adding an amount equal to the deficit repayment portion for this year after the Superintendent determined the allocation of the $32.5 million legislative infusion.

The Superintendent of Insurance ordered surcharges be increased by 11.8%. She set the hospital deficit reduction assessment at 46%.

Entities

The insurance industry standard practice is to increase premiums paid by individual insured providers by an additional 10 percent to provide coverage for an entity under which the insured provider(s) practice. Using this standard practice, the PCF surcharge payable by an entity qualified under the Medical Malpractice Act is 10 percent of the aggregate surcharges for the independent providers who practice in the entity.

Independent Outpatient Healthcare Facilities

The Board did not have data to deviate from the actuary's recommendation that Independent Outpatient Healthcare Facility surcharges be based upon a charge of 10% of the premium for each covered provider practicing in the Independent Outpatient Healthcare Facility. The recommended surcharge for Independent Outpatient Healthcare Facilities was therefore 10% of the premium (surcharge) for each covered provider practicing in the Independent Outpatient Healthcare Facility. This is what the Superintendent Ordered.

The PCF Advisory Board recommended that in the future the PCF should compile data on a per procedure basis—as it does for Hospitals—for Independent Outpatient Healthcare Facilities for use in determining the most appropriate method for assessing surcharges and surcharge changes in the future.

The Superintendent of Insurance accepted some of the Board's recommendations but did not raise the surcharge rates as high as recommended. See Final Order, Ex. B.

The Board once again respectfully encourages the Legislature to appropriate funding to reduce the PCF's past deficit.

Five members of the Advisory Board (New Mexico Medical Society "NMMS" Representative William Ritchie, NMMS Representative Nick Autio, Hospital Representative Troy Clark, Hospital Representative Mike Dekleva, and Certified Nurse Practitioner Representative Alfonzo Martinez,) identify to the Legislature the former Superintendent's recommended changes to the sections of the Medical Malpractice Act, which they submit will improve the solvency of the PCF. See Ex. C. Four members of the Advisory Board, New Mexico Trial Lawyers Association "NMTLA" Representative Kathy Love, NMTLA Representative Ray Vargas, Patient Representative Ezra Spitzer, and Patient Representative Ellen Stevens disagree and take the position that such recommendations are not appropriate for this Board.

RESPECTFULLY SUBMITTED BY:

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

IN THE MATTER OF DETERMINING	)	
PATIENT'S COMPENSATION FUND	)	
SURCHARGE RATES	)	**Docket No. 2023-0018-CF**
________________________________	)	

PROPOSED FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

FINDINGS OF FACT:

1. On September 21, 2023, and again on October 12, 2023, a quorum of the Advisory Board of the New Mexico Patient's Compensation Fund ("PCF") conducted a duly noticed public hearing to receive evidence and comment on proposed surcharges to be levied pursuant to NMSA 1978, § 41-5-25(D).

2. The Patient Compensation Fund Advisory Board's objective in holding this public hearing is to advise the Office of the Superintendent of Insurance ("OSI") regarding the setting of surcharges to eliminate the deficit and create a sustainable PCF for the future.

3. Mr. Robert Walling of Pinnacle Actuarial Resources testified at the hearing as a qualified casualty actuary. Exhibits A through ___ were admitted into the record.

4. The obligations of the PCF are funded by annual surcharges collected from every qualified healthcare provider ("QHP") admitted into the PCF pursuant to NMSA 1978, § 41-5-5. NMSA 1978, § 41-5-25(D).

5. The PCF is required to collect surcharges from: (a) independent providers based on designated classes grouped by risk; (b) entities organized by one or more individual providers, but not majority owned by hospitals; (3) hospitals (including hospital employed providers); (4) outpatient health care facilities; and (5) independent outpatient health care facilities. NMSA 1978, § 41-5-3, NMSA 1978, § 41-5-5.

6. NMSA 1978, § 41-5-25(D) requires the PCF Custodian to determine the surcharges based on sound actuarial principles.

7. NMSA 1978, § 41-5-25(D) requires the PCF Custodian to contract for an annual independent actuarial study of the PCF. The purpose of the actuarial study is two-fold:

   a. To analyze risk based on all available data to set surcharges to cover expected payouts for occurrences for the year the surcharges are collected.

b. To set surcharges "with the intention of bringing the fund to solvency with no projected deficit by December 31, 2026. All qualified and participating hospitals and outpatient health care facilities shall cure any fund deficit attributable to hospitals and outpatient health care facilities by December 31, 2026." NMSA 1978 § 41-5-25(F).

8. Third Party Administrator Integrion contracted with the consulting actuarial firm Pinnacle Actuarial Resources ("Pinnacle") to conduct an actuarial study of the PCF as of December 31, 2022. Robert Walling of Pinnacle prepared a report which was admitted as evidence at the Surcharge Rate Setting Hearing on September 21, 2023. *See* Exhibit A.

9. The data sources Pinnacle used to prepare the report were:

a. PCF Financial Statement Data

b. Industry Rate Filings

c. PCF Claims Data

d. PCF Current Class Plan and Exposure Data

Deficit

10. The projected losses were estimated by Pinnacle as greater than what was estimated through December 31, 2021.

11. Pinnacle estimated the losses to be paid for all claims occurring prior to December 31, 2022 to be approximately $266.8 million on a nominal basis (i.e. not including funds that may be earned on invested assets).

12. As of December 31, 2022, the PCF balance was $168.4 million, after reflection of the $32.5 million legislative infusion.

13. The PCF deficit as of December 31, 2022, when estimated losses are calculated on a nominal basis, is therefore approximately $130.9 million, or $98.4 million after reflection of the $32.5 million legislative fund infusion in 2023.

14. Reflecting reserves on a present value basis, using a 3.5% discount rate on invested assets, results in the PCF having a deficit of approximately $91.9 million, after reflection of the legislative infusion in 2023. This is an increase of $20.1 million since the prior analysis as of December 30, 2021.

15. The deficit is attributable, in large part, to decisions made by prior Superintendents of Insurance to not increase surcharges as recommended by the Actuaries hired to perform actuarial studies of the PCF.

16. The PCF Advisory Board, acting as Hearing Officer, asked the OSI and Pinnacle to apportion the deficit in two categories: one for independent providers, and the second for hospital employed providers and hospitals.

17. Pinnacle allocated $31.65 million, of the fund deficit to independent providers.

18. Pinnacle allocated the remaining $66.78 million to hospital employed physicians and hospitals.

Future Risk

19. The Consumer Price Index (CPI) for all urban consumers was used to calculate the increase to the per occurrence limit for independent physicians and surgeons. Evaluating the index as of year-end produces an adjustment factor of 6.44 percent. The result is an increase to the per occurrence limit from $803,224 to $854,991 – widening the PCF's exposed layer from $553,224 to $604,991. The analysis of MPLI increased limits factors ("ILF's") indicate that rates for independent physicians should be increased an additional +5.7 percent to support the additional exposure.

20. Without considering the deficit surcharge, the overall rate impact for independent physicians is an increase of +18.9 percent at the expected level and +28.5 percent at the 75 percent confidence level.

21. Pinnacle allocated 42.8 percent, or, $56.0 million, of the fund deficit to independent physicians & surgeons. Adjusted this amount by $24.4 million, or 75% of the $32.5 million to reflect the funds allocated to physicians and surgeons by the New Mexico legislature resulting in a net deficit allocation of $31.6 million. For 2024, the estimated load is 32.7 percent. Including the deficit surcharge produces an overall rate increase of +57.7 percent at the expected level and +70.4 percent at the 75 percent confidence level. *See* Ex. A, p. 4. The reduction in expected deficit surcharge is driven by better-than-expected claim experience in calendar year 2022 for independent physicians and surgeons.

22. The insurance industry standard practice is to increase premiums paid by individual insured providers by an additional 10 percent to provide coverage for an entity under which the insured provider(s) practice. Using this standard practice, the PCF surcharge payable by an entity qualified under the Medical Malpractice Act is 10 percent of the aggregate surcharges for the independent providers who practice in the entity.

23. Pinnacle allocated 57.2 percent, or, $74.9 million, of the fund deficit to hospitals. Adjusted this amount by $8.1 million, or 25% of the $32.5 million to reflect the funds allocated to hospitals

by the New Mexico legislature resulting in a net deficit allocation of $66.8 million. For 2024, the estimated load is 49.1 percent. Including the deficit surcharge produces an overall rate increase of +66.7 percent at the expected level and +80.2 percent at the 75 percent confidence level. *See* Ex. A, p. 4. The increase in expected deficit surcharge levels is driven by higher-than-expected claim experience in calendar year 2022 for the hospitals.

24. Should the Superintendent of Insurance allocate the $32.5 million infusion 50% to the independent physicians and surgeons, and 50% to hospitals, the indicated deficit surcharge load is changed from 32.7% to 41.0% for independent physicians and surgeons and 49.1% to 43.1% for hospitals. The overall rate indications are thus +67.6% and +60.0% at the expected level and +81.2% and +73.0% at the 75% confidence level for independent physicians and surgeons and hospitals, respectively. Ex. A, pg. 6.

25. Should the Superintendent of Insurance allocate the $32.5 million infusion 62% to the independent physicians and surgeons, and 38% to the hospitals, the indicated deficit surcharge load is changed from 32.7% to 46.0% for hospitals. Including the deficit surcharge produces an overall rate increase of +63.2 percent at the expected level and +76.5 percent at the 75 percent confidence level. Supplemental Exhibit at pg. 2.

26. Pinnacle's rate level indication for independent physicians and surgeons suggests an increase of +10.0 percent on an expected value basis. At a 75 percent level of statistical confidence, the indicated increase is +18.9 percent.

27. The analysis of MPLI ILF's for independent physicians and surgeons indicate rates should be increased +5.7 percent to support the widening of the exposed layer from $553,224 to $604,991 due to the consumer price index adjustment required by NMSA 1978, § 41-5-6.

28. Pinnacle's rate level indication for hospitals suggests an increase of +11.8 percent on an expected value basis. At a 75 percent level of statistical confidence, the indicated increase is +20.9 percent.

29. After adding the deficit surcharge load of 49.1 percent, the overall rate increase for hospitals is 66.7 percent at the expected level and 80.2 percent at the 75 percent confidence level. *See* Ex. A, page 5.

30. Reviewing entity coverage charges for business entities covered by the PCF, and based upon review of industry rate filings, Pinnacle found that a typical entity charge is 10% of the premium for each covered provider in the entity. Individual analysis of practice groups would be

inefficient and there is no indication that the industry standard is unreasonable. The recommended entity charge is therefore 10% of the premium (surcharge) for each covered provider in the entity.

Independent Outpatient Healthcare Facilities

31. **The Committee does not currently have data to deviate from Pinnacle's recommendation that Independent Outpatient Healthcare Facility surcharges be based upon a charge of 10% of the premium for each covered provider practicing in the Independent Outpatient Healthcare Facility. The recommended surcharge for Independent Outpatient Healthcare Facilities is therefore 10% of the premium (surcharge) for each covered provider practicing in the Independent Outpatient Healthcare Facility.**
32. **Going forward, the PCF should compile data on a per procedure basis—as it does for Hospitals—for Independent Outpatient Healthcare Facilities for use in determining the most appropriate method for assessing surcharges and surcharge changes in the future.**

BASED ON THESE FINDINGS, THE PCF ADVISORY BOARD, ACTING AS THE HEARING OFFICER, HEREBY CONCLUDES AND RECOMMENDS:

A. PCF surcharges for independent providers should be increased by 14.4 percent, which represents the recommended increase of 18.9% minus the batch claim add-on, given that batch claim coverage has been discontinued. This recommendation is based, in part, on balancing a multitude of factors including, but not limited to, the tension between the potential exodus of eligible practitioners from the PCF if surcharge rates render participation cost prohibitive and the risk of underfunding the PCF by not assessing actuary-recommended surcharge increases. A deficit surcharge should not be assessed against independent providers this year.

B. The PCF Advisory Committee recommends that the Superintendent allocate the $32.5 million infusion from the Legislature 62% to Independent physicians and surgeons, and 38% to Hospitals, based upon the ratio of independent physicians to physicians employed by hospitals.

C. For hospitals, we recommend accepting the rate increase proposed by the actuarial report at the expected level which is 11.8%, with one exception, reducing that figure by the

amount included for the “Batch Claim Expected Loss” amount of 4%...which results in a rate increase of approximately 7.62%. This amount is to have added to it an amount equal to the deficit repayment portion for this year, which will need to be recalculated after the allocation of the $32.5M is allocated based upon the recommendation of the PCF Advisory Committee based on proportional number of providers between independent and employed is determined.

D. PCF surcharges for provider owned entities should continue to be assessed at 10 percent of the cumulative individual QHP surcharges for all individual QHPs who practice within the entity.

E. **Independent Outpatient Healthcare Facility surcharges continue to be an additional 10% of the surcharges calculated for the practitioners working within the Independent Outpatient Healthcare Facility. Going forward, the PCF shall keep data on a per procedure basis, as it does for hospitals, for use in determining the most appropriate way to calculate surcharges for Independent Outpatient Healthcare Facilities in the future.**

DATED this ______ day of October, 2023

____
William Ritchie, MD
PCF Advisory Board Chair

____
Kathy Love
PCF Advisor Board Vice Chair

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing *Proposed Findings, Conclusions and Recommendations* was sent by email to the following individuals, as indicated below, on this __________ day of ____________, 2023.

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

IN THE MATTER OF DETERMINING PATIENT'S COMPENSATION FUND SURCHARGE RATES FOR CALENDAR YEAR 2024	)))))	**Docket No. 2023-0018-PCF**

ORDER SETTING PATIENT'S COMPENSATION FUND SURCHARGE RATES FOR CALENDAR YEAR 2024

THIS MATTER comes before the New Mexico Superintendent of Insurance as Custodian of the Patient's Compensation Fund (hereinafter referred to as the "Custodian") upon her receipt of the Patient's Compensation Fund ("PCF") Advisory Board's Proposed Findings, Conclusions and Recommendations after the PCF Advisory Board conducted a properly noticed public hearing on PCF surcharge rates and assessments for deficit reduction. The Proposed Findings, Conclusions and Recommendations of the PCF Advisory Board are incorporated into this Order by reference. The Custodian, having reviewed the PCF Advisory Board's Proposed Findings, Conclusions and Recommendations, having reviewed the record, and being otherwise fully advised in the premises, **HEREBY FINDS AND CONCLUDES:**

1. The PCF Advisory Board's Findings of Fact are supported by substantial evidence in the record as a whole and the PCF Custodian adopts those Findings of Fact as her own.

2. The PCF Advisory Board's Conclusions and Recommendations are adopted with the changes set forth below.

IT IS THEREFORE ORDERED:

A. PCF surcharges for independent providers shall be increased by 10 percent, and no deficit reduction amount will be assessed against independent providers this year. The PCF Advisory Board's reasoning for the surcharge rate is sound and is accepted by the Custodian. However, the

Custodian will be able to reduce the rate increase further than that recommended by the PCF Advisory Board by working with the state investment council to take advantage of the current interest rate environment with a conservative investment strategy for the PCF, without further contributing to the deficit.

B. The Custodian allocates the $32.5 million infusion from the Legislature 62 percent to the deficit attributable to independent providers and 38% to the deficit attributable to the hospitals, based upon the ratio of independent providers to providers employed by hospitals.

C. PCF surcharges for hospitals shall be increased by the amount recommended by the actuarial report at the expected level which is 11.8 percent. That rate will not be reduced by the batch claims amount, since batch claims remain a possibility. The hospital deficit reduction assessment will by set at 46 percent, based on the allocation of the $32.5 million recommended by the PCF Advisory Board. This amount is within a zone of reasonableness suggested by the evidence in the record.

D. Independent outpatient health care facility surcharges will continue to be an additional 10 percent of the surcharges calculated for qualified health care providers employed or contracted with the independent outpatient health care facilities, and this surcharge will be reassessed when sufficient data is available.

DONE AT ORDERED at Santa Fe, New Mexico this 31st day of October, 2023.

HONORABLE ALICE T. KANE
New Mexico Superintendent of Insurance as
Custodian of the Patient's Compensation Fund

Exhibit C

Submitted by five members of the Advisory Board:
New Mexico Medical Society "NMMS" Representative William Ritchie,
NMMS Representative Nick Autio,
Hospital Representative Troy Clark,
Hospital Representative Mike Dekleva, and
Certified Nurse Practitioner Representative Alfonzo Martinez)

As was indicated the former Superintendent's prior Final Order on PCF Surcharges, which was entered on October 7, 2022, adopting the annual increases proposed by prior Actuaries "would likely result in decreased provider participation in the PCF and a decrease in the number of providers who deliver services to New Mexicans." A decrease in provider participation in the PCF would further exacerbate the PCF's deficit. As part of the former Superintendent's Final Order on PCF Surcharges, which was entered on October 7, 2022, the former Superintendent offered "several recommended actions that would deliver significant cost savings to the PCF for an extended period of time." The Advisory Board identifies to the Legislature the former Superintendent's recommended changes to the sections of the Medical Malpractice Act identified below, which would improve the operation of the PCF:

41-5-3(I) and (K): Define "malpractice claim" and "occurrence" to make it clear that a single individual injury event should be treated as a single malpractice claim or occurrence, regardless of the number of contributing providers or alleged acts of malpractice.

41-5-3(J): Define "medical care and related benefits" to be limited only to amounts actually paid by or on behalf of an injured patient or accepted by a health care provider in payment of charges. Make clear that amounts charged (but typically "written off" or dramatically reduced for insurance, Medicaid, or Medicare purposes) are not "reasonable" expenses.

41-5-6(B): Change "consumer price index for all urban consumers" to a different medical subcategory CPI, or postpone the increases until the PCF reaches solvency, or change the increase to a set amount per year.

41-5-7: Replace the following paragraph that was removed from the prior version of the Medical Malpractice Act by House Bill 75: "Payment for medical care and related benefits shall be made as expenses are incurred." Add a provision that the PCF will not settle, and a court may not order, future medical expenses as a lump sum payment.

41-5-10: Replace this provision that was removed from the prior version of the Medical Malpractice Act by House Bill 75, to allow examination to determine the necessity of future medical care.

41-5-25: Include a provision that the PCF custodian shall not pay any settlement or judgment that requires payment of past medical expenses in excess of reasonable expenses as defined by the Medical Malpractice Act or future medical expenses in a lump sum or discounted to present value.

41-5-25: The Medical Malpractice Act should be revised to expressly authorize the PCF Custodian to continue the conventional practice of evaluating and approving all proposed settlements when the case implicates the PCF.

41-5-25(F): Should be revised to state that the deficit reductions obligation only applies to "qualified and participating hospitals and outpatient healthcare facilities."

Lastly, the Legislature should include a venue provision in the Medical Malpractice Act that requires medical malpractice claims to be brought in judicial district for the county where the medical care occurred or in the county where the patient resided at the time of the alleged malpractice.