

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 2025)

Docket No. 2024-0005

PROPOSED FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

FINDINGS OF FACT:

1. On September 11, 2024, and again on October 11, 2024, 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 ("Pinnacle") testified at the hearing as a qualified casualty actuary. Exhibits A and B 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 Integriion contracted with the consulting actuarial firm Pinnacle Actuarial Resources (“Pinnacle”) to conduct an actuarial study of the PCF as of December 31, 2023. Robert Walling of Pinnacle prepared a report (“Report” or “Pinnacle’s Report”) which was admitted as evidence at the Surcharge Rate Setting Hearing on September 5, 2024. *See Exhibit B.*

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 Independent Practitioners’ deficit in the PCF is fully paid off.

11. The projected losses were estimated by Pinnacle as greater than what was estimated through December 31, 2022.

12. Although projected losses increased, the Fund’s deficit position has improved.

13. As of December 31, 2022, the deficit (inclusive of the \$32.5 million legislative infusion) was \$98.4 million.

14. Pinnacle estimated the losses to be paid for all claims occurring prior to December 31, 2023 to be approximately \$292.9 million on a nominal basis (i.e. not including funds that may be earned on invested assets).

15. As of December 31, 2023, the PCF balance was \$219.3 million.

16. Based on the difference between the Fund’s estimated losses and its balance, the Fund’s deficit position as of December 31, 2023 was estimated to be \$73.6 million.

17. Reflecting reserves on a present value basis, using a 3.5% discount rate on invested assets, Pinnacle’s actuarial analysis results in the PCF having a deficit of approximately \$69.8 million. This is a decrease of \$22.0 million since the prior analysis as of December 31, 2022.

Future Risk

18. 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 3.32 percent. The result is an increase to the per occurrence limit from \$854,991 to \$883,404 – widening the PCF’s exposed layer from \$604,991 to \$633,404. The analysis of MPLI increased limits factors (“ILF’s”) indicate that rates for independent physicians should be increased an additional +2.4 percent to support the additional exposure.

19. A 3-year average for all urban consumers was used to calculate the increase to the per-occurrence limit for independent outpatient healthcare facilities. The CPI adjustment for this year is 5.62 percent, which increased the PCF’s exposed layer from \$500,000 to \$556,239.

20. In 2024, the Legislature approved a \$35.9 million infusion to the PCF. The infusion was allocated 100 percent to independent physicians and surgeons and more than eliminated the indicated deficit as of December 31, 2023. Any remaining funds will be held as surplus that will inure to the benefit of the independent physicians and surgeons. On a nominal basis, the indicated surplus is \$17.5 million.

21. Without a deficit surcharge, due to elimination of the deficit, the overall rate impact for independent physicians is an increase of +8.6 percent at the expected level and +17.9 percent at the 75 percent confidence level.

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. The allocated deficit to the hospitals is \$52.4 million

24. Including the deficit surcharge produces an overall rate increase of +19.7 percent at the expected level and +29.8 percent at the 75 percent confidence level. The decrease in expected deficit surcharge levels is driven by lower-than-expected claim experience in calendar year 2023 for the hospitals.

25. Pinnacle’s rate level indication for independent physicians and surgeons suggests an increase of +8.6 percent on an expected value basis. At a 75 percent level of statistical confidence,

the indicated increase is +17.9 percent. These indicated rate changes include the class assignment changes found on page 21 of the Pinnacle Report, which recommend the following changes:

| NM Class Code | Specialty | Current Class | Proposed Class | Exposures | Current Rate | Proposed Rate | Proposed Factor | Indicated Surcharge Impact | % of Surcharge |
|-------------------------------|--|---------------|----------------|-----------|--------------|---------------|-----------------|----------------------------|----------------|
| 10055 | Hematology - No Surgery | 1 | 2 | 9 | 4,761 | 6,348 | 1.00 | 14,283 | 33.3% |
| 10001 | Acupuncture - Other than Acupuncture Anesthesia | 2 | 3 | 0 | 6,348 | 7,617 | 1.20 | 0 | 0.0% |
| 10024 | Dermatology - No Surgery | 2 | 1 | 40 | 6,348 | 4,761 | 0.75 | (63,480) | -25.0% |
| 10006 | Hospitalism | 2 | 3 | 277 | 6,348 | 7,617 | 1.20 | 351,513 | 20.0% |
| 10078 | Neurology - Including Child - No Surgery | 2 | 3 | 18 | 6,348 | 7,617 | 1.20 | 22,842 | 20.0% |
| 10079 | Neurology - Including Child - No Surgery - All Other | 2 | 3 | 13 | 6,348 | 7,617 | 1.20 | 16,437 | 20.0% |
| 10010 | Neurology - Including Child - No Surgery - Pain Management | 2 | 3 | 14 | 6,348 | 7,617 | 1.20 | 17,766 | 20.0% |
| 10110 | Pediatrics - No Surgery | 3 | 2 | 133 | 7,617 | 6,348 | 1.00 | (468,238) | -16.7% |
| 10113 | Pulmonary Diseases - No Surgery | 4A | 3 | 30 | 9,521 | 7,617 | 1.20 | (97,120) | -20.0% |
| 10124 | Podiatry/Chiropractic - No Surgery | 4 | 3 | 0 | 13,426 | 7,617 | 1.20 | 0 | 0.0% |
| 10148 | Radiology - Therapeutic - Minor Surgery | 5 | 5A | 1 | 13,966 | 10,792 | 1.70 | (3,174) | -22.7% |
| Total Surcharge Impact | | | | | | | | 132,888 | |

26. Pinnacle’s rate level indication for hospitals, including Deficit Surcharge, suggests an increase of +19.7 percent on an expected value basis. At a 75 percent level of statistical confidence, the indicated increase is +29.8 percent.

27. 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

28. There are currently only two Independent Outpatient Healthcare Facilities in the PCF. Pinnacle suggested surcharge rates for Independent Outpatient Healthcare Facilities, which can be found below and were set forth on page 7 of Pinnacle Report:

| Independent Outpatient Healthcare Facilities Rates | | |
|---|----------------------|---|
| Facility Type | Exposure Type | January 1, 2025 Indicated Rate at \$556,239 xs \$500,000 Limit |
| Cardiac Rehabilitation Centers | Per 100 Visits | 39.39 |
| College/University Health Centers | Per 100 Visits | 17.54 |
| Community Health Centers | Per 100 Visits | 27.40 |
| Dialysis Centers | Per 100 Visits | 38.37 |
| Home Health/Hospice Care | Per 100 Visits | 7.61 |
| Medical Laboratories | Per \$1,000 Receipts | 1.86 |
| Medispas | Per 100 Visits | 27.40 |
| Mental Health Counseling Centers | Per 100 Visits | 28.71 |
| Pathology Laboratories | Per \$1,000 Receipts | 1.58 |
| Physical/Occupational Rehabilitation Centers | Per 100 Visits | 32.00 |
| Quality Control/Reference Laboratories | Per \$1,000 Receipts | 1.67 |
| Sleep Centers | Per 100 Visits | 27.40 |
| Substance Abuse Counseling Centers | Per 100 Visits | 41.03 |
| Surgery Centers | Per 100 Visits | 152.25 |
| Urgent Care Centers | Per 100 Visits | 67.98 |
| X-Ray/Imaging Centers | Per \$1,000 Receipts | 1.86 |

29. Going forward, the PCF should continue to 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 8.6 percent.
- B. Pursuant to Exhibit 6 of Pinnacle’s Report (NM PCF Reserves 12-31-2023_v3 (No Batch Provision)), for hospitals, we recommend accepting the rate increase proposed by the actuarial Report at the expected level which is 19.7 percent, which includes the deficit surcharge as set forth in the following table:

| | Indicated Assessment Level Change on January 1, 2025 (1) | Increased Limits Factor to \$500,000 vs \$250,000 (2) | Indicated Rate Change (3) | Deficit Surcharge as a % of Surcharge (4) | Indicated Rate Change w/ Deficit Surcharge (5) |
|-----------------|---|--|------------------------------|--|---|
| w/o Risk Margin | -5.7% | 0.0% | -5.7% | 26.8% | 19.7% |
| w/ Risk Margin | 2.4% | 0.0% | 2.4% | 26.8% | 29.8% |

- C. 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.
- D. We recommend making the following class assignment changes:

| HA Class | Current Class | Proposed Class | Current Rates | Proposed Rate | Proposed Rate | Proposed Rate | Indicated Surcharge Impact | % of Surcharge Impact |
|--|---------------|----------------|---------------|---------------|---------------|---------------|----------------------------|-----------------------|
| 10025 Hematology - No Surgery | 1 | 2 | 9 | 4,781 | 6,348 | 1,560 | 14,283 | 33.3% |
| 10001 Anesthesiologists - Other than Anesthesiologists | 1 | 3 | 0 | 6,348 | 7,617 | 1,269 | 0 | 0.0% |
| 10024 Dermatology - No Surgery | 1 | 1 | 40 | 6,348 | 4,761 | 0.75 | (53,460) | -25.0% |
| 10016 Hospitalist | 2 | 3 | 277 | 6,348 | 7,617 | 1,269 | 331,513 | 20.0% |
| 10070 Neurology - Including Child - No Surgery | 2 | 3 | 16 | 6,348 | 7,617 | 1,269 | 21,512 | 20.0% |
| 10079 Neurology - Including Child - No Surgery - All Other | 2 | 3 | 13 | 6,348 | 7,617 | 1,269 | 16,497 | 20.0% |
| 10080 Neurology - Including Child - No Surgery - Pain Management | 2 | 3 | 14 | 6,348 | 7,617 | 1,269 | 17,766 | 20.0% |
| 10110 Podiatrists - No Surgery | 3 | 2 | 131 | 7,617 | 6,348 | 1,000 | (166,239) | -16.7% |
| 10139 Pulmonary Physicians - No Surgery | 0A | 3 | 10 | 9,511 | 7,617 | 1,200 | (51,100) | -20.0% |
| 10124 Podiatrists/Chiropractors - No Surgery | 4 | 3 | 9 | 11,426 | 7,617 | 1,200 | 0 | 0.0% |
| 10116 Radiology - Therapeutic - Minor Surgery | 5 | 5A | 1 | 13,556 | 10,792 | 1,700 | (1,174) | -21.7% |
| Total Surcharge Impact | | | | | | | 152,888 | |

- E. The surcharge rates for Independent Outpatient Healthcare Facilities set forth in the following table and on page 7 of Pinnacle’s Report should be adopted:

| Independent Outpatient Healthcare Facilities Rates | | |
|--|----------------------|---|
| Facility Type | Exposure Type | January 1, 2025 Indicated Rate at \$556,239 xs \$500,000 Limit |
| Cardiac Rehabilitation Centers | Per 100 Visits | 39.39 |
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| Surgery Centers | Per 100 Visits | 152.25 |
| Urgent Care Centers | Per 100 Visits | 67.98 |
| X-Ray/Imaging Centers | Per \$1,000 Receipts | 1.86 |

F. 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 18th day of October, 2024

Signed by:

William Ritchie

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William Ritchie, MD

PCF Advisory Board Chair

DocuSigned by:

Kathleen Love

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PCF Advisor Board Vice Chair

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 18th day of October 2024, I filed the forgoing Proposed Findings, Conclusions, and Recommendations through the OSI’s e-filing system, which caused the parties to be served by electronic means, as more fully reflected on the eService recipients list for this case.

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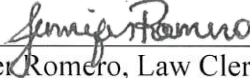
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