

**2025 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: November 19, 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 8, April 9, August 2, September 11, October 11 and November 19, 2024.

OPERATIONS OF THE FUND

Alice Kane has served as Superintendent of Insurance since July 11, 2023, and participated in several PCF Advisory Board meetings. 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 was renewed for an additional year on June 30, 2024. After June 30, 2025, its contract can be renewed for another six months after which OSI will have to issue a Request for Proposal which Integrion and other companies may bid on to serve as the Third Party Administrator of the PCF. Integrion's proposed budget for fiscal 2025 is \$1,627,696 plus estimated GRT of \$124,111.82, for a total of \$1,751,807.82.

Batch Claims

In 2022 when this Advisory Board began examining the PCF and the causes of the deficit that were the subject of numerous hearings before the Legislature in 2021, we learned that about a third of the deficit was caused by two groups of so called "batch claims." Batch claims are systematic patterns of behavior by individual providers that produce large numbers of claims. The PCF was impacted by two doctors. The first was a doctor who performed improper back surgery on patients. Approximately 69 claims were settled in 2012 for occurrences during 2006-2009. Those settlements amounted to \$11.7 million in payouts from the PCF. The second group of claims were against a doctor who improperly implanted pacemakers and defibrillators in patients. There were 31 incidents that occurred from 2005-2010 and those claims amounted to payouts from the PCF of \$10,182,000. Those payouts were made by OSI despite the three (3) occurrence limit set forth in NMSA 1978, § 41-5-5.

As a result of those large claims, in 2022 OSI purchased "re-insurance" coverage to protect against similar large losses. In 2023, the Advisory Board evaluated proposals for continued reinsurance coverage and concluded that, in light of the low risk of future batch claims based on the three-occurrence limit set forth in NMSA 1978, § 41-5-5, and high cost of re-insurance, future batch claim insurance is not necessary.

In past years, the actuarial analyses have provided for the possibility of batch claims, having the effect of increasing the recommended rates for both individual practitioners as well as hospitals. This year, for the same reason that the Board recommended forgoing reinsurance for

batch claims, the Board requested that the actuary remove the risk of batch claims from the analysis of surcharge rate indications. This significantly reduced the rate change for both independent practitioners and hospitals.

Carriers

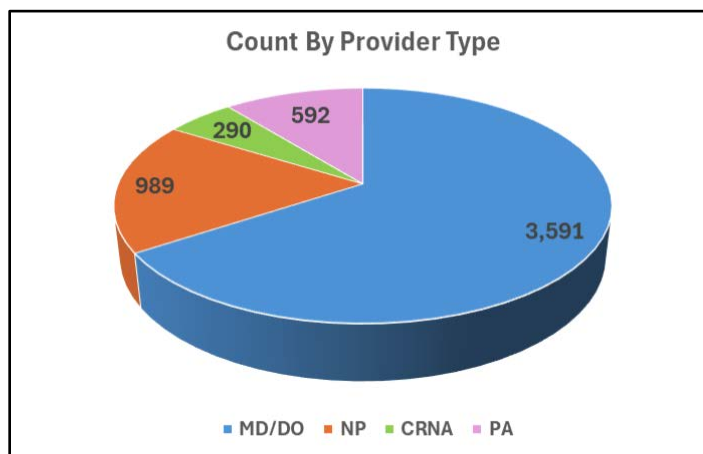
There has been no change from 2023 in the number of participating carriers authorized to write underlying coverage to Qualified Healthcare Providers. The three carriers that do the most underwriting in New Mexico remain Coverys (ProSelect), AEIX and The Doctors Company. Providers who are insured by those three carriers are responsible for the bulk of the surcharges collected by the PCF.

Numbers of Participants and Surcharges Collected

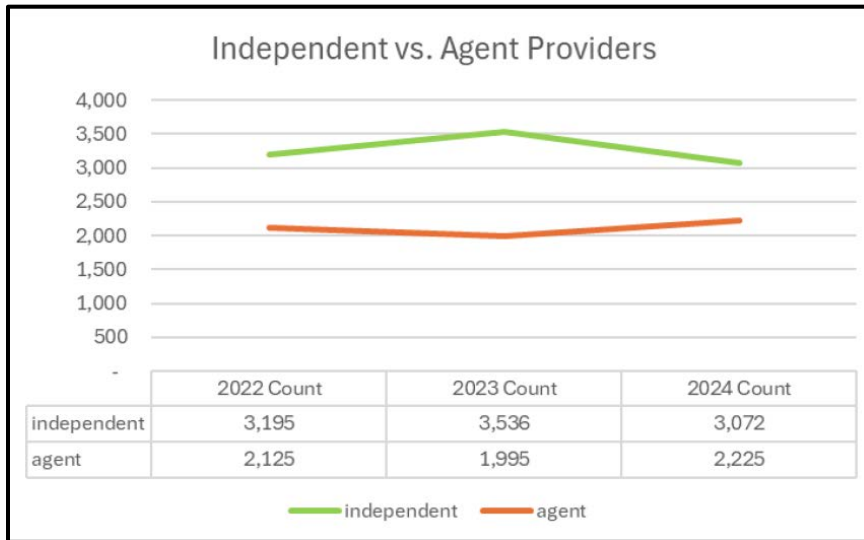
As of midway through 2024, PCF Participants included:

- 16 hospitals and outpatient healthcare facilities;
- 338 group entities; and
- 5,297 individual practitioners.

Below is a chart created by Integriion 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).

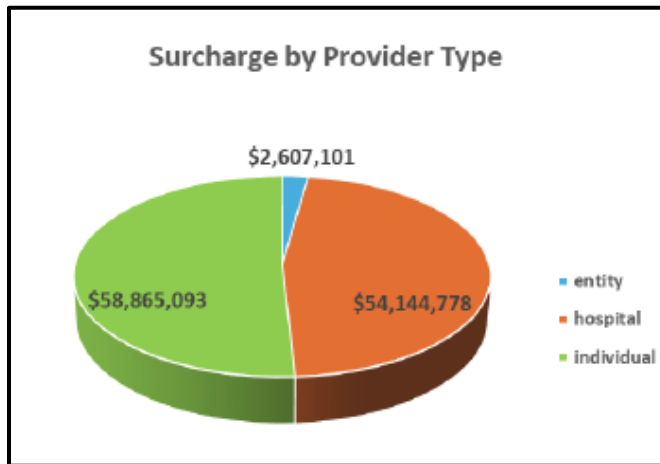


There are 490 independent Nurse Practitioners and 499 hospital-employed Nurse Practitioners. The below chart demonstrates the numbers of independent providers versus the numbers of “agent providers” (practitioners employed by hospitals) in all of 2022, all of 2023, and through July of 2024.

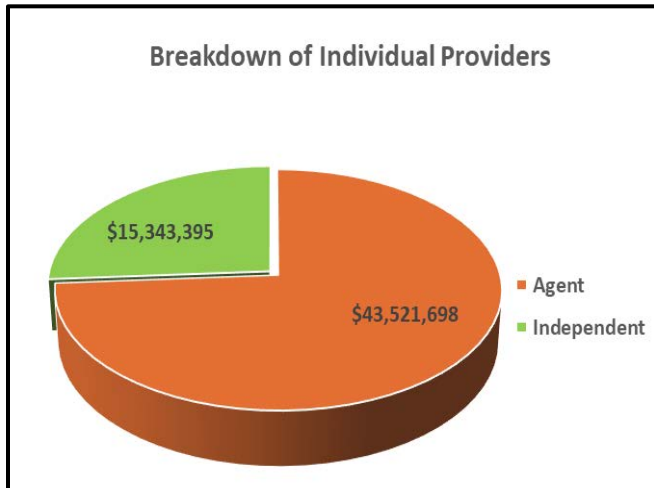


The total surcharges collected in the first half of 2024 were \$115,616,972 compared to 2023 surcharges of \$74,707,553. This represents an increase of 54.8% from the prior year and is attributed primarily to collections of the hospitals’ deficit repayment schedule.

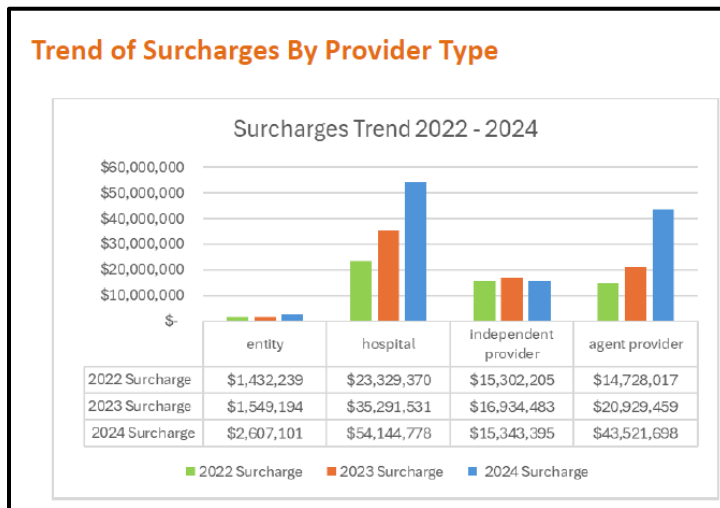
The below chart demonstrates how much has been collected in surcharges among the hospitals, independent practitioners and entities (practice groups).



A further breakdown of the surcharges collected from or on behalf of independent practitioners follows. The green portion of the chart represents the surcharges collected from independent practitioners who are not employed by hospitals. The orange represents the surcharges collected on behalf of independent practitioners who are employed by hospitals. These surcharges are typically paid by hospitals. This data is not to be confused with the numbers of independent practitioners who are employed by hospitals versus working independently. (See the “Count by Provider Type” chart on page 2). The difference in the surcharges collected between independent practitioners and employed practitioners is, again, largely due to the deficit repayment surcharge by hospitals.



Thanks to the Legislature’s infusion of money into the PCF, independent practitioners have not had to incur increases in surcharges to repay the deficit. Although independent practitioners’ surcharges increased by 12.1% in 2022, 10% in 2023, and 10% in 2024, the overall surcharges collected from independent practitioners and entities remained relatively steady over the past 3 years. The below chart demonstrates the trend in surcharges over the last three years for the various healthcare providers. Again, the increase in surcharges shown for hospitals and “agent providers,” i.e. practitioners employed by hospitals, are largely due to repayment of the deficit.



Entity surcharges are assessed based on the number of providers. They pay 10% of the total collected for the individual practitioners in the group. The top 10 entities participating in the Patient’s Compensation Fund by surcharges collected are as follows. The chart also indicates the number of practitioners in each group.

Entity	Surcharge	Provider Count
Southwest Medical Associates LLC	\$ 497,903	265
Las Cruces Physician Services LLC	\$ 258,278	91
Las Cruces Physician Practices LLC	\$ 175,652	70
New Mexico Heart Institute LLC	\$ 109,911	47
Pecos Valley of New Mexico LLC	\$ 88,310	19
New Mexico Orthopaedic Associates PC	\$ 69,128	99
Womens Specialists of New Mexico LTD	\$ 68,698	37
SOUTHWEST EMERGENCY MEDICAL ASSOCIATES OF NEW MEXICO	\$ 60,305	225
MAIN STREET ANESTHESIA OF NEW MEXIC	\$ 45,533	167
Radiology Associates of Albuquerque PA	\$ 41,066	69

PCF Administrative Operational Expenses

The expenses to operate the Patient’s Compensation Fund as of the end of the fiscal year 2024 excluding claims paid were:

- Contractual (attorney, Integriion contract, actuarial services) \$1,719,456
- Intra-agency \$272,200
- Personnel \$21,866
- Other \$15,400,000, which was a special appropriation from the Legislature to refund certain malpractice premiums
- Total = \$17,413,522

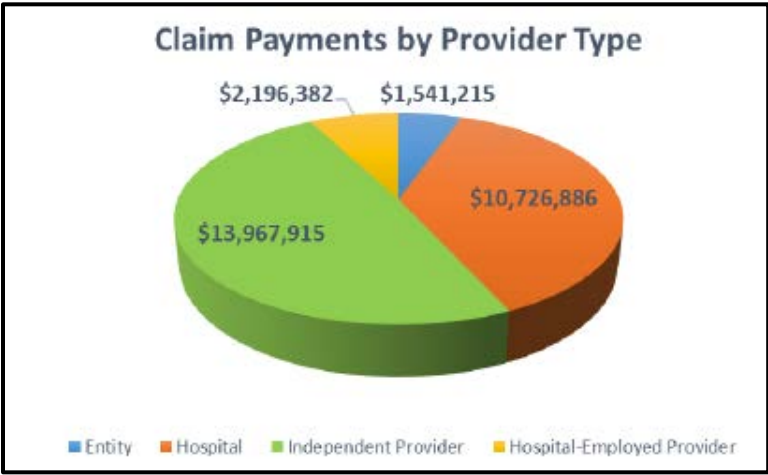
Tracking of Settlement Data

We have reported in past years that 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 practitioners and left the actuary with limited data to accurately assess risk going forward.

Since its inception, the Board has encouraged OSI and the PCF’s Third Party Administrator to track and allocate settlements among the providers where there are multiple providers in a lawsuit. Although it can take many years from the date of an occurrence for a case to resolve with a payout by the PCF (there is a 3 year statute of limitations, then litigation of cases takes an average of 2-3 years, and can last much longer depending on appeals and other factors), the data is developing and will be helpful in the future.

Since it began as the Third Party Administrator in 2022, Integriion has tracked the allocation of settlements among Qualified Healthcare Providers. It reports that as of June 30, for 2024, there had been:

- 46 settlements
- \$28,432,398 paid out for claims in accident years 2013, 2018, 2019, 2020, 2021, 2022 with the apportionment as reflected in the following chart.



The following chart shows by “accident year,” i.e. the date of the alleged malpractice, the number of claims that have been closed since Integrion started as Third Party Administrator, the number of open claims, and the total claims. According to Integrion, there are 35 patients who have open claims for payments for future medical expenses. According to OSI, there are no reserves set aside for payment of those future medical expenses.

Accident Year	Closed	Open	Total Claims
1999		1	1
2008		1	1
2009		1	1
2010		2	2
2011		4	4
2012		3	3
2013	1	8	9
2014		18	18
2015	9	39	48
2016	60	14	74
2017	133	29	162
2018	109	75	184
2019	57	106	163
2020	41	106	147
2021	14	98	112
2022	5	77	82
2023	1	35	36
2024		3	3
Totals:	430	620	1050

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 and outpatient health care facilities owned and controlled by hospitals (including hospital employed providers), 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 11, 2024 and October 11, 2024 the Board conducted duly noticed public hearings, which included sworn testimony from Robert Walling, actuary from Pinnacle Actuarial Resources who provided testimony regarding the Actuarial Analysis as of December 31, 2023. The Board issued its Proposed Findings, Conclusions and Recommendations In the Matter of Determining Patient's Compensation Fund Surcharge Rates on October 18, 2024. Ex. A. The Superintendent of Insurance issued her Order Setting Patient's Compensation Fund Surcharge Rates For Calendar Year 2025 on October 25, 2024. 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) 2023 surcharge rates for individual practitioners;
- 2) 2023 surcharge rates for entities organized by one or more individual practitioners;
- 3) 2023 surcharge rates for independent outpatient health care facilities;
- 4) 2023 surcharge rates for hospitals; and
- 5) To include surcharges for repayment of the remaining 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, since Integrion started tracking settlement data will become more robust in future years), 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, 2023 to be approximately \$292.9 million on a nominal basis (i.e. not including funds that may be earned on invested assets).

The Current Deficit

The independent practitioners' deficit in the PCF is fully paid off. The hospitals have through 2026 to pay the remainder of their deficit obligation, which is currently \$52.4 million. Due to the limited time that hospitals have participated in the PCF and that claims can take several years to mature, it is to be determined whether the hospital deficit will go up as claims are paid.

As of December 31, 2023, the PCF balance was \$219.3 million. Although projected losses have increased, the PCF's deficit position has improved. As of the end of 2022, the deficit was \$98.4 million. As of the end of 2023, the deficit was expected to be \$73.6 million. Reflecting reserves on a present value basis, using a 3.5% discount rate on invested assets, the actuary's analysis results in the PCF having an actual deficit of approximately \$69.8 million, a decrease of \$22 million since the prior analysis. In other words, the PCF performed better than expected in 2023.

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 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.

Investments

The actuary and the PCF Advisory Board continue to encourage the Superintendent of Insurance 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 increase income to the Fund.

Surcharge Rate Increases – Independent Providers

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

+8.6% on an expected value basis and +17.9% at a 75% confidence level.

+2.4% of the increase recommended for Independent Physicians was recommended to support the additional exposure created by the current CPI.

The Board accepted the actuary's central estimate and recommended an increase of 8.6% to the Superintendent of Insurance.

Surcharge Rate Increases – Hospitals

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

+19.7% on an expected value basis and +29.8% at a 75% confidence level, which includes a surcharge that is designed to eliminate the hospitals' portion of the deficit by the end of 2026

The Board accepted the actuary's central estimate and recommended an increase of 19.7%, which included the hospital deficit repayment.

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

There are currently two Independent Outpatient Healthcare Facilities in the PCF. Previously, Independent Outpatient Healthcare Facilities were treated similarly to other entities and they were assessed 10% of the premium paid by each covered provider in the facility. In order to more accurately assess surcharges on those facilities, Pinnacle suggested rates for Independent Outpatient Health Care Facilities, which can be found below:

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

The Board accepted the actuary’s recommendations regarding Independent Outpatient Healthcare Facilities.

The Board provided the Superintendent with its Proposed Findings, Conclusions, and Recommendations set forth above, which were accepted by the Superintendent of Insurance. See Final Order, Ex. B.

Although the Board has effectively served collectively as Hearing Officer for the surcharge rate setting proceedings and oversight of the PCF, it remains divided regarding whether changes should be made to the Medical Malpractice Act. Last year, 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,) attached recommended changes to the report to the Legislature. They stand by those requests. Four members of the Advisory Board, New Mexico Trial Lawyers Association “NMTLA” Representative Kathy Love, NMTLA Representative Ray Vargas, Patient Representative Carmella Starace, and Patient Representative Ellen Stevens disagree.

RESPECTFULLY SUBMITTED BY:

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