



PATIENT'S COMPENSATION FUND

NOTICE

APRIL 8, 2020

**TO: MEDICAL MALPRACTICE INSURERS PROVIDING COVERAGE UNDER THE
NEW MEXICO MEDICAL MALPRACTICE ACT'S PATIENT'S COMPENSATION
FUND**

**RE: MEDICAL MALPRACTICE ACT REQUIREMENTS DURING COVID-19 PUBLIC
HEALTH EMERGENCY**

Efforts to manage the COVID-19 public health emergency have raised questions related to continued application of the statutory requirements of the New Mexico Medical Malpractice Act ("MMA"). As an example, some carriers are providing free medical malpractice coverage to certain providers and are asking whether they must assess the surcharge required by the MMA to qualify them under the PCF. Additionally, some qualified health care providers are changing or adding class codes to practice in specialized areas related to the treatment of COVID-19, and are asking whether they must pay the additional surcharges to maintain their PCF qualified status. This Notice is written to address those and other related inquiries.

Section 41-5-5, NMSA 1978, sets forth the requirements a health care provider must meet to be qualified under the MMA. These requirements include provision of proof that the provider has the required type and amount of malpractice insurance, and payment of the surcharge. These statutory requirements are mandatory, exist to ensure the viability of the fund, and protect both providers and consumers from the possibility of PCF insolvency. The Superintendent is without authority to waive or change them. Accordingly, payment of the applicable surcharge must be made to the PCF for both new enrollees and those providers adding or amending their class codes, and the surcharges must be submitted within the time specified in statute and rule.

“I regret that I cannot waive payment of the surcharges for providers who are on the front lines of this pandemic, but, as fiduciary of the Patient’s Compensation Fund, I am bound by law to uphold the requirements of the MMA and ensure the Fund remains viable through this crisis and beyond” said Superintendent of Insurance Russell Toal.

The PCF has also received questions regarding PCF coverage for health care providers who reside in New Mexico but provide telemedicine services to patients who are out of state. The PCF will cover any judgment entered, or any settlement approved, under the MMA and New Mexico law for these providers. Under the MMA, the PCF covers a claim for malpractice “arising in this state.” NMSA 1978, § 41-5-3(C). Whether a telemedicine malpractice claim arose in New Mexico must be decided by a court on the particular facts of each case.

For questions or concerns related to the NM Patient’s Compensation Fund, please contact Sandra R. Romero, PCF Director, at sandrar.romero@state.nm.us.