

# NEW MEXICO

## 2011



# **Patient Compensation Fund Manual**

PCF09221011

## Summary

The New Mexico Patients Compensation Fund (PCF) serves a vital role in supporting the overall health of the medical professional liability insurance (MPLI) system in New Mexico. The PCF provides excess coverage that stabilizes the operating results of participating insurers and encourages competition which leads to greater availability and affordability of coverage. In New Mexico and other states, a competitive MPLI market tends to attract new physicians leading to greater access to care. The coverage provided by the PCF requires the use of an occurrence coverage form, preferred by healthcare providers, with limits that provide comprehensive coverage to ensure that injured patients receive appropriate compensation for their injuries. As a results, all stakeholders in the New Mexico healthcare system benefit in some way from a healthy PCF.

The PCF was established in 1976 to provide for the payment of claims in excess of a primary limit of \$100,000 per incident which was provided by private insurers. This resulted in the PCF providing coverage with a non-medical indemnity limit of \$400,000 per incident (to reach the state damage cap in non-medical damages), plus unlimited medical benefits. Effective July 1, 1991, the primary limit was increased to \$150,000 on new and renewal policies, thereby reducing the PCF's liability to \$350,000 non-medical indemnity, plus unlimited medical. The PCF's liability was further reduced to \$300,000 effective April 1, 1992 when the primary limit was increased to \$200,000. Most recently, an increase in the maximum non-medical indemnity amount to \$600, 000. Effective April 1, 1995 increased the PCF liability retention to \$400, 000 non-medical indemnity, plus unlimited medical.

The purpose of the Medical Malpractice Act is to promote the health and welfare of the people of New Mexico by making available professional liability insurance for health care providers in the State of New Mexico for services rendered in the State of New Mexico.

## TABLE OF BASE SURCHARGES

*(Prior to the Application of Experience Rating Debits)*

Effective October 1, 2009

PCF Class	Base Surcharge for <u>Full-Time Health Care Providers</u>			
1	\$2,471			
2	\$3,292			
3	\$3,958			
4A	\$4,945			
4	\$5,931			
5A	\$5,259			
5	\$7,247			
6	\$8,567			
7A	\$9,883			
7	\$13,177			
8	\$15,652			
9A	\$15,975			
9	\$18,944			
10	\$20,594			
51 & 52				
	<i>single doctor</i>	\$289		
	<i>each additional doctor</i>	\$73		
	<i>each additional CRNA or PA</i>	\$36		
53	\$198			
99	\$1,968			
CRNA	\$655			
PA-1	\$1,116			
PA-2	\$1,489			
PA-3	\$1,793			

## RULES FOR EXPERIENCE – RATING BASE SURCHARGES

Effective June 1, 2004

Carriers shall debit the base surcharge of each health care provider according to his or her claim experience as described below and shall include the resulting debit in the total surcharge remitted to the PCF.

<u>Number of Claims Reported During the Last Five Years</u>	<u>Debit</u>
1	25%
2	50%
3	75%
4 Or more	100%

Include only those claims which resulted in at least one of the following conditions:

- A finding of both negligence and injury by the PCF medical review commission
- A claim settlement requiring payment by the PCF
- A trial judgment in favor of the plaintiff

	<b>Classification Table Eff 2009</b>	<b>ISO Class Code</b>		<b>PCF</b>
<b>Specialty</b>		<b>M.D.</b>	<b>D.O.</b>	<b>Class</b>
Abdominal Surgery		80166		9
Acupuncture - Other than Acupuncture Anesthesia		80437	84437	1
Aerospace Medicine / Medical Director		80230		1
Allergy/Immunology - No Surgery		80254	84254	1
Anesthesiology		80151	84151	7A
Anesthesiology - All Other		80183	84183	7A
Anesthesiology - Critical Care Medicine		80181	84181	7A
Anesthesiology - Pain Management		80182	84182	2
Angiography / Arteriography / Catheterization		80422	84422	4
Broncho-Esophagology		80101		3
Cardiac Surgery		80141		6
Cardiovascular Disease - Minor Surgery		80281	84281	4
Cardiovascular Disease - No Surgery		80255	84255	2
Cardiovascular Disease - No Surgery		80225		2
Cardiovascular Disease Surgery		80150	84150	10
Chiropractors		80410		99
Chiropractors - Corporate or Partnership Liability		80412		53
Colon and Rectal Surgery		80115		9
Colonoscopy / Endoscopic Retrograde Cholangiopancreatography/ Pneumatic or Mechanical Esophageal Dilation		80443	84443	3
Cryosurgery		80429	84429	4
Dermatology - All Other		80297	84297	3
Dermatology - Clinical and Dermatological Immunology		80295	84295	3
Dermatology - Dermatopathology		80296	84296	3
Dermatology - including X-Ray Therapy / Radiation Therapy		80282		3
Dermatology - No Surgery		80256	84256	2
Diabetes - Minor Surgery		80271		3
Diabetes - No Surgery		80237		1
Discograms / Myelography / Pneumoencephalography		80428	84428	2
Emergency Medicine - Including Major Surgery		80157	84157	6
Emergency Medicine - No Major Surgery		80102	84102	5
Endocrinology - Minor Surgery		80272	84272	3
Endocrinology - No Surgery		80238	84238	1
Endocrinology Surgery		80103		9
General Practitioners or Family Physicians - Minor Surgery - No Ob		80421	84421	3
General Practitioners or Family Physicians - No Surgery - No Ob		80420	84420	1
Family Practitioners - No Ob/ No Surgery		80239		1
Forensic Medicine / Legal Medicine		80240	84240	1
Gastroenterology - Minor Surgery		80274	84274	4A
Gastroenterology - No Surgery		80241	84241	3
Gastroenterology Surgery		80104		9

General Practitioners or Family Physicians - Minor Surgery - No Ob	80421	84421		3
General Practitioners or Family Physicians - No Surgery - No Ob	80420	84420		1
General Practitioners or Family Physicians - Ob but No Major Surgery - performing 40 or less non-high risk deliveries yearly	80273			5A
General Practitioners or Family Physicians - Ob but No Major Surgery - performing high-risk deliveries or more than 40 deliveries yearly	80275			5
General Practice or Family Practice Surgery	80117			9
General Practitioners - No Ob/ No Major Surgery	80242			1
General Preventive Medicine - No Surgery / No Ob	80231			1
General Surgery	80143	84143		9
General/Family Practitioners - No Major Surgery - < 40 Non-High-Risk Deliveries Yearly	80273			5A
General/Family Practitioners - No Major Surgery - High-Risk or > 40 Deliveries Yearly	80275			5
Geriatrics - Minor Surgery	80276	84276		3
Geriatrics - No Surgery	80243	84243		1
Geriatrics Surgery	80105			9
Gynecology - Minor Surgery (including 1st trimester abortions)	80277	84277		3
Gynecology - No Surgery	80244	84244		1
Gynecology Surgery	80167	84167		8
Hand Surgery	80169			6
Head and Neck Surgery	80170			6
Hematology - Minor Surgery	80278	84278		3
Hematology - No Surgery	80245	84245		1
Hospitalism	80222	84222		2
Hypnosis	80232			1
Infectious Diseases - Minor Surgery	80279			3
Infectious Diseases - No Surgery	80246			1
Intensive Care Medicine	80283	84283		3
Internal Medicine - Minor Surgery	80284	84284		4
Internal Medicine - No Surgery	80257	84257		2
Laparoscopy (Peritonescopy)	80440	84440		2
Laryngology Surgery	80106			6
Laryngology - Minor Surgery	80285			3
Laryngology - No Surgery	80258			1
Lymphangiography / Phlebography	80434	84434		4A
Manipulator		84801		1
Needle Biopsy	80446	84446		2
Neonatal/Perinatal Medicine	80804	84804		5
Neoplastic Diseases - Minor Surgery	80286			3
Neoplastic Diseases - No Surgery	80259			1
Neoplastic Surgery	80107			6
Nephrology - Including Child - Minor Surgery	80288	84288		6
Nephrology - Minor Surgery	80287			4
Nephrology - No Surgery	80260			3

Nephrology Surgery	80108			6
Neurology - Including Child - No Surgery	80261			2
Neurology - Including Child - No Surgery - All Other	80299	84299		2
Neurology - Including Child - No Surgery - Pain Management	80298	84298		2
Neurology Surgery - Including Child	80152	84152		10
Nuclear Medicine - Excluding Radiation Therapy	80262	84262		1
Nurse Anesthetists				CRNA
Nutrition	80248			1
Obstetrics Surgery (c-sections only)	80168			6
Obstetrics Surgery / Gynecology Surgery	80153	84153		10
Occupational Medicine	80233			1
Oncology - Minor Surgery	80301	84301		5
Oncology - No Surgery	80302	84302		2
Oncology Surgery	80164	84164		8
Ophthalmology - Minor Surgery	80289	84289		2
Ophthalmology - No Surgery	80263	84263		1
Ophthalmology Surgery	80114			3
Orthopedic Surgery	80154	84154		9
Otology - Minor Surgery	80290			3
Otology - No Surgery	80264			1
Otology Surgery	80158			6
Otorhinolaryngology - Minor Surgery	80291	84291		2
Otorhinolaryngology - No Surgery	80265	84265		1
Otorhinolaryngology Surgery	80159			6
Pathology - All Other	80307	84307		1
Pathology - Blood Banking/Transfusion Medicine - Minor Surgery	80303	84303		3
Pathology - Blood Banking/Transfusion Medicine - No Surgery	80304	84304		1
Pathology - Cytopathology - Minor Surgery	80305	84305		3
Pathology - Cytopathology - No Surgery	80306	84306		1
Pathology - Minor Surgery	80292			3
Pathology - No Surgery	80266			1
Pediatric Surgery	80180	84180		8
Pediatrics - Minor Surgery	80293	84293		6
Pediatrics - No Surgery	80267	84267		4A
Pharmacology - Clinical	80234			1
Physical Medicine and Rehabilitation - All Other	80209	84209		1
Physical Medicine and Rehabilitation - Pain Management	80208	84208		2
Physical Medicine and Rehabilitation / Psychiatry	80235			1
Physicians - Minor Surgery - No Ob	80294			3
Physicians - No Surgery / No Ob - Urgent Care Only	80268	84268		3
Physicians and Surgeons - Corporate or Partnership Liability	80999	84999		51
Physicians Assistants - Supervised by Non-Invasive Specialists				PA-1
Physicians Assistants - Supervised by Specialists Performing Minor Surgery Only				PA-3
Physicians Assistants - Supervised by Specialists Performing Minor	80116	84116		PA-2

Surgery Only				
Physicians Assistants - Supervised by Specialists Performing Major Surgery as Primary Surgeons				PA-3
Plastic Surgery	80156	84156		8
Plastic-otorhino-laryngology Surgery	80155	84155		8
Podiatrists - Surgery	80993-S			7
Podiatrists/Chiropodists - Corporate or Partnership Liability	80943			52
Podiatrists/Chiropodists - No Surgery	80993-N			5
Preventive Medicine - No Surgery - Aerospace Medicine	80133	84133		1
Preventive Medicine - No Surgery - Medical Toxicology	80138	84138		1
Preventive Medicine - No Surgery - Occupational Medicine	80134	84134		1
Preventive Medicine - No Surgery - Public/General Health Medicine	80135	84135		1
Preventive Medicine - No Surgery - Undersea/Hyperbaric Medicine	80139	84139		1
Psychiatry - Addiction Psychiatry	80224	84224		1
Psychiatry - All Other	80229	84229		1
Psychiatry - Child and Adolescent Psychiatry	80226	84226		1
Psychiatry - Forensic Psychiatry	80227	84227		1
Psychiatry - Geriatric Psychiatry	80228	84228		1
Psychiatry - Including Child	80249	84249		1
Psychoanalysis	80250			1
Psychosomatic Medicine	80251	84251		1
Public Health	80236			1
Pulmonary Diseases - No Surgery	80269	84269		2
Radiation Therapy - by Employed Physicians or Surgeons Involved with Major Surgery	80163	84163		1
Radiation Therapy - by Insured Physicians or Surgeons Involved with Major Surgery	80165	84165		1
Radiation Therapy / Lasers - Used in Therapy	80425	84425		5
Radiology - Diagnostic - Minor Surgery	80280	84280		5
Radiology - Diagnostic - No Surgery	80253	84253		2
Radiology - Interventional	80360	84360		5
Radiology - Therapeutic - Minor Surgery	80358	84358		5
Radiology - Therapeutic - No Surgery	80359	84359		2
Radiopaque Dye Injections	80449	84449		4
Rheumatology - No Surgery	80252	84252		1
Rhinology - Minor Surgery	80270			3
Rhinology - No Surgery	80247			1
Rhinology Surgery	80160			6
Sclerotherapy		84802		3
Shock Therapy	80431	84431		1
Shock Therapy - by Employed Physicians or Surgeons Involved with Major Surgery	80161	84161		1
Shock Therapy - by Insured Physicians or Surgeons Involved with Major Surgery	80162	84162		1
Sports Medicine - Minor Surgery	80204	84204		4A
Sports Medicine - No Surgery	80205	84205		2
Teaching Physicians - Minor Surgery	80322			2
Teaching Physicians - No Surgery	80321			1
Teaching Physicians or Surgeons - Major Surgery	80323			7A

Teaching Physicians or Surgeons - Major Surgery	80324			7A
Teaching Physicians or Surgeons - Major Surgery	80325			7A
Teaching Physicians or Surgeons - Major Surgery	80326			7A
Teaching Physicians or Surgeons - Major Surgery	80327			7A
Thoracic Surgery	80144	84144		9
Traumatic Surgery	80171			9
Urgent Care - No Surgery - No Ob	80268	84268		3
Urological Surgery	80145	84145		6
Urology - Minor Surgery	80120	84120		3
Urology - No Surgery	80121	84121		1
Vascular Surgery	80146			9

## NEW MEXICO PATIENT'S COMPENSATION FUND

### Frequently Asked Questions

Q: What is the Patient's Compensation Fund?

A: The Patient's Compensation Fund ("PCF"), which was established by the New Mexico Medical Malpractice Act of 1976, provides an excess layer of professional liability coverage for its member healthcare providers. Also, awards against healthcare providers who are in the PCF are capped.

Q: What are the benefits to healthcare providers for being in the PCF?

A: There are three main benefits:

1. Awards are capped at \$600,000, except for medical care and punitive damages, which are not capped.
2. All malpractice claims against healthcare providers in the PCF must first be reviewed by the New Mexico Medical Review Commission before they can be filed in court.
3. There's a three-year statute of limitations for claims brought against healthcare providers in the PCF. The only exception is that minors under the age of six have until their ninth birthday to file a claim.

Q: Who runs the PCF?

A: The PCF is administered by the Superintendent of Insurance.

Q: Who funds the PCF?

A: The PCF is funded solely through surcharges (i.e. premiums) levied against its member healthcare providers.

Q: Who determines the surcharges?

A: The Superintendent periodically promulgates the surcharges for doctors and other individual practitioners. The current surcharges went into effect October 2009 via Insurance Bulletin 2009-007. The surcharges for hospitals are determined on a case-by-case basis.

Q: Is the PCF solvent?

A: The latest actuarial study, which evaluated the PCF as of 12/31/09, estimated it to be solvent.

Q: What kinds of healthcare providers are covered under the PCF?

A: Doctors, chiropractors, podiatrists, nurse anesthetists, physician's assistants, hospitals and outpatient healthcare facilities are eligible to be in the PCF. We currently have about 1800 doctors (including doctors' business entities), one hospital, and a small number of podiatrists, chiropractors and physician's assistants in the PCF.

Q: Can nurses, midwives, dentists or nursing homes be in the PCF?

A: No. Only the types of healthcare providers listed in the previous question can get into the PCF.

Q: If a hospital is in the PCF, are its employees covered?

A: This is uncertain and may depend on court interpretations of the Medical Malpractice Act.

Q: How can a doctor or other individual practitioner get into the PCF?

A: He or she must first obtain a primary layer of professional liability coverage from an authorized (i.e. fully licensed) insurer. That coverage must be written on an occurrence (not a claims-made) policy form and must provide \$200,000 of coverage per occurrence. For doctors and other individual practitioners, that primary coverage must provide for up to three claims (i.e. a \$600,000 aggregate limit) per policy year.

Q. Can a doctor purchase more and still get into the PCF?

A. No, this is mandated 200,000/600,000

Q. Can a doctor choose not to participate in the PCF are the Medical Malpractice awards still capped at \$600,000 (except for medical care and punitive damages, which are not capped)?

A. The Medical Malpractice awards are capped only if the provider belongs to the PCF.

Q: How can a hospital or outpatient healthcare facility get into the PCF?

A: It must find an authorized insurer that will provide the primary layer of coverage on an occurrence (not a claims-made) policy. It must also fill out a detailed application and hire an actuary to estimate its future losses that the PCF would have to cover. For hospitals and other facilities, the Superintendent determines, on a case-by-case basis, the maximum number of claims that will be covered per policy year.

Q: How many carriers are actively writing the required primary policies for providers in the PCF?

A: Not many. American Physicians Assurance Corporation writes most of the doctors in the PCF, while Medical Protective Company and National Union Fire Insurance Company of Pittsburg write much of the remainder of PCF members.

Q: Can surplus lines insurers provide the primary layer of coverage?

A: No.

Q: Can risk retention groups provide the primary layer of coverage?

A: According to federal law, yes. There is currently one risk retention group providing primary coverage in the PCF.

Q: Who can I contact for further information?

A: The Insurance Division's PCF Analyst, Lynn Rowan, at [lynn.rowan@state.nm.us](mailto:lynn.rowan@state.nm.us) and at 505-476-0191.