STATE OF NEW MEXICO
OFFICE OF SUPERINTENDENT OF INSURANCE

SUPERINTENDENT OF INSURANCE

Alice T. Kane

DEPUTY SUPERINTENDENT

Timothy Vigil

SPECIAL INVITATION TO A VIRTUAL ROUNDTABLE WORKSHOP RELATED TO FUTURE PATIENT'S COMPENSATION FUND RULEMAKING

DATE: MONDAY, JUNE 8, 2026, FROM 10:00 A.M. TO 12:00 NOON

The New Mexico Office of Superintendent of Insurance (OSI) has scheduled a virtual roundtable meeting to discuss a new rule that will outline the administrative procedures and responsibilities by which malpractice claims disbursements will be made from the Patient's Compensation Fund. During this virtual roundtable, OSI staff will present the requirements of the proposed rule and will seek comments on the proposed rule from stakeholders.

To attend the Virtual Roundtable Workshop please use the following links:

Join: https://teams.microsoft.com/meet/228054703542956?p=VdPm2CNrSDCu7LnjJg

Meeting ID: 228 054 703 542 956 - Passcode: hL2wy3xy

Dial in by phone: +1 505-312-4308,,710065928# - Phone conference ID: 710 065 928#

A copy of the draft proposed rule 13.21.6 NMAC, MALPRACTICE CLAIMS DISBURSEMENTS is attached to this notice and is available on the OSI website on the first page, at the following link:

https://www.osi.state.nm.us/en/

Additionally, OSI invites comments during the roundtable workshop on its Statutory Contribution Acknowledgment form. A copy of the form is attached to this notice and is posted on the OSI website.

Written Comments: To submit written comments please send to the following email address: **osi.rulemaking@osi.nm.gov**

Written comments will be accepted until Monday, June 8, 2026, at 5:00P.M. MDT

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TITLE 13 INSURANCE
CHAPTER 21 PATIENT'S COMPENSATION FUND
PART 6 MALPRACTICE CLAIMS DISBURSEMENT

13.21.6.1 ISSUING AGENCY: Office of Superintendent of Insurance
[13.21.6.1 NMAC – N, 13.21.6.1 NMAC, xx/xx/2026]

13.21.6.2 SCOPE: This rule applies to any health care provider participating in the patient's compensation fund, the insurer of a qualified health care provider on behalf of such qualified health care provider, or any party seeking payment for a malpractice claim from the patient's compensation fund under the Medical Malpractice Act, Sections 41-1-1 *et seq*., NMSA 1978.
[13.21.6.2 NMAC – N, 13.21.6.2 NMAC, xx/xx/2026]

13.21.6.3 STATUTORY AUTHORITY: State Rules Act, Sections 14-4-1 *et seq*., NMSA 1978, Sections 59A-2-8 and 59A-2-9 NMSA 1978, the Administrative Procedures Act, Sections 12-8-1 *et seq*., NMSA 1978, and the Medical Malpractice Act, Sections 41-1-1 *et seq*., NMSA 1978.
[13.21.6.3 NMAC – N, 13.21.6.3 NMAC, xx/xx/2026]

13.21.6.4 DURATION: Permanent.
[13.21.6.4 NMAC – N, 13.21.6.4 NMAC, xx/xx/2026]

13.21.6.5 EFFECTIVE DATE: This rule is effective_____, 2026 unless a later date is cited at the end of a section.
[13.21.6.5 NMAC – N, 13.21.6.5 NMAC, xx/xx/2026]

13.21.6.6 OBJECTIVE: Establish the administrative procedures for processing claims for payment from the patient's compensation fund.
[13.21.6.6 NMAC – N, 13.21.6.6 NMAC, xx/xx/2026]

13.21.6.7 DEFINITIONS: This rule adopts the definitions in Section 41-5-3 NMSA 1978, supplemented as follows:

A. "Claimant" means any individual or entity that has asserted a malpractice claim against a health care provider.

B. "Contribution payment" or **"compensation payment"** means a payment of monetary damages from the fund in accordance with Sections 41-5-6, 41-5-7, and 41-5-25 NMSA 1978 of the Medical Malpractice Act.

C. "Malpractice claim" has the same meaning as defined in Subsection J of Section 41-5-3 NMSA 1978, and includes any cause of action arising in this state against a health care provider for medical treatment, lack of medical treatment or other claimed departure from accepted standards of health care that proximately results in injury to the patient, whether the patient's claim or cause of action sounds in tort or contract, and includes but is not limited to actions based on battery or wrongful death. "Malpractice claim" does not include a cause of action arising out of the driving, flying or nonmedical acts involved in the operation, use or maintenance of a vehicular or aircraft ambulance.

D. "Patients' compensation fund" or **"fund"** means the patient's compensation fund created in Subsection A of Section 41-5-25 of the Medical Malpractice Act.

E. "Section 111" refers to Section 111 of the Medicare, Medicaid, and State Children's Health Insurance Program Extension Act of 2007, found at 42 USC Section 1395y(b)(8).

F. "Statutory contribution acknowledgement" means the administrative form required to obtain payments of compensation from the Patient's Compensation Fund. It is also a form prescribed by the superintendent in furtherance of the superintendent's authority to administer and safeguard the patient's compensation fund.

G. "Superintendent" has the same meaning as defined in Section 59A-1-12 NMSA 1978, the superintendent of insurance or the superintendent's duly authorized representative acting in official capacity.

H. "Third-party administrator" means that business entity that has been engaged by the superintendent to provide administration and operation services as required by Subsection B of Section 41-5-25 NMSA 1978 of the Medical Malpractice Act.
[13.21.6.7 NMAC – N, 13.21.6.7 NMAC, xx/xx/2026]

13.21.6.8 DUTY TO SUBMIT DOCUMENTATION. A qualified health care provider, after providing the notice to the superintendent and the third-party administrator required by Subsection C of Section 41-5-25 NMSA 1978, has a continuing duty to submit unredacted documentation supporting all medical expenses for which payment will be requested.

A. The initial notification of a malpractice claim shall be submitted to the superintendent as custodian of the fund, and to the third-party administrator within thirty days of the date of service of a complaint asserting a malpractice claim on the qualified health care provider.

B. No medical expenses will be paid from the patient's compensation fund unless supported by a copy of the original invoice.

[13.21.6.8 NMAC – N, 13.21.6.8 NMAC, xx/xx/2026]

13.21.6.9 PAST MEDICAL EXPENSES. The fund's payment of past medical expenses shall be limited to the value of accrued medical care and related benefits as defined in Subsection P of Section 41-5-3 NMSA 1978, or evidence of the amounts actually necessary to satisfy the bills that have been incurred but not yet satisfied.

[13.21.6.9 NMAC – N, 13.10.6.9, xx/xx/2026]

13.21.6.10 SECTION 111 REPORTING REQUIREMENTS. Any qualified health care provider, or its insurer, or any other party requesting payment for a malpractice claim from the patient's compensation fund must provide the superintendent with the information necessary for the superintendent's Section 111 reporting requirements. Failure or refusal to supply the necessary information will result in the denial of the request. The information necessary is at minimum the claimant's medicare health insurance claim number or claimant's social security number.

[13.21.6.10 NMAC – N, 13.21.6.10 NMAC, xx/xx/2026]

13.21.6.11 REQUESTS FOR COMPENSATION. Any qualified health care provider that settles a malpractice claim in which the qualified health care provider or its malpractice liability insurer seeks payment from the fund shall submit to the fund the following:

A. a certified copy of the court-approved settlement or a certified copy of the final judgment;

B. a fully executed statutory contribution acknowledgement; and

C. the claimant's medicare health insurance claim numbers or social security number.

[13.21.6.11 NMAC – N, 13.21.6.11 NMAC, xx/xx/2026]

13.21.6.12 FUND PAYMENT PROCEDURES:

A. The qualified health care provider, the insurer of a qualified health care provider, or the claimant's attorney or other legal representative, requesting a contribution payment from the fund shall submit a request for compensation in electronic form, to the following email address: xxxxxxxxxx@osi.nm.gov.

B. Form of payment:

(1) Contribution payments shall be made by check, or an automated clearing house (ACH) payment, payable to the trust account of the claimant's attorney or other legal representative (or to such other person or persons as may be specified in the court-approved settlement).

(2) Checks shall be sent by first class mail, postage prepaid, to the last known address of claimant's attorney or other legal representative (or to such other person or persons as may be specified in the court-approved settlement).

(3) Contribution payments are subject to and payable in accordance with the manual of model accounting practices issued by the financial control division of the New Mexico department of finance and administration.

C. The use of the statutory contribution acknowledgment is mandated by the superintendent when issuing payments from the patient's compensation fund.

[13.21.6.12 NMAC – N/E, 13.21.6.12 NMAC, xx/xx/2026]

13.21.6.13 CONFIDENTIALITY OF SETTLEMENT AGREEMENTS. Settlement agreements, all medical records, and any personally identifiable information submitted pursuant to this rule shall be deemed confidential and will be maintained as confidential by the superintendent pursuant to Subsection B of Section 59A-2-12 NMSA 1978.

[13.21.6.13 NMAC – N, 13.21.6.13 NMAC, xx/xx/2026]

13.21.6.14 NONCOMPLIANCE. Noncompliance with the requirements prescribed by these rules shall be deemed adequate and sufficient legal grounds for a denial of a payment request for compensation from the fund.

[13.21.6.14 NMAC – N, 13.21.6.14 NMAC, xx/xx/2026]

PATIENT'S COMPENSATION FUND
STATUTORY CONTRIBUTION ACKNOWLEDGMENT

THIS STATUTORY CONTRIBUTION ACKNOWLEDGMENT is entered into by and between _____ (the "Plaintiff(s)"), _____(the" Defendant(s)") (collectively, the "Parties"), and the New Mexico Superintendent of Insurance, in her capacity as custodian of the New Mexico Patient's Compensation Fund (the "Custodian").

Premises

Plaintiff(s) filed a medical malpractice action against Defendant(s) for the occurrence(s) more fully described in the pleadings filed in Cause No. _____, titled _____ (the "Lawsuit");

Defendant(s) [is/are] [a] Qualified Health Care Provider[s] pursuant to NMSA 1978, § 41-5-5 of the Medical Malpractice Act;

The Parties intend to resolve the malpractice claim arising out of the occurrence(s) alleged in the Lawsuit and intend to seek contribution from the Patient's Compensation Fund ("PCF") in accordance with the Medical Malpractice Act;

The Custodian has been provided with documentation sufficient to support the payment of monetary damages from the PCF in the amounts specified herein, including past medical expenses and related benefits, as provided by the Medical Malpractice Act;

In order to encourage final resolution, prevent unnecessary delay, and to avoid potential misunderstanding, the Parties and the Custodian enter into this Statutory Contribution Acknowledgment to document the amounts of the PCF's total contribution and the terms under which the Parties seek such contribution;

Now, therefore,

1. PCF Contribution. Pursuant to the Medical Malpractice Act, and based upon documentation submitted to the Custodian, the Custodian acknowledges that upon receipt of a copy of the final court-approved settlement pursuant to NMSA 1978, Section 41-5-25(H) the following amounts will be distributed from the PCF:

(a) Past Medical Expenses and Related Benefits in the amount of _____ ($_____) OR [are included within the total Settlement Contribution, with no separate allocation of such expenses identified in the underlying settlement documentation]; and

(b) Monetary Damages in the amount of _____ ($_____) which amount includes any past medical expenses and related benefits not separately allocated in the settlement, in accordance with NMSA 1978, § 41-5-25.

The total amount set forth in subparagraphs (a) and (b) is referred to herein as the "Settlement Contribution."

2. Future Medical Expenses. If applicable, the Custodian further expressly

acknowledges the PCF's statutory obligation to provide Plaintiff(s) with reasonable and medically necessary future medical care and related benefits arising from the occurrence(s) of alleged malpractice that are the subject of the Lawsuit. Such obligation is separate from and in addition to the Settlement Contribution defined in Paragraph 1. The PCF will pay **[insert applicable proportion or "0" if no future medical expenses are owed]** of qualifying future medical expenses and related benefits, beginning on **_____, __, *202*_,** and such expenses and related benefits shall be paid as incurred in accordance with the Medical Malpractice Act and any applicable administrative procedures. Nothing in this Acknowledgment shall be construed to expand, modify, or limit the obligations of the PCF beyond those imposed by the Medical Malpractice Act.

3. Statutory Prerequisite to Payment. The Parties understand that the Custodian's contribution set forth in this Acknowledgment is contingent upon receipt of a court-approved final settlement, a final judgment, or other proof of authenticity permitted under Section 41-5-25(H) NMSA 1978, as amended, sufficient to authorize payment from the PCF. Nothing in this Acknowledgment shall be construed to waive any statutory requirements imposed by the Act.

4. Parties' Representations to the Custodian. By entering into this Statutory Contribution Acknowledgment and submitting a request for payment to the Custodian, the Parties expressly represent to the Custodian that:

(a) With the exception of Plaintiff's claim for Future Medical Expenses as described in Paragraph 2, receipt of payment from the PCF as outlined in Paragraph 1 shall constitute final payment for any and all claims or potential claims that could result in payment from the PCF on behalf of any Qualified Healthcare Provider for the alleged occurrence(s) of medical malpractice that were pled, or that could have been pled, in the Lawsuit.

(b) That any and all claims or liens, including any attorney liens, Medicare/Medicaid/CMS liens, hospital liens, or claims for distribution from any other party or statutory beneficiary, shall be paid by the Plaintiff(s) from the settlement proceeds, that Plaintiff(s) accept sole responsibility for such payment(s), and that the Plaintiff(s) indemnify the Custodian for any such claims and hold the Custodian harmless for the same.

(c) That the Parties shall provide the Custodian with any information necessary to complete any required reporting, including that information necessary for Medicare/Medicaid/CMS reporting, and shall provide a copy of a New Mexico Substitute W9 for any party receiving payment from the PCF. The Custodian reserves the right to seek recovery of any interest, penalties and/or damages assessed against the PCF and/or Custodian resulting from the failure of a party to provide the necessary information.

5. Third Party Beneficiary. The Parties agree that the Custodian is intended to be an express third-party beneficiary of any release of claims or release of liability, or any indemnification provisions contained in the Parties' separate settlement agreement.

6. Obligations of the Custodian. This Statutory Contribution Acknowledgment is intended to memorialize the amounts to be paid by the PCF in accordance with the Medical Malpractice Act, to document the agreements/representations/warranties made by the Parties to the Custodian in requesting payment from the PCF, and to expedite the Parties' settlement by affirming the statutory obligations of the Custodian. Nothing in this Acknowledgment shall be construed to

expand, modify, or limit the obligations of the PCF beyond those imposed by the Medical Malpractice Act, or to hinder, bind, or limit the rights or duties of the Custodian. The Parties agree and acknowledge that they shall not impose any additional restrictions or obligations on the Custodian, through their separate settlement agreement or any other agreement or instrument.

7. Authority. The undersigned has all necessary power and authority to execute and deliver this Statutory Contribution Acknowledgment and to consummate the transactions contemplated hereby. The execution and delivery of this Statutory Contribution Acknowledgment by the Parties and the consummation by the Parties of the transactions contemplated hereby have been duly and validly authorized and approved by the Parties and constitute a valid and binding obligation of the Parties enforceable in accordance with its terms.

The foregoing Statutory Contribution Acknowledgment is acknowledged and accepted by:

For Plaintiff(s):

BY: _____ Date: _____
Printed name: _____

Approved as to form and authority:

BY: _____ Date: _____
Printed name: _____
Counsel for Plaintiff(s)

For Defendant(s):

BY: _____ Date: _____
Printed name: _____
Name of QHP _____

Acknowledged on behalf of the Superintendent of Insurance, in her capacity as Custodian of the New Mexico Patient's Compensation Fund:

BY: _____ Date: _____
_____
Title: General Counsel, New Mexico Office of Superintendent of Insurance