

TITLE 13 INSURANCE
CHAPTER 21 PATIENT'S COMPENSATION FUND
PART 1 GENERAL PROVISIONS

13.21.1.1 ISSUING AGENCY: New Mexico Superintendent of Insurance (the superintendent).
[13.21.1.1 NMAC –Rp, 13.21.1.1 NMAC, 01/01/2022]

13.21.1.2 SCOPE: The rules of Chapter 21 provide for and govern the organization, administration, and defense of the New Mexico Patient's Compensation Fund (the fund).
[13.21.1.2 NMAC –Rp, 13.21.1.2 NMAC, 01/01/2022]

13.21.1.3 STATUTORY AUTHORITY: Section 41-5-25 NMSA 1978;
[13.21.1.3 NMAC –Rp, 13.21.1.3 NMAC, 01/01/2022]

13.21.1.4 DURATION: Permanent.
[13.21.1.4 NMAC –Rp, 13.21.1.4 NMAC, 01/01/2022]

13.21.1.5 EFFECTIVE DATE: January 1, 2022, unless a later date is cited at the end of a section.
[13.21.1.5 NMAC –Rp, 13.21.1.5 NMAC, 01/01/2022]

13.21.1.6 OBJECTIVE: The rules of Chapter 21 are adopted and promulgated to ensure that the *Patient's Compensation Fund* is organized, administered, and operated on a financially and actuarially sound basis so as to achieve the purpose for which it was established. The rules adopted in Chapter 21 shall be construed, interpreted, and applied to achieve the purposes and objectives for which the fund was established.
[13.21.1.6 NMAC –Rp, 13.21.1.6 NMAC, 01/01/2022]

13.21.1.7 DEFINITIONS: This chapter adopts the definitions found in Section 41-5-3 NMSA 1978, in Section 14-4-2 NMSA 1978, in Chapter 59A, Article 1, NMSA 1978, and in 1.24.1.7 NMAC. In addition:

A. "Base coverage" means the medical malpractice liability coverage, as required by the MMA or as determined by the superintendent for a hospital or outpatient health care facility, that must be provided by an insurance policy issued to a health care provider;

B. "Insured" means a health care provider insured under a medical malpractice liability insurance policy;

C. "MMA" means the New Mexico Medical Malpractice Act, Sections 41-5-1 through 41-5-29 NMSA 1978;

D. "Occurrence coverage" means malpractice liability insurance for medical malpractice that occurs during the policy term, regardless of when the claim was reported;

E. "Qualified health care provider" or "QHP" means a health care provider, as defined in Subsection A of Section 41-5-1 NMSA 1978, who is admitted to the fund pursuant to these rules;

F. "Self-insured" means a person who satisfies, or seeks to satisfy, the requirements for becoming a "qualified health care provider" by depositing funds with the superintendent;

G. "Slot coverage" means prohibited coverage for more than one part-time health care provider on a "full-time equivalency" (FTE) basis calculated on how many hours, collectively, the part-time health care providers would be working during the period of coverage and calculating the premium as comparable to the one full-time health care provider's premium; and

H. "Third-party administrator" or "TPA" means the third-party administrator identified in Section 41-5-25 NMSA 1978.

[13.21.1.7 NMAC –Rp, 13.21.1.7 NMAC, 01/01/2022]

13.21.1.8 RESPONSIBILITIES OF THE THIRD-PARTY ADMINISTRATOR: The third-party administrator shall demonstrate its qualifications through prior experience fulfilling responsibilities similar to those set forth herein and have the responsibility to

A. receive and process health care provider requests for admission to the fund;

- B.** determine whether applicants for admission satisfy the standards of financial responsibility and possess the other qualifications for admission specified by these rules;
- C.** timely collect surcharges from, or paid by insurers on behalf of, health care providers;
- D.** certify periods of admission of qualified health care providers;
- E.** process claims against qualified health care providers or the fund in accordance with the MMA and these rules;
- F.** collect and maintain claims experience and surcharge data;
- G.** purchase insurance for the fund and its obligations;
- H.** retain actuarial, legal and claim adjusting services for the fund;
- I.** negotiate reasonable and appropriate compromises and settlements of the fund's liability respecting any claim against the fund and obtain approval from the superintendent or the superintendent's designee before entering into an agreement involving PCF funds;
- J.** pay judgments, settlements, arbitration awards, and medical expenses for which the fund is responsible;
- K.** at the direction of the superintendent, develop and maintain a website linked to the office of superintendent of insurance website;
- L.** provide an annual audit of the fund to the superintendent;
- M.** subject to approval from the superintendent, develop methodology for allocating liability for any fund deficit among health care providers; and
- N.** discharge and perform such other duties, responsibilities, functions, and activities as are expressly or impliedly imposed on the TPA by the MMA, as directed by the superintendent or as specified by these rules.
[13.21.1.8 NMAC –Rp, 13.21.1.8 NMAC, 01/01/2022]

13.21.1.9 EXPENSES OF ADMINISTRATION AND DEFENSE: All expenses incurred for, by, or on behalf of the superintendent or the TPA in the administration, operation, and defense of the fund shall be borne by the fund.
[13.21.1.9 NMAC –Rp, 13.21.1.9 NMAC, 01/01/2022]

13.21.1.10 REFERENCE TO OTHER DOCUMENTS: When a rule issued by the superintendent relating to the MMA or the fund refers to another rule, regulation, statute, or other document, the reference, unless stated specifically to the contrary, is continuous and intended to refer to all amendments of the rule, regulation, statute, or document.
[13.21.1.10 NMAC –Rp, 13.21.1.10 NMAC, 01/01/2022]

13.21.1.11 INTERPRETATION OF TERMS: Unless the context otherwise requires:

- A.** Singular/plural. Words used in the singular include the plural; words used in the plural include the singular;
- B.** Gender. Words used in the neuter gender include the masculine and the feminine. The personal pronoun in either gender may be used in these rules to refer to any person, firm or corporation.
- C.** Permissive/mandatory. May is permissive; shall and must are mandatory.

[13.21.1.11 NMAC –Rp, 13.21.1.11 NMAC, 01/01/2022]

13.21.1.12 USE OF PRESCRIBED FORMS: The TPA may prescribe forms to carry out certain requirements of Chapter 21 of these rules. Prescribed forms must be used when a form exists for the purpose, unless these rules state otherwise or the TPA waives this requirement. The TPA shall accept filings made on photocopies of prescribed forms, provided they are legible.
[13.21.1.12 NMAC –Rp, 13.21.1.12 NMAC, 01/01/2022]

13.21.1.13 ADDRESS FOR FILING DOCUMENTS: The TPA shall post filing and contact information on the Patient's Compensation Fund website.
[13.21.1.13 NMAC –Rp, 13.21.1.13 NMAC, 01/01/2022]

13.21.1.14 SEVERABILITY: If any provision of Chapter 21 of these rules, or the application or enforcement thereof, is held invalid, such invalidity shall not affect other provisions or applications of Chapter 21

these rules which can be given effect without the invalid provisions or applications, and to this end the several provisions of Chapter 21 of these rules are hereby declared severable.
[13.21.1.14 NMAC –Rp, 13.21.1.14 NMAC, 01/01/2022]

History of 13.21.1 NMAC:

13.21.1 NMAC – General Provisions, filed 4/30/2019, was repealed and replaced by 13.21.1 NMAC – General Provisions, effective 01/01/2022.