TITLE 13 INSURANCE
CHAPTER 21 PATIENT'S COMPENSATION FUND
PART 6 MALPRACTICE CLAIMS DISBURSEMENT FOR PAST MEDICAL EXPENSES

13.21.6.1 ISSUING AGENCY: Office of Superintendent of Insurance.
[13.21.6.1 NMAC – N, 11/03/2026]

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, 11/03/2026]

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, 11/03/2026]

13.21.6.4 DURATION: Permanent.
[13.21.6.4 NMAC – N, 11/03/2026]

13.21.6.5 EFFECTIVE DATE: This rule is effective November 3, 2026 unless a later date is cited at the end of a section.
[13.21.6.5 NMAC – N, 11/03/2026]

13.21.6.6 OBJECTIVE: Establish the administrative procedures for processing claims for payment of past medical expenses and monetary damages from the patient's compensation fund.
[13.21.6.6 NMAC – N, 11/03/2026]

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" or **"SCA"** 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, 11/03/2026]

13.21.6.8 DUTY TO SUBMIT DOCUMENTATION FOR PAST MEDICAL EXPENSES: 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, and before or at the time of any negotiated settlement of a malpractice claim, has a continuing duty to submit unredacted documentation supporting all past medical expenses for which payment may be requested as part of the settlement.

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 past medical expenses will be paid from the patient's compensation fund unless supported by a copy of the original invoice provided to the superintendent.
[13.21.6.8 NMAC – N, 11/03/2026]

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, 11/03/2026]

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, 11/03/2026]

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. proof of authenticity listed in Subsection H of Section 41-5-25 NMSA 1978;

B. a fully executed statutory contribution acknowledgement form; and

C. the claimant's medicare health insurance claim numbers or social security number.
[13.21.6.11 NMAC – N, 11/03/2026]

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: pcf@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 or certification of settlement, if applicable).

(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 required by the superintendent when issuing payments from the patient's compensation fund. The statutory contribution acknowledgment for is hereby incorporated by reference in this rule.

D. Any qualified health care provider requesting that the fund pay any portion of its damages pursuant to a final judgment or settlement, as well as any claimant receiving funds from the fund shall, as a condition of such payment, be deemed to have agreed to the following, that:

(1) Any and all claims or liens, that could be brought or made by or through plaintiff or any other person subrogated to plaintiff's rights, including any attorney liens, centers for medicare and medicaid services 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 superintendent, on behalf of the fund, for any such claims and hold the superintendent harmless for the same.

(2) Upon request of the superintendent, either party shall provide the superintendent with any information or documentation within that party's reasonable control that the superintendent determines to be necessary for the administration or protection of the fund, including information required to complete any necessary reporting, and shall provide a copy of a New Mexico Substitute W9 for any party receiving payment from the fund. The superintendent reserves the right to seek recovery of any interest, penalties and/or damages assessed against the PCF or superintendent resulting from the failure of a party to provide the necessary information requested by the superintendent.

(3) The superintendent, on behalf of the fund, shall be considered an express third-party beneficiary of any release of claims or release of liability, or any indemnification provisions contained in the parties' settlement agreement.

[13.21.6.12 NMAC – N, 11/03/2026]

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, 11/03/2026]

13.21.6.14 NONCOMPLIANCE: In addition to any other form of penalty that may be applicable, 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, 11/03/2026]

History of 13.21.6 NMAC: [RESERVED]