

All NM Members (USPS mail and email)

Address

Policy Number

Policy Effective Date

Date

Dear [Title. Last Name],

On April 1, 2021, Governor Michelle Lujan Grisham signed into law House Bill (HB) 75, which makes the most sweeping amendments to the New Mexico Medical Malpractice Act (MMA) since it was enacted in 1976.

The changes made by HB 75 will change the practice of medicine in New Mexico. It is imperative all providers review the impacts of HB 75 on your practice with your personal counsel and insurance professional. You can read HB 75 in its entirety by visiting nmlegis.gov and typing in HB 75 in the keyword search or by accessing the final PDF directly at: <https://www.nmlegis.gov/Sessions/21%20Regular/final/HB0075.pdf>.

PCF Assessments: Some of the financial impacts of HB 75 will be felt on January 1, 2022, through modified Patient Compensation Fund (PCF) surcharges that will be charged to qualified healthcare providers (QHPs) participating in the PCF. HB 75 mandates that “surcharges shall be set with the intention of bringing the fund to solvency” by the end of 2026.

We are waiting on the Office of the Superintendent of Insurance (OSI) to advise us of the amount of the PCF surcharge the OSI requires us to collect from you.

PCF Limits: Effective January 1, 2022, the underlying limit of professional liability carried by QHPs enrolled in the PCF will increase from \$200,000 to \$250,000, and the cap on non-medical damages for individual providers will increase from \$600,000 to \$750,000.

Hospitals and Outpatient Care Facilities: One of the most dramatic changes made by HB 75 is to increase the damage cap for hospitals and outpatient care facilities (OCFs). On January 1, 2022, it will increase to \$4,000,000 and reach \$6,000,000 in January 2027 when hospitals and OCFs will no longer be fund eligible.

The change for OCFs is potentially very significant. Per HB 75, OCFs subject to the higher liability limitation include:

“[A]n outpatient facility, including ambulatory surgical centers, free-standing emergency urgent care clinics, acute care centers and intermediate care facilities and includes a facility’s employees, locum tenens providers and agency nurses providing services at the facility.”

If your practice includes any listed facility, HB 75 has expanded potential liability significantly. The customary \$200,000, now going to \$250,000, may be millions short of the dramatically raised liability cap for hospitals and OCFs (and the providers who work there), which begins at \$4,000,000 in January 2022 and then annually escalates to \$6,000,000 in 2026.



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It is absolutely critical you review your liability exposure under HB 75 with your personal counsel and consult with your insurance professional to see how best to protect yourself, your employees, and facilities. The Doctors Company will continue to offer member QHPs the traditional \$200,000, soon to be \$250,000 limit, but will not be offering the \$4,000,000 that goes into effect on January 1, 2022, and annual escalations thereafter.

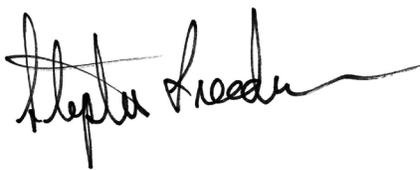
Rewriting all New Mexico policies effective January 1, 2022: To comply with HB 75, increasing the limit to \$250,000 and collecting all PCF surcharges at the new PCF charges published by the PCF administration this fall, The Doctors Company will cancel your current policy and issue a new policy effective January 1, 2022. Please consider this as notice of this change.

Advocacy

The Doctors Company advocated strongly against the New Mexico Trial Lawyers Association's efforts over the last several years to amend the MMA. We provided the Superintendent of Insurance, state and local medical societies, hospital representatives, public officials, lawmakers, and others with key information, including an independent actuarial analysis, to ensure that decision makers and stakeholders understood the potential impacts of the changes to the MMA.

Faced with a legislative session in which the trial lawyers' favored legislation would have the votes to pass and the backing of the governor, the coalition of organizations representing healthcare providers had no other choice than to negotiate from a position of weakness. If the coalition had not participated in the negotiations, nothing would have stopped the trial lawyers' allies in the legislature from stripping every single existing protection from healthcare providers. These negotiations allowed the coalition to salvage some meager protections, but the resulting legislation is devastating to medical professionals. In the future, The Doctors Company will advocate for legislation which will remove the disastrous changes to the MMA that the passage of HB 75 caused. Please consider contacting your state legislators and the governor if you would like to comment on the changes they made to the MMA at the behest of the New Mexico Trial Lawyers Association.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen Freedman", with a long horizontal flourish extending to the right.

Stephen Freedman
Senior Vice President
Regional Operating Officer
thedoctors.com/advocacy