NEW MEXICO'S MEDICAL PRACTICE ENVIRONMENT & THE MEDICAL MALPRACTICE ACT

TOPICS

- NMMS: Who are we?
- Common Goals
- NM Insurance Market
- Patient Compensation Fund
- Access to Care Impacts
- 2023 Legislative Session

NEW MEXICO MEDICAL SOCIETY

WHO ARE WE &
WHY DO WE FOCUS ON MEDICAL MALPRACTICE AS AN ACCESS TO CARE ISSUE

COMMON GOALS

- Patients need access to timely, affordable, and high quality medical care.
- Coverage for lifetime medical expenses to patients if they are injured.
- Make the Patient Compensation Fund solvent.
- Ensure the longevity of the Patient Compensation Fund by having more independent providers participate in the fund.
- Ensuring physicians have access to affordable malpractice insurance that appropriately protects patients, physicians, and their practices.

INDEPENDENT CLINICIANS: WHAT DOES COVERAGE LOOK LIKE

Patient Compensation Fund

- Independent provider:
  - Underlying Coverage - $250,000 secured through insurance company authorized to write under the MMA
  - PCF Coverage – covers claims from $250,000 to the $750,000 cap on compensatory damages
    - PCF also pays for **all** (uncapped) past and future medical expenses of the patient
  - CPI Increases
- Independent Outpatient Facility (After Calendar Year 2023)
  - $5 million cap that will increase to $6 million by 2027
  - Underlying Coverage - $250,000 secured through insurance company authorized to write under the MMA
  - PCF Coverage – covers claims from $250,000 up to $750,000 cap on compensatory damages
    - PCF also pays for **all** (uncapped) past and future medical expenses of the patient
  - Additional Coverage – covers claims from $750,000 up to $5million - $6million cap on compensatory damages
  - No PCF participation after December 31, 2026

Claims Based $1million/$3million Policy

- Independent Providers & Outpatient Facilities:
  - Professional liability/malpractice policy that can be purchased on the open insurance market.
  - These policies cover **only** up to $1million in damages per claim.
  - If damages or judgements exceed $1million, the physician is responsible for paying the excess through a checkerboard of options.
  - These policies limit the number of claims that can access the policy in any one year to 3 claims with a total pay out limit of $3million in the calendar year.
  - These policies **do not** guarantee all future medical expenses of the patients. These policies exist in an **uncapped** environment.

NEW MEXICO'S MALPRACTICE INSURANCE MARKET IS UNIQUE

- Hard to compare apples to apples because every state is different in how medical malpractice suits maybe brought in the judicial system
- Costs are higher in NM – a higher cap after the 2021 Legislative Session is only one reason why.

State	Specialty	PCF	$1m/$3m	% different than NM
NM	Internal Medicine	$20,044	$24,806	
	General Surgery	$91,758	$105,284	
	OBGYN	$105,962	$118,025	
TX	Internal Medicine		$15,065	-39%
	General Surgery		$50,587	-52%
	OBGYN		$57,892	-51%
Colorado	Internal Medicine		$11,372	-54%
	General Surgery		$40,248	-62%
	OBGYN		$46,155	-61%
Arizona	Internal Medicine		$11,118	-55%
	General Surgery		$39,433	63%
	OBGYN		$59,133	-50%
Oklahoma	Internal Medicine		$16,342	-34%
	General Surgery		$57,900	-45%
	OBGYN		$63,224	-46%
Louisiana	Internal Medicine	$38,257		190%
	General Surgery	$141,608		154%
	OBGYN	$162,816		154%
Indiana	Internal Medicine	$10,976		-45%
	General Surgery	$51,424		-44%
	OBGYN	$62,921		-41%

WHY THE PATIENT COMPENSATION FUND?

- Spreading malpractice risk throughout the House of Medicine through participation in the PCF is preferable for clinicians and patients.
  - Judgements are capped which creates stability and some predictability for patients and clinicians.
  - If a patient is harmed, their future medical bills will be paid in full by the PCF.
  - Insurance is more affordable in the PCF than on the open market.
  - Medical Review Commission provides early discovery at no cost to the patient and an opinion on the viability of a malpractice case.
  - Unlimited punitive damages.
- Malpractice claims must be brought within three (3) years unless the case involves a juvenile or an incapacitated individual.
  - Claims are paid out of the fund years after the surcharge has been levied – meaning if providers abandon the fund before a claim is mature, they are no longer paying in surcharges to the fund to then pay out the claim.
  - This leaves the fund vulnerable to being insolvent and creates an unfair burden for remaining clinicians in the fund to potentially pay claims of providers who exited early. Once a provider leaves the fund, there is no way for the state to recover surcharges of non-participants.

INDEPENDENT OUTPATIENT FACILITIES ARE NOT HOSPITALS

- Independent owned and controlled outpatient facilities are **not** hospitals. CMS recognizes them as different entities than hospitals and hospital owned and controlled outpatient facilities.
- Independent physician owned and controlled outpatient facilities continue to be uninsurable under the higher cap amounts from HB75.
  - These facilities have completed exhaustive searches with medical malpractice insurers across the country and have yet to find a single carrier who is willing to write occurrence based or claims made policies at the required $5 million-$6 million level.
- Independent outpatient facilities are reimbursed at half (or less) of the rate a hospital is reimbursed for the same procedures.
  - This means outpatient facilities save the taxpayers, and government money in the long run.
  - Outpatient facilities save **patients money** making them a critical component of the healthcare system.
  - This also means payers do **not** treat independent owned and controlled outpatient facilities as hospitals.
- Outpatient facilities pose less risk than hospital based on the patients they treat and their delivery models.

PROCEDURE	INDEPENDENT OUTPATIENT FACILITY		HOSPITAL OUTPATIENT DEPARTMENT		% OPF RECEIVES OF HOSPITAL RATE
Colonoscopy, flexible; with biopsy, single or multiple	Medicare	$591	Medicare	$1,009	58%
	Patient	$147	Patient	$251	
Arthroscopy, knee, surgical; abrasion arthroplasty or multiple drilling or microfracture	Medicare	$1,632	Medicare	$2,857	79%
	Patient	$408	Patient	$714	
Excision of cyst, fibroadenoma, or other benign or malignant tumor,	Medicare	$1,307	Medicare	$2,924	45%
	Patient	$326	Patient	$731	
Extracapsular cataract removal with insertion of intraocular lens prosthesis	Medicare	$1,284	Medicare	$2,131	60%
	Patient	$320	Patient	$532	
Injection(s), anesthetic agent(s) and/or steroid; transforaminal epidural, with imaging guidance (fluoroscopy or ct), lumbar or sacral, single level	Medicare	$430	Medicare	$952	56%
	Patient	$107	Patient	$190	

Procedure Price Lookup for Outpatient Services | Medicare.gov

MEDICARE PAYMENT RATES FOR OUTPATIENT FACILITIES ARE LESS THAN HOSPITALS

CMS – the federal agency that oversees Medicare and Medicaid – recognizes that independent owned and controlled outpatient facilities are **not** hospitals. The agency reimburses them differently and understands they are a safer environment in which to receive care.

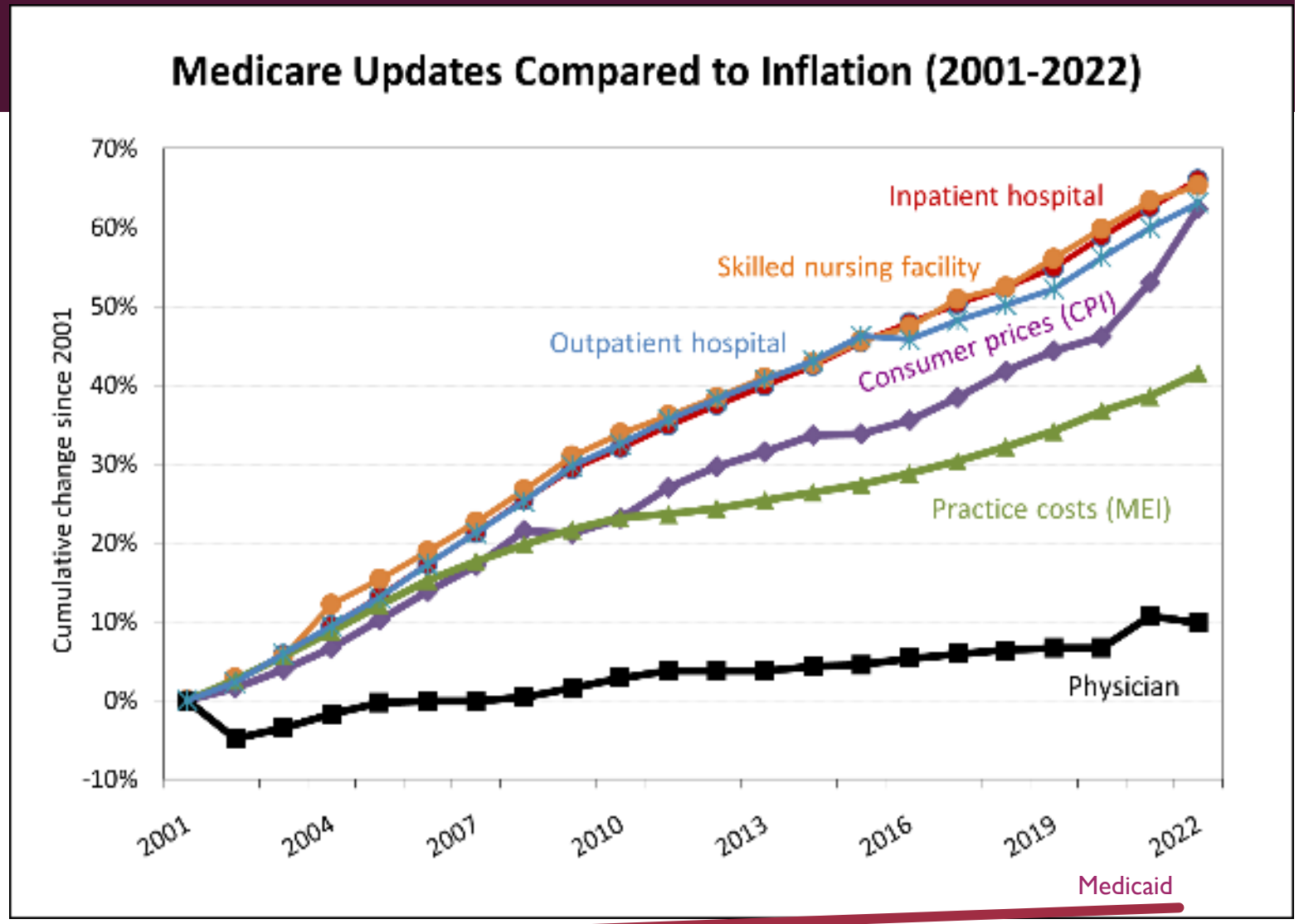
Independent outpatient facilities also see patients who have less risk factors than those receiving care at a hospital.

PATIENT ACCESS TO CARE AND PHYSICIAN PRACTICE ENVIRONMENT

- Todd Williams, MD, PC
  - Started practice in New Mexico in 2000 straight out of residency
  - Original payer mix was ~70% commercial and 30% government: Medicare (20%) and Medicaid (10%)
  - My Practice overhead was ~40%
- As of 2022:
  - Payer mix is now ~70% Medicare and Medicaid and only ~30% commercial
  - My gross receipts have **decreased** since 2007
  - Practice expenses have **increased** since 2000
  - My overhead is now ~60%
    - Gross receipts tax penalty is now 12.5% on "net receipts"

MEDICARE HELPS TELL THE STORY OF LOW REIMBURSEMENT RATES

- The State of New Mexico does not control Medicare, but stagnant Medicare reimbursements compound the revenue issues for physician practices.
- Physician reimbursement rates have not kept up with inflation because there is no inflation adjuster in the rates.
- Physicians have experienced no notable increase in Medicare in 20 years.



PATIENT ACCESS TO CARE AND PHYSICIAN PRACTICE ENVIRONMENT

- Malpractice Issues

- Medscape rated New Mexico as one of the Worst States to Practice Medicine in 3 of the past 5 years
- In 2021 New Mexico was ranked as the third worst state based on the following factors:
  - "New Mexico had a higher rate of adverse actions against physicians than any other state with the exception of New York. The state fared poorly for livability, malpractice payouts for claims against doctors, and medical resident retention".
  - https://www.medscape.com/slideshow/2021-best-worst-practice-6013837#30
- In 2021 Louisiana was ranked as the second worst state also based on the following factors:
  - "Louisiana is in the bottom quintile for adverse actions against doctors, malpractice payouts for claims against doctors, and health system performance.
- Data sources:
  - https://www.medscape.com/slideshow/2021-best-worst-practice-6013837#33

PATIENT ACCESS TO CARE AND PHYSICIAN PRACTICE ENVIRONMENT

- When I started practice in New Mexico, my malpractice insurance cost was $32,000 annually
- My malpractice insurance has increased yearly up to $50,000 in 2021
- With the passing of HB75 which went into effect on Jan 1, 2022, I had the single largest increase in annual malpractice expense, and paid over $60,000 for 2022.
- I have not seen my rates for 2023

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PATIENT ACCESS TO CARE AND PHYSICIAN PRACTICE ENVIRONMENT

- I am also a 4% owner in Four Corners Ambulatory Surgery Center in Farmington (vice president)
  - 4CASC is a multispecialty center serving the entire four corners from Gallup to Dulce to Cuba and Tec Nos Pos Arizona
  - We have been unable to find a single insurer to provide coverage under the new increased malpractice rates created by HB75
- Ambulatory surgery centers and other outpatient facilities are important tools in recruiting many specialty physicians nationwide
  - Plastic surgery, orthopedics, ophthalmology, otolaryngology, urology, podiatry, cardiology, gastroenterology, neurosurgery, cardiology, and even general surgery all have investment opportunities across the country
  - Ambulatory surgery centers are reimbursed on average, just over half of what a hospital is reimbursed for the identical procedure and total revenue is far less than hospitals without the ability to "cost share"

PATIENT ACCESS TO CARE AND PHYSICIAN PRACTICE ENVIRONMENT

- My take-home pay in 2022 was **58%** of the national average for plastic surgeons due to a combination of **poor reimbursement rates** and high overhead, including **malpractice premiums** and the **gross receipt penalty**
- My return on investment in Four Corners Ambulatory Surgery will also decrease due to the increased costs associated with the HB75 increase
- Even with a 100% subsidy of the PCF portion of my malpractice premiums by the State of New Mexico, my rates are still higher than the surrounding states.
- It makes no sense for a private practitioner to continue to practice in the State of New Mexico let alone trying to recruit to the State.

MEDICAL MALPRACTICE IMMEDIATE SOLUTIONS

- Outpatient facilities that are "not majority owned and controlled by a hospital" must be included in definition of independent provider
  - By taking this action, independent outpatient facilities will permanently remain at the lower cap rate and these facilities will permanently remain a part of the Patient Compensation Fund (PCF) which does more to **protect patients**.
  - These independent outpatient facilities are a critical component of patient care – if these facilities close due to lack of insurance, patients will have less access to care, and more physicians may be forced to become employed by a hospital or open their practice elsewhere.
- Additional appropriations to the PCF for solvency
  - Deficit projected $75million -$100 million for FY2024 even after $30 million appropriation for FY23. There are few one-time investments that could do more to bolster access to care than paying off the PCF deficit. The Superintendent of Insurance has made a budget request of no less than a $32.5 million appropriation to the PCF which would be attributed to independent physicians to keep growing medical malpractice insurance costs as reasonable as possible.
- Timeline to pay off the PCF deficit – independent physicians and their outpatient facilities will remain in the act permanently and therefore be able to pay off the deficit over time (longer than 5 years) which will keep medical malpractice insurance costs lower for physicians.
- Monitor definition of "occurrence."
- Additional issues to be examined based on Superintendent of Insurance Final Order of Surcharges for 2023 and the need to maintain solvency in the PCF.

NEW MEXICO MEDICAL SOCIETY

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