



THE NARRATIVE

The mission of the Patient's Compensation Fund is to administer, manage, operate and defend the Fund in a manner that will timely and efficiently meet the needs and interests of all Louisiana healthcare providers, those injured as a result of medical malpractice incidents and the citizens of Louisiana.

Another Year of Rate Relief



*Ken Schnauder,
Executive Director*

A relatively calm but encouraging fiscal year ending June 30 has come and gone with improvement in our financial position due to favorable claims development during the period. Final numbers are not tallied until later in September but there will be an overall improvement in our financial strength year over year.

The improvement in claims development and a slight increase in enrollees resulted in another favorable actuary report. Although some classes of healthcare providers did have indications for a small rate increase, the Board voted during the July meeting, hosted by the staff at East Jefferson General Hospital in Metairie, to keep rates flat for

those with indicated increases and a reduction for those with an indicated decrease. Overall the rates, effective September 2, 2016, went down 1.2%. CRNA's and the "Other" category of providers had the most significant decrease at 8.4%. This makes 2 years in a row without an increase in rates for any specialty enrolled and a decrease for most.

The number of Medical Review Panels filed is slowly climbing from the lows 2 years ago, not seen since the mid 90's and this trend is developing across the country in the medical professional liability line of insurance. Even with the general increase in filed claims, our claims payments for the year decreased from fiscal year 2015. If the recent increase in frequency continues this year, claims payments may begin increasing over the next few years but for now continued improvement is very much a welcomed change.

One can only hope this seemingly stable and improving claims environment remains in place for a number of years so rates can remain stable and continue to relieve pressure on our healthcare system, which seems to be struggling with increased patient volume and decreased reimbursements for services rendered.

The PCF settled 328 claims for the year which is above 300 for the first time in 5 years. The total of those settlements was over \$81 million. In addition over \$21 million was paid

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on the 167 open claims with patients in need of ongoing future medical care. Although frequency of new claims filed has been relatively low for a number of years the PCF is still settling claims as aggressively as ever. The cooperation by the primary healthcare providers and their insurers as well as the plaintiff attorneys

involved, insures the efficient process of resolving claims. As always, our goal is to promptly and fairly resolve every meritorious claim presented and resist those without merit to protect the integrity and financial stability of the Fund for those it was created to protect.

Accountability in Administrative Services



*Barbara Woodard,
Administrative Director*

Historic Flooding–

The office was closed during the week of August 12-19 due to the catastrophic flooding in Baton Rouge and surrounding parishes. Prolonged rainfall for many days caused rivers to flood and submerged thousands of homes and businesses and directly impacted 14 of the 55 PCF staff.

We stand committed in helping our employees while they rebuild homes and put their lives back in order from this unprecedented flooding disaster. Please keep them in your thoughts and prayers.

Human Resources – The Louisiana Patient’s Compensation Fund (PCF) underwent its annual Program Evaluation by the Louisiana Department of State Civil Service (DSCS) in February 2016. This evaluation focuses on compliance with Civil Service Rules and Documentation Requirements. 22 categories are audited and compared against the agency’s prior evaluation and the statewide compliance rate. These categories fall under 4 main headings: Civil Service Authority for Action, Civil Service Compensation Authority, CS Rule Compliance, and CS Retention of Required Documentation. The PCF achieved 100% compliance in all categories audited and scored above the statewide compliance rate. Nolitha LeDay-McDowell, Human Resource Specialist, was recognized by The PCF Oversight Board at the April Board meeting for her dedication to the agency’s HR Program and in receiving a perfect audit. The Civil Service Commission meeting held in June recognized the PCF HR Program by having the DSCS Director, Byron Decoteau, present a commensurate certificate for having an outstanding HR program to the agency. The agency is highlighted in the July 2016 issue of the State Civil Service newsletter, *The*

Bridge. The HR team is commended for their dedication to the agency.

Financial – The PCF annually undergoes a thorough financial audit by the private CPA Firm, Postlethwaite & Netterville (P&N). This audit covers the previous fiscal year’s business operations. The financial audit consists of a four week onsite review of staff files and internal procedures. The main focus is on agency operation expenses, investment activity, payables, receivables, claim payments, payroll and related benefits. The PCF Sections are: Administration (Accounting, Human Resources, Records Management, and Information Technology), Claims Section and Panel/Surcharge Section. Each Section is individually reviewed by the audit team for compliance with agency internal procedures. The Oversight Board is presented each year with the audit report prior to it being sent to the Legislative Auditor for publication. The agency’s operations for fiscal year 2014/2015 ended in conformity with generally accepted accounting principles and there were no findings. The PCF has received a perfect financial audit for the 2nd consecutive year. During the past month P&N has been onsite and is currently auditing the PCF for fiscal year 2015/2016. The agency continues to operate within the approved annual budget and accountability is held to the highest standard. The Accounting team is commended for their dedication to the agency.

Automating–The PCF’s Records Management team has been heavily involved in a project to convert paper provider files to electronic media which makes them readily available to other units in the agency. This project began in 2008 and the Records Management team has completed the project this year. Congratulations to the team and their efforts towards this accomplishment over the last 8 years. This section has also upgraded the Laserfiche imaging system in 2016. The program was written by Records Manager, Hope McCorkle, and IT Director, Brian Mooney. Automation allows the agency to be most efficient in how we conduct business. We appreciate the innovative work by this team!

Acknowledgements – Each year during the first week of May, the agency participates in National Public Service Recognition

Week. Management recognizes that working in public service is a choice. As public servants, employees may be called upon to do more than one job and consolidate duties. In times of economic crisis, they are faced with instability of income, benefits, and job security. During Public Service Recognition Week we give appreciation to our staff for their commitment and dedicated

service. We also acknowledge and award those staff with anniversary dates in 5 year increments. This year we recognized 9 employees with 5, 10, 20, 30, and 35 years of service.

The Oversight Board applauds the efforts and greatly appreciates the dedication of all agency employees.



Nolitha Leday-McDowell, HR Specialist;
April White, HR Analyst



Sandra Porter, Accountant Manager;
Benjamin Sammons, Accountant 2;
Jeannette Digirolamo, Accountant 1;
Samantha Kennedy, Accountant 3

The 2016 “Sandwich” Regular Legislative Session



Dave Woolridge
General Counsel

The 2016 regular legislative session was sandwiched between two special sessions called to address Louisiana’s huge 2016-17 fiscal year shortfall. In no particular order, the following healthcare related issues were addressed¹ in this session.

New Laws Enacted

Act No. 252 – authorizes a licensed physician who practices telemedicine to prescribe any controlled dangerous substance to any patient who is being treated at a licensed healthcare facility without the necessity of

conducting an appropriate in-person patient history or physical examination of the patient. Enacts RS 37:1271.1. Effective 05/26/2016.

Act No. 275 – lengthens the time for a medical malpractice claimant to pay the filing fee for both the private medical review panel process and the state review panel process. A claimant now has 45 days from the date of receipt of the confirmation to pay the filing fee instead of 45 days from the mailing date of the confirmation. Amends RS 40:1231.8 and 40:1237.2. Effective 08/01/2016.

Act No. 396 – authorizes a physical therapist who either has (i) a doctorate degree in physical therapy from an accredited institution; or (ii) five years of licensed clinical practice experience, to implement physical therapy treatment without a prescription or referral by certain licensed providers. Amends RS 37:2418. Effective 06/06/16.

Act No. 417 – amends the definition of “healthcare provider” in the Louisiana Telehealth Access Act to include a licensed dietitian or nutritionist. Amends RS 40:1223.3. Effective 08/01/16.

¹ This article discusses both bills that were enacted and those that failed.

Act No. 630 – removes the requirement that a physician practicing telemedicine either maintains a physical practice location in Louisiana or affirms in writing with the LSBME that said physician has an arrangement with another physician who maintains a physical practice location in Louisiana to provide for referrals and necessary follow-up care. Adds additional requirements that a physician practicing telemedicine must (i) create a medical record on each patient and make the record available to the LSBME upon request; and (ii) if necessary, provide a referral to a physician located in Louisiana or arrange for follow-up care in Louisiana as may be indicated. Authorizes the utilization of interactive audio without video if, after review of medical records, the physician determines that he/she is able to meet the same standard of care as if the healthcare services were provided in person. Provides that proper venue for any lawsuit involving care rendered via telehealth or telemedicine shall be where the patient resides or where the patient was physically located during the provision of the telehealth or telemedicine. Amends several provisions in RS 37 regarding telehealth and telemedicine. Effective 06/17/16.

Proposed laws that failed

SB No. 36² – The Original version sought to amend the definition of “malpractice” in MMA (RS 40:1231.1 *et seq.*) to provide that a physician holding himself out as a specialist in an area of medicine for which he is not board certified or credentialed would be considered an intentional tort. In addition, the Original version sought to make a physician (who intentionally represents himself as being a specialist or being board certified without having obtained the required clinical training, education and board certification and being in good standing with the respective board), his employer, hospital or corporation to be subject to liability without regard to the MMA. The Engrossed version sought to (i) amend the definition of “malpractice” in MMA to include misrepresentation by a health care provider (HCP) of his/her education, training or experience in a particular specialty of medicine or with a particular surgery or procedure; (ii) amend the limitation of recovery section of MMA to add that the HCP

who is found to have misrepresented his/her education, training or experience in a particular specialty of medicine or with a particular surgery or procedure shall be liable for all amounts awarded above the limitation of recovery currently provided for in the MMA; and (iii) make any HCP who negligently or knowingly grants privileges to, advertises for or profits from another HCP’s misrepresentation of his/her education, training or experience in a particular specialty of medicine or with a particular surgery or procedure solidarily liable with said HCP for all amounts awarded above the limitation of recovery currently provided for in the MMA.

SB No. 78³ – The Original version sought to make the total amount recoverable for malpractice claims for brain injuries⁴ to a child⁵ (exclusive of future medical care) not to exceed \$5MM plus interest and costs only when either (i) the medical review panel renders a unanimous opinion in favor of the claimant; or (ii) liability is determined unanimously by a jury. Although the Original version contained numerous drafting issues, it was clear⁶ that the increased cap on damages for these types of malpractice claims applied to both claims against the state/state healthcare providers and private providers. The Engrossed version sought to make the total amount recoverable for malpractice claims for catastrophic brain injuries⁷ to a child⁸ (exclusive of future medical care) not to exceed \$5MM plus interest and costs only when either (i) the medical review panel renders a unanimous opinion in favor of the claimant; or (ii) liability is determined unanimously by a jury. In addition, the Engrossed version only applied to malpractice claims against private healthcare providers.

The 2016 Second Extraordinary Legislative Session

In addition to dealing with proposed legislation addressing Louisiana’s fiscal crisis, the Senate found time to pass a Senate resolution, SR 12, urging joint committees of the Senate to study, receive testimony and make recommendations regarding “present

² SB No. 36 was reported favorably by the Senate Committee on Health and Welfare, with amendments. Although the Senate adopted a non-substantive amendment to SB No. 36, the Senate failed to vote on the Engrossed version.

³ SB No. 78 was reported favorably by the Senate Committee on Finance, with amendments. Although the Senate adopted a non-substantive amendment to SB No. 78, the Senate failed to vote on the Engrossed version.

⁴ “Brain injury” is defined in the Original version of the bill as “any mild, severe, or traumatic injury to the brain.”

⁵ “Child” is defined in the Original version of the bill as “a fetus *in utero* or any natural person under the age of eighteen years.”

⁶ The Fiscal Note prepared by the Legislative Fiscal Office (LFO) for the Original version of SB No. 78 recognized that, in the event

a claim is made against the state involving a brain injury to a child sustained through malpractice, ORM would be responsible for paying the claim. Although the LFO stated that the “exact increase in self generated revenue expenditures is indeterminable”, it did recognize that, “[t]o the extent the ORM Self Insurance Fund has insufficient funds to cover the increased medical malpractice amount, state general fund[s] may be needed.”

⁷ “Catastrophic brain injury” is defined in the bill as “any moderate or severe traumatic brain injury that causes a child to lose partial or total use of one limb or become paraplegic or quadriplegic.”

⁸ “Child” is defined in the bill as “a fetus *in utero* or any natural person under the age of eighteen years.”

Louisiana laws concerning medical malpractice caps and surcharges.” SR 12 included a list of specific organizations to provide testimony, including but not limited to, the Patient’s Compensation Fund. During the testimony offered at the committee hearings on SB No. 78 in the 2016 regular legislative session, it was recognized that the Louisiana Supreme Court, in *Oliver v. Magnolia Clinic*, 2011-2132 (La. 03/13/12), 85 So.3d 39, held that the MMA’s cap on damages is constitutional. In so holding, the Supreme Court stated that any perceived inadequacy of the cap’s amount is to be addressed by the legislature. This appears to have formed the basis for the introduction of SR 12.

In *Oliver*, the Supreme Court acknowledged the State’s objective to justify the existence of the cap: “limiting damages in

malpractice cases lowers malpractice insurance costs, thereby assuring accessible and affordable healthcare for the public”⁹ and avoiding a healthcare crisis in Louisiana. The Supreme Court found that three effects of the cap act to the benefit of a malpractice claimant, namely: “(1) greater likelihood that the offending physician or other health care provider has malpractice insurance; (2) greater assurance of collection from a solvent fund [PCF]; and (3) payment of all medical care and related benefits.”¹⁰ Without the cap, malpractice claims exceeding the cap would increase the probability that there would not be sufficient insurance to pay for uncapped damages, thus resulting in an underfunded, perhaps insolvent system of recovery for claimants.

Great Flood of 2016 Affects Due Date for PCF Surcharges

In response to flash flooding and severe flooding (Great Flood of 2016) that occurred in twenty southern Louisiana parishes in mid-August, Governor Joh Bel Edwards declared a State of Emergency through September 10, 2016. In response, Insurance Commissioner “Jim” Donelon issued an emergency rule to allow affected insureds additional time to pay their premiums to avoid cancellation of their insurance policies, including but not limited to, medical malpractice.

At its September 2016 meeting, the PCF Oversight Board adopted Emergency Rule 5 (ER-5) in response to the Great Flood of 2016, which also provides additional time for certain PCF qualified healthcare providers (QHCPs) to pay their PCF surcharge. ER-5 (summarized below but which can be read in its entirety by clicking [here](#)) applies to all QHCPs:

(i) who, as of 12:01 a.m. on August 12, 2016, reside in, whose operation(s) and/or practice(s) are located in, or whose primary place of employment was in, or whose permanent employer had assigned said person to a business located in, one or more of the following parishes or in one or more of any other parish(es) that have or may hereafter receive a major disaster declaration by the President of the United States or such officer acting under his authority:

Acadia, Ascension, Avoyelles, East Baton Rouge, East Feliciana, Evangeline, Iberia, Iberville, Jefferson Davis, Lafayette, Livingston, Pointe Coupee, St. Helena, St.

Landry, St. Martin, St. Tammany, Tangipahoa, Vermilion, Washington, and West Feliciana; and

(ii) whose renewal date or 30 day grace period for payment of the PCF annual renewal surcharge occurs on or after August 12, 2016 but prior to September 12, 2016.

QHCPs who meet the above criteria are referred to “Affected QHCPs”.

Under ER-5, PCF surcharges for all Affected QHCPs whose renewal date or 30 day grace period for payment of the annual PCF renewal surcharge occurs on or after August 12, 2016 but prior to or on September 12, 2016 (suspension period), shall be due and owing on September 12, 2016. However, the PCF Oversight Board granted continuing authority to the Executive Director of the PCF to reasonably extend the suspension period for those Affected QHCPs who certify to the Oversight Board in writing that said Affected QHCP was impacted by the Great Flood of 2016 in a manner sufficient to prevent the timely payment of the renewal surcharge. The 30 day grace period provided for payment of the annual PCF renewal surcharge by Affected QHCPs who have been granted an extension of the suspension period shall commence on the day immediately following the end of the extended suspension period; the 30 day grace period for all other Affected QHCPs shall commence on September 13, 2016.

⁹ *Oliver*, *supra*, 85 So.3d at 45.

¹⁰ *Id*; citing *Butler v. Flint Goodrich Hospital of Dillard University*, 607 So.2d 517, 521 (La.1992), *cert. denied*, 508 U.S. 909, 113 S.Ct. 2338, 124 L.Ed.2d 249 (1993).