



May 5, 2022

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Via Email to richard.word@state.nm.us and U.S. Mail

Rick Word
Office of Superintendent of Insurance
1120 Paseo De Peralta, 4th Floor
P.O. Box 1689
Santa Fe, NM 87504-1689

Re: Alteon/PCF – Hearing

Dear Mr. Word:

This firm represents The Doctors Company (“TDC”) and Alteon Health, LLC (“Alteon”) in the above referenced matter. Pursuant to the discussion between the parties and the Hearing Officer on April 27, 2022, the purpose of this correspondence is to set forth more comprehensive and complete bases upon which TDC and Alteon seek reconsideration of the denial of the Alteon providers’ and entities’ admission to the Patients Compensation Fund (“PCF”) for the period beginning November 1, 2021 and ending on December 31, 2021 (the “Claim”). TDC and Alteon appreciate the opportunity to provide a more thorough statement of the scope of issues.

Factual Background

The factual background of the controversy at issue is straightforward and undisputed. TDC issued a medical malpractice policy to Alteon (“Policy”) with an effective date of November 1, 2021. The Policy provided coverage to 58 individual providers and 4 Alteon entities (“Proposed QHPs”) and provided sufficient coverage to qualify the Proposed QHPs for participation in the PCF. Alteon paid the required surcharge (\$85,055) (“Surcharge”) to TDC on December 7, 2021.

A clerical error caused by TDC’s need to manually process and reconcile policies to comply with the changes enacted by HB 75 resulted in TDC failing to forward the Surcharge to the PCF. TDC did not discover the error until February 22, 2022, more than 60 days following the inception of the November 1, 2021 Policy and approximately seven weeks after Integrion became the third party administrator of the PCF. TDC immediately sent a written

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communication to the PCF on February 22, 2022 accepting full responsibility for the clerical error and seeking to pay the belated Surcharge. Exhibit A. Integrion responded to the February 22 letter on February 23, 2022. Exhibit B. In the February 23, 2022 letter, Integrion denied TDC's request for relief related to the clerical error. On March 4, 2022, the Superintendent issued a hearing notice. Exhibit C.

Integrion Lacks Authority to Act on Circumstances Arising Prior to January 1, 2022

The facts that give rise to this controversy arose prior to Integrion becoming a third party administrator of the PCF. As far as we are aware, Integrion's responsibilities as the third party administrator commenced on January 1, 2022. The error about which TDC and Alteon seek review occurred on or about November 1, 2021, two months before Integrion's involvement with the PCF. As discussed in the April 27, 2022 status conference, TDC and Alteon will seek discovery concerning the basis on which Integrion claims to have had the requisite authority to issue a determination regarding the Claim. Barring a written provision in the applicable contract that effectively renders Integrion's authority retroactive, TDC and Alteon respectfully submit that Integrion lacked the authority to issue the February 23, 2022 denial letter relating to TDC's November 1, 2021 clerical error.

The Denial does not Achieve the Purposes for which PCF was Created

The denial of the Proposed QHPs' participation in the PCF for the period of November 1, 2021 to December 31, 2021 is contrary to public policy and the explicit objectives and purposes for which the PCF was created. The New Mexico Administrative Code expressly states that the purposes and objectives of the PCF factor heavily into the application of the rules relevant to the operation of the PCF.

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.

The purposes and objectives of the PCF are reflected on the PCF's website:

The Patient's Compensation Fund ("PCF") was established in 1978 by the New Mexico Medical Malpractice Act NMSA 1978, § 41-5-1, et seq. The PCF is funded solely through the surcharges paid by its participants and the Superintendent of Insurance serves as the PCF Custodian.

The purpose of the PCF is to promote the availability of coverage for medical professional liability to health care providers practicing in New Mexico. The PCF provides an excess layer of coverage to doctors, hospitals, and other health care providers who qualify under the provisions of the Medical Malpractice Act. The PCF provides limitations on monetary awards, time limits for filing claims, and mandatory panel review of claims.

Most health care providers participating in the PCF meet the financial responsibility requirements of the Act by purchasing medical malpractice insurance policies written on occurrence basis at \$250,000 per claim from PCF authorized insurers. These insurers collect the PCF surcharge along with the primary layer premium and remit it to the PCF.

The determination that the Proposed QHPs should be denied participation in PCF for any period of time given that the Proposed QHPs completed all the tasks required of them to effectuate their participation in the PCF is both inequitable and contrary to the stated purpose of the PCF: "to promote the availability of coverage for medical professional liability to health care providers practicing in New Mexico." The determination to exclude the Proposed QHPs in fact defeats that stated purpose of PCF and therefore violates 13.21.1.6 NMAC.

Excluding Alteon from the PCF is Not the Appropriate Remedy

Even if a penalty should be imposed because of the clerical error that delayed the transmission of the surcharge from TDC to PCF, the exclusion of the Proposed QHPs is not appropriate. The New Mexico Medical Malpractice Act prescribes the appropriate remedy.

The surcharge shall be collected on the same basis as premiums by each insurer from the health care provider. The surcharge shall be due and payable within thirty days after the premiums

for malpractice liability insurance have been received by the insurer from the health care provider in New Mexico. *If the surcharge is collected but not paid timely, the superintendent may suspend the certificate of authority of the insurer until the annual premium surcharge is paid.*

NMSA 1978 § 41-5-25 (E) (emphasis added).

The circumstance described in the statute is precisely on point: Alteon tendered the surcharge to TDC and TDC's clerical error prevented TDC from timely remitting the surcharge to PCF. But rather than imposing a penalty on TDC, PCF has inequitably punished Alteon for TDC's oversight in a manner that is not contemplated by the NMMMA.

TDC has accepted full responsibility for the error that resulted in the belated remittance of the surcharge and the Superintendent is entitled to exercise his discretion to penalize TDC for its error. The exclusion of the Proposed QHPs is not the appropriate remedy under the circumstances presented in this matter.

Sincerely,

/s/ Jennifer G. Anderson

Jennifer G. Anderson

JGA/nmm

cc: Barry Berenberg

February 22, 2022

Patient's Compensation Fund
Office of Superintendent of Insurance
6200 Uptown Boulevard, NE, s-100
Albuquerque, NM 87110

RE: Eligibility Appeal for Alteon Health LLC

To Whom It May Concern:

While preparing to report Alteon Health LLC, effective 01/01/2022 – 01/01/2023, we discovered the initial new business policy had not been reported. The Doctors Company (TDC) initially issued Alteron Health, LLC, 58 group members and 4 entities, with an effective date of 11/01/2021 – 11/01/2022 under policy# 2253680-01. During the policy changes to comply with HB-75, it was cancelled effective 01/01/2022 and re-issued with an effective date of 01/01/2022 – 01/01/2023 under policy# 2253680-02. This policy was missed from reporting due to the manual reconciliation of TDC's weekly report that is submitted. The entities and groups members are not at fault for this error. The Doctors Company is taking full responsibility for this error.

The total PCF surcharge was received from the insured on 12/07/21 in the amount of \$85,055.

We are making a formal appeal to have coverage reviewed and entered for eligibility from 11/01/2021 – 01/01/2022. Upon approval, we will submit the appropriate surcharges and penalties, if applicable.

If you need additional information, please contact me at 517-324-6852, or email tmyers@thedoctors.com.

Sincerely,



Tierany J. Myers
Underwriting Operations Manager
Direct: (517) 324-6852
Toll Free: (800) 421-2368, ext. 5852
tmyers@thedoctors.com



February 23, 2022

Tierany J. Myers
Underwriting Operations Manager
The Doctors Company
PO Box 2900
Napa, CA 94558
tmyers@thedoctors.com

Dear Ms. Myers:

We received your letter of February 22, 2022, on behalf of Alteon Health, LLC, requesting a "formal appeal" to have the coverage reviewed and entered for the period of 11/01/2021 – 01/01/2022.

After a review of your request, we are unable to authorize admission for the requested time period because no application for Alteon Health, LLC was submitted and paid for within sixty (60) days of the requested effective date of coverage. The only application we have received on behalf of Alteon Health, LLC was submitted on February 18, 2022. This application is currently approved pending payment of the applicable surcharge by March 2, 2022.

Pursuant to NMAC 13.21.2.21(C), if the pending application is complete and approved, and if all surcharges are paid in full within sixty (60) days of the inception of the base coverage, it is anticipated that the admission date will relate back to the inception of the base coverage—01/01/2022.

Please feel free to contact me directly, should you have any questions regarding this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Debbie Luera', is written over a faint, larger signature.

Debbie Luera
Director of Operations, Integrion Group
Third-Party Administrator for the NM Patient's Compensation Fund
DebbieL@integriongroup.com
505.291.4986

BEFORE THE NEW MEXICO SUPERINTENDENT OF INSURANCE
AS CUSTODIAN OF THE PATIENT'S COMPENSATION FUND

IN THE MATTER OF THE PETITION FOR)
 HEARING BY ALTEON HEALTH LLC)
 SUBMITTED BY THE DOCTORS COMPANY)
 _____)

Docket No. [2022-0024](#)

APPOINTMENT OF HEARING OFFICER AND NOTICE OF HEARING

THIS MATTER comes before the New Mexico Superintendent of Insurance, in his Custodian of the New Mexico Patient's Compensation Fund ("PCF"), upon a petition for hearing submitted by The Doctors Company and received by the PCF's third-party administrator, Integriion Group, on February 22, 2022. A copy of the petition is attached hereto as Exhibit "A" and referenced herein as "the Petition." The Doctors Company requests that the Superintendent accept certain surcharges tendered to him with respect to persons and entities seeking to be Qualified Health Care Providers pursuant to the New Mexico Medical Malpractice Act. Having reviewed the Petition and being otherwise informed in the premises,

THE SUPERINTENDENT FINDS AND CONCLUDES:

1. The Superintendent has jurisdiction over this matter pursuant to NMSA 1978, 59A-1-1 et seq. of the New Mexico Insurance Code.
2. The aggrieved party is Alteon Health, LLC, which has standing to seek a hearing in this matter. The Petition will be granted to allow Alteon Health, LLC status as Petitioner.
3. Petitioner is entitled to a hearing pursuant to NMSA 1978, Section 59A-4-15.
4. The Superintendent has good cause to appoint a Hearing Officer to preside over this matter and to schedule a hearing to decide the issues presented.

EXHIBIT C

IT IS THEREFORE ORDERED:

A. The Superintendent hereby designates Richard B. Word as Hearing Officer to preside over this matter and to take all necessary and convenient actions within the limits of his authority and consistent with applicable procedural rules.

B. A video hearing to take evidence on this matter is set for March 22, 2022 at 9:00 a.m. Mountain Time, Link to Video Hearing: <https://us02web.zoom.us/j/2916274744>

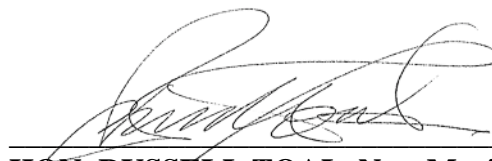
C. The hearing shall be conducted pursuant to Section 59A-4-17 and the PCF formal hearing rules of 13.21.4 NMAC (2022), held in accordance with the applicable provisions of Section 12-8-10 through 12-8-13 and Section 12-8-15, NMSA 1978.

D. Petitioner must be represented by counsel authorized to practice law in New Mexico, who must enter an appearance in this matter by March 14, 2022.

E. This order is effective immediately.

F. This order shall be served upon the parties listed on the attached Certificate of Service by electronic or regular mail.

ISSUED at Santa Fe, New Mexico, this 4th day of March, 2022.

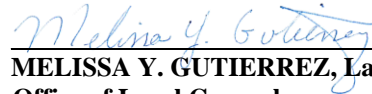


**HON. RUSSELL TOAL, New Mexico Superintendent
of Insurance in his capacity as Custodian of the New
Mexico Patient's Compensation Fund**

EXHIBIT C

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on this 4th day of March 2022, I filed the forgoing order through the OSI's e-filing system, which caused the parties to be served by electronic means, as more fully reflected on the eService recipients list for this case.



MELISSA Y. GUTIERREZ, Law Clerk
Office of Legal Counsel
Office of Superintendent of Insurance