

**To:** IHA Members

**From:** Laura Brown, Deputy General Counsel

**Date:** February 16, 2024

**Re:** 2024 Patient's Compensation Fund Surcharges under Indiana's Medical Malpractice Act

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On February 13, 2024, the Indiana Department of Insurance (IDOI) published [Bulletin 273](#) outlining the surcharges for physicians and hospitals for the Patient's Compensation Fund (PCF) effective July 1, 2024. Bulletin 273 specifies that the surcharge for physicians will increase by 4.2%, and the surcharge for hospitals will increase by 2%.

As a reminder, the PCF is a dedicated fund administered by the IDOI that was created in 1975 by the Indiana General Assembly as a component of Indiana's Medical Malpractice Act (the Act). The Fund provides compensation for patients who have experienced medical malpractice.

During the 2015 and 2016 legislative sessions, IHA supported efforts to modestly increase the damage caps under the Act. The Act has been a national model for decades, and IHA has fought to ensure that it continues to reflect the careful balance between the interests of patients and access to care. The caps on damages had not been adjusted in almost two decades, so IHA and other stakeholders had become concerned that the Act was increasingly vulnerable to constitutional challenges.

IHA collaborated throughout the 2016 session with the Indiana State Medical Association, Indiana Trial Lawyers Association, and lawmakers to reach a thoughtful solution. By phasing in an increase to the cap from \$1.25 million to \$1.8 million by 2019, the stakeholders felt the Act would be better protected from what would be a devastating result if overturned by the Indiana Supreme Court.

On July 1, 2017, the following changes became effective:

- The overall cap on damages for malpractice increased from \$1.25 million to \$1.65 million, and the provider's responsibility increased from \$250,000 to \$400,000 (with the remainder being the responsibility of the PCF).
- Plaintiff's attorney fees were capped at 32%.
- The stipend for medical review panel members was increased from the previous maximum of \$3,050 to \$4,000 per case. These costs are paid by the losing party, or in cases where there is no majority opinion, they are split between parties.
- Then beginning on July 1, 2019, the cap increased to \$1.8 million, with the provider's responsibility increasing from \$400,000 to \$500,000 (with the remainder being the responsibility of the PCF).

There are many factors that impact the annual surcharge adjustment, including the current PCF balance, recent experiences in actual claims filed, and consideration of future serial claims (i.e., multiple malpractice claims against an individual provider).

Changes in the PCF surcharge rates for the past several years are shown below, but it should be noted that these figures address PCF surcharges only and do not reflect malpractice insurance

rates that are negotiated with private carriers. Despite the increase in rates for the first time in several years, the rates are still below those in the mid to late 2010s.

After reviewing, please do not hesitate to contact IHA's Deputy General Counsel Laura Brown at [lbrown@ihaconnect.org](mailto:lbrown@ihaconnect.org) should you have any questions.

**Recent Changes in Overall PCF Surcharge Rates**

	<b>2023</b>	<b>2022</b>	<b>2021</b>	<b>2020</b>	<b>2019</b>	<b>2018</b>	<b>2017</b>	<b>2016</b>	<b>2015</b>
<b>Physician</b>	<b>No Change</b>	<b>No Change</b>	-1.65%	No Change	-10.9%	1.8%	0.8%	4.3%	3.1%
<b>Hospital</b>	<b>No Change</b>	<b>No Change</b>	-2.1%	-2.5%	-12.3%	9.9%	14.8%	11.2%	15.9%