

To: IHA Members

From: Laura Brown, Deputy General Counsel

Date: January 23, 2023

Re: 2023 Patient's Compensation Fund Surcharges under Indiana's Medical Malpractice Act

On January 12, 2023, the Indiana Department of Insurance (IDOI) published [Bulletin 267](#) outlining the surcharges for physicians and hospitals for the Patient's Compensation Fund (PCF) effective July 1, 2023. **Notably, Bulletin 267 provides that the 2023 PCF surcharges for physicians and hospitals will remain flat and will not change from the current effective rates as outlined in the Bulletin.**

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.

In summary, the overall 2023 PCF surcharges for physicians and hospitals will remain unchanged on July 1. There are many factors that impact the annual adjustments, including the current PCF balance, the increased damage limits, recent experiences in actual claims filed, and consideration of future serial claims (i.e., multiple malpractice claims against an individual provider). Changes in 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.

After reviewing, please do not hesitate to contact IHA’s Deputy General Counsel Laura Brown at lbrown@lhaconnect.org should you have any questions.

Recent Changes in Overall PCF Surcharge Rates

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