

# STATE OF NEW MEXICO OFFICE OF SUPERINTENDENT OF INSURANCE

SUPERINTENDENT OF INSURANCE



DEPUTY SUPERINTENDENT

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## Medical Malpractice Premium Reduction

### FAQs for Medical Malpractice Carriers

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The New Mexico State Legislature appropriated \$15.4 million to the New Mexico Office of Superintendent of Insurance (OSI) to address medical malpractice insurance costs for individual providers and independent group practices. The appropriation was part of a supplemental appropriation package passed in 2023 that provided each legislator and Governor Michelle Lujan Grisham with targeted appropriations for their key priorities. Governor Lujan Grisham prioritized funding for this program in her supplemental appropriation request.

This document is intended to provide additional detail around how the appropriation will be distributed to eligible providers in the state of New Mexico. OSI has also developed an FAQ for independent health care providers and group practices that may have questions about the program.

**What is the OSI asking insurers to do? Please provide as much specificity as possible in terms of dates, amounts and expected actions.**

The OSI has previously requested companies to provide the following information:

- The number of providers per specialty
- The aggregate earned premium related to each specialty

Funds related to the Medical Malpractice appropriation have been provided to the carriers by CES, our third-party administrator. These funds will be distributed to the carriers based on the earned premium data provided by the carriers. Funds must be distributed to providers by September 1, 2024.

The carriers will be instructed on how to disburse funds by CES. These instructions will include an excel spreadsheet that details how the funds provided to carriers should be allocated amongst the OB and non-OB groups, as well as the percentage of premium to be applied to the 2023 earned premium for each provider to determine the payment. Payments to be distributed by carriers can determine the most efficient means by which to distribute the funds to a provider.

The carriers will track and provide the following information to CES: Policy Number, Earned Premium for said policy number, subsidized amount sent by carrier and date sent. Data reporting to be completed by 09/15/24.

**Are the funds labeled as a subsidy?**

The appropriation refers to these funds as a subsidy.

**Is this a non-insurance transaction the insurers are carrying out as an accommodation to the OSI?**

The New Mexico State Legislature appropriated the funds to the OSI for distribution to eligible providers. The OSI determined the most efficient means for distributing the funds would be to work with New Mexico's carriers that insure eligible providers. The carriers' assistance is not considered an insurance transaction, because it is offsetting an existing premium that has already been paid. Carriers are required to distribute the funds per the directions provided by the OSI.

**Can OSI provide a statement to be shared with doctors that clearly identifies how this process will work?**

OSI's program administration vendor will provide the language that carriers must share with doctors. The OSI will provide a document to each provider explaining the reason they are receiving a subsidy through Medical Malpractice Premium Relief Allocation.

**What specific providers are included in the definition of obstetricians and related providers?**

The "OB family" is defined as:

1. Nurse mid-wife;
2. Family general practice with OB;
3. Gynecology;
4. Gynecology with IVF; or
5. OBGYN

**What if a doctor has left the carrier or for insureds who were not insured the full year, is pro-  
ration required?**

The doctor would still be eligible to receive funds based upon earned premium paid by the provider in calendar year 2023.

**Who receives the funds if a group entity provided the insurance?**

The party who initially paid the policy premium should receive the subsidy funds

**What if there is a dispute, how will OSI resolve those disputes?**

Disputes should be promptly submitted to the OSI for review and resolution.

**Can “payment” be made via a policy credit for business that has renewed?**

Carriers may use a policy credit if that is the carrier’s preference. Carriers may also issue a check or ACH payment.

**Is payment to be per “as of” date or based on all insured period(s) during calendar 2023?**

The payment is based on the 2023 reported earned premium provided by carriers.

**Will each insurer get a listing of members/insureds entitled to the payment and the amount to be paid? If not, who will do that?**

The providers entitled to the payment are the providers that were considered by carriers when submitting the data call to the OSI. The carriers have already determined providers in the mandatory data call. The OSI will provide the total allocated amount for each carrier based on the aggregated earned premium reported by the carriers for calendar year 2023. The OSI will also provide the percent of 2023 earned premium to be paid to each provider for both the OB and non-OB groups. The OSI does not have the individual provider level 2023 earned premium. The carrier will be responsible for pulling the individual provider 2023 earned premium (A) and using the % of premium to be refunded provided by the OSI (B) to calculate the payment for each individual provider ( $C = A * B$ ).

**What if checks are uncashed?**

Checks issued by the carriers should provide that the check will be void if not cashed within one of year of issuance. Carriers are then obligated to notify the OSI that a check was not cashed and return the funds to the OSI.

**What due diligence is required? If a member/insured is no longer active and cannot be readily located, what is the insurer expected to do?**

Carriers should promptly the OSI that the insured is no longer active and cannot be readily located. The OSI will assist in locating the provider. In the event a provider cannot be located, the carrier is obligated to return the funds to the OSI.

**What if the member/insured is unavailable due to death, disability, or retirement?**

Carriers should promptly the OSI that the member/insured is unavailable due to death, disability, or retirement. The OSI will provide directions on how to proceed. In the event the funds cannot be distributed, the carrier is obligated to return the funds to the OSI.

**What if the needed programming cannot be done to disburse all funds by 9-1-24?**

The carrier must return the funds to OSI and will be reverted to the General Fund of the State of New Mexico.

**Are these payments taxable?**

There may be circumstances in which these payments are considered a taxable event. OSI cannot provide tax advice. Providers are encouraged to consult with their trusted tax advisor. OSI has issued additional guidance requiring carriers to issue a 1099 to providers to account for such circumstances.

**Will OSI handle 1099 tax reporting?**

Carriers will need to issue 1099s to providers with the check that gets issued to the policyholder and the letter. OSI will issue 1099s to carriers for the administrative fee payments.

**If the check is not negotiated before the deadline, are we responsible to put a “stop” on the check?**

Yes.

**Who will be responsible for fielding questions regarding the subsidy payments?**

OSI will respond to questions sent to [MMPR.Inquiry@osi.nm.gov](mailto:MMPR.Inquiry@osi.nm.gov).