

Accountability Report Transmittal Form

Agency Name SC Medical Malpractice Patients' Compensation Fund

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## **Accountability Report Fiscal Year July 1, 2012 – June 30, 2013**

### **Section I – Executive Summary**

The South Carolina Medical Malpractice Patients' Compensation Fund (PCF) is a state agency, which was created by the General Assembly in 1976 for the specific purpose of providing medical malpractice coverage in excess of South Carolina healthcare provider's basic or primary insurance coverage. The PCF is authorized by Sections 38-79-410 through 38-79-490 of the South Carolina Code of Laws. The PCF is self-supporting through annual member fees and assessments when appropriate. The PCF currently receives no federal, state or other funding. The PCF operates under the direction of a thirteen-member Board of Governors. The PCF contracts with the South Carolina Medical Malpractice Joint Underwriting Association (JUA) for professional insurance brokerage and risk management services which are provided through the firm of Marsh USA, Inc. Marsh provides underwriting services, claims & legal services to the PCF and its Board of Governors.

The mission of the PCF is:

***“To provide excess medical liability coverage to its members who are South Carolina licensed healthcare providers at an affordable cost. The objective is to better serve the citizens of South Carolina through a viable and adequately funded malpractice program for physicians, dentists, hospitals and other healthcare facilities. The PCF Board of Governors is committed to strengthening and preserving the Patients' Compensation Fund in order to assure that the licensed healthcare providers of South Carolina have adequate liability and litigation protection.”***

The PCF issues certificates of membership and collects membership fees. All qualified South Carolina licensed health care providers who meet the eligibility requirements may participate in the Fund and maintain the participation by remitting to the Board the appropriate membership fees and deficit assessments as are required by the Board on or before the provider's membership anniversary date. Annual fees are set by the PCF Board of Governors effective June 1<sup>st</sup> of each year. Furthermore, the PCF monitors claims and lawsuits against its members, which are investigated, handled and defended by the basic insurance carrier. The PCF pays any portion of

settlements and/or judgments that are in excess of the member's basic coverage up to the member's limits of coverage. The PCF affords the same liability coverage that is afforded by the member's basic insurance policy, except for the amounts of liability coverage, which vary depending on the requests of the members. The PCF statute requires members to maintain a minimum basic coverage with limits of \$200,000 per claim and \$600,000 annual aggregate of all claims.

With the statutory changes made in fiscal year 2008, the PCF Board of Governors approved the elimination of unlimited coverage. Beginning January 1, 2009 the PCF no longer offers unlimited coverage for new PCF memberships. Effective May 1, 2009, all current members with unlimited coverage were required to lower their limit of coverage at renewal. If no limit was chosen the member was automatically changed to \$10 million per claim/\$12 million annual aggregate. The PCF views this as a positive change that will continue affect the overall stability of the Fund.

The PCF has made a number of positive changes under the direction of the Board of Governors and James Mercer, DDS, Chairman of the Board of Governors. These positive changes include the following:

- *Scheduled discounts for all members up to 15% if underwriting criteria is met*
- *Agent/Broker commissions changed to a flat 5%*
- *A choice of excess limits of coverage for members with basic carriers other than the SC Joint Underwriters Association*
- *Slot rating for physician practices*
- *Split limit retro coverage*
- *Developed and approved a rating schedule for hospitals to include Self-Insured Retention Limits and Large Deductibles*
- *Partnered with the State Insurance Reserve Fund for a new Program for Technical Schools and Universities to provide excess medical malpractice coverage for nursing and pharmacy students*
- *Conversion coverage approved for members formally with claims made coverage that wish to convert to occurrence*
- *Lowered discount factors for claims-made contingent upon the JUA approval for same factors. New factors will be affective 9/1/13*
- *New commission incentives to agents writing new and returning members. 10% for returning members and 15% for new members*

The PCF's vision is to be the premier provider of excess professional liability insurance and risk management services for the licensed healthcare providers of the state of South Carolina. Our values include:

- Focus on the needs of our members.
- Support and respect all healthcare providers and related relationships.
- Establish a culture of consistency and fairness in our performance.
- Provide leadership with knowledge-based decisions and operate with integrity.

- Embrace change through continuous improvement.
- Work together as a team.
- Make a difference in the community.
- Utilize best business practices.

The PCF provides customer services to its members through enrollment of new members, renewal of current members, collection of fees and assessments and payment of claims. It provides credentialing information to hospitals and managed care organizations in a prompt and accurate fashion.

With the passing of S.83 *The Medical Malpractice Tort Reform*, the responsibility of the management of the funds of the PCF has been transferred to the Board of Governors of the PCF. The funds are deposited into two accounts, a Treasury account and an Investment Account. The Operating Fund of the PCF remains with the State Treasurer. The Operating Fund with the State Treasurer holds the funds of the PCF Budget. All accounts are interest bearing accounts. The Board of Governors is charged with closely monitoring and managing all accounts.

### **Assessment**

The PCF Board of Governors again determined that a premium assessment was **not** necessary during this fiscal year. The last assessment was in June 2000. The statute grants the Board the authority to make assessments under Section 38-79-450 of the Code of Laws of South Carolina, 1976.

### **Rate Change**

Following an actuarial review, which was conducted at the direction of the South Carolina Department of Insurance, the PCF Board of Governors voted to implement the following rate changes for the varying limits of coverage:

- \$1,000,000 per occurrence/\$3,000,000 annual aggregate –5.0% decrease
- \$2,000,000 per occurrence/\$4,000,000 annual aggregate – 4.7% decrease
- \$3,000,000 per occurrence/\$6,000,000 annual aggregate – 4.3% decrease
- \$5,000,000 per occurrence/\$7,000,000 annual aggregate – 4.2% decrease
- \$10,000,000 per occurrence/\$12,000,000 annual aggregate – 0% change

These rate changes were based on the actuary's recommendation and were approved by the PCF Board of Governors at the PCF Board of Governors quarterly meeting on March 13, 2013. The Board of Governors considered a number of factors in their deliberations for these rate changes including but not limited to claims experience over this fiscal year, competitive place in the commercial market, and a miscellaneous actuarial review while keeping in mind our goal of providing affordable protection for the healthcare providers in the State of South Carolina. Also included in the consideration of the rate changes this year was the effect of Tort Reform of 2005. This decrease at the \$1,000,000/\$3,000,000 level represents the fourth rate decrease in the PCF coverage limits over the past nine (9) years and supports the PCF Board's belief that the PCF's financial condition continues to stabilize. The overall rate reduction for all rates totals 2.6%.

The PCF Board continues to surcharge any licensed healthcare providers who have had issues with regard to their State Board licensing. This surcharge applies where there are issues such as

a loss of hospital privileges, criminal activity, sanctions, license revocation or restrictions of the physician's license to practice medicine. The surcharge will remain with the member for a ten (10) year period and is reduced after five (5) years assuming no additional issues have arisen during this time. An inquiry is made to the State Board of Medical Examiners on each new member who applies to the PCF.

The PCF Board of Governors continues to review the surcharge for experience rating. A member is surcharge based on the frequency and amounts of settled claims. The surcharge for experience rating remains with the member for 10 years.

The PCF continues to use independent agents to assist the PCF in the underwriting of its members. Agency Commissions are based on 5% of the member fees. The Board believes that establishing this relationship helps to better serve our members.

## **Section II – Organization Profile**

The product that is provided by the PCF is excess medical malpractice coverage for licensed healthcare providers in the State of South Carolina. The PCF was established when the majority of medical malpractice carriers left the state, leaving the physicians, dentist and other licensed healthcare providers in the state without sufficient coverage in the event of a medical malpractice claim. During this crisis the PCF established itself as the only excess medical malpractice carrier available to all licensed healthcare providers. Our key customers or stakeholders are physicians, dentist, mid-level healthcare providers, professional associations, and hospitals.

The PCF partners with the South Carolina Medical Association, the South Carolina Dental Association and the South Carolina Hospital Association with the goal of providing excess coverage and risk management services to the members of the PCF. Our main goal in these partnerships is to reduce medical errors, protect licensed healthcare providers and maintain a stable medical malpractice environment in the state.

In 2008 the PCF Board of Governors moved from a direct write organization to the use of independent agents to write excess medical malpractice insurance, in an effort to establish cohesive relationships with the independent insurance agents in South Carolina. The PCF Board continues to review and enhance the commission rate structure. The PCF Staff works closely with the PCF approved agents to provide the best customer service to its new, current and former members.

The Patients' Compensation Fund continues to function with a staff of five full-time equivalent employees. Included are two Administrative Assistants, one Program Coordinator, one Program Manager and the Executive Director. The main and only office location of the PCF is in Columbia, SC.

At the close of the fiscal year, the PCF had a membership total of 3,020. This includes one nursing home, 31 Clinics & Hospitals, 187 professional associations, 2052 physicians, 592 dentists and oral surgeons, 140 Midlevel healthcare providers, 18 pharmacists and other healthcare providers. The PCF paid a total of \$18,029,108 for claims, settlements and judgments during the fiscal year. This represents a nominal (2%) increase claims payments made from the

prior fiscal year. The PCF collected \$14,106,938 in membership fees which constitutes an approximate decrease of 12% from the prior fiscal year.

The PCF is an organization that works extensively with legal counsel for claims defense, expert witnesses, and claims investigations, all in conjunction with the primary carrier. The effective selection, coordination and management of these professionals are critical to the success of the PCF. It requires professionals with special skills and a high work ethic. For all of the PCF claims that went to trial during this fiscal year, 99% of the claims resulted in defense verdicts. This fiscal year will continue to show a downward trend in the total number of claims paid as well as their severity. This appears to be in line with the national trend, which has resulted in a soft market for Medical Malpractice insurance.

There has been a drop in our physician membership which we believe is due largely to the continuing practice of South Carolina hospitals purchasing physician practices and to competitive pricing by other carriers coming into the state due to a soft medical malpractice market. These factors, along with the increasing number of members choosing lower PCF limits and increased shared limit options, account for the decrease in membership fees.

The Board has engaged in extensive strategic planning efforts throughout the fiscal year, which included the continual review and revision of the PCF Plan of Operations, Underwriting Manual of Rules & Rates and claims handling procedures. The Board continues to review and consider legislative changes that will allow for the more efficient operation and management of the Fund. The Plan of Operations details procedural information that provides for economic, fair and nondiscriminatory administration and for the prompt and efficient provision of excess medical malpractice insurance. The Plan contains other provisions including, but not limited to, assessment of all members for expenses, deficits, losses, reasonable underwriting standards, acceptance and cession of reinsurance, appointment of servicing carriers, and procedures for determining the amounts of insurance to be provided by the Fund. The Plan of Operation and any amendments to the Plan are subject to the approval of the Board and of the Director of Insurance or his designee.

With the passage of S.669 the PCF Board is beginning to work toward stabilizing the Fund by capping its exposure. S.669 clarified the PCF Board's authority to set limits of coverage. Prior Unlimited exposure has resulted in excessively high Incurred But Not Reported statistics. At the end of this fiscal year the PCF memberships consisted of the following limits:

10 Million per occurrence/12 Million annual aggregate	34%
5 Million per occurrence/7 Million annual aggregate	8%
3 Million per occurrence/6 Million annual aggregate	17%
2 Million per occurrence/4 Million annual aggregate	1%
1 Million per occurrence/3 Million annual aggregate	40%

Active memberships with unlimited coverage ended with May 1, 2010 renewals.

The Fund provides a high level of customer services to its members through enrollment of new members, renewal of current members, collection of fees and payment of claims. It provides credentialing information to hospitals and managed care organizations.

The Board has authorized the revision of the membership agreement and the development of applications to better serve its members. The Board continues to allow its members to pay their annual membership fee on a quarterly basis, with a small administrative fee.

The PCF website now allows new members to apply on-line for a PCF membership, existing members to pay membership fees, and direct access to renewal information for hospitals and managed care organizations credentialing agents. This past fiscal year we have added the ability to pay by electronic fund transfer (EFT). We continually look for ways to may our website more interactive for our members.

Physicians and dentists that attend the South Carolina Medical Association and the South Carolina Dental Association Risk Management Seminar, which is sponsored by the JUA, receive a discount in their annual membership fee. The new Dentists discount now includes a 40% discount for first year of practice with a 10% discount for the second year. If new dental graduates attend the Risk Management Seminar held at the MUSC Dental School they will also received a 25% discount on their first year's membership fees. It is a one-time discount. The discount does not apply to a physician's professional association.

As previously stated, the PCF consists of five full-time employees. The Executive Director, along with the Board of Governors, closely monitors the staff's ability to meet the demands and needs of its members, which continue to increase. The PCF is a highly complex organization that works extensively with legal counsel for claims defense, expert witnesses and claims investigations, all in conjunction with the primary carrier. The effective selection, coordination and management of these professionals are critical to the success of the PCF. It requires a staff with specialized skills and a high work ethic.

### **Section III – Leadership**

The Board of Governors is composed of three physicians, two dentists, two hospital representatives, two insurance representatives, two attorneys, and two representatives of the general public, all appointed by the Governor. The appointed members serve a term of six years. Currently we are awaiting the replacement of one physician member and the trial lawyer member. The Governor recently appointed two physicians and a trial lawyer to the PCF Board of Governors. With these appointments it completes the PCF Board roster.

The Board continues to amend its Plan of Operation and Manual of Rules and Rates for efficient administration of the Fund, consistent with the provisions of the Plan of Operations and Article 5 of the enabling legislation.

The Executive Director is charged with the day-to-day operations of the Fund. Quarterly newsletters are sent to the members/stakeholders giving updates to underwriting changes, news, risk management initiatives and spotlights on our members.

## **Strategic Planning**

The Board continues ongoing revisions to the Plan of Operation, the Manual of Rules and Rates and Claims Handling Procedures. The Board continues to review and consider legislative changes that will allow for the more efficient operation and management of the Fund. One initiative that the Board successfully supported is clarification of the PCF's governing statute as it relates to the PCF's ability to eliminate unlimited coverage and set specific limits of coverage offered to PCF members.

The Plan of Operation details procedural information that provides for the economic, fair and nondiscriminatory administration of claims and for the prompt and efficient provision of excess medical malpractice insurance. The Plan contains other provisions including, but not limited to, assessment of all members for expenses, deficits, losses, reasonable underwriting standards, acceptance and cession of reinsurance, appointment of servicing carriers and procedures for determining the amounts of insurance to be provided by the Fund. The Plan of Operation and any amendments to the Plan are subject to the approval of the Board and of the Director of the Department of Insurance or his designee.

Other strategic planning initiatives include:

- Establishing and approval of true excess limits above non-JUA carrier with basic limits of \$1million per claim/\$3million annual aggregate. These limits provide security for those healthcare providers who, because of risk, specialty or venue, feel additional coverage is needed. These limits of coverage are for members with basic insurers other than the SC Joint Underwriting Association (JUA).
- Adding a new limit of coverage for \$2million per occurrence/\$4million annual aggregate.
- New Marketing initiatives that include attendance as a vendor at annual meetings of specialty organizations
- Enhanced the interactive website for PCF members for member services and risk management by allowing members to pay membership fees by electronic fund transfer (EFT)
- Establishing stronger relationships with all admitted medical malpractice carriers
- Continual review and revision of coverages afforded to our members

## **Customer Focus**

The Fund provides excellent customer services to its members through enrollment of new members, renewal of current members, collection of fees and assessments, payment of claims and responding to membership inquiries. It provides credentialing information to hospitals and managed care organizations. The Board is pleased to roll out the interactive portion of the PCF



website to facilitate payment of membership fees (annual and quarterly), confirm coverage and apply for coverage through the PCF website.

The Board continues to authorize the revision of the membership agreement and the development of applications to better serve its members. The Board continues to allow its members to pay their annual membership fee on a quarterly basis, with a small handling fee.

Physicians and dentists that attend the South Carolina Medical Association and South Carolina Dental Association Risk Management Seminar, which is sponsored by the JUA, receive a discount in their annual membership fee. The discount is equivalent to a maximum of 25% of the base premium, up to a maximum of \$2,000. It is a one-time discount fee. The discount does not apply to a physician's professional association.

Healthcare providers are credentialed by hospitals, insurance companies and managed care organizations. In order to obtain hospital privileges and participate in managed care organizations, healthcare providers must show proof of professional liability insurance coverage, as well as any claims history. The PCF receives approximately 6,000 requests for this information annually and the PCF responds to these requests on behalf of its members with a sense of urgency. The PCF website now allows for approved hospitals, insurance companies and managed care individuals to confirm coverage through the website. Obtaining claims information continues to require a signed authorization from the PCF member.

Also provided to our members at no extra charge is Locum Tenens coverage for physicians who have to be away from their practice for up to 45 days per member year. This coverage extends the member coverage to their substitute physician.

### **Information and Analysis**

The PCF has upgraded its computers and technology equipment throughout the fiscal year. This includes the purchase of new computers, monitors, needed software and a new server. The Board approved moving our server back on-site. Also approved was the addition of an exchange server to control emails received at the PCF. This has greatly improved our efficiency in continuing to serve the PCF members and eliminated some processing issues. Off site backups of all PCF data have been approved and put in place.

The PCF continues to update its website with current information focusing on changes in the medical malpractice industry. The website can be accessed at [www.scpf.com](http://www.scpf.com). An important part of our website is the interactive portion that allows new members to apply on-line and current members to pay their membership fees on line and verify their coverage. It also provides access to hospitals and managed care organizations that require updated membership information. The PCF data is updated daily to provide members and other approved groups access to current PCF membership information.

The PCF entered into an agreement with SC Portal to facilitate the transfer of PCF funds from the PCF website to the PCF Treasury account currently with Carolina First. The SC Portal has been instrumental in establishing the sc.gov website. For a minimal charge (\$1.00 per transaction) to our members the SC Portal manages the fund transfers. Payment by Electronic Fund Transfer is now available through SC Portal. The charge for this will be \$2.50 per transaction. These fees are charged back to the PCF member.

Approval has been given by the PCF Board for the development of a new PCF membership management system. This new system will eliminate the problems that previously existed with “real time” reporting under the MMS and legacy system. The new system will allow the PCF staff to obtain correct data for year end reporting. The PCF’s old program was an access database, which met the needs of the PCF when it was first developed. Because of the expansion of rating and policy processes, we felt there was a need to change the platform for easier access, case management documentation and report processing. The PCF Computer Committee was responsible for selection of the software vendor and made the recommendation for the new software for full board approval. The new vendor chosen was TeamIA, a Lexington, South Carolina based company. The PCFA scheduled to go-live September 23, 2013.

The PCF is now paperless! An estimated 529,160 membership and claims documents have been scanned and destroyed. TeamIA and Palmetto Microfilm have completed our document management system which allows the PCF to go paperless. It is our goal to move to electronic billing and email interface with our members for billing, coverage confirmation and endorsements. This has been a huge effort on the part of the PCF staff that will have a large cost saving impact to the organization.

### **Workforce Focus**

As previously stated, the Agency now consists of five full-time employees. The Director has filled all vacant positions with current and/or part-time employees. She, along with the Board of Governors, continues to closely monitor the employees’ ability to meet the demands and needs of its members. All required OHR reporting is completed in a timely manner.

Effective January 1, 2010 the PCF went live with the HR/Payroll modules of SCEIS. This is a single data repository and reporting tool that improves data accuracy. Through MySCEmployee, all PCF employees enter their work time and leave information, maintain personal data for payroll and benefits, access their pay stubs, enter and process travel expenses and more. In addition, management has the ability to maintain and make changes to benefits and approve employee time and leave requests.

All employees have a developmental plan which is scheduled to be updated in the upcoming fiscal year. Employees are encouraged to enroll in HR administered classes as well as College and Technical School classes. The PCF has a tuition reimbursement policy that reimburses tuition up to six (6) credit hours per term if the employee maintains no less than a “C” average.

### **Management Controls**

Following the Legislative Audit Council’s report of January 2000, a new PCF Board of Governors was appointed. The PCF has implemented the following management controls to ensure the proper administration of the Fund:

- Written policies and procedures
- No longer grants retroactive coverage after a claim is filed
- All information from primary insurer is verified including proper documentation of loss dates, settlement amounts and coverage before payment is made by the Fund

- Controls implemented to ensure accuracy in its computer database
- Implementation of proper computer training to assure all employees have the necessary skills to service our members
- Proper procedures established to ensure timely reporting of claims by the basic carrier and its members
- PCF reports all claims to the National Practitioner Databank as required
- PCF does not use proxies for voting and quorums. Confidential matters are discussed in Executive Session. Minutes are taken for all Board Committee Meetings
- Two PCF Board member's appointments are awaiting executive approval
- By statute, the PCF has the authority to determine amount of insurance to be provided. The PCF implemented variable limits effective July 1, 2003.
- The promotion of the Program Manager to fill the position of Executive Director on September 4, 2003
- Approval of independent agents to assist in the underwriting of new and current members
- Elimination of the option of unlimited liability coverage to its members

### **New Initiatives**

The PCF continues to develop their on-line application process which follows through with our "going green" initiative. Included in this is the large group payment process through the PCF Interactive website, [www.spcpf.com](http://www.spcpf.com).

The PCF staff will begin a new initiative for increasing communication and building stronger relationships with their approved independent agents. This will include PCF product education through quarterly newsletters, email blasts and office visits.

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### **Process Management**

In 2008 a vendor was hired to complete a Membership Management System (MMS). The system they developed was fraught with defects. After a forensic review of the MMS it was determined that the system was unusable. The PCF is currently involved in a claim against previous vendor through the Board of the IT Materials Management Office to recover all monies paid to the previous vendor. A hearing is scheduled for December 3, 2013.

As stated above, this year the PCF Board approved hiring TeamIA to develop a PCFA (Patients' Compensation Fund Application) that replaces the defective system developed and implemented by the prior vendor. The initial phase of development included evaluation of all work processes. Business rules were established as the foundation of the new system. There are four parts to the system:

- Reporting
  - gives the ability to produce actuary, financial, membership, claims and production reports used to evaluate and improve the operation of the PCF
- Member Summary
  - assists the PCF staff in disseminating required information to the PCF members

- Claims
  - incorporates all claims functions such as reserving, maintaining claim vendors, capturing risk severity data, and issuing claim payments
- Underwriting
  - produces billing, refunds, underwriting endorsements, locum tenens, credentialing and agents' commissions

Once the system is completed it will house the PCF data of our members and will be a tool for the PCF staff to expedite the medical malpractice coverages for our members which is one of the key services we provide.

### **Business Results**

The principal challenge facing the PCF is to retain current members and at the same time, adjust membership fees appropriately to reduce the loss reserve liability. The other significant challenge the PCF faces is to manage the claims process effectively and coordinate with the primary carriers for satisfactory resolution of all claims. The PCF's ultimate goal is to provide medical professionals with effective medical malpractice liability coverage, while ensuring that the PCF is in a sound financial position to pay all of its liabilities. There are no pending judgments on appeal that affect the PCF.

Based on actuarial reviews and recommendations, the PCF Board of Governors feels confident that the rates established this fiscal year are appropriate. The PCF continues to experience rate members for claims experience as well as surcharge members for state licensing issues. New underwriting initiatives have been established to assist in maintaining and improving membership numbers such as discounts based on group size, number of years of continued coverage through the PCF and positive loss experience.

The South Carolina Patients' Compensation Fund shows an overall deficit on its books due to the fact that, since 2002, it has recorded the actuarial liability for unpaid claims as well claims that are "incurred but not reported." Prior to 2002, the Fund's accounts did not reflect such reserves operating on a cash basis. Over the past 11 years the PCF Board of Governors has taken steps to reduce the net deficit of the PCF by \$140,191,492. As a result, the PCF continues to show a positive trend in its overall financial outlook. During the fiscal year, the PCF met all of its financial and legal obligations in a timely manner.

The Fund is not aware of any facts, decisions, or conditions that can reasonably be expected to have a material impact on the Fund's economic outlook during the fiscal year beginning July 1, 2011.