

Medical Malpractice Coverage

I. Coverage Sources.

Tulane University provides coverage to its healthcare employees, which includes physicians on the faculty, residents and interns, and medical students,¹ in addition to all allied health employees, including but not limited to nurses, psychologists, social workers, athletic trainers, and others who are involved in patient care or related activities on behalf of Tulane. This coverage arises from the institution's self-insurance program, excess insurance policies, and enrollment in the Louisiana Patients' Compensation Fund ("PCF").

Note: Healthcare services provided by Tulane employees in other than the private sector; that is, those services provided at state-operated facilities, federally funded institutions and/or programs, and/or voluntary or charitable services, are excluded from the above coverages. However, many of these exposures fall within statutory coverages or immunities. For example, coverage arises under the Medical Liability for State Services Act ("MLSSA"), LSA-R.S. § 40:1299.39, *et seq.*, the Louisiana statute which applies to treatment of patients at State institutions, (pursuant to contracts or affiliation agreements for staff appointments and teaching and training activities between Tulane and the State representing its various facilities), but is not the responsibility of Tulane University. Similarly, physicians practicing at institutions under the governance of the Veterans Administration are deemed employees of the United States pursuant to and in compliance with the terms of 28 U.S.C. § 7316; malpractice claims fall within provisions of the Federal Tort Claims Act at 28 U.S.C. §§ 1346(b) and 2672. *Tulane University's Office of the Associate General Counsel does not provide representation in connection with these matters.*

¹ Please contact the Office of Associate General Counsel, Health Sciences Center, for specific information regarding medical students' liability coverage; e.g., students are not enrolled in the PCF coverage.

II. Procedure for PCF Enrollment.

It is critical to our employees' PCF coverage that the Office of Associate General Counsel at the Health Sciences Center be advised of the following information pertaining to every individual employee that must be qualified and every location or site where patients are being seen by Tulane providers.

(1) The PCF requires an annual filing of an Institutional Health Care Provider's Application which seeks information regarding all Tulane-operated clinics and facilities, as well as positions and number of employees assigned to each location. This information is the same information also required by our excess insurer for policy renewal or placement each year.

(2) In order for any physician (or specifically identified allied health professional) to be considered a "qualified health care provider" and entitled to the benefits of the statutory limitation of liability afforded by the Louisiana Medical Malpractice Act, LSA-R.S. § 40:1299.41, *et seq.*, for private health care providers, the PCF must have on file a "**Self Insured Physician Application**" and a record of the receipt of payment of the applicable **surcharge** for such covered individuals.

(3) PCF's website at www.lapcf.louisiana.gov contains the relevant information for enrollment. At the home page, click on the tabs on the left-hand

side labeled “**Applications**” or “**Rates**”. At the “Rates” page, there are links to the “Manual” and the “Surcharge Rates” for the year in question. Once at the Surcharge Rates table, the Surcharge Rates applicable to Tulane’s employees are found in the column labeled “Self Insured”. The “Manual” provides the requisite information concerning the physician’s “Class” depending on specialty category as defined therein, and Code #, as well as surcharge information for those specially identified allied health professionals for which enrollment is mandatory.

(4) PCF surcharges are calculated based on the Class and Code number which apply to the individual physician based on specialty (or other specifically enrolled provider type) as indicated in the PCF Rates Manual, in addition to any discounts that will apply depending on the apportionment of time that an individual is performing services on behalf of Tulane. Those discount categories are also identified in the Rates Manual on the PCF website. Please refer to the Manual for the particular Class and Code number associated with the individual to be enrolled when submitting applications for PCF coverage to the Office of the Associate General Counsel.

Note: Discounted surcharge rates are allowed as provided in the Manual based on time devoted to services on behalf of Tulane other than fulltime (100%).

(5) Annually, in May, the department chair or his/her designee; i.e., generally this will be the ADBON departmental administrator position, will receive a memorandum from Patricia A. Bethancourt,

Associate General Counsel, requesting a listing of all physicians and allied healthcare professionals to be enrolled or renewed with the PCF. (The department's previous year's list will be sent along with the memorandum for comparison.) Any physician who was enrolled continuously in the prior annual period or periods will not need to submit another Self Insured Physician Application, but a surcharge will be required for re-enrollment.

(6) Because our faculty enrollment period begins on July 1st of each year and ends on June 30th of the following year, the provider names, identifying them by specialty, Class, and Code#, and the proper surcharge payment must be forwarded to the PCF before July 1st each year. It is imperative that the information supplied to the Associate General Counsel is complete and accurate and timely to ensure continuous coverage without gaps. **If there are lapses, the protections of the statute are not available and our physician or allied health professional's (Tulane's) exposure will be unlimited.**

(7) Each department is charged with the obligation and responsibility to provide to the Office of Associate General Counsel, HSC, the list of physicians and names of allied healthcare providers who are to be individually enrolled, along with applications for all newly included providers, as well as the designation by Class and Code number, and include any discounts to be applied. It is then the role of the Associate General Counsel to compute the

applicable surcharge rates, prepare the appropriate documentation, and secure the funds to submit to the PCF timely. Please be advised that, due to internal processes, surcharge payments cannot be forwarded immediately to the PCF and, therefore, a lag time of **at least one week** should be anticipated for coverage to be finally in place once the application and request are submitted to the Office of Associate General Counsel. This information may be transmitted to this Office via facsimile (988-3588) to expedite the processing.

(8) Mid-year Changes.

(a) New physicians hired throughout the year must be enrolled with the PCF prior to beginning to treat any patients for Tulane. Therefore, the Office of Associate General Counsel must be notified when any new physician faculty member is added. A Self-Insured Physician application form and surcharge payment must be provided to the PCF for each new hire who will be seeing patients. The surcharge rate will be pro-rated based on the date of employment/enrollment.

(b) The Office of Associate General Counsel should be notified when a faculty member resigns, is terminated, separated, or status changes, in order that a **surcharge refund**, if available, may be timely requested from the PCF. The department will receive a credit of the pro-rated time that has not been served based on the annual fee.

(9) Interns' and Residents' Coverage

(a) Medical interns and residents are provided the same coverages for medical malpractice as medical faculty, including qualification through the PCF, and the same exclusions for State and VA services, when they are performing their training assignments authorized by the School of Medicine GME Office. There is no coverage for moonlighting activities except as dictated in the Residents' Handbook.

(b) Filing with the PCF is also handled by the Associate General Counsel's Office, HSC, with information being provided by the GME Office as to the interns' or residents' names, levels of training, and rotation assignments. Individual application forms are not required for interns' and residents' coverage; however, surcharges and identification of resident positions must be submitted to the PCF prior to the renewal date and a list forwarded to the PCF each quarter indicating the rotation assignments by site and by individual names of the interns/residents. This list is compiled and submitted to the Office of the Associate General Counsel, HSC, by the GME Office for transmittal to the PCF.

(c) The annual period for residents' enrollment is from January 1st each year ending on December 31st of that same year. The

surcharge rates are as noted in the PCF Rates Manual, but generally are at 33% of the standard rate for the Class for interns and 66% for residents.

Assistance

Any questions concerning medical malpractice liability and coverage, including requests for certificates of insurance and claims history, should be directed to the Associate General Counsel's Office at the Health Sciences Center at 988-6745 (Fax: 988-3588).

For a brief overview of the medical malpractice claims system in Louisiana pursuant to the applicable statutes, LSA-R.S. §§ 40:1299.41, *et seq.*, click on the following link:

<http://www2.tulane.edu/tulinsur/overview.pdf>