RESPONSE TO PUBLIC COMMENT 2016 FEE SCHEDULE & BILLING INSTRUCTIONS

The proposed changes to the WCA Healthcare Provider Fee Schedule were released for public comment on October 02, 2015. The public comment period was from October 02, 2015 through November 02, 2015. In addition to written comments, the WCA accepted oral comment at a public hearing on October 22, 2015.

The WCA received public comment recommending it increase payment rates for certain EMG codes. The commenter recommended increased rates for the following CPT codes: Office Visits - 99241-99245; 99201, $71.66; 99202, $122.91; 99203, $179.57; 99204, $274.38; 99205, $345.54; 99211, $32.32; 99212, $71.68; 99213, $119.61; 99214, $178.11; 99215, $241.21; Surgery - 23600, $541.23; 24500, $597.09; 26600, $485.84; 26725, $561.39; 26750, $304.57; 28510, $206.69; 11760, $372.67; and 26727, $813.59 [CPT only copyright 2014 American Medical Association. All rights reserved.]

Response: After careful consideration, the WCA has opted not to adopt the recommended rates for the specified CPT codes at this time. The WCA’s analysis of the recommended rate increases puts the recommended increases mostly above the 80th percentile of paid rates and will make New Mexico rates the highest in the sub-region for 2016. The WCA is reviewing other sources of local data and reevaluating the current methodology to continue reflecting future competitive market rates. These CPT codes will be revisited in the future.

The WCA received public comment recommending it look into the amount charged by medical providers who provide medical records via CD but charge the requesting party as if paper records were copied. The commenter proposed an adjustment to the rule providing an allowable charge for a CD of medical records. This commentator also expressed concerns that contracted medical record copying companies tend to ignore the WCA’s rules governing costs for copying medical records.

Response: The proposed fee schedule did not recommend changes to the costs for copying medical records. The commentator’s comments are well taken and the WCA will study the issues raised for future action.

The WCA received public comment expressing concern that requiring 48 hours’ notice cancellation for an IME may not be reasonable for an injured worker who may not always know 48 hours in advance that he or she cannot attend an IME. The commentator recommended the cancellation period be 24 hours’ notice.

Response: After careful consideration, the WCA is keeping the proposed 48 hour cancellation notice for IMEs, which has been the standard cancellation notice for some time. The WCA will continue to review and monitor how cancelled IMEs affect workers, physicians, and parties paying for IMEs.

The WCA received public comments recommending clarification to the pharmacy and compounded medication sections of the billing instructions. One commentator requested more
specific billing instructions for compounded medications for programming and bill review purposes. Another commentator suggested clarifying language to better distinguish between pharmacy and non-pharmacy dispensed medications and compounded and repackaged drugs. The commentator proposed the following changes:

1. “The health care provider formula for billing generic and brand name prescription drugs....” be replaced with “The formula for billing generic and brand name prescription drugs when not dispensed by a licensed pharmacy.”

2. “A compounded NDC Number shall not be used and shall not be considered ....” be replaced with “A repackaged drug NDC Number shall not be used and shall not be considered...”

3. “Health care provider dispensed compounded medications” be replaced with “Compounded medications not dispensed by a licensed pharmacy.”

**Response:** After careful consideration, the WCA will revise the fee schedule with the recommended language changes. At this time, the WCA will not provide additional billing instructions for compounded medications. The WCA will monitor and evaluate how health care providers and payers work within the current regulations and will consider greater specificity in the future if necessary.

The WCA received public comments on the proposed maximum reimbursement amount for medical cannabis. The comments received reiterated comments received when the WCA proposed changes to Part 7 of the WCA’s rules that provided a process for reimbursement of medical cannabis. Concerns were reiterated about the WCA regulating reimbursement of medical cannabis when marijuana is a controlled substance (Schedule I drug) under federal law. One commentator stated there is currently no evidence that medical cannabis is an effective treatment for workplace injuries and that peer reviewed medical guidelines, including ODG, do not recommend medical cannabis for treatment of workplace injuries. This commentator also cited a study by the National Institute on Drug Abuse (NIDA) finding serious health risks associated with marijuana use. One commentator stated that his company will object to reimbursing workers for medical cannabis as long as marijuana is a controlled substance under federal law, that there is no evidence that medical cannabis is effective to treatment workplace injuries, and that medical marijuana is understood to have serious harmful health effects. Another commentator expressed hope that New Mexico’s Legislature would provide a solution so that employers and insurers will not be in violation of federal law.

**Response:** By promulgating rules and proposing a fee schedule for reimbursement of medical cannabis, the WCA is not advocating for the use of medical cannabis as a treatment method for workplace injuries. Rather, the WCA is reluctantly setting forth rules and a fee schedule in response to three Court of Appeals’ decisions which ruled medical cannabis can be reasonable and necessary medical care under the Workers’ Compensation Act. The reimbursement model adopted by the WCA is a balanced and fair approach to the issue, and it is in line with the initial case that held the injured worker should be reimbursed for his or her out of pocket expenses associated with purchasing medical cannabis. Whether medical cannabis is reasonable and necessary for treatment of a workplace injury will depend on each individual case. As with any other dispute under the Act, the parties may utilize the WCA’s dispute resolution process to resolve any disagreement regarding the reasonableness and necessity of
medical cannabis in a given case. The WCA will monitor medical cannabis usage among the workers’ compensation population and will consider changes in the future as needed.

Since promulgating amendments to Part 7 of the WCA regulations, parties have expressed confusion about the maximum reimbursable amounts and conversion ratios when receipts do not reflect amounts in grams of dry weight or dry weight equivalent. Rather than set the maximum reimbursable amount at eight (8) eights per calendar quarter, the WCA will set the maximum reimbursable amount at 230 units (1 unit ≈ 200 mg THC which is ≈ 1 gram of dry weight equivalent). A reimbursable amount of 230 units per calendar quarter is not a material change from the proposed maximum amount of 8 ounces (≈ 226.8 grams) per calendar quarter. By setting the reimbursement amounts in units rather than ounces, the WCA’s terminology will be consistent with the Department of Health, which certifies patients for participation in the medical cannabis program and regulates licensed producers manufacturing and supplying medical cannabis.

The undersigned thanks all of those who took the time to offer comments on the 2016 Fee Schedule and Billing Instructions. The final schedule will be available by December 1, 2015, and the schedule will go into effect on January 1, 2016.

Darin A. Childers, Director
New Mexico Workers’ Compensation Administration

Date: December 1, 2015