November 12, 2024

Mr. Michael Holt, Esq.
Office of General Counsel
Workers' Compensation Administration
State of New Mexico
2410 Centre Ave SE
Albuquerque, NM 87106

Re: Comments on Proposed Changes to Rules Governing Payments for Health Care Services (11.4.7)

Submitted via Electronic Mail to gc.clerk@wca.nm.gov

Dear Mr. Holt-

Thank you for the opportunity to provide feedback on the aforementioned proposed regulations. I am reaching out on behalf of the American Association of Payers, Administrators, and Networks (AAPAN), to represent our members' perspectives on some of the key points raised by the proposed rules. AAPAN is the leading national association of preferred provider organizations ("PPOs"), networks, pharmacy benefit managers, payers, and administrators in the workers' compensation sector. Through our members, we help thousands of injured workers throughout the country, including in New Mexico.

We thank the administration in advance for your thoughtful consideration of the following comments:

1. **Imposition of Penalties at 30 Days (11.7.4.8(D)(3)) –** We are very concerned with the language contained in this section for several reasons:
    a. The 30-day timeframe fails to consider underlying claims-related issues that may require a longer timeframe to adjudicate the bill properly, such

as a compensability issue, a disputed body part, a coverage issue, or a very complicated/complex bill that requires extensive manual review (such as a long inpatient hospital stay), etc. Many of these potential pitfalls are outlined in the subsequent section 11.7.4.8(D)(8). Although these types of bills do not constitute the majority of bills reviewed, they can be disproportionately expensive (especially in the case of longer inpatient hospital bills), hence raising the risk of an inappropriate large penalty being assessed.

b. In similar fashion, the section (D)(3) penalty imposition also fails to take into account bills that may be incomplete, a duplicate, improperly billed, or other anomalies with the bill itself that result in the bill's failure to constitute a "clean bill". Failure to provide a "clean bill" to the payer for review results in delays in processing, sometimes necessitating manual intervention that can greatly exceed the 30-day timeframe. As above, several of these billing-related deficiencies are outlined in 11.7.4.8(D)(8).

c. Section (D)(3) does not take into account a situation wherein the billing statement is sent to the incorrect payer address. Errors such as these require extra time on the part of the payer to re-route bills. Sometimes, the bills are not received at all and must be resent entirely by the provider which can considerably lengthen the response/payment time.

d. Section (D)(3) inappropriately assesses penalties based on the "unpaid HCP fee schedule rate" and fails to take into account appropriate reimbursement rate reductions such as negotiated rates, PPO discounts, and other appropriately-applied bill review reductions. Any potential penalty should be calculated based on the actual "Amount Due" (which takes into consideration these types of appropriate reductions).

In order to address the issues outlined above, we would request that the language of Section (D)(3) be amended. We have modeled our suggested language based on the penalty provisions contained in Georgia Code § 203 (2019) - *Payment of Medical Expenses; Procedure When Amount of Expenses is Disputed*, as well as added cross-references to other appropriate existing sections of the New Mexico regulations.

Current language: D3. Failure to contest in accordance with the criteria for contesting bills and an appropriate explanation of benefits or make good faith payment within 30 days of receipt of a bill for reasonable and necessary services shall result in an interest rate of ten percent of the unpaid HCP fee schedule rate or $25.00, whichever is greater, to be paid at the same time as any delinquent amounts

Amended language: D3. Failure to contest a clean bill (that does not contain one or more of the exception criteria outlined in section 11.4.7.8(D)(9)), sent to the correct payor address, in accordance with the criteria for contesting bills and an appropriate explanation of benefits or make good faith payment ~~within~~ 30 days ~~of receipt~~ after expiration of the timeframe outlined in 11.4.7.8(D)(2) ~~of a bill~~ for reasonable and necessary services shall result in an interest rate of ten percent of the amount due ~~unpaid HCP fee schedule rate~~ or $25.00, whichever is greater, to be paid at the same time as any delinquent amounts.

2. **Petitions for Reconsideration; Timeframes (11.4.7.8 (D)(14))**

In similar fashion to the comments listed above, we would urge the WCA to also modify the language of 11.4.7.8(D)(14), which addresses petitions for reconsideration. Although the current proposed draft does not have suggested changes for this section, the same potential compensability and billing issues that impact the 30-day timeline in 11.7.4.8(D)(3) would also apply in this section. As such, we would like to suggest the following changes to language of (D)(14):

Current language: D14. Payment or disposition of a request for reconsideration shall be issued within 30 days of payer's receipt of the request for reconsideration. Failure to comply with the established deadline shall result in the payer accepting the provider's position asserted in the request for reconsideration.

Amended language: Payment or disposition of a clean request for reconsideration (that does not contain one or more of the exception criteria for

bills outlined in section 11.4.7.8.(D)(9)), sent to the correct payor address, shall be issued ~~within~~ 30 days ~~of payer's receipt~~ after expiration of the bill response timeframe outlined in in 11.4.7.8(D)(2). Failure to comply with the established deadline shall result in the payer accepting the provider's position asserted in the request for reconsideration.

3. **Physician-Dispensed Medication Language (11.4.7.9(D)(6))**

We would like to thank the WCA for expanding the language of this section with the intention of restricting subsequent refills of physician-dispensed medications. However, we do have some concerns that the term "renewal" may be misinterpreted. We are also concerned that the broad term "health care provider" may be misconstrued to also encompass pharmacies (as defined in Section 52-4-1 NMSA 1978), which would inadvertently require pre-authorization for ALL refills (even in a retail pharmacy).

To that end, we would request that the language of this section be amended as follows:

Current language – D6. Health care provider dispensed medications shall not exceed a 14-day supply for any new prescriptions; reimbursement for any renewal or refill prescription for a health care provider dispensed medication is disallowed absent pre-authorization by the payer. The payment for health care provider dispensed medications shall not exceed the cost of a generic equivalent.

Amended language – D6. ~~Health care provider dispensed medications~~ Medications dispensed by a health care provider, other than a pharmacy, shall not exceed a 14-day supply for any new prescriptions~~; reimbursement for any renewal or refill prescription for a health care provider dispensed medication is disallowed absent pre-authorization by the payer.~~ Subsequent refills must be filled in a licensed pharmacy or be pre-authorized by the payor, if dispensed by a health care provider other than a pharmacy. The payment for medication dispensed by a healthcare provider, other than a pharmacy, ~~health care provider dispensed medications~~ shall not exceed the cost of a generic equivalent. A

health care provider, other than a pharmacy, who dispenses medications shall not receive a dispensing fee.

4. **Deposition Testimony Fees for Physicians (11.4.7.13)**

Sections 11.4.7.13(D)(1-5) propose very substantial increases in fees for practitioners for deposition preparation and testimony, with increases ranging from $250/hour to $800/hour, depending upon the category. We are very concerned with these substantial increases, as these hourly rates place New Mexico far above the deposition reimbursement rates of other states. To provide a benchmark analysis, we compiled the hourly reimbursement rates for the first full hour of deposition testimony from other states, and have included those rates in the chart below:

STATE	RATE
CA	$455
GA	$600
FL	$300
TN	$750
VT	$300
NY	$350
CT	$550
MS	$500

Fig. 1 - Hourly Reimbursement Rates for 1st Hour of Depo Testimony. Other States

Averaging the rates of all the other states listed above would result in a reimbursement rate of $476/hour. Rounding up, we would propose that the 1st full hour testimony rate be raised to **$500/hour** (more equitable than the $800 rate in the current proposal)**,** which would still place New Mexico slightly above the average of the other states and continue to provide a substantial reimbursement increase (of 25% over the current $400 level), while keeping the rate at a reasonable level relative to other states.

Using that same logic, we would propose increasing the other categories of rates by the same margin (25%) to the proportional benchmark rates as follows:

	Current	Draft Proposed Increase	**Benchmark Rate**
1st Hour, Depo Testimony	$400	$800	**$500**
2nd or 3rd Hour, Depo Testimony	$360	$700	**$450**
1st Hour, Depo Prep	$200	$400	**$250**
2nd or 3rd Hour, Depo Prep	$120	$250	**$150**

Fig. 2 – New Mexico Proposed Benchmark Rates for Depositions

Once again, we would like to thank the WCA for your continued efforts and dedication to improving the Workers' Compensation system in New Mexico. Please do not hesitate to reach out to me if I can answer any questions or provide any additional information on the comments we have provided.

Sincerely,

Lisa Anne Hurt-Forsythe
Vice President, Government Affairs
AAPAN

SMS/Direct: (916) 224-1163
E-Mail: laHurt-Forsythe@aapan.org

Cc: Mr. Julian Roberts, President, AAPAN