State of New Mexico
WORKERS' COMPENSATION ADMINISTRATION

MICHELLE LUJAN GRISHAM
GOVERNOR

HEATHER JORDAN
DIRECTOR

December 17, 2024

Effective January 1, 2025, the New Mexico Workers' Compensation Administration amended certain administrative rules. The Office of General Counsel Office has prepared the following explanation of the changes made. Redline versions of the rule changes can be found on the WCA website.

Part 3 – Payment of Claims, Post-Accident Drug and Alcohol Testing and Conduct of Parties

11.4.3.8(B): The current rule ties the employer's timing of payment of the first installment of benefits to when a first report of injury is filed (FROI). If the FROI is not filed, the rule as written could be construed to mean that the first installment of benefits need not be paid. The amendment strikes the reference to the filing of the FROI as a trigger for payment of the first installment of benefits. Under the amended rule, the timing of the payment of the *first and remaining* installment of benefits is tied to statutory law, namely NMSA (1978) 52-1-30. The WCA considered striking NMAC 11.4.3.8(B) entirely as being unnecessarily duplicitous of section 52-1-30 but the WCA believed a complete striking of the rule provision might lead payers to believe there was no triggering event for making the initial payment of benefits. The WCA believed the better approach was to harmonize the rule with the pertinent statutory provision rather than striking it entirely.

11.4.3.8(C): Under the current rule, if an employer denies a claim, the worker can request from the employer the basis for the denial of the claim. The current rule is silent as to when the employer must respond to the worker's request. Under the amendment, the written response by the employer to the worker must be provided within 30 days of receiving the worker's request.

11.4.3.11(A)(3) & (4): The current rule on reimbursement of mileage benefits provides reimbursement rates that have not been raised for many years. The WCA believed higher mileage benefit reimbursement rates were needed to account for the interim inflation that has occurred since the mileage benefit reimbursement rates were last raised.

11.4.3.11(B): The current rule requires the employer to reimburse mileage benefits incurred by the worker *after* the expenses have been incurred. Under the amended rule, a workers' compensation judge will have discretion by rule to enter an order that requires the employer to pay mileage benefit *in advance*.

Part 4 – Claims Resolution

11.4.4.13(I): A party should be able to initiate the subpoena process without having to seek judicial approval or establishing good cause. The WCA added a new sentence to 11.4.4.13(I) to permit a party to issue a subpoena with first obtaining a court order of having to establish good

cause as a pre-condition to issuing a subpoena. This should enhance a party's ability to obtain relevant documents in a pending case.

11.4.4.13(J)(4): Many litigants before the WCA do not have English as a first language. Such a party who receives discovery such as interrogatories and a request to produce which is not in their native language may be prejudiced absent translation into their native language. The WCA added 11.4.4.13(J)(4) to permit the judge discretion to require translation of discovery into the native language of the responding party to ensure fairness and substantial justice.

11.4.4.13(N)(3): To expedite litigation before the WCA, the WCA is attempting to minimize the need for parties to take physician depositions when the purpose of the deposition is to obtain physician testimony that is routine such as when the physician is merely testifying as to the contents of what facially appears in the medical records. The WCA added 11.4.4.13(N)(3) to provide administrative rule support for what may be existing practice before workers' compensation judges. The amended rule provides that a judge may consider as testimony the content of admitted medical records of an authorized health care provider or independent medical examiner for any relevant purpose other than to establish causal connection pursuant to NMSA 1978, § 52-1-28(B).

11.4.4.16(A)(5): WCA judges likely already have authority and discretion to impose appropriate sanctions on an attorney, party or personal representative that acts unreasonably during a deposition. However, to remove any doubt in this regard, and to emphasize the importance of reasonable attorney behavior during depositions, the WCA is adding 11.4.4.16(A)(5) to expressly provide WCA judicial authority to impose sanctions for unreasonable conduct during a deposition.

11.4.4.18(A), (B) & (C): The WCA has in each of its offices a courtroom to conduct official court proceedings necessary to the adjudication of workers' compensation complaints filed at the WCA. Currently, the WCA does not have an administrative rule that specifically addresses court security. The WCA is adding 11.4.4.18 (A)-(C) in support of the WCA's effort to provide parties, attorneys, WCA judges, WCA personnel, and others, with more secure WCA facilities. Many district courts in New Mexico have similar court security measures in place. The new administrative provisions are necessary to provide the WCA with greater authority to control security within its facilities.

Part 11 – Proof of Coverage

11.4.11.8(E) is being added to 11.4.11 NMAC (Part 11) as a new lettered paragraph. With the advancement of technology and adoption by the insurance industry of electronic data interchange, the WCA no longer accepts certificates of insurance evidencing workers' compensation coverage. The new rule comports with existing practice at the WCA in that a certificate establishing proof of workers' compensation insurance is not to be filed with the WCA but is to be electronically transmitted to the WCA's approved electronic data interchange vendor. Transmission of proof of coverage to the WCA's approved electronic data interchange vendor constitutes filing in the office of the Director of the WCA.

Explanation of difference between rule language submitted for public comment and adopted rule language

11.4.4.13(B)(1)(j) &11.4.4.13(S): These provisions concerned an effort by the WCA to add administrative rule provisions to permit the parties to seek a "limited IME" in addition to a traditional IME. Many comments were received in opposition to the suggested rule change, including that the proposed rule would create uncertainty, foster litigation, add expense, and provide too limited medical records for a "limited IME" physician to review. Other comments included that the proposed rule's timelines for adjudicating disputes over a "limited IME" were too lengthy. While medical providers' input into the proposed rule were solicited and received, it is clear that providers had inadequate input into the concept of a "limited IME" not to mention the providers did not fully understand the rule change that was being suggested. The WCA has elected to withdraw the proposed rule provisions concerning "limited IME's" to permit additional discussion amongst stakeholders on this topic. The WCA may reconsider in the future this subject matter in future rule makings.

11.4.4.13(H): The WCA has elected to delete the proposed rule which attempted to establish deposition time limits regarding the depositions of parties, witnesses and physicians. Public comments were received both in favor and against these deposition time limits. Comments in opposition included that the time limits could generate copious legal disputes concerning the deposition time limits and deposition gamesmanship such as a party taking too long during a deposition which thereby limited or exhausted the opponent's deposition time. In addition, WCA judges already have discretionary authority to control discovery, including deposition times; such authority mitigates the need for a formal rule delineating base-line times for deposition. The WCA has elected to delete the proposed rule over deposition time limits to permit additional discussion amongst stakeholders on this topic. The WCA may reconsider in the future this subject matter in future rule makings.

11.4.4.13(J)(4) was modified in the final rule in comparison to the rule submitted for public comment in that the WCA deleted this sentence from the final rule: "The associated costs of any such translation shall be paid by the serving party or as otherwise ordered by the judge." The WCA was concerned that the provision regarding who pays the costs of translation could conflict with NMSA 1978, §52-1-54(D), which requires employers to advance up to $3,000 upon request of the worker for purposes of discovery. Under the proposed rule, if the worker served discovery in English upon an employer who did not speak English as their native language, the proposed rule would potentially shift the costs of translation to the worker. The WCA elected to delete any reference to payment for the costs of translation of discovery yet retained the proposed rule permitting the judge discretion to order translation of discovery into the language of the responding party.

Part 7 – Payments for Healthcare Services

Due to numerous negative comments about the proposed rule change to Part 7, our agency has decided not to implement any changes this year to Part 7. The WCA will resume work on Part 7 in light of the public comments received in future rule makings.

This concludes the summary of the overview of the rule revisions.