



November 12, 2024

Casualty Solutions Group (CSG)

This communication provides Enlyte comments on rules proposed by the New Mexico Workers' Compensation Administration as a proposed draft.

Comments on Draft Rules:

Title 11 Labor and Workers' Compensation
Chapter 4 Workers' Compensation
Part 7 Payments for Health Care Services

Comment 1: Important statutory maximum charges allowable are included in N. M. S. A. 1978, § 52-4-5 which do not appear to be included in Part 7, Payments for Health Care Services.

We recommend a definition be added to 11.4.7.7 NMAC (Definitions) in order to incorporate a phrase used in the applicable statute:

“Maximum Charge Allowable” means the lesser of the HCP Fee Schedule, Usual and Customary Fee or contracted charges. The schedule of maximum charges specified in § N. M. S. A. 1978, § 52-4-5 shall not apply to hospital charges.

Statutory Requirements in N. M. S. A. 1978, § 52-4-5. See entire section; however, the most relevant subsections are listed below:

A. The director shall adopt and promulgate regulations establishing a schedule of maximum charges as deemed necessary for treatment or attendance, service, devices, apparatus or medicine provided by a health care provider. The rates in the schedules of maximum charges shall not fall below the sixtieth percentile or above the eightieth percentile of current rates for health care providers. In determining current rates for health care providers, the director shall utilize a variety of health care provider charges, including the charges of those providers serving low income, medicare and medicaid patients.

B. A health care provider shall be paid his usual and customary fee for services rendered or the maximum charge established pursuant to Subsection A of this section, whichever is less. However, in no case shall the usual and customary fee exceed the maximum charge allowable.

D. No amount in excess of the amount required by Subsection B of this section for a service shall be paid by the employer, the employer's insurer, the worker, a

representative of the worker or any other person to a health care provider for rendering that service in connection with an injury or disablement within the purview of the Workers' Compensation Act or the New Mexico Occupational Disease Disablement Law.

G. The schedule of maximum charges specified in this section shall not apply to hospital charges. The director shall establish a separate schedule of maximum charges for hospital charges no later than April 1, 1991.

H. Nothing in this section shall prevent an employer from contracting with a health care provider for fees less than the maximum charges allowable.

We recommend the addition of the following to § 11.4.7.8 NMAC (Ground Rules for Billing and Payment), subsection A to ensure better integration of the applicable statutes into the rule:

A health care provider shall be paid his usual and customary fee for services rendered or the maximum charge established pursuant to the HCP fee schedule adopted and promulgated by the director, whichever is less. However, in no case shall the usual and customary fee exceed the maximum charge allowable.

Statutory requirement N. M. S. A. 1978, § 52-4-5 B.

B. A health care provider shall be paid his usual and customary fee for services rendered or the maximum charge established pursuant to Subsection A of this section, whichever is less. However, in no case shall the usual and customary fee exceed the maximum charge allowable.

We recommend the revision of § 11.4.7.8 NMAC (Ground Rules for Billing and Payment), subsection A (3) to ensure better integration of the applicable statutes into the rule:

Nothing in these rules shall preclude the separate negotiation of fees between a provider and a payer within the HCP fee schedule for any health care service as set forth in these rules for fees less than the maximum charges allowable.

Statutory requirement, N. M. S. A. 1978, § 52-4-5 H

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H. Nothing in this section shall prevent an employer from contracting with a health care provider for fees less than the maximum charges allowable.

We also recommend a revision to the definition for "Usual and Customary Fee" to provide additional clarity and to conform to the applicable statute:

GG. "Usual and Customary Fee" means the monetary fee that a practitioner normally charges for any given health care service. It shall be presumed that the charge billed by the practitioner is that practitioner's usual and customary charge for that service unless it exceeds the practitioner's charges to self-paying patients or non-governmental third-party payers for the same services and procedures. In no case shall the usual and customary fee exceed the maximum charge allowable.

Statutory requirement N. M. S. A. 1978, § 52-4-5 B.

B. A health care provider shall be paid his usual and customary fee for services rendered or the maximum charge established pursuant to Subsection A of this section, whichever is less. However, in no case shall the usual and customary fee exceed the maximum charge allowable.

We sincerely appreciate the opportunity to offer comment on the proposed changes to § 11.4.7 NMAC Payments for Health Care Services.