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November 12, 2024

New Mexico Workers' Compensation Administration
c/o WCA Office of General Counsel
PO Box 27198
Albuquerque, NM 87125-7198

RE: Written Comments on Proposed 2025 Rule Changes

Dear WCA Office of General Counsel,

New Mexico Mutual appreciates the opportunity to participate in the Workers' Compensation Administration ("WCA") process in preparing the new WCA Rule changes effective in 2025. Specifically, sections Part 3 (Payment of Claims, Post-Accident Drug and Alcohol Testing, and Conduct of Parties), Part 4 (Claims Resolution), Part 7 (Payments for Health Care Services), and Part 11 (Proof of coverage).

Enclosed please find written comment submitted on behalf of New Mexico Mutual related to the Proposed 2025 WCA Rule changes. New Mexico Mutual has organized its comments to the Proposed 2025 WCA Rule changes with a heading for each section, depending on the proposed change(s).

Please feel free to contact me if you have any questions or require any clarification or assistance.

Sincerely,

Jeremiah Ritchie
VP and General Counsel
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MILEAGE BENEFITS

11.4.3.11(A)

The proposed rule changes include the following:

11.4.3.11 MILEAGE BENEFITS:

A. Employer shall pay worker's mileage, transportation, meal and commercial lodging expenses for travel to HCPs pursuant to this rule. Payment shall be made only to the injured worker and within 30 days of the employer's receipt of an original itemized receipt that complies with the requirements of this rule:

(1) for travel to HCPs of 15 miles or more, one way, from the worker's residence or place of employment, depending upon the point of origin of travel, mileage shall be reimbursed at the mileage reimbursement rate set by the New Mexico Department of Finance and Administration regulations in effect on the date of travel;

(2) actual reimbursement for the cost of a ticket on a common carrier, if applicable;

(3) actual reimbursement up to ~~\$45~~25.00 for any one meal with up to three meals total and ~~\$30~~75.00 total reimbursed for a 24 hour period; and,

(4) actual reimbursement up ~~\$85~~150.00 for the cost of overnight commercial lodging in the event of required travel of at least 150 miles one way from worker's residence or place of employment, depending upon the point of origin of travel.

Comments: We support these changes as more accurately reflecting the associated travel costs. These changes will reduce financial stress on workers and facilitate attendance for treatment, which helps further the purposes of the Workers' Compensation Act.

ADJUDICATION PROCESS

11.4.4.13(B)(1) Application of Judge:

The proposed rule changes include the following:

B. Application to judge:

(1) Unless otherwise provided, all claims under the act shall be initiated by filing a complaint form, and the clerk shall schedule the claim for mediation. A party may file an application to judge, and the clerk shall assign the case to a judge to adjudicate the following limited forms of relief only:

(a) physical examination pursuant to Section 52-1-51 NMSA 1978;

(b) independent medical examination pursuant to Section 52-1-51 NMSA 1978;

(c) determination of bad faith, unfair claims processing, fraud or retaliation;

(d) supplemental compensation order;

(e) award of attorney fees;

(f) stipulated reimbursement agreement pursuant to Section 52-5-17 NMSA 1978;

(g) consolidation of payments into quarterly payments (not a lump sum under

Section 52-5-12 NMSA 1978);

(h) approval of limited discovery where no complaint is pending before the agency, including but not limited to approval of a communication to a treating health care provider when the parties cannot otherwise agree on the form or content; ~~or~~

(i) request for release of medical records; ~~or~~

(j) disputes over limited IME's and determinations of reasonableness and necessity of authorized HCP recommended treatment following receipt of a limited IME report.

Comments: We think the implementation of a limited IME concept creates challenges, as described below. We urge the WCA to postpone adoption of such a scheme pending further study and input from the community.

11.4.4.13(J)(4) Interpreters:

The proposed rule changes include the following:

- J.** Appointment of interpreter:
- (1) It is the responsibility of the parties to determine if interpretive services are necessary.
 - (2) An interpreter may be appointed by the judge, director, or mediator. The interpreter shall be court-certified, except that a non-certified interpreter may serve at mediation conferences.
 - (3) The employer shall be responsible for the cost and arrangement of a qualified interpreter for the hearing or mediation conference. This responsibility may fall to the uninsured employers' fund when named as a party.
 - (4) The judge shall have discretion to require written discovery translated into the language of the responding party to ensure fairness and substantial justice. The associated cost of any such translation shall be paid by the serving party or as otherwise ordered by the judge.

Comments: We don't believe this amendment is necessary. The Workers' Compensation Act states that each party is to pay its own discovery costs, with the exception that Employers may be required to advance workers up to \$3,000 for discovery costs. To the extent worker needs interpreters to assist in answering discovery, it should be included in the \$3,000 advance of costs.

11.4.4.13(H) Depositions:

The proposed rules changes include the following:

- H.** Depositions: Upon the filing of a complaint and by written stipulation of the parties, good cause is presumed and depositions may be taken of the worker, employer representative, authorized HCP, and any provider of an independent medical examination. Non-party and medical depositions shall not exceed two hours absent good cause shown demonstrating the need to exceed the two-hour time limit. Depositions of the worker and the employer representative may not exceed three hours absent good cause shown demonstrating the need to exceed the three-hour time limit.

Comments: The deposition time limitations, while likely intended to create efficiency, may have the opposite effect by causing more legal disputes over the sufficiency of deposition time. There may be gamesmanship to exhaust depo limits and deprive the other side of questioning, leading to more hearings to extend those time limits. The inability to revisit depositions easily could result in missed opportunities to address new information discovered during the case, impacting the thoroughness of the fact-finding process. We do not think depo times are a significant deterrent, particularly if reimbursement rates are increased as proposed elsewhere in these rules. Additionally, deposition time limits, to the extent they lead to deposition setting resets, will increase the disruption to our physician and other medical providers, adding a

significant negative impact to the process and to the ultimate retention and recruitment of new providers to the workers' compensation system.

11.4.4.13(S) Independent Medical Examinations:

The proposed rule changes include the following:

S. Independent Medical Examinations
(1) An IME may address any medical issue in dispute between the parties, including the causal relationship to the accident. At the judge's discretion, relevant medical records from up to 10 years prior to the claimed date of accident may be provided to the IME provider.
(2) A "limited IME" means an IME, as defined in part one of these rules, for the limited purpose of resolving a dispute existing between the parties over the reasonableness and necessity of specific medical care ordered by an authorized HCP. No other issues may be addressed absent court order. Unless otherwise ordered, relevant medical records not more than one year prior to the claimed date of accident may be sent to the limited IME provider. An evidentiary hearing to decide the reasonableness and necessity of the proposed treatment shall be held no more than 90 days of receipt of the limited IME report. Unless otherwise ordered, medical evidence allowed at this hearing is limited to the depositions of the authorized HCP and the limited IME provider. The 90 day hearing period may be extended by order of court for good cause shown, including but not limited to the unavailability of the ordering provider or the limited IME provider.

Comments: The rules governing IMEs and Limited IMEs are overly complex and open to broad interpretation, which can lead to inconsistent application and more legal disputes. The limitations on the scope of records (one year for Limited IMEs and 10 years for full IMEs) create significant risks it could inadvertently exclude critical information relevant to the case. We believe it is essential that procedures balance efficiency with the need to access comprehensive medical history as the limitations do not align with the reality that workers may be eligible for lifetime medical benefits, and a broader review of medical history may be necessary to ensure fair and comprehensive treatment of the worker's claim. This framework may ultimately cause more harm than good by restricting crucial information and fueling further legal challenges. There is also no direction as to the implementation process for this new concept. We would need to include our medical providers in this discussion.

GROUND RULES FOR BILLING AND PAYMENT

11.4.7.8(D)(3) Payment provision ground rules:

The proposed rule changes include the following:

D. Payment provision ground rules.

(1) The provision of services gives rise to an obligation of the employer to pay for those services. Accordingly, all services are controlled by the rules in effect on the date the services were provided.

(2) For all reasonable and necessary services provided to a worker with a valid workers' compensation claim, payer is responsible for timely good faith payment within 30 days of receipt of a bill for services unless payment is pending in accordance with the criteria for contesting bills and an appropriate explanation of benefits has been issued by the payer. Payment for non-contested portions of any bill shall be timely.

(3) 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.

Comments: We support the idea of holding payers accountable for timely payment. It is imperative to also clarify the implementation process and the associated burdens on both payers and providers. Without clear guidelines and definitions around what it means to make "good faith payment," there is a significant risk of increased billing disputes, which would detract from the overall efficiency of the claims process.

Additionally, amending the fee schedule to include additional EOB codes is essential for enhancing transparency and facilitating smoother claims processing. Current codes do not adequately capture all legitimate basis for contesting a payment. We look forward to providing further comments as it relates to the additional EOB codes in the proposed 2025 Health Care Provider Fee Schedule & Billing Instructions.

We encourage the WCA to postpone implementation of this provision pending changes to the EOB codes and additional guidance around these terms.

NON-CLINICAL SERVICES

11.4.7.13(D)(5) Depositions:

The proposed rule changes include the following:

11.4.7.13 NON-CLINICAL SERVICES

A. For medical records and report copies requested for the purpose of investigating or administering a workers' compensation claim, a practitioner may charge for paper and electronic copies as set forth in the HCP fee schedule, except as provided in Paragraphs (12), (13), (14) and (15) of Subsection C of 11.4.7.8 NMAC. This fee is inclusive of any and all fees, including, but not limited to, administrative, processing, and handling fee of any kind.

B. A practitioner may charge for the completion of the WCA Form Letter to Health Care Provider the amount set forth in the HCP fee schedule.

C. A practitioner may charge for the completion of the WCA Provider's Report of Physical Ability according to the criteria and amount set forth in the HCP fee schedule.

D. Depositions

(1) An HCP may not charge more than ~~\$400~~\$800 for the first hour or any portion thereof; and not more than ~~\$360~~\$700 per hour for the second and subsequent hours, prorated in five minute increments. An HCP may not charge more than ~~\$200~~\$400 for the first hour of deposition preparation time actually spent, and not more than ~~\$120~~\$250 per hour for the second or third hours, prorated in five minute increments, up to a maximum of three hours.

Comments: We support the changes that would increase the compensation rates for providers involved in deposition preparation and testimony. These adjustments help recognize the value of providers' time and expertise, encouraging their participation, and improving the quality of testimony in workers' compensation cases. Ensuring fair compensation for providers is a necessary step toward maintaining an efficient, equitable, and reliable workers' compensation system.