

WORKERS' COMPENSATION ADMINISTRATION
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TITLE 11 LABOR AND WORKERS' COMPENSATION
CHAPTER 4 WORKERS' COMPENSATION
PART 1 GENERAL PROVISIONS

- 1 **ISSUING AGENCY:** Workers' Compensation Administration (WCA). [6-1-96]
- 2 **SCOPE:** These rules govern all parties involved in claims arising under the Workers' Compensation Act. [6-1-96]
- 3 **STATUTORY AUTHORITY:** The Director is authorized by NMSA 1978, § 52-5-4 (Repl. Pamp. 1991), to adopt reasonable rules and regulations to implement the legislative purposes of the Workers' Compensation Act. The Workers' Compensation Act specifically directs the adoption of definitions for the phrases "Bad Faith" and "Unfair Claims Processing" in NMSA 1978, § 52-1-28.1 (Repl. Pamp. 1991). The rules on record confidentiality are adopted pursuant to NMSA 1978, § 52-5-21 (Repl. Pamp. 1991). [6-1-96]
- 4 **DURATION:** Permanent. [6-1-96]
- 5 **EFFECTIVE DATE:** June 1, 1996. [6-1-96]
- 6 **OBJECTIVE:** This part defines words and phrases frequently used in the rules adopted by the Director and also establishes rules for review of agency records. [6-1-96]
- 7 **DEFINITIONS:** The definitions adopted below shall apply to all WCA rules unless expressly indicated otherwise in a specific part of these rules.
 - 7.1 **"Act"** means collectively: the Workers' Compensation Act, the Workers' Compensation Administration Act, the Subsequent Injury Act, and the Occupational Disease Disablement Law, NMSA 1978, §§ 52-4-1 to 52-4-5 (Repl. Pamp. 1991). This definition includes prior law applicable to the particular facts of the claim.
[2-24-92...6-1-96]
 - 7.2 **"Administration"** means the Workers' Compensation Administration (WCA).
[2-24-92...6-1-96]
 - 7.3 **"Bad Faith"** means the denial or refusal to pay a claim without any reasonable basis, accompanied by knowledge or awareness of the lack of a reasonable basis, or a reckless disregard of the unreasonableness of the denial or refusal to pay, or malice.

"Bad Faith" also means intentional conduct in the handling of a claim by any person that amounts to fraud, malice, oppression or willful or reckless disregard of the rights of any party. [1-24-91...6-1-96]
 - 7.4 **"Business Day"** means any day on which the WCA is open for business.
[1-24-91...6-1-96]
 - 7.5 **"Cause"** means any and all proceedings before the WCA pertaining to the same disease or accidental injury and assigned the same file number by the Clerk of the Administrative

Court. [6-1-96]

- 7.6 **“Claim”** means any allegation of entitlement to benefits or relief under the Act, which has been communicated to the Employer or the Subsequent Injury Fund by the giving of notice as required by the Act. [1-24-91...6-1-96]
- 7.7 **“Clerk”** (also referred to as Clerk of the Administrative Court or Clerk of the WCA) means any individual assigned by the Director to oversee the filing of claims and records with the WCA. [6-1-96]
- 7.8 **“Complaint”** means a written request for workers’ compensation benefits or any relief under the Act, filed on a mandatory form with the Clerk of the WCA by a Worker, Employer, Insurance Carrier or the Subsequent Injury Fund. [2-24-92...6-1-96]
- 7.9 **“Director”** means the Director of the WCA. [2-24-92...6-1-96]
- 7.10 **“Employer”** means, collectively, unless otherwise stated: an Employer subject to the Act; a self-insured entity, group or pool; a workers’ compensation insurance carrier or its representative; or any authorized agent of an Employer or insurance carrier, including any individual owner, chief executive officer or proprietor of any entity employing Workers. [5-26-87...6-1-96]
- 7.11 **“Fund”** means the Subsequent Injury Fund as defined in the Subsequent Injury Act, NMSA 1978, §§ 52-2-1 to 52-2-14 (Repl. Pamp. 1991). [2-24-92...6-1-96]
- 7.12 **“Health Care Provider”** (also referred to in the rules as “HCP”) means any person, entity or facility authorized to furnish health care to an injured Worker pursuant to NMSA 1978, § 52-4-1 (Repl. Pamp. 1991), including any provider designated pursuant to NMSA 1978, § 52-1-49 or -51 (Repl. Pamp. 1991), and may include a provider licensed in another state if approved by the Director, as required by the Act. [5-26-87...6-1-96]
- 7.13 **“IME”**, or independent medical examination, means a medical examination of a worker, by a provider other than a previously designated health care provider, upon whom the parties have agreed or the Judge has appointed according to the Act. [6-1-96]
- 7.14 **“Judge”** means a Workers’ Compensation Judge appointed by the Director pursuant to NMSA 1978, § 52-5-2 (Repl. Pamp. 1991). [6-1-96]
- 7.15 **“Mediation Conference”** means a mandatory conference at which all parties named in the Complaint shall appear and present their positions to the Mediator. [2-24-92...6-1-96]
- 7.16 **“Mediator”** means a Director’s designee, who will evaluate and attempt to resolve a Complaint by holding a mediation conference and issuing a recommendation for resolution of the Complaint. [2-24-92...6-1-96]
- 7.17 **“Medical Records”** means:
- 7.17.1 All records, reports, letters, and bills produced or prepared by a HCP relating to the care and treatment rendered the Worker; [5-26-87...6-1-96]
- 7.17.2 All other documents generally kept by the HCP in the normal course of business relating to

the Worker, including, but not limited to, clinical, nurses' and intake notes, notes evidencing the patient's history of injury, subjective and objective complaints, diagnosis, prognosis and/or restrictions, reports of diagnostic testing, hospital records, logs and bills, physical therapy records, and bills for services rendered. [5-26-87...6-1-96]

7.18 **"Party"** means any of the following:

7.18.1 An Employer against whom a claim has been asserted by an injured or disabled Worker; [2-24-92...6-1-96]

7.18.2 An injured or disabled Worker asserting a claim against an Employer; or [2-24-92...6-1-96]

7.18.3 The Fund, if a claim has been asserted against it. [2-24-92...6-1-96]

7.19 **"Pending cause"** means any cause in which a party has filed a document with the Clerk of the WCA within the previous six months, and which has not yet been administratively closed by the Clerk. [6-1-96]

7.20 **"Person"** means any individual, association, organization, reciprocal or Lloyd's plan insurer, partnership, firm, syndicate, trust, corporation and every legal entity as defined in NMSA 1978, § 59A-1-10 (Repl. Pamp. 1991). [6-1-96]

7.21 **"Pleading"** means any document filed and endorsed by the Clerk. [6-1-96]

7.22 **"Rules of Civil Procedure"** means the Rules of Civil Procedure for the District Courts, as adopted by the Supreme Court of New Mexico. [6-1-96]

7.23 **"Rules of Evidence"** means the Rules of Evidence as adopted by the Supreme Court of New Mexico. [5-26-87...6-1-96]

7.24 **"Rules of the WCA"** means rules enacted by the WCA and cited as 11 NMAC 4. [6-1-96]

7.24.1 These rules are organized by title, chapter, part, section, paragraph, and subparagraph. [6-1-96]

7.24.2 For ease of use, these rules may be referred to in writing and speech by part, section, paragraph, and subparagraph. [6-1-96]

7.25 **"Unfair Claims Processing"** includes, but is not limited to, any and all of the following practices with respect to claims, by an Employer, Worker or other person: [1-24-91...6-1-96]

7.25.1 Knowingly misrepresenting pertinent facts relating to workers' compensation benefits; [1-24-91...6-1-96]

7.25.2 Failing to acknowledge and act promptly upon communications with respect to claims of Workers; [1-24-91...6-1-96]

7.25.3 Failing to adopt and implement reasonable standards for the prompt investigation and processing of Workers' claims; [1-24-91...6-1-96]

7.25.4 Failing to affirm or deny coverage of claims within a reasonable time after a request for

payment of benefits has been submitted to an Employer;
[1-24-91...6-1-96]

- 7.25.5 Not attempting in good faith to develop prompt, fair and equitable settlements of claims in which liability has become clear; [1-24-91...6-1-96]
- 7.25.6 Compelling litigation to recover amounts due by offering substantially less than the amounts ultimately recovered in actions brought by similarly situated Workers; [1-24-91...6-1-96]
- 7.25.7 Compelling litigation to recover benefits, when benefits are currently being paid at the maximum rate of entitlement under the Act; [6-1-96]
- 7.25.8 Delaying the investigation or payment of claims by requiring a Worker or HCP to submit a preliminary claim report, and then requiring the submission of formal proof containing substantially the same information as the preliminary report; [1-24-91...6-1-96]
- 7.25.9 Soliciting, accepting or obtaining a complete release of liability in exchange for an acceleration of benefits, or discounting an acceleration of benefits, where such an acceleration is not made pursuant to a lump sum payment approved by a Judge; [6-1-96]
- 7.25.10 Failing to promptly provide the Worker, upon request, a written explanation of the basis for denial of a claim, or the identity and address of the workers' compensation coverage of the Employer; [1-24-91...6-1-96]
- 7.25.11 Inducing the Worker, by means of false representations about the law or facts, to forfeit the Worker's rights under the HCP rules of the WCA; [6-1-96]
- 7.25.12 Failing to timely pay authorized and undisputed medical bills; and [6-1-96]
- 7.25.13 Any practice intentionally engaged in, which delays or prolongs the payment of benefits at a rate not consistent with the Act. [6-1-96]

7.26 ***“Wage records”*** means all records evidencing all wages, commissions, overtime pay, gratuities, meals, board, rent, housing or lodging received from any Employer during all time periods relevant to the Act. [6-1-96]

7.27 ***“Worker”*** means an injured or disabled employee. [2-24-92...6-1-96]

7.28 ***“Records”*** does not include: [4-30-98]

- 7.28.1. the identity of the insurance carrier for a particular employer, the fact that the employer is certified as a self-insurer or the fact that the Administration has no record of compliance with the insurance requirement of the Act; [4-30-98]
- 7.28.2. any matter required to be made available to another state agency pursuant to statutes, joint powers agreements or memoranda of understanding; [4-30-98]
- 7.28.3. any matter required to be disclosed by the order of a court of competent jurisdiction; [4-30-98]

- 7.28.4. any pleadings filed or evidence received in the course of any proceeding to either enforce the mandatory insurance requirement or impose sanctions for violation of the Workers' Compensation Act, related statutes, or the rules promulgated thereunder, where that proceeding has been settled or adjudged. [4-30-98]

8 CONFIDENTIALITY [1-24-91...6-1-96]

- 8.1 All records of the WCA are confidential, unless introduced as evidence during an administrative or judicial proceeding. Inspection of the evidence and exhibits will be allowed only during normal business hours. A written request to inspect must be submitted to the Clerk. The written request to inspect shall indicate sufficient information to distinctively identify and retrieve the file to be inspected. [1-24-91...6-1-96]
- 8.2 Right to Inspect WCA Records
- 8.2.1 Once a disablement or accident occurs, any person who is a party to a claim arising from the disablement or accident shall have the right to inspect all files relating to the accident or disablement, and all files relating to any prior accident, injury or disablement of the Worker. [1-24-91...6-1-96]
- 8.2.2 The party must establish an existing claim prior to being allowed to inspect the WCA files. A party may prove an existing claim by providing the Clerk a signed statement containing the names of the parties, social security number and date of accident, and indicating a claim for workers' compensation benefits has been made. A party desiring to inspect a WCA file shall give the Clerk written notice of the request to inspect. The notice shall identify any currently pending WCA Complaints. [1-24-91...6-1-96]
- 8.3 The named party, representative or the attorney in a claim shall be required to provide acceptable proof of identity prior to being allowed to inspect WCA files. Acceptable proof of identity shall be a driver's license or other identification bearing a photograph, name and address of the person requesting inspection. [1-24-91...6-1-96]
- 8.4 The Clerk shall review the written request and determine if the person requesting the inspection has a right to inspect. [1-24-91...6-1-96]
- 8.5 The Clerk shall allow only authorized employees of the WCA, parties, representatives or attorneys of record to a claim the right to inspect the WCA files. The confidentiality of WCA records shall not be waived by any person or party. [1-24-91, 6-1-96]