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By Email (gc.clerk@wca.nm.gov)

March 17, 2026

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

RE: Written Comments on Proposed 2026 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 on April 7, 2026. Specifically, sections Part 4 (Claims Resolution) and Part 7 (Payments for Health Care Services).

Enclosed please find revised written comment submitted on behalf of New Mexico Mutual related to the Proposed 2026 WCA Rule changes. New Mexico Mutual has organized its comments to the Proposed 2026 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,

A handwritten signature in black ink, appearing to read "Dan Giralmo", written in a cursive style.

Dan Giralmo
Vice President of Claims
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505.343.2898

Claims Resolution

11.4.4.15 (A) APPROVAL OF ATTORNEY FEES AND LIENS:

The proposed 2026 rule changes proposed the following language:

All contested applications and any petition seeking an attorney fee equal to or greater than the attorney fee cap prescribed by Section 52-1-54 or 11.4.4 NMAC 13 52-3-47 NMSA 1978, or as the judge may order, shall include as applicable a supporting discussion of statutory requirements and the following factors:

Comments: We support this revision and appreciate the administration’s efforts to ensure attorney fee awards remain compliant with statutory and applicable case law requirements. To further support clarity and alignment with the statutory framework, we recommend revising the language to remove “equal to or greater than” when referencing the attorney fee cap under Section 52-1-54. As currently written, the phrase implies that an attorney fee may exceed the statutory cap; however, by definition, a cap represents the maximum allowable amount. Therefore, there should not be any circumstance in which an attorney fee is greater than the cap established by statute. We suggest revising the language to read:

“...any petition seeking the maximum attorney fee prescribed by Section 52-1-54...”

11.4.4.15 (A)(10)

The proposed 2026 rule changes proposed to add the following factors:

- (1) the chilling effect of miserly fees upon the ability of an injured worker to obtain adequate representation;
- (2) the time and effort expended by the attorney in the particular case;
- (3) the extent to which the issues were contested;
- (4) the novelty and complexity of the issues involved;
- (5) the fees normally charged in the locality for similar legal services;
- (6) the ability, experience, skill and reputation of the attorney;
- (7) the relative success of the workman in the court proceeding;
- (8) the amount involved;
- (9) the rise in the cost of living;
- (10) whether the worker suffered a subsequent injury or injuries that flowed from the primary workplace injury thereby justifying a fee cap multiple award;
- (11) the impact of an excessive fees award paid to attorneys upon the prices paid by consumers and employers for goods and services, including workers’ compensation insurance premiums; and
- (12) any other relevant information for the determination of the attorney fee award in question.



Comments: With respect to Factor 10, which states *“whether the worker suffered a subsequent injury or injuries that flowed from the primary workplace injury thereby justifying a fee cap multiple award,”* We recommend revising Factor 10 to clarify that the determination of a fee cap multiple award should not be based solely on the number of injuries involved. Ultimately, the award of attorneys’ fees should be determined based on the merits and circumstances of each individual claim, as determined by the first 9 factors. Regardless of whether separate caps may be available, subsequent injuries should only impact attorneys’ fees to the extent that they increase the complexity, scope, or level of legal work required to litigate the claim.

Proposed Language:

“The extent to which additional injuries or medical conditions arising from the primary workplace injury increased the complexity, scope, or level of legal work required in the claim.”

Payments for Health Care Services

11.4.7.12 (C)(2)(C) Case Management

The proposed 2026 rule changes removed the following language:

The contractor shall give reasonable notice and an opportunity to the worker or his or her representative to be present during, or to participate in, all contacts by the case manager.

Comments: We support this revision as it helps ensure the statutory program can function effectively and as intended.