

# NMAC

## Transmittal Form



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Volume:  Issue:  Publication date:  Number of pages:  (ALD Use Only)  Sequence No.

Issuing agency name and address:  Agency DFA code:

Contact person's name:  Phone number:  E-mail address:

Type of rule action:  New  Amendment  Repeal  Emergency  Renumber  (ALD Use) Recent filing date:

Title number:  Title name:

Chapter number:  Chapter name:

Part number:  Part name:

Amendment description (If filing an amendment):

Amendment's NMAC citation (If filing an amendment):

Are there any materials incorporated by reference? Yes  No  Please list attachments or Internet sites if applicable.

If materials are attached, has copyright permission been received? Yes  No  Public domain

Specific statutory or other authority authorizing rulemaking:

Notice date(s):  Hearing date(s):  Rule adoption date:  Rule effective date:

# Concise Explanatory Statement For Rulemaking Adoption:

## Findings required for rulemaking adoption:

### Findings MUST include:

- Reasons for adopting rule, including any findings otherwise required by law of the agency, and a summary of any independent analysis done by the agency;
- Reasons for any change between the published proposed rule and the final rule; and
- Reasons for not accepting substantive arguments made through public comment.

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See concise explanatory statement attached.

Issuing authority (If delegated, authority letter must be on file with ALD):

Name:

Check if authority has been delegated

Title:

Director

Signature: (BLACK ink only OR Digital Signature)

Date signed:

*Heather Jordan*

3/25/26

Heather Jordan (Mar 25, 2026 10:51:19 MDT)



State of New Mexico  
**Workers'  
 Compensation  
 Administration**

**Michelle Lujan Grisham**  
 STATE REPRESENTATIVE Governor

2026 MAR **Heather Jordan**  
 Director

March 25, 2026

IN RE:

RULEMAKING PROCEEDING FOR THE  
 AMENDMENT OF 11.4.7.12 NMAC (PAYMENT FOR HEALTH CARE SERVICES)

**CONCISE EXPLANATORY STATEMENT**

The New Mexico Workers' Compensation Administration (hereinafter the "WCA") hereby adopts rules that amend the WCA's Part 7, 11.4.7.12 - Inpatient Admissions, Case Management and Utilization Review:

(1) Statutory Authority for Rule Promulgation:

Section 52-5-4 NMSA 1978 authorizes the director of the WCA to adopt reasonable rules and regulations for effecting the purposes of the Workers' Compensation Act.

(2) Effective Date of Rule:

April 7, 2026

(3) Date of Adoption of Rule:

March 25, 2026

(4) Date of Meeting Approving Rule:

A public comment hearing concerning the proposed rule was held on February 27, 2026. Otherwise, no meeting was held to adopt the rule as such a meeting is not required.

(5) Reasons for Adopting Rule:

The purposes of the amendments in Part 7, Payment for Healthcare Services, Section 11.4.7.12 - Inpatient Admissions, Case Management and Utilization Review, are as follows:

The WCA is required by statute to create a case management system. See §52-4-3 NMSA 1978. The rule change is being made to strengthen nurse case management ("case management") services provided through the WCA to injured workers by deleting a rule provision which in practice served to unduly restrict the ability of a case

manager to communicate during case management services provided through the WCA and pursuant to the statutory authority noted above.

The rule amendment is limited to 11.4.7.12(C)(2)(c) NMAC, which currently provides: “The contractor<sup>1</sup> shall have the right to contact the worker, insurer, third party administrator, legal representatives, and all HCP’s<sup>2</sup> involved in the case. 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, any and all contacts by the case manager.”

The amended rule deletes the second sentence of the current rule.

By statute, the WCA is required to establish a case management system to, among other things: develop and monitor medical treatment and progress; assess the propriety of alternative healthcare consistent with medical standards and cost effectiveness; ensure the injured or disabled worker follows the prescribed health plan; and to formulate a return-to-work plan. See §52-4-3 NMSA 1978.

The WCA is striking the language at issue as its inclusion substantially interferes with the WCA’s statutory mandate to establish an effective case management system. The stricken language effectively consumes the enabling statute by requiring the assigned case manager to obtain pre-contact permission from the worker or their counsel prior to making any contact during the case management assignment. The rule as currently written has proven to be unworkable in practice.

The statute further requires that WCA use contractors as case managers. Therefore, case managers who are under contract with the WCA are not agents of the employer or insurer. They are paid by the WCA. The WCA believes that, at the point when a case manager is assigned, necessary parameters or limitations regarding communications between the case manager and the worker, or the case manager and the HCP, can be agreed upon by the parties and the WCA’s medical cost containment bureau. In case of dispute, the parties may seek appropriate relief upon application to the director.

(6) Reasons for Changes from Published Rule:

No changes have been made to the published rule.

(7) Reasons for Not Accepting Substantive Arguments from Public Comment:

The WCA received comments suggesting the following:

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<sup>1</sup> A contractor is defined as “any organization that has a legal services agreement currently in effect with the workers’ compensation administration (WCA) for the provision of utilization review or case management or peer review services.” 11.4.7.7(F) NMAC.

<sup>2</sup> An HCP is a “Health care provider” as defined by 11.4.1.7(K) NMAC.

Comment: Fundamental fairness to the worker requires that a worker know what is being said about him or her by an agent of the state to a healthcare provider and to that agent by the healthcare provider.

WCA Response: The WCA believes that principles of fundamental fairness can be maintained even in the absence of the deleted sentence from the current rule. Again, issues concerning potentially inappropriate communication by the case manager can be effectively addressed at the outset of nurse case management and, if no agreement is reached or a dispute later arises, the issue can be appropriately resolved by the director upon application.

Comment: The amendment conflicts with case law such as *Church's Fried Chicken No. 1040 v. Hansen*, regarding *ex parte* communication with a worker's healthcare provider because it allows improper influence of a worker's healthcare provider and infringes on patient-physician confidentiality. *Church's Fried Chicken No. 1040 v. Hansen*, 114 N.M. 730, 734 (“[c]ourts which have denied *ex parte* interviews with a plaintiff's treating physician have generally restricted such right because of . . . concern that adversarial parties may seek to improperly influence a plaintiff's physician.”)

WCA Response: Eliminating the one sentence at issue from the existing rule does not conflict with case law regarding *ex parte* communication as cases like *Church's Fried Chicken No. 1040 v. Hansen* address *ex parte* communications between the case manager hired by the employer or insurer and a health care provider (HCP). Case managers hired by the WCA are independent contractors and are not retained on behalf of the employer or insurer. The relationship is not adversarial so the normal *ex parte* concerns do not arise. See *Gomez v. Nielson's Corp.*, 119 N.M. 670, 674 (“Moreover, the regulations concerning case management apply only to case management activities undertaken by the independent organization that is under contract to the Administration, and not activities of employer case management teams. WCA 93.8.3(C). Accordingly, we do not believe that the statute or the regulations provide a basis for an employer-based case manager to be exempt from the teachings of *Church's Fried Chicken.*”)

Comment: The assignment of case managers comes at the employer/insurer's request. Workers do not usually want a case manager assigned and do not agree to it.

WCA Response: While an employer/insurer is typically the party that requests the WCA to appoint a case manager, requests are often made jointly, and nothing forecloses the worker's attorney from making their own request for case management. In any event, the ultimate decision to appoint a case manager belongs to the WCA's medical cost containment bureau or, by extension, the director. Eligibility of a request for case management is determined according to objective, WCA rule criteria, regardless of the referral source. See 11.4.7.12(C)(2) NMAC.

Moreover, workers have an opportunity to object to and argue against the appointment of a case manager by an application to the director. See 11.4.7.12(C)(1)(d) NMAC. Ultimately, the appointment of a case manager is a fulfillment of the WCA's

statutory duty to ensure medical treatment to an injured worker is being provided in a cost-effective manner. See §52-4-3 NMSA 1978 (requiring the director to establish a case management system for the provision of medical service, including assessing cost-effectiveness of services) & §52-5-1 NMSA 1978 (stating that the legislature's intent in creating the WCA includes the provision of medical benefits to injured or disabled workers "at a reasonable cost to employers.")

Comment: A comment was received that the amended rule undermines the importance of the worker's interest in a mechanism to resolve disputes about a case manager's request.

WCA Response: The WCA believes this comment substantially duplicates prior comments already addressed. In further response, it is the obligation of the WCA to implement the legislature's statutory mandate regarding case management, and the worker's interests are not the only interests the WCA must consider. The WCA has many stakeholders whose interests must be considered including on the issue of appointing a case manager

Comment: *Ex parte* communications between a case manager and health care provider are inappropriate because there is an adversarial relationship between a case manager and a worker. The comment suggests that a case manager's purpose is to work on behalf of the employer/insurer to contain costs.

WCA Response: The WCA has already addressed the concerns regarding *ex parte* communications. In further response, it is merely one role of the case manager to help contain medical costs, which does not exclusively benefit the employer/insurer. However, other provisions suggest that the legislature envisioned a balance of stakeholder interests, including the provision of "appropriate medical care," ensuring the injured worker is following the "prescribed health care plan," and that "alternate health care services" are "appropriate" and "based on acceptable medical standards." See §52-4-3(B) NMSA 1978. Case managers are also required by rule to "avoid conflicts of interest or the appearance of impropriety when performing case management services." See 11.4.1.12(A)(5) NMAC.

Comment: The amended rule takes away the worker's right to have counsel present during conversations between the worker and case manager.

WCA Response: The amended rule does not take away this right. It only changes the requirement that a case manager first notify counsel of the communication. A worker can decline to communicate with the case manager without counsel if the case manager contacts the represented worker. Likewise, the HCP can decline to speak with the case manager unless the worker is present. Again, the WCA envisions the concerns over *ex parte* communications being constructively discussed at the point of initial case management assignment or, upon dispute, by application to the director.

Comment: Some workers suffer from mental impairment and cognitive problems, requiring protection by counsel during communications with case managers.

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WCA Response: In specific cases in which a mental impairment or cognitive problem requires additional protection of the worker, such incremental protections can be broached at the time of initial assignment of the case manager or with the medical cost containment bureau. In the event of dispute, an application to the director can be filed.

Comment: Workers do not understand that the case manager is appointed by the WCA and is not an agent of the insurer; workers see the case manager as someone asking questions and making suggestions that impact the medical care they will receive.

WCA Response: The WCA understands that workers generally do not understand the workers' compensation system, and this includes the role of a WCA-appointed case managers. However, the WCA believes these concerns can be adequately addressed at the outset of the case management process. It has always been incumbent upon stakeholders involved in the case management process to make sure the worker understands the role of the case manager. Regardless of the rule change, the WCA believes the worker's concerns can be adequately addressed and any questions appropriately answered at the outset or during case management.

Comment: A comment was received in opposition to the changes to Part 7 because, in the commenter's experience, case managers seek concessions from HCPs to:

- Return the worker to work as quickly and with few restrictions as possible;
- Have workers reach maximum medical improvement as quickly as possible;
- Limit costly tests, procedures or medications; and
- To influence causation issues by introducing to the HCP additional information related to potential pre-existing conditions or other factors or provide legal advice to the effect that an HCP should make certain decisions because it is what a WCJ would do. These attempts at influence, according to the commenter, are not for the benefit of the worker, but to save the insurer costs and deny claims.

WCA Response: The comment fails to appreciate the legislature's direction to the WCA to create a case management system which includes:

- The case manager creating a plan for a worker to return to work, §52-4-3(B)(5) NMSA 1978;
- The case manager helping a worker reach maximum medical improvement (MMI), see 11.4.7.12(C)(2)(a)(vi) NMAC (including failure to reach maximum medical improvement within one year as a factor in determining the eligibility of a case for case management). To the extent that a worker believes the nurse case manager is improperly trying to influence an HCP's determination whether the worker has reached MMI, the worker can file an application to the director objecting to the case management, 11.4.4.11(A)(7) NMAC; and
- Case managers are permitted to assess more cost-effective alternatives "based on acceptable medical standards," §52-4-3(B)(3) NMSA 1978, and the WCA's mission includes ensuring medical benefits are provided at a "reasonable cost to the employers," §52-5-1 NMSA 1978. Again, if a worker believes a case

manager is violating the statute, they can apply to the director for relief, 11.4.4.11(A)(7) NMAC.

The WCA strives to neither favor the rights of the employer over the worker or those of the worker over the employer. Any issue about the scope of a case manager's communications with the HCP or worker can be addressed by an application to the director, either prior to the appointment of a case manager, or at any point during case management. See 11.4.4.11(A)(7) & 11.4.7.12(C)(1)(d) NMAC.

For the foregoing reasons, the WCA has reviewed the public comments and elects not to withdraw the proposed amendment as requested or make changes to the proposed rule.

IT IS SO ORDERED.

*Heather Jordan*

Heather Jordan (Mar 25, 2026 10:51:19 MDT)

Heather Jordan, Director  
New Mexico Workers'  
Compensation Administration

Mar 25, 2026

Date

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# Transmittal Form & CES Combined - Part 7

Final Audit Report

2026-03-25

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## "Transmittal Form & CES Combined - Part 7" History

-  Document created by Stephanie Brown-Woods (stephanie.brown-woods@wca.nm.gov)  
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-  Signer heather.jordan@wca.nm.gov entered name at signing as Heather Jordan  
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This is an amendment to 11.4.7 NMAC, Section 12, effective 4/7/2026

**11.4.7.12 INPATIENT ADMISSIONS, CASE MANAGEMENT AND UTILIZATION REVIEW:**

- A. Basic provisions.**
- (1) All workers and their legal representatives are required to cooperate with the WCA or its contractor, if any, with respect to all reasonable requests for information necessary for any provision of service.
  - (2) For the purpose of facilitating the provision of services, all employers, insurers, and third party administrators are required to communicate, cooperate and provide information, without charge, to the WCA or its contractor, if any.
  - (3) The WCA or its contractor, if any, shall report any refusal to cooperate to the director. Failure to provide requested information shall be presumed to be a refusal to cooperate. Any dispute concerning the reasonableness of any request for information may be submitted, in writing, to the director. The determinations of the director concerning the reasonableness of such requests are final.
  - (4) In any hearing before the WCA, the worker's refusal to cooperate in any services may be considered by a workers' compensation judge on the issues of reasonableness and necessity of medical charges or reasonableness, necessity, or appropriateness of medical treatment.
  - (5) The contractor shall avoid conflicts of interest or the appearance of impropriety when performing case management services and utilization review.
  - (6) Nothing in these rules prohibits an employer from establishing their own system of case management or utilization review at the employer's expense as provided in Section 52-4-3 NMSA 1978.
- B. Inpatient admission review**
- (1) For every inpatient admission the following information shall be provided to the WCA or its contractor at least 48 hours prior to the admission or before the close of the next business day after any emergency admission:
    - (a) worker's/patient's name;
    - (b) worker's/patient's social security number;
    - (c) worker's/patient's employer;
    - (d) employer's insurance carrier or third party administrator and a statement of whether they have authorized the admission;
    - (e) date of injury/onset of symptoms;
    - (f) admitting diagnosis, including primary, secondary, and tertiary, if any;
    - (g) planned treatment(s) and procedures;
    - (h) planned date of admission; and
    - (i) proposed length of stay.
  - (2) For planned or elective hospital admissions any practitioner ordering the admission of a worker for evaluation or treatment of their injury or occupational disease disablement shall report the admission to the WCA.
  - (3) For emergency hospital admissions, the hospital shall report the admission to the WCA.
- C. Case management**
- (1) Referral process
    - (a) Any party may refer a claim to the WCA for case management by the WCA or its contractor, if any, by submitting the appropriate form to the WCA medical cost containment bureau. The form is located on the agency website.
    - (b) A WCA judge may refer a claim for case management by submitting a written referral to the medical cost containment bureau and with a copy placed in the court file.
    - (c) Within 20 days of receiving a referral and all supporting documentation, the medical cost containment bureau shall notify the parties and the judge, if any, of its decision either accepting or denying the referral. The medical cost containment bureau may assign approved cases to the WCA's contractor.
    - (d) Any party who objects to the decision of the medical cost containment bureau shall notify the WCA of its objection by filing an application to the director not later than 15 days from service of the decision.
  - (2) Procedures
    - (a) The WCA will consider the following factors when determining eligibility of a case referred for case management:

- (i) severe or complex injury including total loss of limb/amputation, severe injury to multiple body parts or limbs, severe burns over a large part of body, traumatic brain injury, spinal cord injury, reflex sympathetic dystrophy/complex region pain syndrome;
- (ii) language barrier, including hearing impairment;
- (iii) a record or pattern of non-compliance with prescribed treatment, care plan or medical appointments;
- (iv) multiple health care providers, including providers of different disciplines, requiring coordination between them;
- (v) inpatient admission lasting longer than five days or multiple admissions or emergency room visits;
- (vi) failure to reach maximum medical improvement after one year from the date of injury;
- (vii) psychological issues that complicate provision of services; and
- (viii) any other reasonable criteria as approved by the director.

(b) The WCA will monitor case management services to ensure progress pursuant to Section 52-4-3 NMSA 1978. The WCA may terminate or reassign services as it deems appropriate with notice to the parties.

(c) The contractor shall have the right to contact the worker, insurer, third party administrator, legal representatives, and all HCPs involved in the case. ~~[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, any and all contacts by the case manager.]~~

(d) The contractor providing case management services may help coordinate services by bringing treatment options or return to work opportunities to the attention of the health care provider.

(e) The contractor shall provide status reports to the WCA as directed, with copies to the parties identified in the initial assignment.

**D. Utilization review**

**(1) Referral process**

(a) Any party may refer a claim to the WCA for utilization review by the WCA or its contractor, if any, by submitting the appropriate form to the WCA medical cost containment bureau. The form is located on the agency website.

(b) A utilization review request for pre-admission review of hospital admissions, except for emergency services, shall also follow this same referral and procedural process.

(c) Within 20 days of receiving a referral and all supporting documentation, the medical cost containment bureau shall notify the parties of its decision either accepting or denying the referral. The medical cost containment bureau may assign approved cases to the WCA's contractor.

(d) Any party who objects to the decision of the medical cost containment bureau shall notify the WCA of its objection by filing an application to the director not later than 15 days from service of the decision.

**(2) Procedures**

(a) Utilization review shall consider only the medical reasonableness, clinical necessity, efficiency and quality of the treatment under review.

(b) Only one treatment is appropriate for utilization review.

(c) Utilization review shall not include issues of compensability, including:

(i) the causal relationship between the treatment under review and the worker's work-related injury;

(ii) whether the worker is disabled; and

(iii) whether the worker is at maximum medical improvement.

(d) If the medical cost containment bureau or its contractor requests additional information, the parties shall provide the requested information within 15 days. The WCA shall issue its utilization review decision within 60 days of receiving all necessary documentation.

(e) The WCA in its sole discretion may assign a claim to its contractor for peer review. Peer review shall only be conducted by a licensed healthcare provider who is in a similar field or equivalent discipline as the provider whose service is being reviewed. Peer review shall be independent and the physician or health care provider should not have prior involvement in the worker's care or treatment.

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(f) The medical cost containment bureau shall communicate the utilization review findings in writing with a copy to all parties. The WCA may adopt the findings of its contractor after utilization review.

(g) Any party who objects to the utilization review findings shall file an application to director within 15 days from service of the utilization review findings. If an application is not filed within 15 days, the utilization review findings shall become binding on the parties.

(h) The director may set a utilization review matter for hearing. An order issued by the director after hearing or receipt of an application to director is final and binding on the parties.  
[11.4.7.12 NMAC - Rp, 11.4.7.12 NMAC, 1/1/2023 ; A, 4/7/2026]