

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

IN THE MATTER OF ADOPTION OF)
PROPOSED AMENDMENTS TO THE)
INSURANCE DIVISION'S GRIEVANCE)
PROCEDURES RULE REGARDING)
INTERNAL CLAIMS AND APPEALS)
AND THE EXTERNAL REVIEW)
PROCESS)
_____)

Case No. 12-00034-IN

NEW MEXICO
PUBLIC REGULATION
COMMISSION
FILED
2012 FEB 14 PM 3:55

NOTICE OF PROPOSED RULEMAKING

NOTICE IS HEREBY GIVEN that the Superintendent of the Insurance Division of the New Mexico Public Regulation Commission (Superintendent) proposes to amend its existing grievance procedures, regarding internal claims and appeals and the external review process, currently codified in the New Mexico Administrative Code (NMAC) at 13.10.17 (the Grievance Procedures). This matter comes before the Superintendent upon his own Motion and, having reviewed the record and being duly advised,

THE SUPERINTENDENT FINDS AND CONCLUDES:

1. The Superintendent has jurisdiction over the subject matter and the parties in this proceeding pursuant to the New Mexico Insurance Code, 1978 NMSA §59A-1-1 *et seq.* (Insurance Code).
2. The Affordable Care Act¹, reorganized, amended and added to the provisions of part A of Title XXVII of the Public Health Service Act relating to group health plans and health insurance issuers in the group and individual markets pertaining to: 1) internal claims and appeals, and 2) external review processes. On July 23, 2010, the U.S. Departments of

¹ The Patient Protection and Affordable Care Act (Pub. L. 111-148, enacted on March 23, 2010), as amended by the Health Care and Education Reconciliation Act (Pub. L. 111-152, enacted on March 30, 2010), collectively referred to as the Affordable Care Act ("ACA").

Health and Human Services, Labor and the Treasury issued interim final regulations implementing these requirements (IFR).

3. States with regulations pertaining to internal claims and appeals and external review that are not as stringent as the standards established in the IFR and related, subsequent federal publications, must amend their regulations to conform to the federal standards.

4. The Grievance Procedures should be amended to incorporate the new, federal standards set forth in the IFR and related, subsequent federal publications. In order to comply with the standards and requirements of the IFR and subsequent, related federal publications, the Superintendent has prepared a proposed amended rule (Proposed Rule) reflecting the requirements of the IFR and related, subsequent federal publications. The Proposed Rule is attached to and incorporated into this Notice of Proposed Rulemaking (NOPR) by reference as Exhibit A.

5. The Superintendent will accept written comments on the rule contained in Exhibit A and proposed in this NOPR from any interested person. The public is encouraged to file written comments although oral comments will be accepted at the public hearing in this case. Interested persons shall file their written comments on the proposed rules no later than **March 26, 2012**. Any response comments shall be filed no later than **April 2, 2012**. Comments suggesting changes to the proposed rule shall state and discuss the particular reasons for the suggested changes, shall cite to any state or federal law, or other materials, referred to in the comment and shall include all specific language necessary or appropriate to effectuate the changes being suggested. Specific proposed language changes to the proposed rule shall be in legislative format. All

pleadings, including comments and suggested changes to the proposed rules, shall bear the caption and docket number contained at the top of this NOPR.

6. Written comments or written response comments shall be sent to:

Melanie Sandoval
Records and Docketing Division
New Mexico Public Regulation Commission
Attention: Case No. 12-00034-IN
P.O Box 1269
1120 Paseo de Peralta
Santa Fe, NM 87504

7. Copies of the proposed rules may be downloaded from the New Mexico Public Regulation's web site, www.nmprc.state.nm.us.

8. The Superintendent will review all timely submitted written comments and will hold a public comment hearing beginning at 1:00 p.m. on April 11, 2012, at the Superintendent of Insurance, Public Regulation Commission Hearing Room, 4th Floor, PERA Building, 1120 Paseo de Peralta, Santa Fe, New Mexico.

9. Any person with a disability requiring special assistance in order to participate in a hearing should contact Kacy Aiken at 505-827-3928 at least 48 hours prior to the commencement of the hearing.

10. 1.2.3.7(B) NMAC (Ex Parte Communications) draws a distinction applicable to rulemaking proceedings between communications occurring before the record has been closed and communications occurring after the record has been closed. It defines only the latter as ex parte communications. In order to assure compliance with 1.2.3.7(B) NMAC, the Superintendent should set a date on which it will consider the record to be closed. The Superintendent finds that date shall be the earlier of thirty (30) days following the Public Hearing; that is, May 11, 2012, or the date a Final Order is issued in this case. The setting

of that record closure date will permit the Superintendent to conduct follow-up discussions with parties who have submitted initial or response comments to the Superintendent's proposed rules or responses to any bench requests. However, this action should not be interpreted as extending the time during which parties may file comments or response comments, or as allowing the filing of other types of documents in this case.

11. Copies of this Notice should be sent to all persons on the attached Certificate of Service.

IT IS THEREFORE ORDERED:

A. A rulemaking proceeding should be, and hereby is, instituted in this Docket concerning amendments to its existing grievance procedures, regarding internal claims and appeals and the external review process, currently codified in the New Mexico Administrative Code (NMAC) at 13.10.17 (the Grievance Procedures). The proposed rule, attached to this NOPR as Exhibit A, is proposed for adoption as a permanent rule as provided by this NOPR.

B. This NOPR shall constitute due and lawful notice to all potentially interested parties.

C. Initial, written comments on the proposed rule must be filed by **March 26, 2012** and written response comments must be filed by **April 2, 2012**.

D. A public hearing on the proposed rule amendments shall be held beginning at 1:00 p.m. on **April 11, 2012** at the offices of the Superintendent, at the following location:

Superintendent of Insurance
4th Floor - Public Regulation Commission Hearing Room
1120 Paseo de Peralta
Santa Fe, New Mexico 87501

E. Pursuant to 1.2.3.7(B) NMAC, the record in this case will be closed on the earlier of thirty (30) days following the public hearing; that is, May 11, 2012, or the date a Final Order is issued in this case.

F. Persons providing public comment and/or participating in this public hearing are encouraged to provide specific comment on the proposed rule and cite specifically to any federal or state laws or other materials referenced in a comment. Those wishing to make comments are also encouraged to address any other topic that may be relevant to this rulemaking.

G. Interested persons should contact the Superintendent to confirm the date, time and place of any public hearing, because hearings are occasionally rescheduled. Any person with a disability requiring special assistance in order to participate in the Hearing should contact Kacy Aiken at 505-827-3928 at least 48 hours prior to the commencement of the public hearing in this case.

H. In accordance with NMSA 1978, § 8-8-15(B), this NOPR, including Exhibit A, shall be mailed at least thirty days prior to the first hearing date to all persons who have made a written request for advance notice.

I. In addition, copies of this NOPR, including Exhibit A, shall be e-mailed to all persons on the attached Certificate of Service if their e-mail addresses are known. If their e-mail addresses are not known, then the same materials shall be mailed to such persons via regular mail.

J. This NOPR, without Exhibit A, pursuant to NMSA 1978 14.4.7.1.B(1), shall be published in at least two newspapers of regular circulation in the State of New Mexico, and in the New Mexico Register. Affidavits attesting to the publication of this

NOPR as described above shall be filed in this docket.

K. In addition, this NOPR shall be posted on the Superintendent's official Website.

L. This NOPR is effective immediately.

DONE AND ORDERED this 14th day of February, 2012


JOHN J. FRANCHINI
Superintendent of Insurance