

This is an amendment to 11.4.12 NMAC, Section 9, effective 11/7/2025

**11.4.12.9 CLAIMS ADMINISTRATION:**

**A.** The WCA may contract with an independent adjusting company for the adjusting of those claims that are determined to be eligible for payment by the fund, purchase a loss portfolio transfer covering some or all of the liabilities of the fund, or may purchase a policy of commercial insurance to cover the liabilities of the fund upon a finding by the director that such purchases are in the best interests of the workers eligible to receive benefits from the fund and the entities paying assessment to support the fund.

(1) The fund, in conjunction with the independent adjusting company, if any, shall pay, or oppose, claims on their merits, and shall be treated for purposes of mediation and adjudication of disputes as a party with all rights and responsibilities applicable under law.

(2) With approval of the director, the independent adjusting company may engage outside counsel for representation when necessary.

(3) The fund or the independent adjusting company may solicit information concerning the average weekly wage of the worker from the employer. Provision of such information to the fund or the independent adjusting company shall not constitute an admission that the worker was an employee. In the event that the employer does not respond to the request for wage information, the employer will be informed, in writing, at the last known address of the employer, or by any means authorized by the director or his designee, that wages are in dispute and that the worker's evidence concerning wages shall be used to calculate average weekly wage. In the event that the employer does not respond within a reasonable time from the date the letter described in this paragraph, an affidavit from the worker concerning the wages earned while employed by the uninsured employer shall be deemed sufficient evidence upon which to pay benefits. Any suspected fraudulent reporting of wages by any party shall be reported to the enforcement bureau for investigation.

(4) In the event of a dispute concerning the wage basis for benefits, or in the event of other disputed benefits, the fund and the independent adjusting company may pay indemnity or other benefits, under reservation of rights, to the worker based upon available wage or other claim information.

**B.** With respect to any complaint filed with the WCA arising from a dispute about the provision of any benefit due on any claim eligible for payment by the fund, the fund and the employer at the time of injury or last injurious exposure shall be named as parties.

**C.** The independent adjusting company shall regularly report to the WCA on expenditures made to and on behalf of workers from the fund.

~~[(1) The independent adjusting company shall file the first report of injury or illness (E1.2) with the WCA within 10 days of the eligibility determination and provide a copy of the E1.2 to the worker.]~~

~~[(2)] (1) The independent adjusting company shall file all payment reports required by law.~~

~~[(3)] (2) The independent adjusting company shall maintain records sufficient to allow the WCA director or his designee to audit the administration of claims and shall provide those records upon request to the WCA. The independent adjusting company shall be subject to audit by the WCA or its contractor with respect to the administration of claims against the fund.~~

~~[(4)] (3) The independent adjusting company shall actively support the WCA in its efforts to provide information to the public concerning the fund and to prosecute penalty collection proceedings against an uninsured employer pursuant to this rule.~~

**D.** The fund shall have the right to subrogation as provided by Section 52-1-9.1 NMSA 1978.

(1) The independent adjusting company may pursue subrogation rights on behalf of, and at the direction of, the fund.

(2) The independent adjusting company shall be entitled to retain reimbursement for reasonable legal fees and expenses plus ten percent of the sum recovered in subrogation net of legal fees and expenses. The remainder of the subrogation recovery shall be paid to the fund.

**E.** The fund shall be liable only for those benefits that are due under the Workers' Compensation Act or Occupational Disease Disablement Law.

(1) The fund shall be entitled to the protections of the exclusive remedy provisions of the Workers' Compensation Act or Occupational Disease Disablement Law to the same extent it would if it were the insured employer of any worker who is eligible for benefits against the fund.

(2) The fund shall not be subject to claims for payments of a judgment obtained in a third party lawsuit, nor for payment of a judgment obtained in a tort action against an uninsured employer.

**F.** Duplicate recovery of workers' compensation benefits is strictly prohibited.

(1) The fund shall immediately cease payments to or on behalf of any worker who is receiving workers' compensation payments from another source for the same injury and arising out of the same accident.

(2) The fund shall have the right of first reimbursement for workers' compensation benefit payments made that duplicate any payments received by the injured worker from another source and may offset subsequent payments, institute collection proceedings, request criminal investigation or seek any other lawful remedy to recover duplicate payments of workers' compensation benefits.

**G.** Payments under the fund shall not constitute payments by the employer for purposes of the exclusive remedy provisions of the Act. The fund shall be entitled to assert all defenses and subrogation rights that would be available to an insured employer.

[11.4.12.9 NMAC - N, 10/15/2003; A, 11/15/2004; A, 12/31/2011; A, 1/1/2023; A, 11/7/2025]