

STATE OF NEW MEXICO
OFFICE OF SUPERINTENDENT OF INSURANCE

SUPERINTENDENT OF INSURANCE
Russell Toal



DEPUTY SUPERINTENDENT
Jennifer A. Catechis

BULLETIN 2022-005

April 5, 2022

This Bulletin supersedes and replaces Bulletin 2021-001.

TO: INSURANCE COMPANIES AUTHORIZED TO TRANSACT THE BUSINESS OF INSURANCE IN NEW MEXICO

RE: INTEREST RATE APPLICABLE TO UNPAID CLAIMS 45 DAYS AFTER REQUIRED PROOF OF LOSS HAS BEEN FURNISHED

THIS BULLETIN is issued pursuant to NMSA 1978, § 59A-2-8, § 59A-16-21, and 13.1.2 NMAC.

The New Mexico Insurance Code, at NMSA 1978, § 59A-16-21(B), as amended by the enactment of New Mexico House Bill 235 (Chapter 108, Section 12) in the 2021 Regular Legislative Session, provides:

Notwithstanding any provision of the Insurance Code [Chapter 59A NMSA 1978], any insurer issuing any policy, certificate or contract of insurance, surety, guaranty or indemnity of any kind or nature that fails for a period of forty-five days, after required proof of loss has been furnished, to pay to the person entitled the amount justly due shall be liable for the amount due and unpaid with interest on that amount at the rate of one and one-half times the prime lending rate for New Mexico banks during the period the claim is unpaid. Interest shall accrue, and the interest rate shall be determined, as of the forty-sixth day after the proof of loss was furnished.

The 2021 amendment became effective on July 1, 2021. It clarifies that interest on a due and unpaid claim shall accrue during the period the claim is unpaid, and it establishes the date for determining the interest rate as the 46th day after proof of loss has been furnished.

The statute no longer provides for determination by the Superintendent. Instead, it uses the prime lending rate for New Mexico banks as the basis for calculating interest due. The Superintendent will no longer be publishing bulletins setting the interest rate to be used for unpaid claims. The prime lending rate is the rate

that is published by the Wall Street Journal. Insurers should refer to the Wall Street Journal for the applicable prime lending rate.

NMOSI rules, as currently set forth in the New Mexico Administrative Code at 13.10.22.12(O) NMAC provide, as to managed health care plans (MHCP):

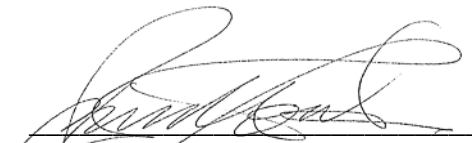
Each contract shall provide that an MHCP failing to pay a health care professional or failing to pay a covered person for out of pocket covered expenses within forty-five days after a clean claim has been received by the MHCP shall be liable for the amount due and unpaid *with interest on that amount at the rate of one and one half times the rate established by a bulletin entered by the superintendent in January of each calendar year.* For the purposes of this section, "clean claim" means a manually or electronically submitted claim that contains all the required data elements necessary for accurate adjudication without the need for additional information from outside of the MHCP's system and contains no deficiency or impropriety, including lack of substantiating documentation currently required by the MHCP, or particular circumstances requiring special treatment that prevents timely payment from being made by the MHCP.

Because this rule no longer conforms to the governing statute, it is hereby set aside in limited part, pending future amendment through a rulemaking. The part that is set aside is only that part which pertains to the calculation of interest, as shown above in italics.

On January 12, 2021, the Superintendent issued Bulletin No. 2021-001, having determined that the statutory interest rate on unpaid claims was 4.875% pursuant to NMSA 1978, § 59A-16-21(B) as it existed at the time, prior to its amendment by House Bill 235. Bulletin 2021-001 is hereby rescinded, and it is superseded by this Bulletin.

Please direct any questions regarding this bulletin to Anna Krylova, NMOSI Chief Actuary, at (505) 827-4529, or via e-mail at anna.krylova@state.nm.us.

ISSUED this 5th day of April, 2021.



RUSSELL TOAL
SUPERINTENDENT OF INSURANCE