

STATE OF NEW MEXICO

OFFICE OF SUPERINTENDENT OF INSURANCE

SUPERINTENDENT OF INSURANCE
Russell Toal



DEPUTY SUPERINTENDENT
Jennifer Catechis

BULLETIN 2022-007

MAY 3, 2022

This Bulletin supersedes and replaces Bulletin 2022-005.

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

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

THIS BULLETIN is issued pursuant to NMSA 1978, § 59A-2-8, § 59A-16-21, § 59A-16-21.1, 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. For most kinds of insurance, it also establishes the date for determining the interest rate as the 46th day after proof of loss has been furnished (*but see* “Health Plans – Additional Timelines,” below).

Interest Rate Determination

The statute as amended no longer provides for determination of interest 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 set by banks for consumer lending. It is typically the same for most banks and is not New Mexico-specific. The Wall Street Journal publishes what is considered to be the definitive US prime lending rate. Insurers can refer to the Wall Street Journal for the applicable prime lending rate to be used in the calculation of the unpaid claim interest 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.

Health Plans – Additional Timelines

The 2021 legislature also revised certain time limits for the processing and payment of claims submitted to health plans. NMSA 1978, § 59A-16-21.1. For health plans, there are now specific interest

determination dates, as follows:

- (1) The 15th day after receipt of a claim for prescription drugs and related fees if submitted electronically by a pharmacy;
- (2) The 31st day after receipt of any other electronically submitted claim; and
- (3) The 46th day after a claim submitted manually.

See, NMSA 1978, § 59A-16-21.1(A)(1)(c), § 59A-16-21.1(B), and § 59A-16-21.1(C). Consistent with NMSA 1978, § 59A-16-21(B), interest on a due and unpaid health plan claim shall accrue during the period the claim is unpaid.

Unpaid Claims for Kinds of Insurance Not Expressly Addressed Through House Bill 235

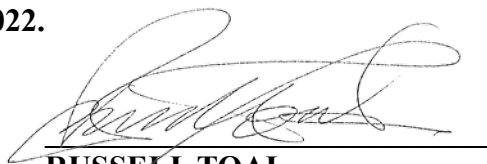
The interest rate for a due and unpaid claim under a kind of insurance not expressly addressed through the adoption and codification of HB 235 shall be the prime lending rate as published in the Wall Street Journal on the interest determination date, which shall be the day after the applicable claim payment deadline provided by statute or by OSI rule. As with all other kinds of insurance, interest on a due and unpaid claim shall accrue during the period the claim is unpaid.

Rescission of Bulletin 2022-005

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. On April 5, 2022, the Superintendent issued Bulletin No. 2022-005, which recognized the impact of House Bill 235 and rescinded and superseded Bulletin 2021-001. However, Bulletin 2022-005 omitted mention of the additional timelines pertinent to health plan claims as set out in NMSA 1978, § 59A-16-21.1. Bulletin 2022-005 is therefore 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 3rd day of May, 2022.



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