

From: Chris Mechels <cmechels@q.com>
Sent: Sunday, November 8, 2020 9:43 PM
To: CPR, RMD, SRCA <RMD.CPR@state.nm.us>
Subject: [EXT] Public Hearing Comments #3

Dear Sir,

This comment is for the upcoming November 13 hearing, and relates to, and draws upon, my previous comments #1 and #2, which were submitted for the September 30 hearing which was later postponed. The comments to that earlier meeting have been carried forward to the November 13 hearing, per your SRCA website.

As my earlier comments detailed violations of the Rules Act procedures, and also where the proposal directly contradicted the Statute, I hoped those flaws would be remedied before this hearing, but it seems they have not been. Your ALD Division, which is bringing this Rules change has instead chosen to "bull ahead" with the same illegal change.

In addition to the earlier flaws, we now have a false and misleading Purpose and Summary, provided below, meant clearly to deceive:

"Purpose:

The purpose of the proposed amendment of [1.24.10.15](#) NMAC is to allow and to accept an original signature or digital signature on the transmittal form for any rule filing.

At the virtual hearing the Administrator will take oral comments related to the rulemaking actions listed below and will consider approving these rule making actions.

Summary:

Due to the governor's declaration of a public health emergency, the SRA issued an emergency amendment on April 29, 2020 to section 15 allowing for transmittal form filing with a digital signature. By operation of law, this emergency amendment expires on October 30, 2020. This permanent rule amendment eliminates the public health emergency as a predicate basis for allowing digital signature."

1) In fact, there was no mention of the digital signature in the new rule filing protocols published in the NM Register on March 24, 2020. The protocol only established a change in filing dates.

2) The required Reason for the Emergency Rule issued on April 29, 2020 also made no mention of the digital signature, with the focus again on the filing dates. It also established that the change was only for the duration of the emergency proclaimed by the Governor. The mention of the digital signature seemed only for completeness, as 1.24.10.15.A already establishes that a digital signature is acceptable. Thus, no change is NECESSARY for that purpose. There seems, in fact, no need for the Emergency Rules as the March 24th protocol change covered the issue. And, since the Emergency Rule was ILLEGAL as it failed to comply with the Rules Act, and thus had no effect, the result was nil.

3) The Synopsis of the 30 September rules change then simply lied, as follows;

"Synopsis:

Due to the governor's declaration of a public health emergency, the SRA issued an emergency amendment on April 29, 2020, to section 15 allowing for transmittal form filing with a digital signature. The proposed amendment of [1.24.10.15](#) NMAC consists of continuing to accept digital signature by eliminating the public health emergency predicate language."

In fact, as explained above, there was no need to address the digital signature. The REAL reason, unstated, was to make the filing protocol change PERMANENT.

4) After the very illegal 30 September rule hearing was postponed, ALD simply chose to bring the change again, simply recasting its form to eliminate the reliance on the Emergency Rule text. The intent remained, which was to make the filing protocol change, introduced in March, PERMANENT.

Why would ALD do this, with all the subterfuge, when the March language covered the "problem"? It would appear that ALD wanted to relax the requirements for filing rules, which are spelled out in NMSA 14-4-3.A The language does not allow for delays, or anticipate them, but the "standard" requirement has come to be that rules must be filed within 2 days. This is spelled out in the CPR Strategic Plans for FY17 and FY18. It seems that ALD took advantage of the emergency to relax the filing requirements, without having to explain themselves.

The change is a disadvantage to those served by ALD, and sets up a situation where they have to "seek" a more speedy filing at ALD's pleasure, even though it is a Right. Easy to see why users might oppose this change if brought openly. This all shows ALD in a very poor light, bringing a fraudulent change, where the reason supplied is patently false. This would appear to be Malfeasance.

Suggested Changes:

Abandon the proposed change, as unnecessary, unwise, and illegal. The March 2020 protocol change was adequate to address the Emergency. All the rest was subterfuge to seek an illegal end under cover of the Emergency.

Consider deleting NMAC 1.24.10.15(G) which ALD modified on 7/1/2017. It directly undercuts the Concise Explanatory Statement requirement in the Rules Act statute, and is thus illegal. Its existence serves to explain why many rules changes from the Dept of Health lack a compliant Concise Explanatory Statement. This ALD language tells them that whatever they submit as a CES will be "considered sufficient compliance". ALD undercut the Rules Act, and the result is chaos.

The Rules Act is a central component of the New Mexico legislative process, and ALD must support its implementation, as their job requires. It is unacceptable, and Malfeasance, for them to

undercut the very laws they are paid to support. Past SRCA Director Linda Trujillo contributed to the 2017 HB58 improvements to the Rules Act, and also co-sponsored the bill, which she saw as important. It is intolerable to now have ALD, under the current administration, undercutting those reforms.

We must do better. You must do better.

Regards,

Chris Mechels
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