

TITLE 13 INSURANCE
CHAPTER 17 WORKERS' COMPENSATION INSURANCE
PART 2 WORKERS' COMPENSATION DISPUTE BOARD

13.17.2.1 ISSUING AGENCY: Office of Superintendent of Insurance.
[7-1-97; 13.17.2.1 NMAC - Rn & A, 13 NMAC 17.2.1, 5-15-01; A, 3-14-14]

13.17.2.2 SCOPE: This rule applies to grievances relating to experience modification factors, classification assignments and manual rules and other related matters deemed pertinent by the superintendent, as applied to specific workers' compensation insurance policies, which are to be heard by the New Mexico workers' compensation dispute board.
[1-1-93, 7-1-97; 13.17.2.2 NMAC - Rn, 13 NMAC 17.2.2, 5-15-01; A, 3-14-14]

13.17.2.3 STATUTORY AUTHORITY: NMSA 1978 Sections 59A-2-9, 59A-3-6, 59A-17-5, 59A-17-8, 59A-17-19, 59A-17-27 and 59A-17-30.
[1-1-93; 13.17.2.3 NMAC - Rn, 13 NMAC 17.2.3, 5-15-01]

13.17.2.4 DURATION: Permanent.
[7-1-97; 13.17.2.4 NMAC - Rn, 13 NMAC 17.2.4, 5-15-01]

13.17.2.5 EFFECTIVE DATE: January 1, 1993, unless a later date is cited at the end of a section.
[1-1-93, 7-1-97; 13.17.2.5 NMAC - Rn & A, 13 NMAC 17.2.5, 5-15-01]

13.17.2.6 OBJECTIVE: The purpose of this rule is to establish a workers compensation dispute board to provide a mechanism by which aggrieved parties may obtain review of the application of the rules of the workers' compensation system to their individual workers' compensation policies, and to engage in other activities as more clearly set forth in 13.17.2.2 NMAC.
[1-1-93; 13.17.2.6 NMAC - Rn, 13 NMAC 17.2.6, 5-15-01; A, 3-14-14]

13.17.2.7 DEFINITIONS: "Advisory organization" means an entity as defined by Section 59A-17-4(A) NMSA 1978, licensed in accordance with Section 59A-17-19 NMSA 1978 and designated by the superintendent pursuant to Section 59A-17-8(A) NMSA 1978.
[13.17.2.7 NMAC - N, 5-15-01; A, 3-14-14]

13.17.2.8 COMPOSITION OF DISPUTE BOARD: The superintendent shall appoint the members of the dispute board, which shall consist of five voting members, one non-voting regulatory participant and two non-voting advisors as follows:

A. The one non-voting regulatory participant shall be from the staff of the office of superintendent of insurance.

B. The five voting members shall be from the private sector as follows:

(1) one voting member shall be a private sector employer or a representative of a private sector employer located in New Mexico;

(2) one voting member shall be affiliated with a local chamber of commerce, small business federation, or similar business association in New Mexico;

(3) two voting members shall be independent insurance agents licensed in New Mexico;

(4) one voting member shall be a representative from a New Mexico self-insurance group;

(5) each voting member shall be knowledgeable concerning workers' compensation insurance, rules, and classifications and shall be familiar with the business environment and business community of New Mexico;

(6) no voting member shall be, or be an employee of, an insurance company, insurance broker, law firm, actuary, or any association of any such entities; neither shall any such member be under contract to any such entity;

(7) no two voting memberships shall be affiliated with the same business organization, affiliated group, business league, or labor organization and

(8) all voting memberships shall be held in the name of the individual.

C. One non-voting advisor shall be an insurance company that writes workers' compensation insurance policies in New Mexico.

(1) The insurance company shall designate one salaried employee to represent it on the dispute board, and another salaried employee as an alternate.

(2) The company representative or alternate representative shall attend each meeting of the dispute board and shall serve as a technical and business resource. The representative will provide advice to the dispute board on issues relating to experience modification factors, classification assignments, manual rules and other related matters deemed pertinent by the superintendent. The company representative may participate in the discussion but shall have no vote in determining the dispute board's decisions.

D. One non-voting advisor shall be an employee of the advisory organization and shall serve as a technical resource for the dispute board. The representative from the advisory organization will provide advice to the dispute board on issues relating to experience modification factors, classification assignments, manual rules and other related matters deemed pertinent by the superintendent. The advisory organization representative may participate in the discussion, but shall have no vote in determining the dispute board's decisions.

[1-1-93; 13.17.2.8 NMAC - Rn & A, 13 NMAC 17.2.8, 5-15-01; A, 3-14-14]

13.17.2.9 [RESERVED]

[1-1-93; 13.17.2.9 NMAC - Rn & A, 13 NMAC 17.2.9, 5-15-01; Repealed, 3-14-14]

13.17.2.10 TERMS OF DISPUTE BOARD MEMBERS:

A. Each member's term on the dispute board shall be for three years, staggered per the discretion of the superintendent so that the terms of no more than two voting members shall expire concurrently. No voting member shall be permitted to serve more than two consecutive three-year terms. There shall be no limitation on a non-voting regulatory participant's or a non-voting advisor's reappointment to serve successive terms.

B. The term of each dispute board member shall commence on April 1 and expire on March 31 three years later.

C. If a vacancy occurs on the dispute board, the superintendent shall appoint a replacement for the remainder of the unexpired term. Such replacement shall be from the same class as the retiring member.

[1-1-93; 13.17.2.10 NMAC - Rn, 13 NMAC 17.2.10, 5-15-01; A, 3-14-14]

13.17.2.11 [RESERVED]

[1-1-93; 13.17.2.11 NMAC - Rn & A, 13 NMAC 17.2.11, 5-15-01; Repealed, 3-14-14]

13.17.2.12 REIMBURSEMENT: The advisory organization shall reimburse members for reasonable expenses connected with dispute board functions including, but not limited to, travel expenses, food and lodging. Such reimbursement may be provided as a per diem allowance. Members shall receive no other compensation for their participation.

[1-1-93; 13.17.2.12 NMAC - Rn & A, 13 NMAC 17.2.12, 5-15-01; A, 3-14-14]

13.17.2.13 CHAIR: The dispute board shall meet either in person or by teleconference at the beginning of each term for purpose of electing a chair. The chair shall be responsible for organizing the agenda of each meeting and each hearing, arranging facilities, providing notice as required, and for the conduct of each hearing. The chair may appoint from among the members a secretary to which it may delegate any of its administrative functions.

[1-1-93; 13.17.2.13 NMAC - Rn, 13 NMAC 17.2.13, 5-15-01; A, 3-14-14]

13.17.2.14 HEARING PROCEDURES: The dispute board shall meet as needed and in accordance with the provisions of state law.

A. Upon receipt of a grievance, the dispute board shall schedule a hearing within sixty (60) days, unless state law mandates a shorter period.

B. The dispute board shall provide written notice of hearing to the appellant, the insurer, the policyholder, the producing agent and the advisory organization within thirty (30) days after receipt of the grievance, but not less than ten (10) days prior to the hearing.

C. Hearings may not be held unless a majority of the dispute board is present either in person or by teleconference.

D. Any party to a hearing may request permission to have a court reporter or other recording method present at the hearing at the cost of the requesting party. The requested permission to record the hearing must be made in writing to the chairman of the dispute board at least fifteen (15) days before the date of the hearing. The request must explain the intended purpose and use of the recorded record of the hearing. The chairman shall call a

meeting of the dispute board, in person or by telephone to consider such request and the dispute board may consent or deny permission to record the hearing procedure. The requesting shall be notified in writing of the decision of the dispute board, at least two working days before the hearing date.

[1-1-93; 13.17.2.14 NMAC - Rn & A, 13 NMAC 17.2.14, 5-15-01; A, 3-14-14]

13.17.2.15 CONFLICTS OF INTEREST:

A. If a dispute board member has a conflict of interest with respect to a hearing scheduled before the dispute board, a substitute shall be appointed by the chair for purposes of that particular hearing. A substitute member shall be from the same class as the member being replaced.

B. A member will be deemed to have a conflict of interest if:

- (1) the member is associated with either party to the appeal;
- (2) the member is a direct competitor of either party;
- (3) the member is part of an affiliated group, any member of which is a direct competitor of either party; or

(4) the member has any other material conflicting interest which would call into question that member's ability to render an unbiased decision.

C. A member is associated or affiliated with a party if they are involved in a common business enterprise or if they are members of a controlled group as that term is defined by Section 851(c)(3) of the Internal Revenue Code. A member is associated with the party if there is any familial relationship between them.

D. The insurance company advisor will be deemed to have a conflict of interest only if it is one of the parties to the dispute. In the event such conflict of interest is deemed to exist for the insurance company advisor, a substitute insurance company shall be appointed by the chair to serve as the non-voting insurance company advisor for purposes of the particular hearing scheduled before the dispute board in which the conflict of interest exists.

E. A conflict of interest may be waived if, after full disclosure of the facts raising such a conflict, all parties to the appeal agree to such waiver.

F. Notwithstanding the provisions of Subsection B of this section, neither of the representatives from the office of superintendent of insurance and the advisory organization shall be deemed to have a conflict of interest with respect to any appeal brought before the dispute board based solely upon the representatives' affiliation with the advisory organization or the office of superintendent of insurance.

[1-1-93; 13.17.2.15 NMAC - Rn & A, 13 NMAC 17.2.15, 5-15-01; A, 3-14-14]

13.17.2.16 DECISIONS OF DISPUTE BOARD:

A. The decision of the dispute board will be by majority vote of those voting members of the dispute board who are present at the hearing. A member's vote may be cast only by the member or, in the member's absence, by the member's alternate who has been designated in writing. Otherwise, proxy voting shall not be permitted.

B. Each decision shall be supported by a written memorandum stating the reason(s) for the decision, which memorandum shall be sent to both parties and to the superintendent.

C. The votes of each member shall not be recorded on this memorandum.

D. This memorandum shall be prepared by the chair of the dispute board or by a member or non-voting advisor designated by the chair.

[1-1-93; 13.17.2.16 NMAC - Rn, 13 NMAC 17.2.16, 5-15-01; A, 3-14-14]

13.17.2.17 REVIEW: Review of decisions of the dispute board shall be accorded pursuant to Section 59A-17-30B NMSA 1978. The chair of the dispute board, or the secretary appointed by the chair, shall advise each appellant in writing of his or her rights of appeal and the procedure to be followed.

[1-1-93; 13.17.2.17 NMAC - Rn & A, 13 NMAC 17.2.17, 5-15-01; A, 3-14-14]

HISTORY OF 13.17.2 NMAC:

Pre-NMAC history.

SCC 92-5-IN, New Mexico Workers' Compensation Appeals Board, filed 11-30-92.

History of repealed material.

NMAC history.

13 NMAC 17.2, Workers' Compensation Appeals Board, filed 5-27-97 was reformatted, renumbered as 13.17.2 NMAC, and amended effective 5-15-01.