

## McDowell, Robert

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**From:** Stoller, Ken <KStoller@aiadc.org>  
**Sent:** Monday, March 19, 2018 5:00 PM  
**To:** Henderson, Meredith  
**Cc:** Bourdon, Kendall; Jackson, Ronald; 'John McMillan (McMillan@manningfulton.com)'  
**Subject:** [External] AIA Comments on Rules for the Utilization of Opioids and Pain Management in Workers' Compensation Claims

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**To:** Meredith Henderson, Executive Secretary  
**From:** Kenneth A. Stoller, Assistant General Counsel, American Insurance Association  
**Re:** Comments on Proposed 04 NCAC 10M .0101 Rules for the Utilization of Opioids, Related Prescriptions, and Pain Management Treatment in WC Claims  
**Date:** March 19, 2018

The American Insurance Association ("AIA") appreciates the opportunity to provide comments on the Rules for the Utilization of Opioids, Related Prescriptions, and Pain Management Treatment in Workers' Compensation Claims. AIA represents approximately 320 major property and casualty insurers that annually write nearly \$600 million in workers' compensation insurance premiums in North Carolina, constituting more than 40% of the market.

As indicated in our earlier comments on the draft proposal, which are included below, AIA strongly supports efforts to rein in the excessive prescription of opioids, and we once again commend the Commission for taking many important steps to reduce the inappropriate prescription of opioids to injured workers.

In the interests of maximizing the impact of these beneficial reforms, we recommend the following improvements. Unless otherwise stated, these recommendations apply to 04 NCAC 10M .0201, .0202 and .0203.

- Instead of merely stating that providers "shall consider and may prescribe non-pharmacological treatments for pain," 04 NCAC 10M .0401 should *require* the prescription of such treatments (e.g., physical therapy, chiropractic, acupuncture, massage, cognitive behavioral therapy, biofeedback, and functional restoration programs) *before* opioids are prescribed.
- Along those lines, when documenting the insufficiency of non-pharmacological and non-opioid therapies before prescribing any targeted controlled substance, providers should be required to specifically identify the nature, duration and outcome of those therapies.
- The requirement that providers document that oral opioid dosing is "medically contraindicated" as a prerequisite to prescribing transdermal, transmucosal or buccal opioid preparations should be strengthened by requiring the documentation of objective evidence (e.g., allergic reaction, gastrointestinal intolerance, inability to swallow, medically significant systemic side effects) why oral medications cannot be continued.

- The requirement that providers advise the employee of the potential risks of prescribing an opioid to an employee already taking benzodiazepines or carisoprodol and and communicate with the other prescribing provider should be strengthened by requiring the provider and claimant to sign a written disclosure of the risks inherent in taking these dangerous medications in combination.
- We recommend re-including the prohibition against prescribing more than a 30-day supply of opioids at a time in both an acute phase following the first prescription and a chronic phase. Due to the inherently dangerous nature of opioids, injured workers taking such medications should be re-evaluated at least every 30 days.

Once again, we appreciate the opportunity to offer comments on this important issue. Please let me know if you have any questions.

**Kenneth A. Stoller | American Insurance Association**

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**From:** Stoller, Ken

**Sent:** Wednesday, December 6, 2017 5:00 PM

**To:** 'Meredith.Henderson@ic.nc.gov' <Meredith.Henderson@ic.nc.gov>

**Cc:** 'kendall.bourdon@ic.nc.gov' <kendall.bourdon@ic.nc.gov>; Jackson, Ronald <rjackson@aiadc.org>; John McMillan (McMillan@manningfulton.com) <McMillan@manningfulton.com>

**Subject:** AIA Comments on Draft Rules for the Utilization of Opioids and Pain Management in Workers' Compensation Claims

To: Meredith Henderson, Executive Secretary, North Carolina Industrial Commission

From: Kenneth A. Stoller, Assistant General Counsel, American Insurance Association

Re: Comments to Draft 04 NCAC 10M .0101 - Rules for the Utilization of Opioids, Related Prescriptions, and Pain Management Treatment in WC Claims

Date: December 6, 2017

The American Insurance Association (“AIA”) appreciates the opportunity to provide comments on the draft Rules for the Utilization of Opioids, Related Prescriptions, and Pain Management Treatment in Workers’ Compensation Claims. AIA represents approximately 320 major property and casualty insurers that annually write nearly \$600 million in workers’ compensation insurance premiums in North Carolina, constituting more than 40% of the market.

AIA strongly supports the draft rules, and we appreciate the significant efforts of the Workers’ Compensation Opioid Task Force in creating them. The excessive prescription of opioids is a staggering societal problem, and

state workers' compensation systems must do everything in their power to safeguard the health of injured workers, ensuring their timely and successful recovery while avoiding what should be the unfathomable (but which have become all too frequent) outcomes of addiction and even death. While opioids were originally intended for patients with cancer or end-of-life pain, for decades they have been regularly (and inappropriately) prescribed for commonly occurring workers' compensation injuries. Studies have repeatedly shown that opioid treatment in that context does not seem to fulfill any of the key outcome opioid treatment goals: long-term pain relief, improved quality of life and improved functional capacity. The inappropriate prescription of opioids negatively affects patient health and return to work and can have lasting consequences on an individual's life. A California Workers' Compensation Institute (CWCI) report found that workers who took high doses of opioid painkillers to treat injuries like back strains stayed out of work three times longer than those with similar injuries who took lower doses. Delayed return to work reduces the likelihood an injured worker will ever return to productive employment.

The rules drafted by the Opioid Task Force take many important steps to reduce the inappropriate prescription of opioids to injured workers, including (i) the imposition of reasonable limits on daily dosage, length of prescription, and other types of medications prescribed in concert with opioids; (ii) requiring providers to consult the Controlled Substances Reporting System (CSRS) when prescribing opioids; and (iii) requiring employer/carrier preauthorization for higher-risk prescriptions for pain in a chronic phase.

While we appreciate the spirit of the requirement that providers document the insufficiency of non-pharmacological and non-opioid therapies before prescribing any targeted controlled substance, we believe the intent should be reinforced by requiring providers to specifically identify the nature, duration and outcome of those therapies. We recommend doing this in concert with strengthening the admonition in 04 NCAC 10M .0401 that providers "shall consider and may prescribe non-pharmacological treatments for pain" to *require* the prescription of those treatments (e.g., physical therapy, chiropractic, acupuncture, massage, cognitive behavioral therapy, biofeedback, and functional restoration programs) before taking the dangerous and frequently unnecessary step of prescribing opioids for work-related injuries.

In addition to adopting the reforms articulated in the draft rules, we recommend that the Commission consider taking other measures enacted or being contemplated in several other states to further "bend the curve" of the opioid epidemic in order to improve the quality of life of injured workers – and even save their lives in some instances. Chief among these is adoption of a prescription drug formulary, which would amplify the benefits of the opioid guidelines and impose additional (and necessary) restrictions on the use of compound drugs, whether or not in concert with opioids. There is no clinical evidence for the efficacy of non-FDA-approved compound drugs, and the majority of these compounds that are administered topically have no proven clinical impact. Accordingly, all compounds should be subject to preauthorization and required to meet FDA requirements.

Once again, we appreciate the opportunity to provide comments on this important issue. Please let me know if you have any questions.

**Kenneth A. Stoller | American Insurance Association**

Assistant General Counsel & Director, Amicus Program and Legal Reform

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**From:** Henderson, Meredith [<mailto:Meredith.Henderson@ic.nc.gov>]  
**Sent:** Friday, November 17, 2017 5:19 PM  
**To:** [ncic.rules@lists.ncmail.net](mailto:ncic.rules@lists.ncmail.net)  
**Subject:** [NCIC.Rules] Notice of Draft Rules for the Utilization of Opioids and Pain Management in Workers' Compensation Claims for Preliminary Public Comment by Dec. 6

**Notice of Draft Rules for the Utilization of Opioids and Pain Management in Workers' Compensation Claims for Preliminary Public Comment**

In February 2017, Chairman Charlton L. Allen established the North Carolina Workers' Compensation Opioid Task Force to study and recommend solutions for the problems arising from the intersection of the opioid epidemic and related issues in workers' compensation claims. After several months of research and collaboration, the Workers' Compensation Opioid Task Force has developed draft utilization rules for opioids, related prescriptions, and pain management treatment in workers' compensation claims. The Commission is grateful to the members of the Workers' Compensation Opioid Task Force for their time commitment, hard work, and dedication to the groups' mission.

**The Commission seeks preliminary public comment on the draft rules** prior to initiating formal rulemaking. The public feedback will be considered prior to the official filing of proposed rules. The Commission has developed a PowerPoint presentation that provides an executive summary of the draft rules. The Commission strongly recommends reviewing both the [PowerPoint](#) and the [draft rules](#) before commenting. **Comments on the draft rules should be e-mailed no later than December 6, 2017**, to [meredith.henderson@ic.nc.gov](mailto:meredith.henderson@ic.nc.gov). Professional or other groups are encouraged to consolidate the comments of their members where possible. Questions may be e-mailed to [meredith.henderson@ic.nc.gov](mailto:meredith.henderson@ic.nc.gov).



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