March 19, 2018

Ms. Kendall M. Bourdon, J.D.
Rulemaking Coordinator & Legislative Liaison
North Carolina Industrial Commission
1240 Mail Service Center
Raleigh, North Carolina 27699-1240

Dear Ms. Bourdon,

We write to provide written comment on the North Carolina Industrial Commission's (NCIC) proposed Rules 04 NCAC 10M—Rules for the Utilization of Opioids, Related Prescriptions, and Pain Management Treatment in Workers' Compensation Claims. Everyone is aware of the societal and economic impact that the opioid epidemic is having on North Carolina. We applaud the Industrial Commission's efforts to encourage safer prescribing habits of targeted controlled substances (TCS) and agree with the overarching goals of ensuring that employees receive services and care to include timely and effective delivery of appropriate and responsible medical treatment for pain management while adequately containing medical costs in workers' compensation claims. We have assumed that the proposed Rules will become effective in short order and have started to make plans for implementation of the Rules. In our effort to prepare, we have identified some operational and logistical concerns about how the Rules will be applied and enforced. Therefore, we write to provide general comments that we hope will assist the NCIC as it moves forward with this important rule-making.

Before we provide comments on specific Rules below, we also have two broad concerns. We share the concerns of other organizations regarding the proposed effective date for the Rules. First, the implementation date is inconsistent with the CSRS requirements of the STOP Act, which are not scheduled to go into effect until the State of North Carolina has implemented further technological upgrades to the CSRS. Inconsistent effective dates may create significant confusion for health care providers, pharmacy benefit managers and carriers. Second, some carriers and pharmacy benefit managers may need additional time to prepare to implement the Rules. Additional time may be necessary to develop new policies and procedures as well as software. Therefore, we recommend an implementation date that provides six (6) months of preparation time with an effective date of November 1, 2018.

Finally, we have general concerns that the Rules may place additional burdens on health care providers beyond those specified in the STOP Act, which may discourage said providers from continuing to treat workers' compensation patients and ultimately disadvantage injured employees. Moreover, if health care providers refuse to treat workers' compensation patients, one of the goals of the Rules as noted in 04 NCAC 10M .0101(c)—to "facilitate the timely and effective delivery of appropriate medical treatment for pain management in workers' compensation claims"—may be undermined.

General Comments

04 NCAC 10M .0201(j), .0202(j) and .0203(j)

We agree with the goal of educating employees regarding the dangers of combing a TCS with benzodiazepines and carisoprodol as well as encouraging medical providers to communicate with one another when scripts are combined. However, multiple references to the phrase "health care provider" in the first sentence of subsection (j) of each Rule may be confusing particularly since the phrase is defined by G.S. 97-2(20). We recommend that the Rules be revised as follows *"If an employee is taking benzodiazepines or carisoprodol ~~prescribed by another health care provider~~, the health care provider shall not prescribe a targeted controlled substance to the employee without advising the employee of the potential risks of combining a targeted controlled substance and benzodiazepines or carisoprodol."* This minor change would accomplish the goal of ensuring that the treating health care provider in the workers' compensation claim advises the employee of the risks of combining a TCS with a benzodiazepine or carisoprodol regardless of the provider that wrote the script for the benzodiazepine or carisoprodol. For consistency sake, we also recommend that the second sentence in the Rules be amended as follows: *"The health care provider shall also communicate with the ~~health care~~ provider prescribing the benzodiazepines or carisoprodol to inform that ~~health care~~ provider of the prescription of a targeted controlled substance."*

04 NCAC 10M .0301

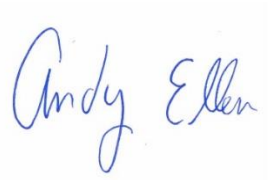
We agree with the NCIC that a co-prescription for an opioid antagonist may be appropriate in certain circumstances to protect an injured employee. However, the list in Rule 301 may be too broad and therefore ineffective. For example, the Rule notes a health care provider should consider prescribing an antagonist for an employee with sleep apnea. If a health care provider determines based on his or her professional judgment that an antagonist is not warranted, will the provider be at risk for a malpractice suit as negligence per se if the employee is seriously injured or becomes deceased due to the combined effects of the opioid and sleep apnea even though 04 NCAC 10M .0101(c) specifically notes that the Rules do not constitute a standard of medical care? If health care providers believe they are at risk, a script for an opioid will likely be accompanied by a co-prescription for an antagonist, which may be contrary to the stated goal in 04 NCAC 10M .0101(c) to ensure that medical costs are adequately contained in workers' compensation claims. If the Rule were amended to require a co-prescription when an employee qualifies under two or more of the criteria specified, would that accomplish the goal of ensuring employees are provided safe and appropriate care while adequately containing medical costs and providing some assurance to health care providers in the process?

04 NCAC 10M .0501

Rule 501 seems to contradict G.S. 97-25 and related case law that note the employer has the right to direct medical care in a compensable claim. While Rule 501 notes an employer or carrier may request additional information from a health care provider regarding referral and treatment of a substance abuse disorder, the Rule does not specifically allow the employer to select the substance use disorder specialist to evaluate and/or treat the employee. If, in the professional judgement of a health care provider, an employee should be evaluated for the discontinuation or tapering of a TCS or treatment of substance use disorder, we recommend that the Rule note that after consulting with the health care provider the employer may determine the appropriate specialist to provide evaluation and treatment.

Thank you for the opportunity to provide feedback on the Rules for the Utilization of Opioids, Related Prescriptions and Pain Management Treatment in Workers' Compensation Claims. We appreciate the NCIC's efforts to ensure that employees are provided safe and targeted pain management while adequately containing medical costs and encouraging health care providers to continue to treat workers' compensation patients.

Sincerely,



Andy Ellen
President and General Counsel
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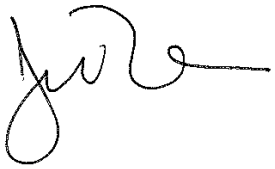

Julia Dixon
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