



November 28, 2016

The Honorable Charlton Allen, Chairman
North Carolina Industrial Commission
430 N Salisbury St.
Raleigh, NC 27603

Dear Chairman Allen and Commissioners:

Pursuant to the North Carolina Industrial Commission's ("Commission") November 18, 2015 Notice of Public Comment Meeting, the North Carolina Hospital Association ("NCHA") respectfully submits the following information to supplement and further elaborate on the comments that we made during the hearing:

The Industrial Commission has proposed a temporary rule entitled Rule 04 NCAC 10J.0103 Fees for Institutional Services that was submitted to the North Carolina Office of Administrative Hearings. The temporary rule is pursuant to N. C. General Statute § 150B-21.1(a)(5). The effects of the August 9, 2016 decision in *Surgical Care Affiliates, LLC v. North Carolina Industrial Commission*, No. 16-CVS-0060 (Wake County) necessitate the expedited implementation of the temporary rule. Specifically, NCHA will be commenting on Paragraphs g and h as set forth in the proposed temporary rule and offering a detailed reimbursement proposal to address the issues related to Paragraph h.

Fees for Institutional Services Provided Ambulatory Surgical Centers – Paragraph G

NCHA agrees that the maximum allowable amounts for institutional services provided by ambulatory surgical centers ("ASCs") should be based on the Medicare ASC reimbursement amount determined by applying the most recently adopted and effective Medicare Payment System Policies for Services Furnished in Ambulatory Surgical Centers and Outpatient Prospective System reimbursement formula and factors as published annually in the Federal Register. We also support the Commission's decision to adopt the same rule that it had adopted earlier for the payment of services rendered in an ASC. Specifically, we support that the maximum reimbursement rate for institutional services provided by ASCs should be 200 percent of the Medicare ASC facility-specific amount. This approach will provide fair and reasonable reimbursement for services rendered by ASCs, is consistent with the reimbursement approach used for hospital outpatient services, will protect employers and insurers from the risks associated with a percentage of charge reimbursement methodology by moving to a prospective payments system, and will result in substantial savings for employers and insurers when compared to the previous reimbursement methodology.

As indicated in previous comment letters, NCHA does not support a rate lower than 200% of the applicable Medicare fee schedule for outpatient services rendered by hospitals and free-standing ambulatory surgery centers. Medicare payments for outpatient services are low when compared to the costs of providing those services, thus, a 2x multiplier is needed to provide adequate reimbursement and ensure appropriate access to care. Rates lower than 200% of the applicable Medicare fee schedule will likely create access problems. It is imperative that the Commission provide adequate reimbursement rates to providers to ensure that injured workers receive the services and standard of care required by the Workers' Compensation Act.



During the November 18, 2016 public hearing, there were some comments questioning why Medicare rates for outpatient services rendered in a hospital are higher than rates for services rendered by an ambulatory surgery center. The Centers for Medicare and Medicaid Services (CMS) has acknowledged that hospitals have greater costs complying with a more comprehensive scope of licensing, accreditation and other regulatory requirements than other providers and thus, when services are furnished in a hospital setting, total Medicare payments (made to the hospital and the professional combined) typically exceeds the Medicare payment made for the same service at other provider settings. CMS recognized that hospitals incur higher overhead costs because they maintain the capability to furnish services 24 hours a day and 7 days per week, furnish services to higher acuity patients than those who receive services in other provider settings, and have additional legal obligations such as complying with the Emergency Medical Treatment and Active Labor Act (EMTALA). Other justifications supporting the differences in payment are presented below:

Patients who are too sick for physician offices or too medically complex for ASCs are treated in the hospital outpatient department (HOPD). Physicians refer more complex patients to HOPDs for safety reasons, as hospitals are better equipped to handle complications and emergencies. As such, compared to other provider settings, HOPDs treat patients who are suffering from more severe chronic conditions and generally have higher prior utilization of hospitals and emergency departments.

Unlike physician offices and ASCs, hospitals play a unique and critical role in the communities they serve by providing a wide range of acute-care and diagnostic services, supporting public health needs, and offering many other services that promote the health and well-being of the community. By contrast, many physicians and ASCs serve a limited number of Medicaid and charity care patients. In addition, hospitals provide emergency standby services such as:

24/7 Access to Care: Providing health care services, including specialized resources, 24 hours a day, seven days a week (24/7), 365 days a year.

The Safety Net: Caring for all patients who seek emergency care regardless of ability to pay.

Disaster Readiness and Response: Ensuring that staff and facilities are prepared to care for victims of large-scale accidents, natural disasters, epidemics and terrorist actions.

The added costs of operating hospital services are substantial. There are additional costs for infrastructure, Joint Commission requirements, life-safety codes and other regulatory requirements, not to mention the additional overhead cost of being prepared to meet the community's needs on a 24/7 basis. While these expenses increase the cost in hospital settings, they also ensure that safety and quality of the services delivered and 24/7 access.

Fees for Institutional Services Provided Ambulatory Surgical Centers – Paragraph H

The language proposed by the Industrial Commission as set forth in 04 NCAC 10J.0103.h is presented below:

Paragraph h - Notwithstanding Paragraph (g) of this rule, if surgical procedures listed in



Addendum EE (Surgical Procedures Excluded from Payment in ASCs for CY 2017) to the most recently adopted and effective Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems as published in the Federal Register, or its successors, are provided at ASCs, they shall be reimbursed with the maximum amount being the usual, customary, and reasonable charge for the service or treatment rendered.

NCHA does not support the provisions set forth in Paragraph h as presented which appear to allow ASCs to perform other surgical procedures not included on the Covered List of ASC Surgical Procedures for CY 2017 and receive usual, customary, and reasonable charges for these surgical procedures. We do not believe that ASCs should be allowed to perform surgical procedures that are not appropriate for hospital outpatient settings and receive reimbursement that could potentially be far greater than the reimbursement amounts received by hospitals. In addition, we do not feel it is appropriate that ASC reimbursement for these procedures would not include the bundling logic applied to hospitals outpatient procedures through the Medicare APC fee schedule. We believe that there is a true hierarchy related to the appropriate setting for most surgical procedures (e.g., physician office, ASC with limited 24 hour capabilities, hospital outpatient with inpatient support, and hospital inpatient). We are willing to support that ASCs can perform the same procedures as set forth on the Medicare Hospital Outpatient Prospective Payment System (HOPPS) (HOPPS) list, although many of these procedures are currently excluded from the Covered List of ASC Surgical Procedures, provided that these procedures are 1) clinically appropriate for the ASC setting, 2) are payable to an ASC only if payment is allowed under Medicare's status indicators found for the same code in Addendum B of the HOPPS, and 3) reimbursed at a bundled rate comparable to 200% of the ASC fee schedule.

During the November 18, 2016 public hearing, NCHA presented a detailed, common sense approach to developing an appropriate fee schedule, which would be comparable to 200% of the Medicare ASC fee schedule, for those procedures which are payable under the Medicare HOPPS fee schedule but are not currently listed on the Covered List of ASC Surgical Procedures for CY 2017. We suggested that Medicare rates for the covered list of ASC Surgical Procedures be compared to the Medicare rates for the covered list of hospital outpatient surgical procedures to ascertain the percentage relationship between the two fee schedules. This percentage comparison could be calculated on a code specific basis or in aggregate. We recommend that the percentage comparison be calculated in aggregate in order to simply the claim processing/payment process for payers. The resultant percentage (s) would then be applied to 200% of the Medicare HOPPS fee schedule of each applicable surgical code not included on the ASC Covered List to determine the maximum reimbursable ASC rate. This approach would result in ASCs receiving a consistent reimbursement rate at approximately 200% of Medicare ASC fee schedule and would protect payers from having to negotiate unbundled UCR amounts that could in essence be higher than what they are paying hospitals for the same outpatient surgery.

NCHA asked Optum to prepare an assessment comparing the Medicare payments and relative weights for hospitals and ASC from the 2017 final rule in an effort to calculate the aggregate percentage recommended above. Optum excluded all the items that are bundled under the Medicare fee schedules for hospitals and ASCs. In addition, Optum did not include the supplemental ASC services list which primarily includes radiology codes. Optum's comparative assessment is attached as Exhibit I. Based on Optum's assessment, NCHA recommends that the Commission use 55.42% in developing an appropriate ASC fee schedule for those procedures that are payable under the HOPPS fee schedule but are not currently included on the Covered List of ASC Surgical Procedures for CY 2017. NCHA recommends that the resultant ASC fee schedule be developed as follows:



(HOPPS Procedure Payment Rate times 55.42%) times 200% = ASC Payment Rate which should be adjusted by the ASC's specific Medicare wage index

This same calculation can be achieved by multiplying the HOPPS Procedure Payment Rate by 110.84% and then adjusting the results by the ASC's specific Medicare wage index.

An example of this calculation is presented below:

HOPPS Procedure Payment Rate - \$100

ASC Procedure Payment Rate – (($\$100 \times 55.42\%$) times 200%) = \$100.84 or 110.84% of HOPPS Procedure Payment Rate

During the November 18, 2016 public hearing, the Commissioners asked for suggested language that could be used to reflect this recommended approach. NCHA recommends that the Commission adopt the following language for paragraph h:

h) Notwithstanding Paragraph (g) of this Rule, if surgical procedures listed in Addendum EE (Surgical Procedures Excluded from Payment in ASCs for CY 2017) to the most recently adopted and effective Hospital Outpatient Prospective Payment and Ambulatory Surgical Center Payment Systems as published in the Federal Register, or its successors, are provided at ASCs, they shall be reimbursed with a maximum reimbursement rate of 110.84% of the Medicare Hospital Outpatient Prospective Payment System for the procedure rendered adjusted by the ASC's specific Medicare wage index provided that the procedure is clinically appropriate for the ASC setting and payment is allowed under Medicare's status indicators found for the same code in Addendum B of the Medicare Hospital Outpatient Prospective Payment System.

Thank you for the opportunity to comment. Please feel free to contact me if you have any additional questions.

Sincerely,

A handwritten signature in black ink that reads "Ronald G. Cook". The signature is written in a cursive, slightly slanted style.

Ronald G. Cook
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North Carolina Hospital Association
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cc. Kendall Bourdon
Meredith Henderson
Linwood Jones

**SURGICAL CARE AFFILIATES' COMMENTS
IN RESPONSE TO THE NORTH CAROLINA INDUSTRIAL COMMISSION
NOTICE OF TEMPORARY RULEMAKING FOR WORKERS' COMPENSATION
MEDICAL FEE SCHEDULE 04 NCAC 10J .0103**

November 29, 2016

To: North Carolina Industrial Commission
430 N. Salisbury Street
Raleigh, NC 27603

Via: Kendall Bourdon
IC Rulemaking Coordinator
Delivered via email to kendall.bourdon@ic.nc.gov

Dear Chairman Allen & Commissioners:

Pursuant to the North Carolina Industrial Commission's ("Commission") October 18, 2016 Notice of Temporary Rulemaking for Workers' Compensation Medical Fee Schedule amending 04 NCAC 10J .0103, Surgical Care Affiliates, LLC ("SCA") respectfully submits the following comments in response to the proposed temporary rule published by the Commission addressing fees for ambulatory surgical center ("ASC") services in workers' compensation cases.

SCA manages seven ASCs in North Carolina and has an ownership interest in each of these centers through wholly-owned subsidiary corporations (hereinafter "SCA ambulatory surgical centers"). The SCA ambulatory surgical centers are located throughout North Carolina and include Blue Ridge Day Surgery in Raleigh, Charlotte Surgery Center, Fayetteville Ambulatory Surgical Center, Greensboro Specialty Surgery Center, Surgical Center of Greensboro, The Eye Surgery Center of the Carolinas in Southern Pines, and Eastern Regional Surgical Center in Wilson.

SCA and the ASCs in North Carolina that support SCA's proposal submitted to the Industrial Commission on September 26, 2016 represent the majority of ASCs in North Carolina that provide surgical services to injured workers covered by the Workers' Compensation Act.

SCA opposes the Commission's Proposed Temporary Rule for the following reasons:

- The temporary rule is not cost effective and does not meet North Carolina statutory requirements.
- The reduction in rates to 200% of Medicare ASC fee schedule would be very harmful to the workers' compensation system.
- There is no statutory authority for adopting a temporary rule.

THE COMMISSION’S PROPOSED TEMPORARY RULE IS NOT COST EFFECTIVE AND DOES NOT MEET NORTH CAROLINA STATUTORY REQUIREMENTS

North Carolina law requires that fee schedules adopted by the Commission be adequate to ensure that injured workers are provided the standard of services and care intended by the Workers’ Compensation Act and that providers are reimbursed reasonable fees for providing these services. The Commission also is required to ensure that medical costs are adequately contained. N.C. Gen. Stat. § 97-26(a). The Commission’s proposed temporary rule does not meet these requirements.

The Proposed Fee Schedule Does Not Cover All ASC Procedures

The Commission’s proposed temporary rule does not set a fee schedule for all procedures that can be performed in ASCs. Instead, for those surgical procedures that are not included in the Medicare ASC fee schedule, the proposed temporary rule states that those procedures are required to be reimbursed “with the maximum amount being the usual, customary and reasonable charge.” Workers’ Compensation Research Institute (“WCRI”) recently reported that “[t]he administration of the usual, customary, and reasonable charges as a basis for reimbursement rates requires substantial resources on the part of the state agencies, both for development of a sufficient and accurate database of charges or fees in the local communities and for timely updates to the database to capture changes in the prevailing charges or reimbursements and in the utilization of new procedures.”¹ Relying upon a usual, customary, and reasonable (“UCR”) methodology will create great uncertainty and a likelihood that there will be numerous disputes that will need to be resolved by the Commission and the courts.

At a public hearing held on November 18, 2016, speakers representing the North Carolina Hospital Association and a group of business and trade associations also commented that the use of UCR to determine the amount that will be paid to ASCs for surgical procedures not covered by the Medicare ASC fee schedule was problematic. Reference was made to the numerous disputes that would arise that would need to be resolved by the Industrial Commission and the substantial resources that would be necessary.

This uncertainty of whether and in what amount ASCs will be reimbursed for surgical procedures not covered by Medicare will create access issues and will result in payers (including self-insured employers) having to pay for these procedures at a higher hospital inpatient charge.

By crafting a fee schedule that uses only the Medicare fee schedule as its foundation, the proposed rule does not recognize that a wide variety of procedures can be performed safely and cost-effectively on the working-age population. The workers’ compensation population is typically younger and healthier than the Medicare population, meaning that there are additional procedures that can be performed safely and effectively with a shorter stay. As noted by the National Council on Compensation Insurance (“NCCI”): “WC claimants have very different demographics, medical conditions, and priorities than retirees. It would be a mistake to blindly

¹ WCRI, *Designing Workers’ Compensation Medical Fee Schedules* (2016).

rely on Medicare rates as perfect measures of resources appropriate to treat work-related injuries.”²

Additionally, for Medicare patients nationwide, covered surgical procedures include “surgical procedures . . . for which standard medical practice dictates that the beneficiary would not typically be expected to require active medical monitoring and care at midnight following the procedure.”³ For non-Medicare patients in North Carolina, ASCs are permitted to keep patients for up to 24 hours.⁴ This means a non-Medicare patient can stay in the facility overnight, provided they are released within the specified timeframe.⁵ The ability to keep workers’ compensation and commercial patients in an ASC overnight broadens the list of procedures that can be performed safely and effectively in the ASC setting.

The ASC fee schedule proposed by the Commission fails to take all of these factors into consideration.

The Failure to Propose a Fee Schedule Covering All Surgical Procedures Results in Greater Costs to the System

The failure to include all procedures that can be safely performed on an outpatient basis results in a significant cost to the system. Particularly impactful in the context of workers’ compensation injuries are a number of spine codes, many of which are not covered under the Medicare ASC fee schedule but are commonly performed in the ASC setting on working-age patients. Total joint replacements (knee, hip, and shoulder) also are paid by Medicare only in the inpatient setting and these cases are routinely performed on patients – especially young and otherwise healthy patients like many injured workers – in the ASC setting.

To meet the goals of the Workers’ Compensation Act, the Commission should be proposing a fee schedule that promotes having these procedures performed in ASCs instead of in a more costly inpatient setting. The proposed fee schedule will continue to encourage hospitals to provide these surgical procedures in the highest cost setting.

When confronted with an injured worker who needs a procedure not paid for under Medicare’s HOPD payment methodology, a hospital can choose to perform the procedure in its inpatient setting. The result is a much higher cost to the system for an inpatient stay and for the procedure. Providing certainty in the reimbursement to ASCs for procedures like total joint replacements that are not on the Medicare ASC list would allow the injured worker’s doctor to make the decision for the patient about the best site of service for these procedures.

Workers’ compensation patients can be prioritized in an ASC setting and are often seen more quickly than they are in a hospital setting. This, combined with the ASC industry’s low infection rates and high quality of care, allows for a rapid return to work, resulting in savings to

² NCCI, *Effectiveness of Workers Compensation Fee Schedules - A Closer Look* (Feb. 11, 2009).

³ 42 C.F.R. § 416.166(b).

⁴ N.C. Gen. Stat. § 131E-176(1b).

⁵ Federal regulations allow for stays up to 24 hours in ASCs. *See* 42 C.F.R. § 416.2.

the system for short-term disability expenses beyond the savings proposed under the fee schedule.

The impact of not having a fee schedule that includes all procedures can be shown by the drop in workers' compensation cases performed in ASCs since April 2015 when the invalid fee schedule began being used. SCA's Workers' Compensation cases declined by 4.2% between April 1, 2015 and March 31, 2016. An NCCI analysis of case volume recently obtained by SCA shows a decline in volume of workers' compensation cases by all North Carolina ASCs in 2015 of 8.2%.⁶

The workers' compensation system benefits when ASCs are able to shift higher acuity cases out of the inpatient environment into a lower cost, outpatient setting. Even though the proposed rule allows for payment for codes that do not have a payment assigned within Medicare fee schedule, without a predictable, reasonable rate for these procedures identified in advance of the case, ASCs cannot determine if they are able to cover the costs of taking on the case and open themselves up to tremendous risk for high cost procedures. The result will likely be that ASCs will refuse to take most of the procedures that are not on the Medicare fee schedule. Therefore, the same procedures will cost more for insurance carriers and self-insured employers.

SCA's Proposed Fee Schedule Meets the Requirements of the Workers' Compensation Act

SCA's proposed ASC fee schedule submitted to the Commission on September 26, 2016 would align payments for ambulatory surgical procedures with the Medicare HOPD fee schedule while at the same time acknowledging that Medicare has not created an allowance for certain procedures that are routinely and safely provided to non-Medicare patients in the ASC setting. As such, SCA proposed a rate for these services that is consistent with the resources and time involved in providing such procedures. In order to limit the uncertainty of the system's exposure on reimbursement, charge master increases would be limited to 0% increase for these procedure codes for the first 3 years, or a revenue neutral adjustment will be applied to the percent of charge paid. SCA's proposal will provide the standard of services and care intended by the Workers' Compensation Act, will reimburse ASCs reasonable fees for providing services, and will ensure that medical costs are adequately contained. *See* N.C. Gen. Stat. § 97-26(a).

In contrast to the fee schedule proposed by SCA, which covers all procedures that can be safely performed in ASC, a representative of the North Carolina Hospital Association suggested at the public hearing that those surgical procedures not covered under the Medicare ASC fee schedule be reimbursed at some percentage of the hospital outpatient ("HOPD") Medicare fee schedule. Although this methodology makes sense for those procedures that are on the HOPD Medicare fee schedule and is actually consistent with SCA's prior proposal, the Hospital Association's proposal would not address the procedures not on the Medicare HOPD fee schedule. That is because certain procedures, such as total joint replacements, are increasingly being done in ASCs but are not covered under the HOPD Medicare fee schedule.

⁶ NCCI data include three months of payment not under the invalid fee schedule.

SCA's proposed fee schedule provides sufficient reimbursement so that ASCs can recover the cost of the implants involved in some surgical procedures. The proposed temporary rule does not adequately reimburse ASCs so that these costs can be recovered and also does not separately reimburse for implants. Under the ASC fee schedule that became effective in 2013, ASCs were being paid for implants at no greater than invoice cost plus 28%. The failure to separately reimburse for implants results in even less reimbursement to ASCs and reduces the incentive to provide services involving high-cost implants. In contrast, hospitals are able to recover higher implant costs by shifting patients to the higher-cost inpatient setting for those surgical procedures.

Payment for treating injured workers should be equivalent between the two outpatient settings for equivalent procedures. When an injured worker requiring surgery visits an ASC, he or she receives the same care as he or she would in a hospital environment. For these cases, the direct costs are equivalent – implant and supply costs, nursing staff, anesthesia costs, etc. Payment for surgery for the same patient, receiving the same treatment – in many cases even performed by the same surgeon – should not be differentiated based on factors and costs unrelated to the workers' compensation system and should be the same regardless of location.

Other states are recognizing the importance of addressing the two sites using the same methodology in setting their medical fee schedules. Alaska and Connecticut, two of the most recent states that enacted legislation related to workers' compensation medical fee schedule reforms specific to ambulatory surgical centers, used the HOPD fee schedule. In 2014, the Medical Services Review Committee in Alaska was directed to create a medical fee schedule based on Medicare-based conversion factors. The new schedule became effective December 1, 2015. The Medical Services Review Committee determined that HOPDs and ASCs should be reimbursed as a percent of the Medicare HOPD fee schedule.⁷ Similarly, effective April 1, 2015, the Connecticut Workers' Compensation Commission established a medical fee schedule for ASCs based on the Medicare HOPD fee schedule.⁸

As noted by the Commission, discrepancies in payments between ASCs and HOPDs would "potentially diminish the pool of doctors available to treat injured employees, and reduce the quality and timeliness of care." The Commission further warned: "That impact will likely be most severely realized in our State's more rural areas, where the quality and availability of effective treatment is already a greater concern."⁹ SCA agrees with the Commission that the only way to ensure injured workers access to high-quality, effective care is to create parity between the ASC and HOPD medical fee schedules.

⁷ H.B. 316, Chapter 63 SLA 14 (Alaska 2014).

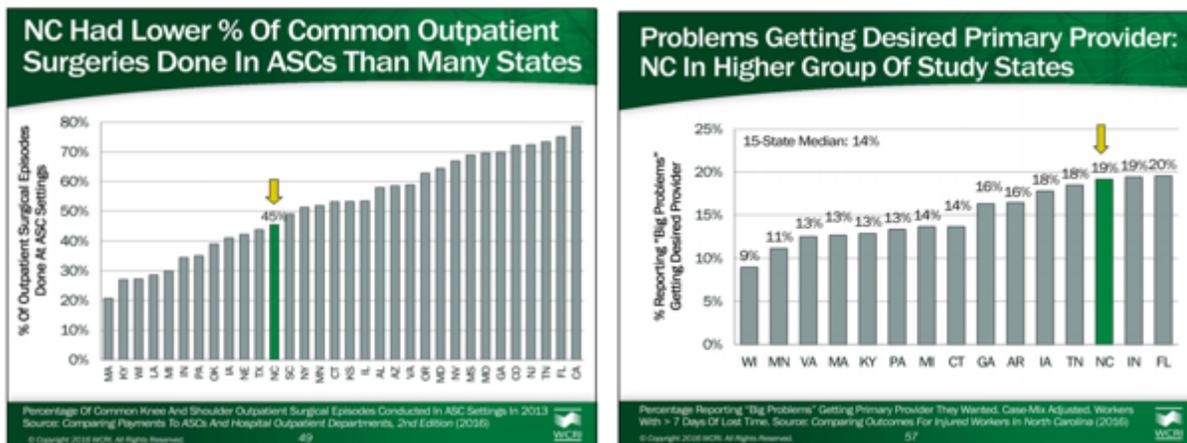
⁸ S.B. 61, Public Act No. 14-167 (Conn. 2014).

⁹ N.C. Indus Comm'n's Mem. of L. in Support of Mot. to Stay, *Surgical Care Affiliates, LLC v. N.C. Indus. Comm'n*, No. 16-CVS-0060 (Wake Cty. Super. Ct. Aug. 17, 2016).

THE REDUCTION IN RATES TO 200% OF THE MEDICARE ASC FEE SCHEDULE PROPOSED WOULD BE VERY HARMFUL TO THE SYSTEM

Reducing the fee schedule to 200% of ASC Medicare would have an even greater negative affect on workers’ access to surgical care. As noted by NCCI: “The Medicare fee schedule is very useful as a starting point for the design of WC medical fee schedules, but has notable shortcomings for WC, including too little emphasis on return to function and too little sensitivity to cost differences among states.”¹⁰ WCRI noted that “[i]f workers’ compensation fee schedule rates are higher than Medicare, this does not necessarily mean that the workers’ compensation rates are high enough to avoid access-to-care issues for injured workers. The latter limitation arises because providers’ decisions about which patients to see are influenced in part by reimbursement rates from alternative payers. If workers’ compensation pays higher than Medicare but lower than commercial insurers, there still might be legitimate concerns about access.”¹¹

Data collected by WCRI demonstrated that common outpatient surgeries done in North Carolina ASCs was 45% lower than in most states.¹² Additionally, NC injured workers reported that they had “big problems getting the primary provider that they wanted.”¹³ Significantly reducing the payments to ASCs for treating injured workers could exacerbate injured workers’ access to surgical care in ASCs.



In Texas, following drastic cuts in the fee schedule, the number of physicians willing to treat all work-related injuries dramatically declined from 2002 to 2004. Specifically, “[t]hree quarters (77%) of orthopedic surgeons in Texas now limit workers compensation cases, dramatically up from (29%) two years ago. Similar declines in access have occurred for general surgeons and other surgical specialists.”¹⁴

¹⁰ NCCI, *Effectiveness of Workers Compensation Fee Schedules - A Closer Look* (2009).

¹¹ WCRI, *Designing Workers’ Compensation Medical Fee Schedules* (June 2012).

¹² WCRI, *Compscope™ Medical Benchmarks for North Carolina*, 17th ed. (Oct. 2016).

¹³ *Id.*

¹⁴ Texas Medical Association, *Workers’ Compensation Special Report – 2004 Survey of Texas Physicians*.

Hawaii experienced similar access issues when its workers' compensation fee schedule reimbursements were inadequate. As noted in a comprehensive review conducted by the state:

While the impact of the change in the medical fee schedule may not have reached overwhelming proportions, it appears to have affected the treatment of injuries in workers' compensation cases. Health care providers are struggling with a duty to heal, while juggling fiscal responsibilities that will afford them to stay in business to continue to practice medicine. This trend of turning away workers' compensation patients should be given attention before it becomes critical. The medical fee schedule definitely appears to have had a negative impact on an injured employee's access to specialty care and diminished access to more experienced health care providers.¹⁵

Workers' compensation medical cost variation is not solely driven by the medical fee schedule. As noted by the National Academy of Social Insurance:

the tremendous interstate variation in the share of total benefits going to medical care reflects between-state differences in: average weekly wages; the nature and severity of work-related injuries; the quantity and prices of medical services provided to injured workers; and the dollar value of cash benefits (driven by factors such as benefit replacement rates, maximum and minimum weekly benefits, the waiting period, and duration of TTD benefits). If, therefore, changes to the workers' compensation law in a given state reduce the dollar value of cash benefits, but medical benefits are stable, the share of benefits accounted for by medical care increases.¹⁶

Additional factors such as strong employment growth also increase medical benefits since more employed workers will be covered under workers' compensation.

THE INDUSTRIAL COMMISSION DOES NOT HAVE STATUTORY AUTHORITY TO ADOPT A TEMPORARY RULE

In the Commission's notice of its intent to adopt a temporary rule, the Commission states that the reason is the recent court order entered by Wake County Superior Court Judge Paul Ridgeway in *Surgical Care Affiliates, LLC v. North Carolina Industrial Commission*. However, Judge Ridgeway's decision does not provide a basis for adopting a temporary rule and bypassing the requirements for permanent rulemaking set forth in the Administrative Procedure Act.

¹⁵ Hawaii Legislative Reference Bureau State Capitol, *The Medical Fee Schedule Under the Workers' Compensation Law*.

¹⁶ National Academy of Social Insurance, *Workers' Compensation: Benefits, Coverage, and Costs* (2014).

N.C. Gen. Stat. § 150B-12.1 allows an agency to adopt a temporary rule only under very limited circumstances. A court order can only be the basis for temporary rulemaking if that court order requires the immediate adoption of a rule. That is simply not the case. There is nothing in Judge Ridgeway's decision that requires the adoption of a temporary rule. Instead, in setting aside the invalid ASC fee schedule, Judge Ridgeway's decision clearly states that the fee schedule adopted in 2013 continues to be effective.

CONCLUSION

For the reasons set forth above, SCA opposes the proposed temporary rule. SCA recommends that the Commission initiate permanent rulemaking with the proposed fee schedule recommendation in SCA's September proposal, which is consistent with North Carolina statutory requirements, accounts for all procedures that can be performed in ASCs, and results in substantial savings to the Workers' Compensation system in North Carolina.

Respectfully submitted this 29th day of November 2016.



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November 28, 2016

North Carolina Industrial Commission
430 N. Salisbury Street
Raleigh, NC 27603

Dear Chairman Allen & Commissioners:

Thank you for the opportunity to present comments in response to the North Carolina Industrial Commission's (Commission) Notice of Temporary Rulemaking for Workers' Compensation Medical Fee Schedule 04 NCAC 10J .0103. Please accept this letter in opposition to the Commission's October 18, 2016 notice of proposed temporary rule to amend 04 NCAC 10J .0103.

Matthews Surgery Center, LLC supports the proposal submitted by Surgical Care Affiliates, LLC ("SCA") on September 26, 2016 to amend the previously declared invalid Rule 04 NCAC 10J .0103 specific to the fee schedule under North Carolina's Workers' Compensation Act for services provided by ambulatory surgical centers (ASCs).

In April 2015, the Industrial Commission established new Workers' Compensation fee schedules for hospitals, physicians, and ASCs. However, in promulgating regulations to establish a new fee schedule for ASCs, the Industrial Commission failed to follow the required process set forth in the Administrative Procedure Act. Consequently, the fee schedule was ruled invalid on August 9, 2016 by Wake County Superior Court Judge Paul Ridgeway.

Matthews Surgery Center, LLC opposes the Commission's Proposed Temporary Rule for the following reasons:

- The temporary rule is not cost effective and does not meet North Carolina statutory requirements.
- The reduction in rates to 200% of Medicare ASC fee schedule would be very harmful to the workers' compensation system.
- There is no statutory authority for adopting a temporary rule.

North Carolina law requires that fee schedules adopted by the Commission be adequate to ensure that injured workers are provided the standard of services and care intended by the Workers' Compensation Act and that providers are reimbursed reasonable fees for providing these services. The Commission's proposed rule does not address all procedures that were being conducted in ambulatory surgery centers prior to the implementation of the invalid fee schedule on April 1, 2015.

The proposed temporary rule reduces the fee schedule to 200% of ASC Medicare and excludes procedures that are otherwise performed at ASCs. This has restricted and will continue to restrict access for injured workers to receive surgical care in ASCs operating in North Carolina. Limiting access to ASCs violates the statutory requirement of ensuring injured workers are provided the services and standard of care required by the Workers' Compensation Act.

Under the ASC fee schedule that became effective in 2013, implants are reimbursed at no greater than invoice cost plus 28%. The proposed temporary rule does not separately reimburse for implants. The failure to separately reimburse for implants results in even lower reimbursement to ASCs and creates an unreasonable risk for providing services involving high-cost implants. In contrast, hospitals are able to recover higher implant costs by shifting patients to the higher-cost inpatient setting for those surgical procedures.

The failure of the Medicare ASC fee schedule to include all procedures that can be safely performed on an outpatient basis results in a significant cost to the system. Particularly impactful in the context of workers' compensation injuries are a number of spine procedures, many of which are not covered under the Medicare ASC fee schedule but are commonly performed in the ASC setting on working-age patients. Total joint replacements (knee, hip, and shoulder) also are paid by Medicare only in the inpatient setting, and these cases are routinely performed on patients – especially young and otherwise healthy patients like many injured workers – in the ASC setting.

The proposed rule's reliance on a usual, customary, and reasonable ("UCR") methodology for addressing these types of procedures does not address the gap that the Medicare ASC fee schedule creates. All of the stakeholders who presented at the November 18, 2016 public hearing agreed that the UCR methodology would create more uncertainty to the system and increase the number of fee disputes that would have to be resolved by the Commission.

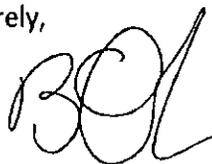
Lastly, the Commission has no basis for promulgating a temporary rule. The Commission states that the reason is the recent court order entered by Wake County Superior Court Judge Paul Ridgeway in *Surgical Care Affiliates, LLC v. North Carolina Industrial Commission*. Judge Ridgeway's Decision does not require the adoption of a temporary rule and the bypass of the requirements for permanent rulemaking set forth in the Administrative Procedure Act. An agency may adopt a temporary rule only under very limited circumstances. A court order can only be the basis for temporary rulemaking if that court order requires the immediate adoption of a rule. That is simply not the case. There is nothing in Judge Ridgeway's Decision that requires the adoption of a temporary rule. Judge Ridgeway's Decision clearly states that the fee schedule adopted in 2013 continues to be effective.

For the reasons set forth above, Matthews Surgery Center, LLC opposes the proposed temporary rule. We recommend that the Commission initiate permanent rulemaking with the proposed fee schedule recommendation in SCA's September 26, 2016 proposal, which is

consistent with North Carolina statutory requirements, accounts for all procedures that can be performed in ASCs, and results in substantial savings to the Workers' Compensation system in North Carolina.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to be 'KB' or similar initials, written in a cursive style.

KENDALL BOURDON
CEO CAROLINA

cc: Kendall Bourdon
Meredith Henderson

November 28, 2016

North Carolina Industrial Commission
430 N. Salisbury Street
Raleigh, NC 27603

Dear Chairman Allen & Commissioners:

Thank you for the opportunity to present comments in response to the North Carolina Industrial Commission's (Commission) Notice of Temporary Rulemaking for Workers' Compensation Medical Fee Schedule 04 NCAC 10J .0103. Please accept this letter in opposition to the Commission's October 18, 2016 notice of proposed temporary rule to amend 04 NCAC 10J .0103.

Mallard Creek Surgery Center supports the proposal submitted by Surgical Care Affiliates, LLC ("SCA") on September 26, 2016 to amend the previously declared invalid Rule 04 NCAC 10J .0103 specific to the fee schedule under North Carolina's Workers' Compensation Act for services provided by ambulatory surgical centers (ASCs).

In April 2015, the Industrial Commission established new Workers' Compensation fee schedules for hospitals, physicians, and ASCs. However, in promulgating regulations to establish a new fee schedule for ASCs, the Industrial Commission failed to follow the required process set forth in the Administrative Procedure Act. Consequently, the fee schedule was ruled invalid on August 9, 2016 by Wake County Superior Court Judge Paul Ridgeway.

Mallard Creek Surgery Center opposes the Commission's Proposed Temporary Rule for the following reasons:

- The temporary rule is not cost effective and does not meet North Carolina statutory requirements.
- The reduction in rates to 200% of Medicare ASC fee schedule would be very harmful to the workers' compensation system.
- There is no statutory authority for adopting a temporary rule.

North Carolina law requires that fee schedules adopted by the Commission be adequate to ensure that injured workers are provided the standard of services and care intended by the Workers' Compensation Act and that providers are reimbursed reasonable fees for providing these services. The Commission's proposed rule does not address all procedures that were being conducted in ambulatory surgery centers prior to the implementation of the invalid fee schedule on April 1, 2015.

The proposed temporary rule reduces the fee schedule to 200% of ASC Medicare and excludes procedures that are otherwise performed at ASCs. This has restricted and will continue to restrict access for injured workers to receive surgical care in ASCs operating in North Carolina. Limiting access to ASCs violates the statutory requirement of ensuring injured workers are provided the services and standard of care required by the Workers' Compensation Act.

Under the ASC fee schedule that became effective in 2013, implants are reimbursed at no greater than invoice cost plus 28%. The proposed temporary rule does not separately reimburse for implants. The failure to separately reimburse for implants results in even lower reimbursement to ASCs and creates an unreasonable risk for providing services involving high-cost implants. In contrast, hospitals are able to recover higher implant costs by shifting patients to the higher-cost inpatient setting for those surgical procedures.

The failure of the Medicare ASC fee schedule to include all procedures that can be safely performed on an outpatient basis results in a significant cost to the system. Particularly impactful in the context of workers' compensation injuries are a number of spine procedures, many of which are not covered under the Medicare ASC fee schedule but are commonly performed in the ASC setting on working-age patients. Total joint replacements (knee, hip, and shoulder) also are paid by Medicare only in the inpatient setting, and these cases are routinely performed on patients – especially young and otherwise healthy patients like many injured workers – in the ASC setting.

The proposed rule's reliance on a usual, customary, and reasonable ("UCR") methodology for addressing these types of procedures does not address the gap that the Medicare ASC fee schedule creates. All of the stakeholders who presented at the November 18, 2016 public hearing agreed that the UCR methodology would create more uncertainty to the system and increase the number of fee disputes that would have to be resolved by the Commission.

Lastly, the Commission has no basis for promulgating a temporary rule. The Commission states that the reason is the recent court order entered by Wake County Superior Court Judge Paul Ridgeway in *Surgical Care Affiliates, LLC v. North Carolina Industrial Commission*. Judge Ridgeway's Decision does not require the adoption of a temporary rule and the bypass of the requirements for permanent rulemaking set forth in the Administrative Procedure Act. An agency may adopt a temporary rule only under very limited circumstances. A court order can only be the basis for temporary rulemaking if that court order requires the immediate adoption of a rule. That is simply not the case. There is nothing in Judge Ridgeway's Decision that requires the adoption of a temporary rule. Judge Ridgeway's Decision clearly states that the fee schedule adopted in 2013 continues to be effective.

For the reasons set forth above, Mallard Creek Surgery Center opposes the proposed temporary rule. We recommend that the Commission initiate permanent rulemaking with the proposed fee schedule recommendation in SCA's September 26, 2016 proposal, which is

consistent with North Carolina statutory requirements, accounts for all procedures that can be performed in ASCs, and results in substantial savings to the Workers' Compensation system in North Carolina.

Thank you for your consideration.

Sincerely,



KENDALL BOURDON
CEO OF NORTH CAROLINA

cc: Kendall Bourdon
Meredith Henderson



November 28, 2016

North Carolina Industrial Commission
430 N. Salisbury Street
Raleigh, NC 27603

Dear Chairman Allen & Commissioners:

Thank you for the opportunity to present comments in response to the North Carolina Industrial Commission's (Commission) Notice of Temporary Rulemaking for Workers' Compensation Medical Fee Schedule 04 NCAC 10J .0103. Please accept this letter in opposition to the Commission's October 18, 2016 notice of proposed temporary rule to amend 04 NCAC 10J .0103.

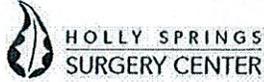
Holly Springs Surgery Center, LLC supports the proposal submitted by Surgical Care Affiliates, LLC ("SCA") on September 26, 2016 to amend the previously declared invalid Rule 04 NCAC 10J .0103 specific to the fee schedule under North Carolina's Workers' Compensation Act for services provided by ambulatory surgical centers (ASCs).

In April 2015, the Industrial Commission established new Workers' Compensation fee schedules for hospitals, physicians, and ASCs. However, in promulgating regulations to establish a new fee schedule for ASCs, the Industrial Commission failed to follow the required process set forth in the Administrative Procedure Act. Consequently, the fee schedule was ruled invalid on August 9, 2016 by Wake County Superior Court Judge Paul Ridgeway.

Holly Springs Surgery Center, LLC opposes the Commission's Proposed Temporary Rule for the following reasons:

- The temporary rule is not cost effective and does not meet North Carolina statutory requirements.
- The reduction in rates to 200% of Medicare ASC fee schedule would be very harmful to the workers' compensation system.
- There is no statutory authority for adopting a temporary rule.

North Carolina law requires that fee schedules adopted by the Commission be adequate to ensure that injured workers are provided the standard of services and care intended by the Workers' Compensation Act and that providers are reimbursed reasonable fees for providing these services. The Commission's proposed rule does not address all procedures that were being conducted in ambulatory surgery centers prior to the implementation of the invalid fee schedule on April 1, 2015.



The proposed temporary rule reduces the fee schedule to 200% of ASC Medicare and excludes procedures that are otherwise performed at ASCs. This has restricted and will continue to restrict access for injured workers to receive surgical care in ASCs operating in North Carolina. Limiting access to ASCs violates the statutory requirement of ensuring injured workers are provided the services and standard of care required by the Workers' Compensation Act.

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The failure of the Medicare ASC fee schedule to include all procedures that can be safely performed on an outpatient basis results in a significant cost to the system. Particularly impactful in the context of workers' compensation injuries are a number of spine procedures, many of which are not covered under the Medicare ASC fee schedule but are commonly performed in the ASC setting on working-age patients. Total joint replacements (knee, hip, and shoulder) also are paid by Medicare only in the inpatient setting, and these cases are routinely performed on patients – especially young and otherwise healthy patients like many injured workers – in the ASC setting.

The proposed rule's reliance on a usual, customary, and reasonable ("UCR") methodology for addressing these types of procedures does not address the gap that the Medicare ASC fee schedule creates. All of the stakeholders who presented at the November 18, 2016 public hearing agreed that the UCR methodology would create more uncertainty to the system and increase the number of fee disputes that would have to be resolved by the Commission.

Lastly, the Commission has no basis for promulgating a temporary rule. The Commission states that the reason is the recent court order entered by Wake County Superior Court Judge Paul Ridgeway in *Surgical Care Affiliates, LLC v. North Carolina Industrial Commission*. Judge Ridgeway's Decision does not require the adoption of a temporary rule and the bypass of the requirements for permanent rulemaking set forth in the Administrative Procedure Act. An agency may adopt a temporary rule only under very limited circumstances. A court order can only be the basis for temporary rulemaking if that court order requires the immediate adoption of a rule. That is simply not the case. There is nothing in Judge Ridgeway's Decision that requires the adoption of a temporary rule. Judge Ridgeway's Decision clearly states that the fee schedule adopted in 2013 continues to be effective.

For the reasons set forth above, Holly Springs Surgery Center, LLC opposes the proposed temporary rule. We recommend that the Commission initiate permanent rulemaking with the proposed fee schedule recommendation in SCA's September 26, 2016 proposal, which is consistent with North Carolina statutory requirements, accounts for all procedures that can be



performed in ASCs, and results in substantial savings to the Workers' Compensation system in North Carolina.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "D. Orskey".

David Orskey
Administrator

cc: Kendall Bourdon
Meredith Henderson

BLUE RIDGE SURGERY CENTER
an affiliate of **SCA**

November 28, 2016

North Carolina Industrial Commission
430 N. Salisbury Street
Raleigh, NC 27603

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Blue Ridge Surgery Center supports the proposal submitted by Surgical Care Affiliates, LLC ("SCA") on September 26, 2016 to amend the previously declared invalid Rule 04 NCAC 10J .0103 specific to the fee schedule under North Carolina's Workers' Compensation Act for services provided by ambulatory surgical centers (ASCs).

In April 2015, the Industrial Commission established new Workers' Compensation fee schedules for hospitals, physicians, and ASCs. However, in promulgating regulations to establish a new fee schedule for ASCs, the Industrial Commission failed to follow the required process set forth in the Administrative Procedure Act. Consequently, the fee schedule was ruled invalid on August 9, 2016 by Wake County Superior Court Judge Paul Ridgeway.

Blue Ridge Surgery Center opposes the Commission's Proposed Temporary Rule for the following reasons:

- The temporary rule is not cost effective and does not meet North Carolina statutory requirements.
- The reduction in rates to 200% of Medicare ASC fee schedule would be very harmful to the workers' compensation system.
- There is no statutory authority for adopting a temporary rule.

North Carolina law requires that fee schedules adopted by the Commission be adequate to ensure that injured workers are provided the standard of services and care intended by the Workers' Compensation Act and that providers are reimbursed reasonable fees for providing these services. The Commission's proposed rule does not address all procedures that were being conducted in ambulatory surgery centers prior to the implementation of the invalid fee schedule on April 1, 2015.

BLUE RIDGE SURGERY CENTER

an affiliate of **SCA**

The proposed temporary rule reduces the fee schedule to 200% of ASC Medicare and excludes procedures that are otherwise performed at ASCs. This has restricted and will continue to restrict access for injured workers to receive surgical care in ASCs operating in North Carolina. Limiting access to ASCs violates the statutory requirement of ensuring injured workers are provided the services and standard of care required by the Workers' Compensation Act.

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The failure of the Medicare ASC fee schedule to include all procedures that can be safely performed on an outpatient basis results in a significant cost to the system. Particularly impactful in the context of workers' compensation injuries are a number of spine procedures, many of which are not covered under the Medicare ASC fee schedule but are commonly performed in the ASC setting on working-age patients. Total joint replacements (knee, hip, and shoulder) also are paid by Medicare only in the inpatient setting, and these cases are routinely performed on patients – especially young and otherwise healthy patients like many injured workers – in the ASC setting.

The proposed rule's reliance on a usual, customary, and reasonable ("UCR") methodology for addressing these types of procedures does not address the gap that the Medicare ASC fee schedule creates. All of the stakeholders who presented at the November 18, 2016 public hearing agreed that the UCR methodology would create more uncertainty to the system and increase the number of fee disputes that would have to be resolved by the Commission.

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BLUE RIDGE SURGERY CENTER

an affiliate of **SCA**

For the reasons set forth above, Blue Ridge Surgery Center opposes the proposed temporary rule. We recommend that the Commission initiate permanent rulemaking with the

proposed fee schedule recommendation in SCA's September 26, 2016 proposal, which is consistent with North Carolina statutory requirements, accounts for all procedures that can be performed in ASCs, and results in substantial savings to the Workers' Compensation system in North Carolina.

Thank you for your consideration.

Sincerely,

Mae Smith, RN

cc: Kendall Bourdon
Meredith Henderson

November 28, 2016

North Carolina Industrial Commission
430 N. Salisbury Street
Raleigh, NC 27603

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Surgery Partners, Inc., which operates Wilmington SurgCare in Wilmington, North Carolina and Orthopaedic Surgery Center of Asheville in Asheville, North Carolina, supports the proposal submitted by Surgical Care Affiliates, LLC ("SCA") on September 26, 2016 to amend the previously declared invalid Rule 04 NCAC 10J .0103 specific to the fee schedule under North Carolina's Workers' Compensation Act for services provided by ASCs.

In April 2015, the Industrial Commission established new Workers' Compensation fee schedules for hospitals, physicians, and ASCs. However, in promulgating regulations to establish a new fee schedule for ASCs, the Industrial Commission failed to follow the required process set forth in the Administrative Procedure Act. Consequently, the fee schedule was ruled invalid on August 9, 2016 by Wake County Superior Court Judge Paul Ridgeway.

Surgery Partners, Inc. opposes the Commission's Proposed Temporary Rule for the following reasons:

- The temporary rule is not cost effective and does not meet North Carolina statutory requirements.
- The reduction in rates to 200% of Medicare ASC fee schedule would be very harmful to the workers' compensation system.
- There is no statutory authority for adopting a temporary rule.

North Carolina law requires that fee schedules adopted by the Commission be adequate to ensure that injured workers are provided the standard of services and care intended by the Workers' Compensation Act and that providers are reimbursed reasonable fees for providing these services. The Commission's proposed rule does not address all procedures that were being conducted in ambulatory surgery centers prior to the implementation of the invalid fee schedule on April 1, 2015.

The proposed temporary rule reduces the fee schedule to 200% of ASC Medicare and excludes procedures that are otherwise performed at ASCs. This has restricted and will continue to restrict access for injured workers to receive surgical care in ASCs operating in North Carolina. Limiting access to ASCs violates the statutory requirement of ensuring injured workers are provided the services and standard of care required by the Workers' Compensation Act.

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For the reasons set forth above, Surgery Partners, Inc. opposes the proposed temporary rule. We recommend that the Commission initiate permanent rulemaking with the proposed fee schedule recommendation in SCA's September 26, 2016 proposal, which is consistent with North Carolina statutory requirements, accounts for all procedures that can be performed in ASCs, and results in substantial savings to the Workers' Compensation system in North Carolina.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Simmons", written in a cursive style.

Linda Simmons
Regional Vice President
Surgery Partners, Inc.
331 Springwater Chase
Newnan, GA 30265
lsimmons@surgerypartners.com

cc: Kendall Bourdon
Meredith Henderson



Creating High Value Partnerships

November 28, 2016

North Carolina Industrial Commission
430 N. Salisbury Street
Raleigh, NC 27603

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Compass Surgical Partners, LLC supports the proposal submitted by Surgical Care Affiliates, LLC ("SCA") on September 26, 2016 to amend the previously declared invalid Rule 04 NCAC 10J .0103 specific to the fee schedule under North Carolina's Workers' Compensation Act for services provided by ambulatory surgical centers (ASCs).

In April 2015, the Industrial Commission established new Workers' Compensation fee schedules for hospitals, physicians, and ASCs. However, in promulgating regulations to establish a new fee schedule for ASCs, the Industrial Commission failed to follow the required process set forth in the Administrative Procedure Act. Consequently, the fee schedule was ruled invalid on August 9, 2016 by Wake County Superior Court Judge Paul Ridgeway.

Compass Surgical Partners, LLC opposes the Commission's Proposed Temporary Rule for the following reasons:

- The temporary rule is not cost effective and does not meet North Carolina statutory requirements.
- The reduction in rates to 200% of Medicare ASC fee schedule would be very harmful to the workers' compensation system.
- There is no statutory authority for adopting a temporary rule.

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The proposed rule's reliance on a usual, customary, and reasonable ("UCR") methodology for addressing these types of procedures does not address the gap that the Medicare ASC fee schedule creates. All of the stakeholders who presented at the November 18, 2016 public hearing agreed that the UCR methodology would create more uncertainty to the system and increase the number of fee disputes that would have to be resolved by the Commission.

Lastly, the Commission has no basis for promulgating a temporary rule. The Commission states that the reason is the recent court order entered by Wake County Superior Court Judge Paul Ridgeway in *Surgical Care Affiliates, LLC v. North Carolina Industrial Commission*. Judge Ridgeway's Decision does not require the adoption of a temporary rule and the bypass of the requirements for permanent rulemaking set forth in the Administrative Procedure Act. An agency may adopt a temporary rule only under very limited circumstances. A court order can only be the basis for temporary rulemaking if that court order requires the immediate adoption of a rule. That is simply not the case. There is nothing in Judge Ridgeway's Decision that requires the adoption of a temporary rule. Judge Ridgeway's Decision clearly states that the fee schedule adopted in 2013 continues to be effective.



For the reasons set forth above, Compass Surgical Partners, LLC opposes the proposed temporary rule. We recommend that the Commission initiate permanent rulemaking with the proposed fee schedule recommendation in SCA's September 26, 2016 proposal, which is consistent with North Carolina statutory requirements, accounts for all procedures that can be performed in ASCs, and results in substantial savings to the Workers' Compensation system in North Carolina.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "D.S. Hill", written over a light blue horizontal line.

DJ Hill
Co-Founder & Chief Executive Officer

cc: Kendall Bourdon
Meredith Henderson



November 28, 2016

North Carolina Industrial Commission
430 N. Salisbury Street
Raleigh, NC 27603

Dear Chairman Allen & Commissioners:

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Capital City Surgery Center, LLC supports the proposal submitted by Surgical Care Affiliates, LLC ("SCA") on September 26, 2016 to amend the previously declared invalid Rule 04 NCAC 10J .0103 specific to the fee schedule under North Carolina's Workers' Compensation Act for services provided by ambulatory surgical centers (ASCs).

In April 2015, the Industrial Commission established new Workers' Compensation fee schedules for hospitals, physicians, and ASCs. However, in promulgating regulations to establish a new fee schedule for ASCs, the Industrial Commission failed to follow the required process set forth in the Administrative Procedure Act. Consequently, the fee schedule was ruled invalid on August 9, 2016 by Wake County Superior Court Judge Paul Ridgeway.

Capital City Surgery Center, LLC opposes the Commission's Proposed Temporary Rule for the following reasons:

- The temporary rule is not cost effective and does not meet North Carolina statutory requirements.
- The reduction in rates to 200% of Medicare ASC fee schedule would be very harmful to the workers' compensation system.
- There is no statutory authority for adopting a temporary rule.

North Carolina law requires that fee schedules adopted by the Commission be adequate to ensure that injured workers are provided the standard of services and care intended by the Workers' Compensation Act and that providers are reimbursed reasonable fees for providing

23 Sunnybrook Road
Raleigh, NC 27610
capitalcitysurgery.com



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The proposed temporary rule reduces the fee schedule to 200% of ASC Medicare and excludes procedures that are otherwise performed at ASCs. This has restricted and will continue to restrict access for injured workers to receive surgical care in ASCs operating in North Carolina. Limiting access to ASCs violates the statutory requirement of ensuring injured workers are provided the services and standard of care required by the Workers' Compensation Act.

Under the ASC fee schedule that became effective in 2013, implants are reimbursed at no greater than invoice cost plus 28%. The proposed temporary rule does not separately reimburse for implants. The failure to separately reimburse for implants results in even lower reimbursement to ASCs and creates an unreasonable risk for providing services involving high-cost implants. In contrast, hospitals are able to recover higher implant costs by shifting patients to the higher-cost inpatient setting for those surgical procedures.

The failure of the Medicare ASC fee schedule to include all procedures that can be safely performed on an outpatient basis results in a significant cost to the system. Particularly impactful in the context of workers' compensation injuries are a number of spine procedures, many of which are not covered under the Medicare ASC fee schedule but are commonly performed in the ASC setting on working-age patients. Total joint replacements (knee, hip, and shoulder) also are paid by Medicare only in the inpatient setting, and these cases are routinely performed on patients – especially young and otherwise healthy patients like many injured workers – in the ASC setting.

The proposed rule's reliance on a usual, customary, and reasonable ("UCR") methodology for addressing these types of procedures does not address the gap that the Medicare ASC fee schedule creates. All of the stakeholders who presented at the November 18, 2016 public hearing agreed that the UCR methodology would create more uncertainty to the system and increase the number of fee disputes that would have to be resolved by the Commission.

Lastly, the Commission has no basis for promulgating a temporary rule. The Commission states that the reason is the recent court order entered by Wake County Superior Court Judge Paul Ridgeway in *Surgical Care Affiliates, LLC v. North Carolina Industrial Commission*. Judge Ridgeway's Decision does not require the adoption of a temporary rule and the bypass of the requirements for permanent rulemaking set forth in the Administrative Procedure



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For the reasons set forth above, Capital City Surgery Center, LLC opposes the proposed temporary rule. We recommend that the Commission initiate permanent rulemaking with the proposed fee schedule recommendation in SCA's September 26, 2016 proposal, which is consistent with North Carolina statutory requirements, accounts for all procedures that can be performed in ASCs, and results in substantial savings to the Workers' Compensation system in North Carolina.

Thank you for your consideration.

Sincerely,


Jamie Ridout
Administrator

cc: Kendall Bourdon
Meredith Henderson

FAYETTEVILLE AMBULATORY SURGERY CENTER
an affiliate of **SCA**

November 28, 2016

North Carolina Industrial Commission
430 N. Salisbury Street
Raleigh, NC 27603

Dear Chairman Allen & Commissioners:

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Fayetteville Ambulatory Surgery Center supports the proposal submitted by Surgical Care Affiliates, LLC ("SCA") on September 26, 2016 to amend the previously declared invalid Rule 04 NCAC 10J .0103 specific to the fee schedule under North Carolina's Workers' Compensation Act for services provided by ambulatory surgical centers (ASCs).

In April 2015, the Industrial Commission established new Workers' Compensation fee schedules for hospitals, physicians, and ASCs. However, in promulgating regulations to establish a new fee schedule for ASCs, the Industrial Commission failed to follow the required process set forth in the Administrative Procedure Act. Consequently, the fee schedule was ruled invalid on August 9, 2016 by Wake County Superior Court Judge Paul Ridgeway.

Fayetteville Ambulatory Surgery Center opposes the Commission's Proposed Temporary Rule for the following reasons:

- The temporary rule is not cost effective and does not meet North Carolina statutory requirements.
- The reduction in rates to 200% of Medicare ASC fee schedule would be very harmful to the workers' compensation system.
- There is no statutory authority for adopting a temporary rule.

North Carolina law requires that fee schedules adopted by the Commission be adequate to ensure that injured workers are provided the standard of services and care intended by the Workers' Compensation Act and that providers are reimbursed reasonable fees for providing these services. The Commission's proposed rule does not address all procedures that were being conducted in ambulatory surgery centers prior to the implementation of the invalid fee schedule on April 1, 2015.

FAYETTEVILLE AMBULATORY SURGERY CENTER
an affiliate of **SCA**

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For the reasons set forth above, Fayetteville Ambulatory Surgery Center opposes the proposed temporary rule. We recommend that the Commission initiate permanent rulemaking with the proposed fee schedule recommendation in SCA's September 26, 2016

FAYETTEVILLE AMBULATORY SURGERY CENTER

an affiliate of **SCA**

proposal, which is consistent with North Carolina statutory requirements, accounts for all procedures that can be performed in ASCs, and results in substantial savings to the Workers' Compensation system in North Carolina.

Thank you for your consideration.

Sincerely,



Teresa L. Craven, RN
Administrator
Fayetteville Ambulatory Surgery Center

cc: Kendall Bourdon
Meredith Henderson

November 28, 2016

North Carolina Industrial Commission
430 N. Salisbury Street
Raleigh, NC 27603

Dear Chairman Allen & Commissioners:

Thank you for the opportunity to present comments in response to the North Carolina Industrial Commission's (Commission) Notice of Temporary Rulemaking for Workers' Compensation Medical Fee Schedule 04 NCAC 10J .0103. Please accept this letter in opposition to the Commission's October 18, 2016 notice of proposed temporary rule to amend 04 NCAC 10J .0103.

The Eye Surgery Center of the Carolinas supports the proposal submitted by Surgical Care Affiliates, LLC ("SCA") on September 26, 2016 to amend the previously declared invalid Rule 04 NCAC 10J .0103 specific to the fee schedule under North Carolina's Workers' Compensation Act for services provided by ambulatory surgical centers (ASCs).

In April 2015, the Industrial Commission established new Workers' Compensation fee schedules for hospitals, physicians, and ASCs. However, in promulgating regulations to establish a new fee schedule for ASCs, the Industrial Commission failed to follow the required process set forth in the Administrative Procedure Act. Consequently, the fee schedule was ruled invalid on August 9, 2016 by Wake County Superior Court Judge Paul Ridgeway.

The Eye Surgery Center of the Carolinas opposes the Commission's Proposed Temporary Rule for the following reasons:

- The temporary rule is not cost effective and does not meet North Carolina statutory requirements.
- The reduction in rates to 200% of Medicare ASC fee schedule would be very harmful to the workers' compensation system.
- There is no statutory authority for adopting a temporary rule.

North Carolina law requires that fee schedules adopted by the Commission be adequate to ensure that injured workers are provided the standard of services and care intended by the Workers' Compensation Act and that providers are reimbursed reasonable fees for providing these services. The Commission's proposed rule does not address all procedures that were being conducted in ambulatory surgery centers prior to the implementation of the invalid fee schedule on April 1, 2015.

The proposed temporary rule reduces the fee schedule to 200% of ASC Medicare and excludes procedures that are otherwise performed at ASCs. This has restricted and will continue to restrict access for injured workers to receive surgical care in ASCs operating in North Carolina. Limiting access to ASCs violates the statutory requirement of ensuring injured workers are provided the services and standard of care required by the Workers' Compensation Act.

Under the ASC fee schedule that became effective in 2013, implants are reimbursed at no greater than invoice cost plus 28%. The proposed temporary rule does not separately reimburse for implants. The failure to separately reimburse for implants results in even lower reimbursement to ASCs and creates an unreasonable risk for providing services involving high-cost implants. In contrast, hospitals are able to recover higher implant costs by shifting patients to the higher-cost inpatient setting for those surgical procedures.

The failure of the Medicare ASC fee schedule to include all procedures that can be safely performed on an outpatient basis results in a significant cost to the system. Particularly impactful in the context of workers' compensation injuries are a number of spine procedures, many of which are not covered under the Medicare ASC fee schedule but are commonly performed in the ASC setting on working-age patients. Total joint replacements (knee, hip, and shoulder) also are paid by Medicare only in the inpatient setting, and these cases are routinely performed on patients – especially young and otherwise healthy patients like many injured workers – in the ASC setting.

The proposed rule's reliance on a usual, customary, and reasonable ("UCR") methodology for addressing these types of procedures does not address the gap that the Medicare ASC fee schedule creates. All of the stakeholders who presented at the November 18, 2016 public hearing agreed that the UCR methodology would create more uncertainty to the system and increase the number of fee disputes that would have to be resolved by the Commission.

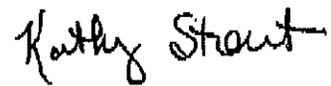
Lastly, the Commission has no basis for promulgating a temporary rule. The Commission states that the reason is the recent court order entered by Wake County Superior Court Judge Paul Ridgeway in *Surgical Care Affiliates, LLC v. North Carolina Industrial Commission*. Judge Ridgeway's Decision does not require the adoption of a temporary rule and the bypass of the requirements for permanent rulemaking set forth in the Administrative Procedure Act. An agency may adopt a temporary rule only under very limited circumstances. A court order can only be the basis for temporary rulemaking if that court order requires the immediate adoption of a rule. That is simply not the case. There is nothing in Judge Ridgeway's Decision that requires the adoption of a temporary rule. Judge Ridgeway's Decision clearly states that the fee schedule adopted in 2013 continues to be effective.

For the reasons set forth above, The Eye Surgery Center of the Carolinas opposes the proposed temporary rule. We recommend that the Commission initiate permanent rulemaking with the proposed fee schedule recommendation in SCA's September 26, 2016

proposal, which is consistent with North Carolina statutory requirements, accounts for all procedures that can be performed in ASCs, and results in substantial savings to the Workers' Compensation system in North Carolina.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Kathy Stout". The signature is written in a cursive, slightly slanted style.

Kathy Stout RN, Administrator
The Eye Surgery Center of the Carolinas

cc: Kendall Bourdon
Meredith Henderson

November 28, 2016

North Carolina Industrial Commission
430 N. Salisbury Street
Raleigh, NC 27603

Dear Chairman Allen & Commissioners:

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Greensboro Specialty Surgical Centers supports the proposal submitted by Surgical Care Affiliates, LLC ("SCA") on September 26, 2016 to amend the previously declared invalid Rule 04 NCAC 10J .0103 specific to the fee schedule under North Carolina's Workers' Compensation Act for services provided by ambulatory surgical centers (ASCs).

In April 2015, the Industrial Commission established new Workers' Compensation fee schedules for hospitals, physicians, and ASCs. However, in promulgating regulations to establish a new fee schedule for ASCs, the Industrial Commission failed to follow the required process set forth in the Administrative Procedure Act. Consequently, the fee schedule was ruled invalid on August 9, 2016 by Wake County Superior Court Judge Paul Ridgeway.

Greensboro Specialty Surgical Center opposes the Commission's Proposed Temporary Rule for the following reasons:

- The temporary rule is not cost effective and does not meet North Carolina statutory requirements.
- The reduction in rates to 200% of Medicare ASC fee schedule would be very harmful to the workers' compensation system.
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North Carolina law requires that fee schedules adopted by the Commission be adequate to ensure that injured workers are provided the standard of services and care intended by the Workers' Compensation Act and that providers are reimbursed reasonable fees for providing

these services. The Commission's proposed rule does not address all procedures that were being conducted in ambulatory surgery centers prior to the implementation of the invalid fee schedule on April 1, 2015.

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Lastly, the Commission has no basis for promulgating a temporary rule. The Commission states that the reason is the recent court order entered by Wake County Superior Court Judge Paul Ridgeway in *Surgical Care Affiliates, LLC v. North Carolina Industrial Commission*. Judge Ridgeway's Decision does not require the adoption of a temporary rule and the bypass of the requirements for permanent rulemaking set forth in the Administrative Procedure Act. An agency may adopt a temporary rule only under very limited circumstances. A court order can only be the basis for temporary rulemaking if that court order requires the immediate adoption of a rule. That is simply not the case. There is nothing in Judge

GREENSBORO SPECIALTY SURGICAL CENTER
an affiliate of **SCA**

Ridgeway's Decision that requires the adoption of a temporary rule. Judge Ridgeway's Decision clearly states that the fee schedule adopted in 2013 continues to be effective.

For the reasons set forth above, Greensboro Specialty Surgical Center opposes the proposed temporary rule. We recommend that the Commission initiate permanent rulemaking with the proposed fee schedule recommendation in SCA's September 26, 2016 proposal, which is consistent with North Carolina statutory requirements, accounts for all procedures that can be performed in ASCs, and results in substantial savings to the Workers' Compensation system in North Carolina.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Debra Murray". The signature is written in a cursive style with a large, looped initial "D".

cc: Kendall Bourdon
Meredith Henderson

SURGICAL CENTER OF GREENSBORO

an affiliate of SCA

November 28, 2016

North Carolina Industrial Commission
430 N. Salisbury Street
Raleigh, NC 27603

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Surgical Center of Greensboro / Orthopaedic Surgical Center supports the proposal submitted by Surgical Care Affiliates, LLC ("SCA") on September 26, 2016 to amend the previously declared invalid Rule 04 NCAC 10J .0103 specific to the fee schedule under North Carolina's Workers' Compensation Act for services provided by ambulatory surgical centers (ASCs).

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SURGICAL CENTER OF GREENSBORO

affiliate of SCA

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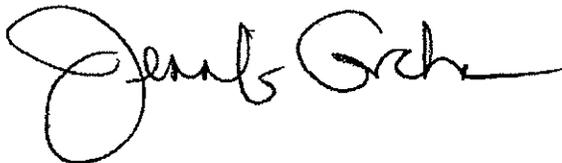
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SURGICAL CENTER OF GREENSBORO
a division of SCA

For the reasons set forth above, Surgical Center of Greensboro / Orthopaedic Surgical Center opposes the proposed temporary rule. We recommend that the Commission initiate permanent rulemaking with the proposed fee schedule recommendation in SCA's September 26, 2016 proposal, which is consistent with North Carolina statutory requirements, accounts for all procedures that can be performed in ASCs, and results in substantial savings to the Workers' Compensation system in North Carolina.

Thank you for your consideration.

Sincerely,



Jennifer Graham
RNFA, CASC, CNOR | Administrator
Surgical Center of Greensboro / Orthopaedic Surgical Center |
www.surgicalcenterofgreensboro.com
1211 Virginia Street / 1101 Carolina Street Greensboro NC 27401

cc: Kendall Bourdon
Meredith Henderson

EASTERN REGIONAL SURGICAL CENTER



November 28, 2016

North Carolina Industrial Commission
430 N. Salisbury Street
Raleigh, NC 27603

Dear Chairman Allen & Commissioners:

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Eastern Regional Surgical Center supports the proposal submitted by Surgical Care Affiliates, LLC ("SCA") on September 26, 2016 to amend the previously declared invalid Rule 04 NCAC 10J .0103 specific to the fee schedule under North Carolina's Workers' Compensation Act for services provided by ambulatory surgical centers (ASCs).

In April 2015, the Industrial Commission established new Workers' Compensation fee schedules for hospitals, physicians, and ASCs. However, in promulgating regulations to establish a new fee schedule for ASCs, the Industrial Commission failed to follow the required process set forth in the Administrative Procedure Act. Consequently, the fee schedule was ruled invalid on August 9, 2016 by Wake County Superior Court Judge Paul Ridgeway.

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- The reduction in rates to 200% of Medicare ASC fee schedule would be very harmful to the workers' compensation system.
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North Carolina law requires that fee schedules adopted by the Commission be adequate to ensure that injured workers are provided the standard of services and care intended by the Workers' Compensation Act and that providers are reimbursed reasonable fees for providing these services. The Commission's proposed rule does not address all procedures that were being conducted in ambulatory surgery centers prior to the implementation of the invalid fee schedule on April 1, 2015.

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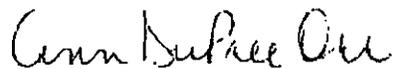
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For the reasons set forth above, **Eastern Regional Surgical Center** opposes the proposed temporary rule. We recommend that the Commission initiate permanent rulemaking with the proposed fee schedule recommendation in SCA's September 26, 2016 proposal, which is

consistent with North Carolina statutory requirements, accounts for all procedures that can be performed in ASCs, and results in substantial savings to the Workers' Compensation system in North Carolina.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Ann DuPree Orr".

**Ann DuPree Orr RN BSN CNOR
Administrator**

cc: Kendall Bourdon
Meredith Henderson

CHARLOTTE SURGERY CENTER

an affiliate of **SCA**

November 28, 2016

North Carolina Industrial Commission
430 N. Salisbury Street
Raleigh, NC 27603

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The Charlotte Surgery Center supports the proposal submitted by Surgical Care Affiliates, LLC ("SCA") on September 26, 2016 to amend the previously declared invalid Rule 04 NCAC 10J .0103 specific to the fee schedule under North Carolina's Workers' Compensation Act for services provided by ambulatory surgical centers (ASCs).

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CHARLOTTE SURGERY CENTER

an affiliate of **SCA**

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CHARLOTTE SURGERY CENTER

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Thank you for your consideration.

Sincerely,



Thomas J. Lally, CEO
Administrator

cc: Kendall Bourdon
Meredith Henderson

CARY ORTHOPAEDICS



& spine specialists

www.caryortho.com

Douglas L. Gollehon, M.D.

Brian T. Szura, M.D.

Douglas J. Martini, M.D.

William K. Andersen, M.D.

Derek L. Reinke, M.D.

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November 28, 2016

North Carolina Industrial Commission
430 N. Salisbury Street
Raleigh, NC 27603

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Sincerely,



admin Director

cc: Kendall Bourdon
Meredith Henderson

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November 28, 2016

North Carolina Industrial Commission
430 N. Salisbury Street
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Sincerely,

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November 28, 2016

North Carolina Industrial Commission
430 N. Salisbury Street
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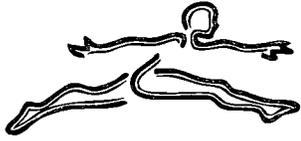
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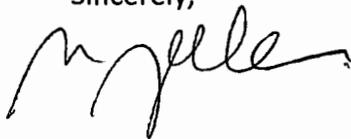
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