



Rules for the Utilization of Opioids, Related Prescriptions, and Pain Management Treatment in Workers' Compensation Claims

Executive Summary

North Carolina Industrial Commission



Background of the Opioid Utilization Rules

- In Session Law 2015-241, the General Assembly tasked the Industrial Commission with studying the potential implementation of a drug formulary in workers' compensation claims filed by State employees. The Commission's April 1, 2016 report focused in part on the troubling issues of opioid misuse and addiction originating from or exacerbated by workplace injuries.
- In response, Chairman Allen created the NC Workers' Compensation Opioid Task Force to study and recommend solutions to the problems arising from the intersection of the opioid epidemic and related issues in workers' compensation claims.
- The Opioid Task Force was composed of representatives of various stakeholders, including employee representatives, self-insured employers, insurance carriers, attorneys, physicians, hospitals, and public health officials.

The Work of the Opioid Task Force

- The Opioid Task Force met from April 2017 through December 2017, intensively discussing possible measures that balance the interests of all stakeholders.
- After several meetings, the Task Force determined that utilization rules were likely to have a meaningful effect on the use of opioids and related issues in workers' compensation claims and could be developed through reasonable stakeholder compromise.
- The Task Force spent months reviewing the NC STOP Act, CDC Guidelines for Prescribing Opioids for Chronic Pain, other professional opioid guidelines, and other states' opioid rules and guidelines for workers' compensation claims.
- The Task Force then developed draft utilization rules over the course of multiple meetings and rounds of review.

The Rulemaking Process

- The Industrial Commission reviewed the Opioid Task Force's draft rules and sought informal public comment on them prior to formal rulemaking.
- The Commission then adopted a set of rules to govern the utilization of opioids, related medications, and pain management in workers' compensation claims. (See [press release](#) for more information.)
- The rules were promulgated through the permanent rulemaking process and went into effect May 1, 2018.
- The Industrial Commission also adopted a Companion Guide to the Rules to assist employees, health care providers, and other stakeholders in understanding and implementing these new Rules.

Legal Authority for Opioid Utilization Rules

- The Industrial Commission has the statutory authority under G.S. § 97-25.4 to promulgate utilization rules and guidelines for medical treatment in workers' compensation cases.
- In Session Law 2017-203, Section 4, the General Assembly directed the Industrial Commission to “adopt rules and guidelines, consistent with G.S. 97-25.4, for the utilization of opioids, related prescriptions, and pain management treatment.”

Opioid Utilization Rules: Highlights

- Following the precedents of the NC STOP Act, the CDC Guidelines for Prescribing Opioids for Chronic Pain, and the workers' compensation opioid rules of other states, the Rules address the following issues:
 - First prescription, acute phase, and chronic phase protocols.
 - Limits on morphine equivalent dose per day.
 - Number of days' supply per opioid prescription.
 - Number and types of opioids prescribed.
 - Checking the Controlled Substances Reporting System (CSRS).
 - Administering urine drug testing.
 - Assessing the employee's risk of opioid-related harm using screening tool.
- The Rules also address benzodiazepines, carisoprodol, opioid antagonists, non-pharmacological pain treatment, and dependence or addiction treatment referrals.

General Provisions of the Rules

(Rule 11 NCAC 23M .0101)

➤ Goals:

- Ensure employees are provided the care intended by Workers' Compensation Act and medical costs are contained.
- Address the outpatient utilization of opioids, related prescriptions, and pain management treatment for non-cancer pain in workers' compensation claims.

➤ Application:

- The Rules apply to all claims arising under the Workers' Compensation Act, but they do **not**:
 - Apply to medications administered in a health care setting (e.g., hospitals).
 - Constitute medical advice or a standard of medical care.
- The provisions limiting the prescription of opioids and certain other medications do not apply to claims in which the employee received opioid treatment for more than 12 consecutive weeks immediately preceding the effective date of the rules.
- The parties may use the medical motion process if a dispute arises.

Important Definitions in the Rules

(Rule 11 NCAC 23M .0102)

- This rule defines several key terms used throughout the Rules:
 - The term “opioid” is used in this summary for brevity, but the Rules use the phrase “targeted controlled substance” and its definition from the NC STOP Act.
 - “Acute phase” is defined as 12 weeks of treatment for pain following an injury by accident, occupational disease, surgery for an injury by accident or occupational disease, or subsequent aggravation of an injury by accident or occupational disease. There may be more than one acute phase.
 - “Chronic phase” is defined as continued treatment for pain immediately following a 12-week period of treatment for pain using a targeted controlled substance.
- Where possible, other definitions are taken from the NC STOP Act, Chapter 90 of the NC General Statutes, and guidance from the CDC and FDA.

Waiver of the Rules

(Rule 11 NCAC 23M .0103)

- This rule provides the procedure by which the Commission may grant a waiver of the Rules based on the circumstances of a particular case.
- An employer or carrier may authorize treatment outside of the Rules based on medical documentation and communication with the health care provider.
- In most cases, it is expected that the parties will be able to resolve disputes about treatment for pain and the application of the Rules or that the Commission will enter an Order resolving the dispute if requested. Nothing prevents the parties from reaching an agreement for safe recommended treatment outside the Rules.

First Prescription of an Opioid

(Rule 11 NCAC 23M .0201)

When issuing the first prescription of pain medication in an acute phase, a health care provider must:

- Document that non-opioid treatment is insufficient.
- Review information in the CSRS regarding the employee for the preceding 12 months.
- Prescribe shortest duration necessary, not to exceed 5-day supply, or 7-day supply post-surgery.
- Prescribe lowest effective dosage, not to exceed 50 MME/day, using one short-acting opioid only.
 - Exception for employees taking more than 50 MME/day before surgery.
 - No additional opioid prescription may be provided for dispensing at a later time.

A health care provider may **not**:

- Prescribe transcutaneous, transdermal, transmucosal, or buccal opioids without documentation of inadequacy of oral dosing.
- Prescribe fentanyl for the first prescription.

Prescribing Opioids in the Acute Phase

(Rule 11 NCAC 23M .0202)

When prescribing subsequent pain medications in an acute phase, a health care provider must:

- Document that non-opioid treatment is insufficient.
- Review the CSRS regarding employee for the preceding 12 months every time an opioid is prescribed in the acute phase.
- Prescribe the shortest duration necessary to treat an employee's pain.
- Prescribe the lowest effective dosage, not to exceed 50 MME/day, using one short-acting opioid only.
 - Exception to allow up to 90 MME/day with documentation of medical justification.

A health care provider may **not**:

- Prescribe transcutaneous, transdermal, transmucosal, or buccal opioids without documentation of inadequacy of oral dosing.
- Prescribe fentanyl in the acute phase.

Prescribing Opioids in the Acute Phase

(Rule 11 NCAC 23M .0202)

(continued)

After the first prescription and an additional 30 days of opioid treatment (35-37 days total), a provider may only continue opioid treatment after completing certain requirements:

- Administer a presumptive urine drug test (UDT).
 - If the presumptive UDT shows nondisclosed illicit or controlled substances or does not show prescribed controlled substances, order a confirmatory UDT.
 - The provider has discretion regarding prescribing opioid while waiting for confirmatory UDT results.
- Administer clinically validated tool for assessing the risk of opioid-related harm.
- Document in the medical record whether the CSRS review, UDT, or risk tool indicates increased risk of opioid-related harm. If opioid treatment is continued where there is increased risk, document the medical justification in the medical record.

Prescribing Opioids in the Chronic Phase

(Rule 11 NCAC 23M .0203)

When prescribing pain medication in a chronic phase, a health care provider must:

- Document that non-opioid treatment is insufficient.
- Review the CSRS regarding employee for the preceding 12 months at every office visit or every three months, whichever is more frequent.
- Prescribe the shortest duration necessary to treat an employee's pain.
- Prescribe the lowest effective dosage, not to exceed 50 MME/day.
 - Exception to allow up to 90 MME/day with documentation of medical justification.
 - Provider may seek preauthorization from employer/carrier for more than 90 MME/day.
- Prescribe only one opioid at a time unless provider documents medical need.

Prescribing Opioids in the Chronic Phase

(Rule 11 NCAC 23M .0203)

(continued)

When prescribing pain medication in a chronic phase, a health care provider may **not**:

- Prescribe more than two opioids at a time, to include only one short-acting opioid and one long-acting or extended release opioid.
- Prescribe methadone in the chronic phase without seeking preauthorization from the employer/carrier.
- Prescribe transcutaneous, transdermal, transmucosal, or buccal opioids without documentation of inadequacy of oral dosing.

A provider shall seek preauthorization from the employer/carrier before prescribing transdermal fentanyl.

Prescribing Opioids in the Chronic Phase

(Rule 11 NCAC 23M .0203)

(continued)

Urine Drug Tests (UDTs) in the chronic phase:

- The health care provider must administer a presumptive UDT **before** first prescribing an opioid in the chronic phase.
- If the presumptive UDT shows nondisclosed illicit or controlled substances or does not show prescribed controlled substances, the provider must order a confirmatory UDT.
 - The provider has discretion regarding prescribing opioid while waiting for confirmatory UDT results.
- After the first UDT, the provider must administer 2-4 UDTs per year within the provider's discretion using the same protocol.
 - Additional UDTs can be authorized by the employer/carrier.
 - Limitations on the number of UDTs does not apply to patients being treated for substance use disorder in addition to pain management.
- Providers may require random and unannounced UDTs.

Prescribing Opioids in the Chronic Phase

(Rule 11 NCAC 23M .0203)

(continued)

- If the employee's opioid treatment is transferred to another practice during the chronic phase, the new provider shall administer and document the results of a clinically validated tool for assessing the risk of opioid-related harm.
- A provider shall document in the medical record whether a CSRS review, UDT, or risk tool indicates increased risk of opioid-related harm. If opioid treatment is continued where there is increased risk, the provider must document the medical justification.

Provisions Regarding Other Medications

(Rules 11 NCAC 23M .0201-.0203 (H), (I), and (J))

These provisions apply to the first prescription and acute and chronic phases:

Health care providers may **not**:

- Prescribe benzodiazepines for pain or as muscle relaxers.
- Prescribe carisoprodol at the same time as an opioid in the acute phase.
- Prescribe carisoprodol at the same time as an opioid in the chronic phase without first seeking preauthorization from the employer/carrier.

If an employee is taking benzodiazepines or carisoprodol prescribed by another provider:

- Exercise extreme caution in prescribing an opioid and advise employee of the potential risks of taking such medications with opioids.
- Notify the provider prescribing benzodiazepines or carisoprodol of the opioid prescription.
- The Companion Guide includes a [table](#) which provides an overview of the phases of treatment under the Opioid Utilization Rules.

Provisions Regarding Other Medications

(Rules 11 NCAC 23M .0301)

A provider shall consider co-prescribing an opioid antagonist to employees if one of the following conditions is present:

- Employee takes benzodiazepines and an opioid.
- Employee takes more than 50 MME/day.
- Employee has a history of drug overdose.
- Employee has a history of substance use disorder.
- Employee has a history of an underlying mental health condition that poses increased risk of overdose.
- Employee has a medical condition or co-morbidity that poses increased risk of overdose.

Prescription for an opioid antagonist shall be written to allow product selection by employer/carrier, to include FDA-approved intranasal formulation.

Non-Pharmacological Pain Treatment

(Rules 11 NCAC 23M .0401)

- A provider shall consider and may prescribe non-pharmacological treatments for pain including, but not limited to, physical therapy, chiropractic services, acupuncture, massage, cognitive behavioral therapy, biofeedback, and functional restoration programs.
- The employer or carrier may request additional information from the provider regarding the prescribed treatment by any method allowed pursuant to the Workers' Compensation Act.
- The Commission developed [a non-mandatory form](#) that employers/carriers may use to request additional information regarding non-pharmacological treatment recommendations from health care providers.

Dependence or Addiction Treatment

(Rules 11 NCAC 23M .0501)

- If a provider believes that an employee may benefit from an evaluation for discontinuation or tapering of an opioid or treatment for dependence or addiction to an opioid, the provider may refer the employee to an appropriate provider for evaluation.
 - The employer or carrier may request additional information from the provider regarding the referral by any method allowed pursuant to the Workers' Compensation Act.
- If treatment is recommended following the evaluation, the employer or carrier may request additional information from the recommending provider regarding the treatment by any method allowed pursuant to the Workers' Compensation Act.
- The Commission developed two non-mandatory forms that employers/carriers may use to request additional information regarding recommendations for [opioid tapering or discontinuation](#) and for [substance use disorder treatment](#) from health care providers.



Industrial Commission

Thank you for reviewing this presentation.

The Opioid Utilization Rules are available at
<http://www.ic.nc.gov/OpioidUtilizationRules110118.pdf>.

The Companion Guide is available at
<http://www.ic.nc.gov/OpioidRulesCompanionGuide.pdf>.

Additional resources and materials are available at
<http://www.ic.nc.gov/OpioidRulesResourcePage.html>.

Updated November 1, 2018.

This executive summary is designed to give general information only.
It is not intended to give legal advice or answer all questions regarding the Opioid Utilization Rules.