

WCRI

## ***Medical Payments Remain Lower in NC***

Medical payments per claim in North Carolina were lower than typical in the 17 states compared in WCRI's recent update of medical benchmarks in North Carolina. For 2022 claims at an average of 12 months of experience, the average medical payment per claim in North Carolina was 33 percent lower than in the 17-state median, and 31 percent lower for 2019 claims at the 36-month maturity.

The results are from *CompScope Medical Benchmarks for North Carolina by Carol Telles, 25th edition*. The latest edition is one of an annual series of analyses by WCRI that benchmarks the performance of North Carolina workers' compensation system with 16 states. The study focused on costs, prices, and utilization of medical care, and examines these medical services in the aggregate, by type of provider, and by type of medical service.

Other states in the study include Arkansas, California, Florida, Illinois, Indiana, Iowa, Louisiana, Massachusetts, Michigan, Minnesota, New Jersey, North Carolina, Pennsylvania, Tennessee, Texas, Virginia, and Wisconsin. Based in Massachusetts, the Workers Compensation Research Institute is an independent, not-for-profit research organization.

WCRI found for 2022 claims at 12 months of experience, at an average of about \$10,000 medical payments per claim were 33 percent lower in North Carolina than the median of the 17 states in the study (at roughly \$15,000). Similarly, for 2019 claims at 36 months of experience, medical costs per claim were 31 percent lower in North Carolina (\$13,400 versus \$19,500 in the median state).

A breakdown by components indicates payments were lower in North Carolina than typical for both nonhospital and hospital outpatient care. For nonhospital services, prices paid and utilization were fairly close to the median state. However, ASC facility payments were 28 percent lower in North Carolina than typical, contributing to the lower nonhospital payments.

WCRI credits the state's adoption of a Medicare-based fee schedule for restraining cost. Following the change, which went into effect beginning in 2015, medical payments decreased rapidly for both outpatient and inpatient care. For example, hospital outpatient payment decreased by 25 percent from 2014 to 2015, 9 percent in 2016, and 4 percent in 2017.

"As a result of these changes, hospital outpatient payments per claim in North Carolina were lower than typical among the states in 2022 (adjusted for injury/industry mix). Prior to 2013, hospital outpatient payments per claim were higher in North Carolina than in most study states," the study concludes.

WCRI says the COVID-19 pandemic has also been a factor in restraining medical costs. Drops in utilization contributed to a decrease or stability in nearly all study states from 2019 to 2021. In 2022, however, medical payments per claim increased in more than half of the states.

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## ***Sturdivant* – The Final Chapter**

By: Tracey Jones

When the North Carolina legislature created the Workers' Compensation Act in 1929, it contained a 400-week cap on indemnity benefits. In 1973 the General Assembly amended NCGS §97-29 to remove the 400-week cap for cases arising on or after July 1, 1975. This statutory change resulted in a significant increase in indemnity exposure for employers and their insurance carriers and increased litigation over claimants' entitlement to on-going benefits.

In 2011, the General Assembly amended the Act to limit temporary total disability (TTD) benefits to 500 weeks, allowing employees to apply, after 425 weeks from the date of first disability, for extended benefits beyond the 500-week cap, if they could prove they had a "total loss of wage-earning capacity," pursuant to NCGS §97-29(c). This amendment applied to cases that occurred on or after June 24, 2011.

Among the cases litigating extended benefits, the NC Court of Appeals (COA) was called upon for the first time to clarify the meaning of "total loss of wage-earning capacity" in April 2023 in *Sturdivant v. N.C. Dep't of Pub. Safety*. The COA interpreted the phrase "total loss of wage-earning capacity" to be synonymous with "total disability." In so doing, the Court accepted the use of the same standard of proof for extended benefit cases as is used in NCGS §97-29 cases within the 500-week cap. This was contrary to the legislative history surrounding the creation of the 500-week cap as well as to the defense bar's contention that based on the plain language of the statute, the standard for extended benefits is greater than the standard to prove disability in cases within the first 500 weeks.

In response to this decision, the General Assembly amended NCGS §97-29(c) in October 2023. The amendment made clear the COA was applying an incorrect definition of "total loss of wage-earning capacity," in NCGS §97-29(c), and clarified it is a separate and different standard than "disability" as defined by NCGS §97-2(9). The new language also made clear suitable employment as defined by NCGS §97-2(22) does not apply to the extended benefits statute. Finally, the new language stated the Commission may consider pre-existing and injury-related physical and mental limitations, vocational skills, education, and experience in determining whether the employee has sustained a total loss of wage-earning capacity.

This amendment controlled in claims going forward, but left unaddressed whether the COA's statutory construction espoused in *Sturdivant* would apply to those pending cases that arose after the 2011 amendment took effect and before the 2023 legislative amendment clarified the legislature's intent.

On December 13, 2024, the N.C. Supreme Court granted discretionary review in *Sturdivant* and held the General Assembly's clarification was not necessary because it reflects



what the statute's plain language meant all along, thereby overturning the COA's statutory interpretation of "total loss

of wage-earning capacity." The Supreme Court reiterated "total loss of wage-earning capacity" in the 2011 amendment means the total loss of the employee's personal capacity to earn wages in any type of employment. Further, the Court looked at the title of the Act, "An Act Protecting and Putting North Carolina Back to Work by Reforming the Workers' Compensation Act", and noted the legislative intent was clear in the title.

This is a significant win for the defense bar as it clearly establishes there is a heightened standard of proof for extended benefits cases.

### Practical Take Aways

- Nevertheless, defendants should remain vigilant in defending these cases. Below is a list of practice pointers:
- Each case will be fact specific; documentation and communication remain critical.
- Have a detailed understanding of the injured worker's job history, educational background and daily activities, including volunteer activities.
- Develop solid medical evidence about the claimant's loss of use or impairment ratings by highlighting the functionality of the injured body part.
- Obtain detailed testimony, including dates, times and follow-ups, from the claimant regarding their job search, or lack thereof.
- Obtain credible expert opinions, both medical and vocational, that clearly support a finding that a claimant can participate in any form of employment.
- The vocational expert should meet with the claimant in person to identify jobs within the claimant's labor market that are readily available in light of his or her work restrictions and educational and vocational background.
- The vocational expert should contact potential employers to determine the likelihood that the claimant can secure employment within his or her work restrictions.

*Tracey Jones, co-chair of Teague Campbell's Workers' Compensation practice group, is a graduate of the University of North Carolina and Wake Forest University School of Law.*

## ***FDA approves non-opioid pain reliver***

Medical providers are hailing the recent approval of suzetrigine, a non-opioid pain drug sold under the brand name Journavx, for treatment of moderate to severe acute pain, such as experienced following a surgical procedure.

It is the first new type of pain reliever approved by the Food and Drug Administration in more than two decades. Suzetrigine is typically dispensed as a 50-milligram prescription pill to be taken every 12 hours after a larger starter dose. Vertex Pharmaceuticals, the company that developed the new drug, said it has set a wholesale cost of \$15.50 per 50-mg pill but that patient assistance programs would be available. Observers note physicians and patients would have to wait to learn what insurance companies might do in terms of coverage.

Suzetrigine is the first new painkiller approved in the US since Celebrex, a type of nonsteroidal anti-inflammatory drug called a Cox-2 inhibitor, which was approved in 1998. “A new non-opioid analgesic therapeutic class for acute pain offers an opportunity to mitigate certain risks associated with using an opioid for pain and provides patients with another treatment option,” Dr. Jacqueline Corrigan-Curay, acting director of the FDA’s Center for Drug Evaluation and Research, said in a news release. “This action and the agency’s designations to expedite the drug’s development and review underscore FDA’s commitment to approving safe and effective alternatives to opioids for pain management,” he said.

“This is an incredible day for patients and physicians alike who now have an approved non-opioid treatment that delivers effective acute pain relief and a favorable safety profile without addictive potential,” says Jessica Oswald, M.D., M.P.H., who serves on Vertex’s acute pain steering committee. “I believe JOURNAVX could redefine the management of pain and become a foundational treatment option for people with all types of moderate-to-severe acute pain, where options aside from opioids have been so desperately needed,” she says.

Surveys have shown medications that control pain are the most commonly prescribed type of drug in hospitals. Also, about 80 million Americans fill prescriptions each year for medications to treat new instances of moderate to

severe pain, according to Vertex. Of these, about 40 million prescriptions are for an opioid. Nearly 10% of acute pain patients treated initially with an opioid linger on prolonged opioid use, and about 85,000 patients will develop opioid use disorder annually, Vertex adds.

Unlike opioid medications, which dull the sensation of pain in the brain, suzetrigine works by preventing pain-signaling nerves around the body from firing in the first place. CNN quotes Dr. Sergio Bergese, an anesthesiologist at Stony Brook University’s Renaissance School of Medicine, as explaining “this drug, what it is doing is interrupting that path, so even though the tissue injury exists, the brain doesn’t know.”

And crucially, suzetrigine creates no euphoria or high such as sometimes induced by opioids, so doctors believe there’s little potential for it to create addiction or dependence. The medication was discovered after researchers learned about a family of fire-walkers in Pakistan who lacked a gene which sends pain signals to the brain.

Members of this family could walk over hot coals without flinching. “They knew that they were on something hot; they knew they could feel the coals. So it’s not impacting the nerves that do heat and touch and stuff like that. It is just these pain-conducting nerves,” Stuart Arbuckle, chief operating officer of Vertex Pharmaceuticals, told *CNN*.

Still, it took scientists 25 years to figure out how to exploit that pain-conducting mechanism to develop a medication. Researchers believe Suzetrigine’s approval means other drugs that could work even better are likely to follow.

“It is an important step forward, because it provides proof of concept that a [sodium-channel blocker] can reduce pain in humans. That opens up the door to a second generation of even more effective medications,” Dr. Stephen Waxman, who directs the Center for Neuroscience and Regeneration Research at the Yale School of Medicine, told *CNN*.

# coming up

Wednesday, March 26- Friday, March 28, 2025

NCASI Annual Conference 2025

Holiday Inn Resort Lumina on Wrightsville Beach

NC Workers' Comp News is produced quarterly by the North Carolina Association of Self-Insurers. To be added to our distribution list, please contact Moby Salahuddin, executive director, at [mobysal@outlook.com](mailto:mobysal@outlook.com)

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## NC Industrial Commission Update

Pursuant to Rule 11 NCAC 23E .0203(a)(2), an employer or their insurance carrier is required to pay the \$200 Report of Mediator fee in full upon receipt of an invoice from the Industrial Commission.

Effective February 8, 2025, the Industrial Commission will allow employers and carriers 30 days from the invoice date within which to pay the invoice and avoid a statutory late payment penalty and interest. Previously, the Commission had set the payment due date as 7 days from the deadline for completing mediation or 7 days from the date mediation was completed, whichever was earlier.

The Industrial Commission emails Report of Mediator fee invoices at the time the mediator is appointed. The Report of Mediator invoice is sent to defense counsel by email shortly after the Appointment of Mediator Order is emailed. Upon receipt of the Report of Mediator invoice, the \$200 fee can be paid online via credit card (MasterCard or Visa) or e-Check. A link for online payment is provided in the email. The \$200 fee also may be paid by paper check mailed to the Commission, but parties are strongly encouraged to pay online via credit card or e-Check.

### Carolyn J. Thompson Appointed to Serve as Deputy Commissioner

Carolyn J. Thompson has been appointed to serve a six-year term as a Deputy Commissioner beginning February 3, 2025. Thompson previously served a partial term as a Deputy Commissioner from January 2023 through September 2023, which ended when she was appointed to the North Carolina Court of Appeals by Governor Roy Cooper.

Thompson previously served as a judge at the District Court, Superior Court, and Court of Appeals. She also has well over a decade of litigation experience in civil and criminal matters. While practicing law, Thompson served as a certified mediator in Superior Court cases and Family Financial Settlement disputes. Thompson is a graduate of Hampton University and the North Carolina Central University School of Law. She will be assigned to the Charlotte office.

### Baddour and Griffin to Continue to as Chair and Vice-Chair

Commissioner Philip A. Baddour, III and Commissioner Myra L. Griffin as Vice-Chair have been serving in these roles since February 2019.

### Gina Cammarano to Serve as General Counsel

Gina Cammarano had been serving as acting general counsel since June of 2023. Since 2019, Ms. Cammarano also has served as the commission's rulemaking coordinator.

Prior to joining the Commission in 2019, Ms. Cammarano represented plaintiffs in workers' compensation claims for 18 years. Ms. Cammarano earned her undergraduate degree from the University of Notre Dame and her J.D. from the University of North Carolina School of Law.