

Milbank Quarterly

Opioid-Review Programs Work

By Moby Salahuddin

Workers' compensation programs that seek to rein in opioid prescribing have not generally resulted in unmanaged pain or reduced function in patients, or led to resistance from patients or providers, or damaged patient-provider relationships, or harmed clinical autonomy, according to research published in the September 2024 issue of *The Milbank Quarterly*.

Despite fears articulated by pharmaceutical companies and patient advocates, opioid review programs have been well-received by patients and providers and led to more cautious prescribing than in the past. Also, both patients and providers reported collaborative pain-management relationships and satisfactory pain control for patients.

Researchers looked at opioid review programs - a form of quality improvement based on utilization review - implemented by workers' compensation agencies in Washington and Ohio. "The consequences of opioid regulations have been generally positive: providers report more limited prescribing and a focus on multimodal pain control; patients report satisfactory pain control and recovery alongside collaborative relationships with providers," the researchers report.

"Although interacting with workers' compensation agencies involves difficulties typical of interacting with other insurers, opioid controls seem to have generally positive effects and are generally perceived favorably," they conclude.

The recently published research confirms other broad-based findings that show a decline in opioid prescribing in workers' compensation. The National Institute for Occupational Safety and Health Safety notes that in 2022, 32% of workers' compensation claims with prescriptions had at least one prescription for opioids, compared to 2012 when 55% of such claims included opioids.

In the study reported in *The Milbank Quarterly*, researchers looked at programs adopted by Ohio and Washington specifically designed to reduce unsafe prescribing. These programs include systematic methods to review opioid-prescribing practices, along with advising prescribers on the best practices for use of opioids and comprehensive pain-management. The review programs end coverage of opioid prescriptions that exceed safe limits or that do not achieve functional goals.

In WA, the Department of Labor and Industries requires prior authorization for any opioid prescribed more than six weeks after a worker's injury and denies coverage of prescriptions for which the prescriber has not documented best prescribing practices and clinically meaningful improvement of the patient's pain and function.. In OH, the Bureau of Workers' Compensation has the authority to retrospectively review claims of a worker receiving an opioid prescription for more than six weeks after the injury. If this review reveals that best practices for prescribing are not being documented, the prescriber receives a series of up to three letters asking them to come into compliance; if they do not, the bureau can stop covering the prescription.

Although overt resistance to prescribing regulations was rare, it was quite common for patients and providers to object to other practices and procedures of their state's WC agencies. Patients' most common complaints dealt with long approval and appeal process wait times, and delays caused by bureaucratic regulations. In addition, many patients said they were frustrated by sparse communications or lack of transparency from these agencies.

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Continued Decline in Number of Comp Cases File

By: Matt Flammia

Recently, the North Carolina Industrial Commission released its 2024 Annual Report, and for the ninth time in the last ten years, there was a decrease in the number of total claims filed with the Industrial Commission. The only year when claims slightly increased was during the 2020-2021 fiscal year, which was during the global pandemic. This appears to be a trend that is going to continue for a variety of reasons but is most likely due to the increased attention and effort by employers to reduce workplace hazards.

According to the Commission's Annual Report, there has been a 36.5% decrease in the number of claims filed in the past ten years.

Year	Claims Filed
2014 - 2015	75,686
2015 - 2016	69,286
2016 - 2017	64,767
2017 - 2018	63,399
2018 - 2019	61,776
2019 - 2020	59,410
2020 - 2021	60,661
2021 - 2022	57,616
2022 - 2023	52,703
2023 - 2024	48,001

There are likely a number of factors that have contributed to the decrease but I believe it shows the work and investment North Carolina employers have made to improve safety standards have had a beneficial impact. We have seen employers take the time and effort to implement stricter safety standards and protocols within their organization, update their employer handbooks, increase the number of training exercises, invest in advanced technology and data, and consider ergonomic solutions within the workplace. In addition, a number of employers have taken steps to be much more proactive and encourage better general health from their employees, including offering better private healthcare options and wellness benefits, which likely has helped with general muscular-type injuries within the workplace. Taking all of this into account, it appears that the time, money and effort employers have invested to reduce risk within the workplace continues to pay off.

Along with the increased focus on workplace safety and wellness, other factors that likely have contributed to the decrease in claims filed is the economy and the shift to more remote work. Simply put, employees are less likely to take steps that they feel could jeopardize their position with their employer. Given the increase in health benefits and private insurance from employers, employees have elected to pursue medical treatment on their



own instead of through the workers' compensation system. There is a thought that the increased number of jobs offered for remote work and hybrid work over the past five years has contributed to the decrease in claims filed. While an employee working remotely can file a claim from an injury suffered at home, there is a belief that employees do not want to jeopardize their ability to work from home by filing claims. Again, this is a hot topic within the workers' compensation industry, and while there was a steady decline in claims filed before the shift to more remote work, it could be an additional factor in the decreased number of claims. If remote work is going to be offered, we recommend that all employers are proactive in establishing written guidelines for the at-home set-up, which will help reduce risk for potential claims.

I expect the trend to continue, but it might plateau to some degree. With the increased industry and population within North Carolina, there are going to be a certain of number of claims filed yearly, which is unavoidable and why the Workers' Compensation Act is in place. However, as long as employers continue to be invested in increased safety, training, health and wellness, and reducing risk within the workplace, the number of claims will likely continue to go down.

Finally, the North Carolina Industrial Commission's Annual Report shows a decline in the settlement rate for claims. In 2023-2024, the settlement rate was seventy-one percent (71%), which is the lowest it has been over the past ten years, and down from seventy-four percent (74%) last year. It isn't a big decrease, and this year could be an outlier, but we know remote mediations have become even more of the norm. Within my practice, I recommend that mediations are held in person whenever possible. I do think virtual mediations work, but I believe there is still a benefit to having everyone in one location, invested and focused on the settlement discussions and the claim, instead of appearing remotely where there are more distractions.

Data and numbers based on North Carolina Industrial Commission's 2024 Annual Report: <https://www.ic.nc.gov/IC%20Annual%20Report%20FY%202024.pdf>

Matt Flammia is a partner in Teague Campbell's Raleigh office. He is a graduate of North Carolina State University and North Carolina Central University School of Law.

NC Industrial Commission Update

By Tracey L. Jones

Extension of Time Periods for Acts to be Done for Thirteen Western North Carolina Counties Until October 28, 2024

Due to the existing and continuing catastrophic conditions resulting from severe weather and flooding in Western North Carolina, on October 11, 2024 the Chief Justice of the North Carolina Supreme Court issued an Order extending until October 28, 2024 the time and periods of limitation for filing and for acts due to be done in the following thirteen counties: Avery, Buncombe, Haywood, Henderson, Jackson, Madison, McDowell, Mitchell, Polk, Rutherford, Transylvania, Watauga, and Yancey.

The Chair of the Commission has entered an Amended Order extending all time periods as outlined in the Chief Justice's recent Order. All time periods for acts to be done contained in any Industrial Commission rule are tolled from September 26, 2024 until October 28, 2024 for parties located in any of the thirteen counties listed in the Chief Justice's October 11, 2024 Order. Any act due to be done between the dates of September 26, 2024 and October 28, 2024 shall be deemed to be timely done if it is done before the close of business on October 28, 2024.

Documents permitted to be filed electronically may be filed until 11:59 p.m. on October 28, 2024. For parties who are not required to file documents electronically and choose to hand-deliver a document, the document may be filed at the main office of the Industrial Commission until 5:00 p.m. on October 28, 2024. The main office of the Industrial Commission is located on the 6th floor of the Dobbs Building, 430 N. Salisbury St., Raleigh, NC 27603. **Please note:** The Commission's October 11, 2024 Amended Order **cannot** be used to extend any **statutory** deadlines for matters under the Commission's jurisdiction; **it only applies to Industrial Commission rule deadlines.** Currently the Industrial Commission has no authority to extend statutory deadlines for matters under the Commission's jurisdiction.

Lauren Halbert Named Director of Compliance Division

Lauren Halbert will begin serving as Director of the Compliance Division effective October 1, 2024. Ms. Halbert has been a member of the Industrial Commission's Compliance Division since 2017, when she joined the division as Assistant Director of Compliance.

Full Commission Chief Administrative Officer and Lead Counsel Update

April Gladkin, who served as the Full Commission's Chief Administrative Officer and Lead Counsel, has left the Industrial Commission to return to the private practice of law. Melissa Botiglione will be serving as Acting Full Commission Chief Administrative Officer and Lead Counsel effective September 3, 2024. Ms. Botiglione has served as Counsel to the Full Commission since December 2021, and she served as a Special Deputy Commissioner assigned to the Deputy Commissioner Section from April 2020 until November 2021.

Ashley M. Moore Reappointed to Second Term as Deputy Commissioner and Named Director of Claims Administration

Ashley M. Moore has been reappointed to a second six-year term as a Deputy Commissioner and will begin serving as the Director of Claims Administration effective September 3, 2024.

Huseby Online Order Form for Hearing Transcripts

Huseby has created a special landing page and order form that a party of record can use to order a hearing transcript in any Industrial Commission case that has not been appealed to the Full Commission or Court of Appeals. This online order form can be used both: (1) for hearings that were recorded by Huseby; and (2) for hearings that were recorded by Graham Erlacher. (NOTE: Graham Erlacher has informed the Commission that it has stopped fulfilling prior transcript requests. Therefore, if you ordered a transcript from Graham Erlacher but have not yet received it, you will not be receiving the transcript from Graham Erlacher).

Because medical motion hearing transcripts have a special 7-day turnaround time, please remember to check the "Medical Motion Hearing" box on the online transcript order form if your case is a medical motion hearing. Please note that this online order form should not be used to request a Full Commission hearing transcript in a case that has been appealed to the North Carolina Court of Appeals. If your case has been appealed to the Court of Appeals and you would like to order a Full Commission hearing transcript, follow the procedures set forth in Rules 7 and 18(b)(3) of the *North Carolina Rules of Appellate Procedure* and use the North Carolina Appellate Division forms.

Tracey L. Jones is a senior workers' compensation partner and co-leader of the Workers' Compensation practice group at Teague Campbell.

coming up

Wednesday, March 26- Friday, March 28, 2025

NCASI Annual Conference 2025

Holiday Inn Resort Lumina on Wrightsville Beach

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WCRI Study Looks at Attorney Involvement

A new study from the Workers Compensation Research Institute (WCRI) examines the effect of attorney involvement on the indemnity payments that workers receive following work-related injuries to help them cover their loss of income

“While the workers’ compensation system was envisioned as an administrative and predictable system for dealing with the consequences of work-related injuries, disputes that lead to attorney involvement in the system remain common,” said Sebastian Negrusa, vice president of research at WCRI. “High rates of attorney involvement in the system have contributed to the debate about the impact of attorney involvement on the benefits delivered to workers with injuries,” he added.

The following are some questions the study addresses:

- What is the impact of attorney involvement on the amount of indemnity payments that workers receive after their injuries?
- What impact does attorney involvement have across different injury types, such as fractures, lacerations, contusions, low back pain cases, inflammations, and non-back sprains and strains?

The analysis sample includes information for workers injured between October 1, 2012, and September 30, 2019, in the 31 states covered by the WCRI Detailed Benchmark/Evaluation (DBE) database and evaluated through March 2022. These states represent over 80 percent of the benefits paid in 2017. The WCRI study analyzed more than 950,000 claims with more than seven days of lost time.

Among the findings:

- Nearly 34% of workers that had been absent from work for more than seven days following a work-related injury had an attorney represent them during the claim process. As would be expected, attorneys were more likely to represent claimants in case of severe injuries:
- Neurological Pain: 61% attorney involvement, with a \$40,670 average indemnity benefit
- Inflammations: 43% attorney involvement, with a \$29,913 average indemnity benefit
- Carpal Tunnel: 40% attorney involvement, with a \$21,204 indemnity benefit.
- Spine (back and neck) sprains, strains and non-specific pain: 36% attorney involvement, with a \$15,199 indemnity benefit.

The researchers concluded that although it is clear claims in which attorneys are represented lead to higher compensation, it is not clear whether the higher payouts are because of attorney involvement or because claimants in these cases had suffered more serious injuries.