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MEMORANDUM

TO: Dr. Michael Lancaster, Chief, Clinical Policy

FROM: Richard E. Slipsky, Special Deputy Attorney General

SUBJ: Telemedicine Consults/Initial Evaluations under N.C.G.S. § 122C

DATE: 2 April 2007

Dr. Lancaster,

You have been contacted by Dr. Chester Day from the Albemarle Local Management Entity (LME) who asked about using their psychiatrist to help local Emergency Department (ED) doctors when they perform first evaluations for involuntary commitments in accordance with N.C.G.S. § 122C. They have a telemedicine hookup in their crisis services unit. The LME psychiatrist can view and interview a person who might meet commitment criteria. The psychiatrist then renders an opinion back to the ED doctor who makes his/her findings on the official court forms. The ED doctor can adopt or reject the consulting psychiatrist's opinion, in whole or in part, using his/her own professional judgment.

You asked whether the procedure outlined above meets NC legal requirements. It is my opinion that so long as the doctor (or eligible psychologist or pilot program healthcare professional) who is signing the official form for the initial evaluation has had the opportunity to personally evaluate the patient and has used their own professional judgment in concluding whether the commitment criteria have been met, then it does not matter whether they have utilized a telemedicine consult that assisted them in this process. The ED doctor may, but does not need to participate in the telemedical consult, anymore than the doctor would have to participate in any other consult before coming to a professional conclusion about the care and treatment of a patient.

Let me make clear that while I believe that telemedicine can be used to assist the healthcare professional in making the initial evaluation, there are limits. I do not think that the ED doctor (or eligible psychologist or pilot program healthcare professional) should be a rubber stamp of the LME's psychiatrist. Whoever signs the form finding that the patient is, or is not, mentally ill and dangerous to self or others is representing to the court that they have done a professional

evaluation, utilizing their own skill and judgment. An evaluator, who simply adopts another doctor's opinion without any exercise of judgment, is not evaluating the patient. In short, the responsibility to evaluate for commitment rests with the professional who signs the form, not with a consultant.

We have been asked in the past whether the initial evaluation can be done totally by telemedicine. That is, unlike the Albemarle scenario detailed above, a patient is taken to a facility with telemedicine technology but no one is present who can do an N.C.G.S. § 122C evaluation. The evaluator is at another telemedicine site. We continue to advise you that a NC Court of Appeals decision issued in the early 1980's (well before telemedicine technology was used and accepted by the medical profession) has resulted in an unsettled state of the law in North Carolina. (*McLean v. Sale*, 54 N.C. App. 538, 284 S.E.2d 160 (1981), holding that the initial evaluation must be done in physical presence of doctor so as to allow the evaluator to utilize his/her "five senses"). As a result, we do not think it prudent for practitioners to conduct an initial evaluation using only telemedicine. We recognize that telemedicine is being recognized across the country and the world as meeting the standard of care, and we know that CMS reimburses for psychiatric services delivered through telemedicine to Medicaid patients here in North Carolina. Our law needs to be clarified before full use can be made of the benefits of telemedicine.

This is an advisory letter. It has not been reviewed and approved in accordance with procedures for issuing an Attorney General's opinion. Please let me know if I can be of further assistance.

Richard E. Slipsky
Special Deputy Attorney General