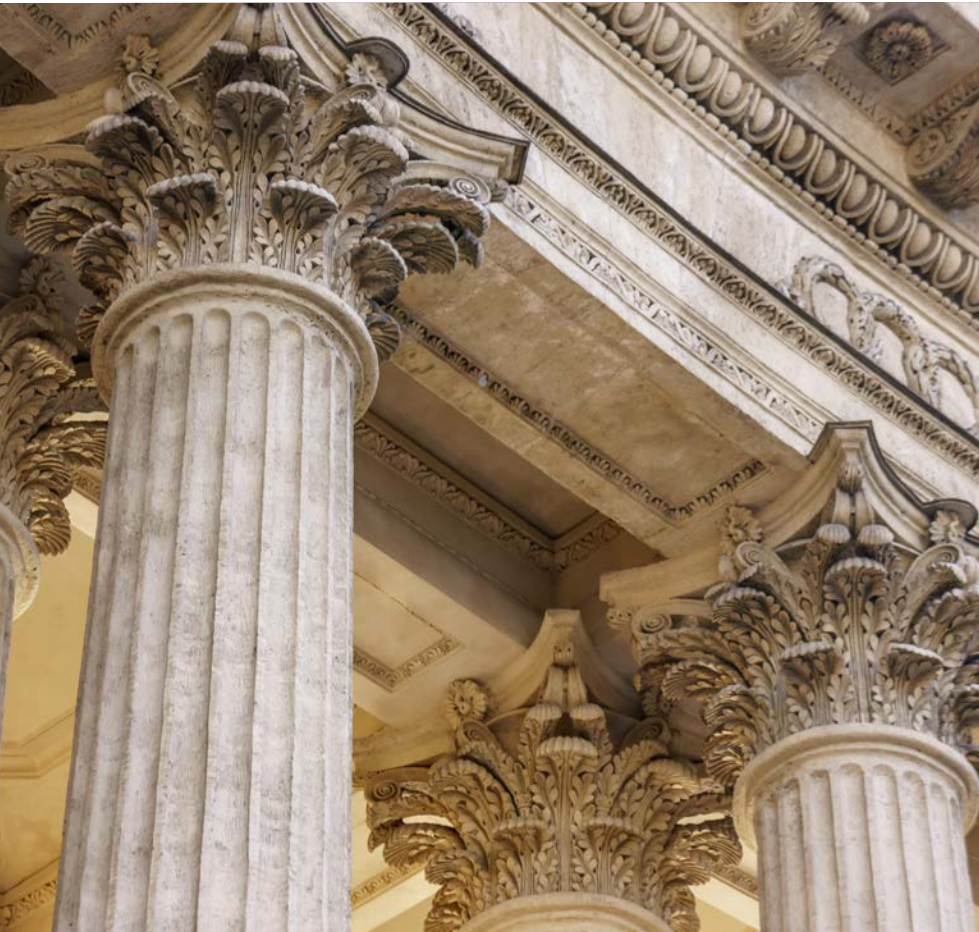




GALLIVAN WHITE BOYD



WORKERS' COMPENSATION DEFENSE GUIDE

2024

SOUTH CAROLINA | NORTH CAROLINA

Helpful Hints, Medicare Compliance, Net Present Value Tables
& Phases of Treatment Under the Opioid Utilization Rules

www.gwblawfirm.com



PHONE NUMBERS

South Carolina Workers' Compensation Commission (SCWCC)

1333 Main Street - Suite 500 • P.O. Box 1715
Columbia, SC 29202 • Phone: 803.737.5700

Claims Department	803.737.6226
Coverage & Compliance	803.737.6203
Executive Director	803.737.5744
Judicial Department	803.737.5672

SCWCC Commissioners

T. Scott Beck, Commission Chair	
Shawnee DeBruhl, Assistant	803.737.5698
Cynthia C. Dooley, Commissioner	
April Cardwell, Assistant	803.737.5660
Michael Campbell, II, Commissioner	
Barbara Cheeseboro, Assistant	803.737.5678
Avery B. Wilkerson, Jr., Commissioner	
Melani Roark, Assistant	803.737.5697
Melody James, Commissioner	
Tamara Morris, Assistant	803.737.5668
Aisha Taylor, Commissioner	
Renee' Smith, Assistant	803.737.5692
Gene McCaskill, Commissioner	
Patty Lundy, Assistant	803.737.5663



SOUTH CAROLINA HELPFUL HINTS



Scheduled Members

§ 42-9-30 provides compensation for the following scheduled members:

Body Loss	Max. Weeks	Body Loss	Max. Weeks
Thumb	65 weeks	Leg	195 weeks
Index Finger	40 weeks	Eye	140 weeks
Second Finger	35 weeks	Hip	280 weeks
Third Finger	25 weeks	Shoulder	300 weeks
Little Finger	20 weeks	Hearing (1 ear)	80 weeks
Great Toe	35 weeks	Hearing (2 ears)	165 weeks
Other Toes	10 weeks	Back *	300 weeks
Hand	185 weeks	Scarring	up to 50 weeks
Arm	220 weeks		
Foot	140 weeks	Total Disability **	500 weeks

* Rebuttable presumption 50% + PPD of back equals 500 week

** Unless brain damage, paraplegia or quadriplegia



Maximum Compensation Rates by Year

01/01/14	AWW	=	\$1,128.19	CR	\$752.16
01/01/15	AWW	=	\$1,149.02	CR	\$766.05
01/01/16	AWW	=	\$1,175.99	CR	\$784.03
01/01/17	AWW	=	\$1,210.32	CR	\$806.92
01/01/18	AWW	=	\$1,257.25	CR	\$838.21
01/01/19	AWW	=	\$1,268.55	CR	\$845.74
01/01/20	AWW	=	\$1,299.94	CR	\$866.67
01/01/21	AWW	=	\$1,355.03	CR	\$903.40
01/01/22	AWW	=	\$1,445.06	CR	\$963.37
01/01/23	AWW	=	\$1,553.67	CR	\$1,035.78
01/01/24	AWW	=	\$1,640.42	CR	\$1,093.67

Mileage Rate: 0.67 Cents per Mile

Effective January 1, 2024

Disability Compensation Formula

Number of Weeks for Member x Percentage of Disability x

Compensation Rate = Compensation

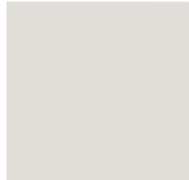
EXAMPLE:

If Commissioner finds Claimant has 10% permanent partial disability to his right upper extremity and Claimant has a compensation rate of \$200.00, then Claimant would be owed \$4,400.00:

220 Weeks (Arm) x .10 (Disability) x \$200 (C/R) = \$4,400.00



SOUTH CAROLINA HELPFUL HINTS (CONTINUED)



Most Commonly Used SC Forms

- Form 12A** Employer's First Report of Injury
- Form 14B** Physician's Statement
Required for settlement of cases involving a pro se claimant
- Form 15** Agreement for Compensation
File within the first 150 days of notice to suspend benefits
- Form 16A** Agreement for Permanent Disability
(DOI after 07/01/2007)
- Form 17** Receipt of Compensation
- Form 18** Periodic Report
File every 6 months
- Form 19** Status Report and Compensation Receipt
File to close claim
- Form 20** Statement of Earnings of Injured Worker
File within 30 days of Form 50 or within 30 days of beginning temporary compensation
- Form 21** Employer's Request For Hearing
File 150 days after accident to suspend or terminate benefits
- Form 27** Subpoena
- Form 50** Employee's Notice of Claim/Hearing Request
- Form 51** Employer's Answer to Form 50
File within 30 days

Termination of Temporary Compensation

Within 150 Days of Notice of Accident (§ 42-9-260, Reg. 67-505)

- Claimant has returned to work for at least 15 days and no temporary partial compensation is due.
- Claimant agrees that he/she is able to return to work and has signed a Form 17.
- Based on good faith investigation, the claim is denied.
- Claimant has been released to return to work without restrictions and employment has been offered.
- Claimant has been released to return to work with limited duty restrictions and Employer has provided/offered work consistent with employment.
- Claimant has refused medical treatment, examination or evaluations.

After 150 Days of Notice of Accident (§ 42-9-260, Reg. 67-506)

- If Claimant executes a Form 17, Receipt of Compensation, Carrier can immediately terminate temporary compensation.
- If Claimant returns to work for at least 15 calendar days and no temporary partial compensation is due, Carrier can suspend temporary total compensation but must refer to Defense Counsel to file a Form 21, Request for Hearing.
- Under all other circumstances, disability is presumed to continue until the issue of suspension/termination is addressed at a Form 21 hearing.

Note: Commission may issue a fine if certain forms are not timely filed.



T. Cory Ezzell
Group Leader
Partner | Greenville
cezell@gwblawfirm.com
864.271.5345



SOUTH CAROLINA WORKERS' COMPENSATION NET PRESENT VALUE TABLE

Revised 2024 | 2% Annum Weeks 1-100 / 3.93% Annum Weeks 101 - 500

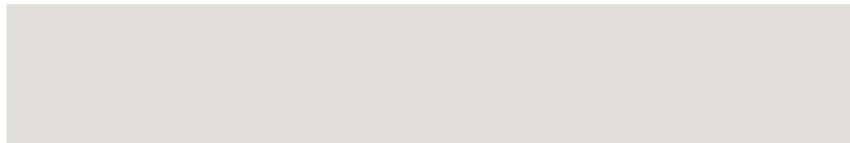
Week	Present Value	Week	Present Value	Week	Present Value	Week	Present Value	Week	Present Value
1	0.9996	51	50.4934	101	98.1319	151	143.5431	201	187.2709
2	1.9988	52	51.4736	102	99.0571	152	144.4339	202	188.1287
3	2.9977	53	52.4535	103	99.9815	153	145.3241	203	188.9859
4	3.9962	54	53.4329	104	100.9052	154	146.2136	204	189.8424
5	4.9942	55	54.4120	105	101.8283	155	147.1024	205	190.6983
6	5.9919	56	55.3907	106	102.7506	156	147.9906	206	191.5535
7	6.9892	57	56.3690	107	103.6723	157	148.8781	207	192.4081
8	7.9862	58	57.3470	108	104.5932	158	149.7649	208	193.2620
9	8.9827	59	58.3245	109	105.5135	159	150.6510	209	194.1153
10	9.9789	60	59.3017	110	106.4330	160	151.5365	210	194.9680
11	10.9747	61	60.2785	111	107.3519	161	152.4213	211	195.8200
12	11.9701	62	61.2550	112	108.2701	162	153.3054	212	196.6714
13	12.9651	63	62.2310	113	109.1876	163	154.1889	213	197.5221
14	13.9597	64	63.2067	114	110.1043	164	155.0717	214	198.3722
15	14.9539	65	64.1820	115	111.0204	165	155.9538	215	199.2216
16	15.9478	66	65.1570	116	111.9358	166	156.8353	216	200.0704
17	16.9413	67	66.1315	117	112.8506	167	157.7161	217	200.9185
18	17.9344	68	67.1057	118	113.7646	168	158.5963	218	201.7660
19	18.9271	69	68.0796	119	114.6779	169	159.4757	219	202.6129
20	19.9195	70	69.0530	120	115.5905	170	160.3545	220	203.4591
21	20.9114	71	70.0261	121	116.5025	171	161.2327	221	204.3047
22	21.9030	72	70.9988	122	117.4138	172	162.1102	222	205.1497
23	22.8942	73	71.9711	123	118.3243	173	162.9870	223	205.9940
24	23.8850	74	72.9430	124	119.2342	174	163.8631	224	206.8377
25	24.8754	75	73.9146	125	120.1434	175	164.7386	225	207.6807
26	25.8655	76	74.8858	126	121.0519	176	165.6135	226	208.5231
27	26.8552	77	75.8566	127	121.9598	177	166.4876	227	209.3649
28	27.8444	78	76.8271	128	122.8669	178	167.3612	228	210.2060
29	28.8334	79	77.7971	129	123.7734	179	168.2340	229	211.0465
30	29.8219	80	78.7668	130	124.6791	180	169.1062	230	211.8864
31	30.8100	81	79.7362	131	125.5842	181	169.9777	231	212.7256
32	31.7978	82	80.7051	132	126.4886	182	170.8486	232	213.5642
33	32.7852	83	81.6737	133	127.3923	183	171.7188	233	214.4022
34	33.7722	84	82.6419	134	128.2954	184	172.5884	234	215.2395
35	34.7588	85	83.6098	135	129.1977	185	173.4573	235	216.0762
36	35.7451	86	84.5772	136	130.0994	186	174.3256	236	216.9123
37	36.7310	87	85.5443	137	131.0004	187	175.1932	237	217.7477
38	37.7165	88	86.5111	138	131.9007	188	176.0601	238	218.5825
39	38.7016	89	87.4774	139	132.8003	189	176.9264	239	219.4167
40	39.6863	90	88.4434	140	133.6993	190	177.7920	240	220.2502
41	40.6707	91	89.4090	141	134.5976	191	178.6570	241	221.0831
42	41.6546	92	90.3743	142	135.4952	192	179.5213	242	221.9154
43	42.6382	93	91.3391	143	136.3921	193	180.3850	243	222.7471
44	43.6215	94	92.3036	144	137.2883	194	181.2480	244	223.5781
45	44.6043	95	93.2678	145	138.1839	195	182.1104	245	224.4085
46	45.5868	96	94.2315	146	139.0788	196	182.9721	246	225.2383
47	46.5689	97	95.1949	147	139.9730	197	183.8331	247	226.0674
48	47.5506	98	96.1579	148	140.8665	198	184.6936	248	226.8959
49	48.5319	99	97.1206	149	141.7594	199	185.5533	249	227.7238
50	49.5129	100	98.0828	150	142.6516	200	186.4124	250	228.5511

SOUTH CAROLINA WORKERS' COMPENSATION NET PRESENT VALUE TABLE

Revised 2024 | 2% Annum Weeks 1-100 / 3.93% Annum Weeks 101 - 500

Week	Present Value	Week	Present Value	Week	Present Value	Week	Present Value	Week	Present Value
251	229.3777	301	269.9237	351	308.9666	401	346.5622	451	382.7642
252	230.2038	302	270.7191	352	309.7325	402	347.2997	452	383.4743
253	231.0291	303	271.5139	353	310.4978	403	348.0367	453	384.1840
254	231.8539	304	272.3081	354	311.2626	404	348.7731	454	384.8931
255	232.6781	305	273.1017	355	312.0268	405	349.5089	455	385.6017
256	233.5016	306	273.8947	356	312.7904	406	350.2442	456	386.3097
257	234.3245	307	274.6871	357	313.5534	407	350.9790	457	387.0172
258	235.1468	308	275.4789	358	314.3159	408	351.7132	458	387.7242
259	235.9684	309	276.2701	359	315.0777	409	352.4468	459	388.4306
260	236.7895	310	277.0607	360	315.8390	410	353.1799	460	389.1365
261	237.6099	311	277.8507	361	316.5998	411	353.9124	461	389.8419
262	238.4297	312	278.6401	362	317.3599	412	354.6444	462	390.5467
263	239.2489	313	279.4289	363	318.1195	413	355.3758	463	391.2510
264	240.0675	314	280.2171	364	318.8785	414	356.1067	464	391.9548
265	240.8854	315	281.0048	365	319.6369	415	356.8370	465	392.6580
266	241.7027	316	281.7918	366	320.3948	416	357.5667	466	393.3608
267	242.5194	317	282.5782	367	321.1520	417	358.2959	467	394.0629
268	243.3355	318	283.3641	368	321.9088	418	359.0246	468	394.7646
269	244.1510	319	284.1493	369	322.6649	419	359.7527	469	395.4657
270	244.9659	320	284.9340	370	323.4205	420	360.4803	470	396.1663
271	245.7801	321	285.7180	371	324.1755	421	361.2073	471	396.8664
272	246.5938	322	286.5015	372	324.9299	422	361.9337	472	397.5659
273	247.4068	323	287.2844	373	325.6837	423	362.6597	473	398.2649
274	248.2192	324	288.0667	374	326.4370	424	363.3850	474	398.9634
275	249.0310	325	288.8484	375	327.1898	425	364.1098	475	399.6613
276	249.8421	326	289.6295	376	327.9419	426	364.8341	476	400.3587
277	250.6527	327	290.4100	377	328.6935	427	365.5578	477	401.0556
278	251.4627	328	291.1899	378	329.4445	428	366.2810	478	401.7520
279	252.2720	329	291.9693	379	330.1950	429	367.0036	479	402.4478
280	253.0807	330	292.7480	380	330.9448	430	367.7257	480	403.1432
281	253.8889	331	293.5262	381	331.6942	431	368.4473	481	403.8379
282	254.6964	332	294.3037	382	332.4429	432	369.1683	482	404.5322
283	255.5033	333	295.0807	383	333.1911	433	369.8887	483	405.2260
284	256.3095	334	295.8571	384	333.9387	434	370.6086	484	405.9192
285	257.1152	335	296.6329	385	334.6858	435	371.3280	485	406.6119
286	257.9203	336	297.4082	386	335.4323	436	372.0468	486	407.3040
287	258.7248	337	298.1828	387	336.1782	437	372.7651	487	407.9957
288	259.5286	338	298.9569	388	336.9235	438	373.4828	488	408.6868
289	260.3319	339	299.7304	389	337.6683	439	374.2000	489	409.3774
290	261.1345	340	300.5032	390	338.4126	440	374.9166	490	410.0675
291	261.9365	341	301.2755	391	339.1563	441	375.6328	491	410.7571
292	262.7380	342	302.0473	392	339.8994	442	376.3483	492	411.4461
293	263.5388	343	302.8184	393	340.6419	443	377.0633	493	412.1346
294	264.3390	344	303.5890	394	341.3839	444	377.7778	494	412.8226
295	265.1386	345	304.3589	395	342.1254	445	378.4918	495	413.5101
296	265.9377	346	305.1283	396	342.8662	446	379.2052	496	414.1971
297	266.7361	347	305.8971	397	343.6065	447	379.9181	497	414.8835
298	267.5339	348	306.6654	398	344.3463	448	380.6304	498	415.5694
299	268.3311	349	307.4330	399	345.0855	449	381.3422	499	416.2549
300	269.1277	350	308.2001	400	345.8241	450	382.0534	500	416.9397

NORTH CAROLINA HELPFUL HINTS



Responding to Claims

Within 30 days of the Form 18 acknowledgment letter, Carrier or Employer must file a Form 60, 61 or 63 to admit, deny or pay the claim without prejudice. If this is not done, the IC will order a \$400* sanction against the Carrier. After the fine is assessed, Carrier or Employer, has an additional 30 days to file a Form 60, 61 or 63, or an additional fine of \$200 will be assessed and the claim will be placed on the enforcement docket. *Effective 2018

Responding to Motions

The Carrier has 10 calendar days after the Motion is served to file and serve a response. The Carrier must retain an attorney.

Medical Treatment Termination

The right to medical treatment shall terminate 2 years after Carrier's or Employer's last payment of medical or indemnity compensation unless: 1) Employee files an application for additional medical treatment which is approved by the Commission, or 2) the Commission on its own Motion orders further medical treatment.

Death Claim

Where death results proximately from injury, payments to Decedent's beneficiaries must be made up to a maximum of 500 weeks to conform to N.C.G.S. § 97-29 (§ 97-38). Also, the Employer shall pay up to \$10,000.00 in burial expenses. (§ 97-40).

Electronic Document Filing Portal (EDFP)

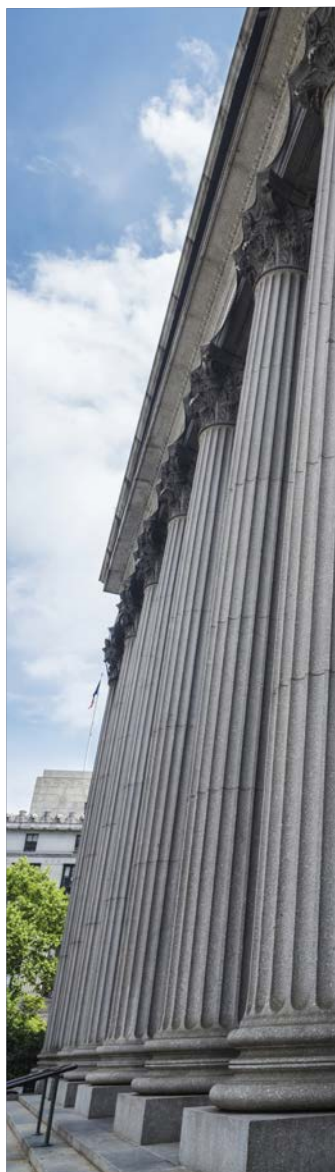
Information on how to register for and use EDFP is available at <http://www.ic.nc.gov/training.html>.

Clincher Payments

Payments made pursuant to a clincher agreement must be made within 10 days after the date of the IC approval order (§ 97-18(e)). Failure to make payments after a 14-day grace period shall result in a 10% penalty (§ 97-18(g)).

Time Periods

- Waiting Period (§ 97-28): 7 days before 1st TTD payment is due
- Waiting Period Recoverable after Disability (§ 97-28): 21 days
- Employer's First Report of Injury (§ 97-92) (Form 19) is due 5 days from knowledge of injury.
- Employer must Admit (Form 60), Deny (Form 61), or Pay Without Prejudice - Rule 601 (Form 63) within 30 days notice from Commission of filing of claim. If Defendants deny the claim, a Form 61 should be filed within 14 days of written or actual notice of the injury. (§ 97-18(c)).



If a Form 63 is filed, payments may continue for 90 days from date Employer has written or actual notice of injury. Defendants must file Form 61 to deny before expiration of the 90-day period or waive right to contest compensability of, and liability for, the claim. The IC may approve a 30-day extension when filed prior to the 90-day deadline.

Written Communication with Doctor:

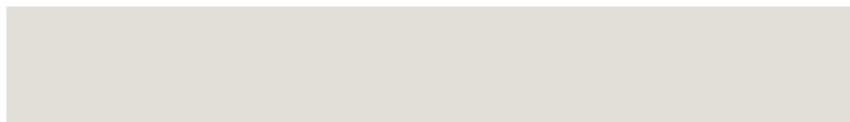
Provide contemporaneous notice to Plaintiff; provide doctor's response to a Plaintiff within 10 business days (§ 97-25.6(c)(2)). If providing new information to the physician, provide a copy to Plaintiff and allow 10 business days to file a Motion for Protective Order. (§ 97-25.6 (d)).

Oral Communication with Doctor:

Provide Plaintiff prior notice of intended communication and invitation to participate; provide summary of communication within 10 business days if Plaintiff does not participate. (§ 97-25.6(c)(3)).

Statute of Limitations

- File Initial Claim (§ 97-24 and § 97-58) 2 years
- Change of Condition (§ 97-47) 2 years
- Appeal to the Full Commission (§ 97-85) 15 days
- Appeal to NC Court of Appeals (§ 97-86) 30 days



How do you Calculate Average Weekly Wage?

Compute wages for 1 year prior to injury, then divide by 52. Omit any period of time during which Employee missed more than 7 consecutive calendar days. If Employee worked less than 1 year, divide wages by number of weeks actually worked. (§ 97-2(5)).

Temporary Total Disability (TTD)

If disability exceeds 7 days, benefits of 66-2/3% of AWW (not to exceed the maximum compensation rate for the year in which the injury occurred) may be paid to Employee for an indefinite amount of time (DOI prior to 06/24/2011) or for a maximum of 500 weeks (DOI on or after 06/24/2011) from the date of first disability, unless an extension is properly requested and granted. (§ 97-29).

Temporary Partial Disability (TPD)

66-2/3% of the difference between the AWW before the injury and the amount able to earn after the injury for up to 300 weeks (DOI prior to 06/24/2011) or 500 weeks (DOI on or after 06/24/2011) from the date of first disability. (§ 97-30).

Loss of Vision

Distance	Near	Efficiency	% Loss	Distance	Near	Efficiency	% Loss
20/20	14/14	100.0%	0.0%	20/90	14/63	53.4%	46.6%
20/25	14/17.5	95.7%	4.3%	20/100	14/70	48.9%	51.1%
20/30	14/21	91.5%	8.5%	20/120	14/84	40.9%	59.1%
20/35	14/24.5	87.5%	12.5%	20/140	14/98	34.2%	65.8%
20/40	14/28	83.6%	16.4%	20/160	14/112	28.6%	71.4%
20/45	14/31.5	80.0%	20.0%	20/180	14/126	23.9%	76.1%
20/50	14/35	76.5%	23.5%	20/200	14/140	20.0%	80.0%
20/60	14/42	69.9%	30.1%	20/220	14/154	16.7%	83.3%
20/70	14/49	64.0%	36.0%	20/240	14/168	14.0%	86.0%
20/80	14/56	58.5%	41.5%				

Injury to External or Internal Organ

Loss or permanent injury to any important external or internal organ or part of the body for which no compensation is payable under any other subdivision of the section, the Industrial Commission may award proper and equitable compensation not to exceed \$20,000.

Scarring

The IC shall award a proper and equitable amount for serious facial or head disfigurement not to exceed \$20,000. The IC shall award a proper and equitable amount for serious bodily disfigurement for which no compensation is payable under any other subdivision of the section not to exceed \$10,000.



2024

SCHEDULED INJURIES

Bodily Loss

Body Loss	Max. Weeks	Body Loss	Max. Weeks
Thumb	75 weeks	Hand	200 weeks
1st Finger	45 weeks	Arm	240 weeks
2nd Finger	40 weeks	Foot	144 weeks
3rd Finger	25 weeks	Leg	200 weeks
4th Finger	20 weeks	Eye	120 weeks
Great Toe	35 weeks	Back	300 weeks
Other Toe	10 weeks		

Hearing Loss

Hearing Loss	Max. Weeks
One Ear	70 weeks
Two Ears	150 weeks

Loss of Teeth

Age	Amount of Tooth (Crowns 50%)	Age	Amount of Tooth (Crowns 50%)
Up to 23	\$720.00	27 - 29	\$540.00
24 - 25	\$600.00	30 and over	\$420.00

Scheduled injuries occurring after January 1, 1996.

Maximum Compensation Rates

Year	Rate	Year	Rate
2009	\$816.00	2017	\$978.00
2010	\$834.00	2018	\$992.00
2011	\$836.00	2019	\$1,028.00
2012	\$862.00	2020	\$1,066.00
2013	\$884.00	2021	\$1,102.00
2014	\$904.00	2022	\$1,184.00
2015	\$920.00	2023	\$1,254.00
2016	\$944.00	2024	\$1,330.00

Minimum Compensation Rate: \$30.00
 Mileage Rate: \$0.67 cents per Mile as of January 1, 2024



Jared Simms
Partner | Charlotte
jsimms@gwblawfirm.com
704.227.1933

COMMONLY USED NORTH CAROLINA FORMS

Form 18	Notice of Accident to Employer and Claim of Employee
Form 19	Employer's Report of Injury to the Industrial Commission
Form 22	Statement of Days Worked and Earnings of Injured Employee
Form 23	Application to Reinstate Payment of Disability Compensation
Form 24	Application to Terminate or Suspend Payment of Compensation
Form 25N	Notice to IC of Assignment of Rehabilitation Professional
Form 25R	Evaluation for Permanent Impairment
Form 25T	Itemized Statement of Charges for Travel
Form 26A	Employer's Admission of Employee's Right to Permanent Partial Disability
Form 28	Return to Work Report
Form 28B	Report of Carrier of Compensation and Medical Compensation Paid Notice of Right to Additional Medical Compensation
Form 28C	Report of Carrier of Compensation and Medical Compensation Paid Pursuant to Compromise Settlement Agreement
Form 28T	Notice of Termination of Compensation (Trial RTW)
Form 28U	Employee's Request that Compensation be Reinstated After Unsuccessful Trial Return to Work
Form 29	Supplemental Report for Fatal Accidents
Form 30	Agreement for Compensation for Death
Form 33	Request that Claim be Assigned for Hearing
Form 33R	Response to Request that Claim be Assigned for Hearing
Form 60	Employer's Admission of Employee's Right to Compensation
Form 61	Denial of Workers' Compensation Claim
Form 62	Notice of Reinstatement or Modification of Compensation
Form 63	Notice to Employee of Payment of Compensation without Prejudice or Payment of Medical Compensation without Prejudice
Form 90	Report of Earnings

BASIC OVERVIEW OF THE PHASES OF TREATMENT UNDER THE OPIOID UTILIZATION RULES

Phase	Acute Phase (12 weeks of treatment)		Chronic Phase (continued treatment after 12 weeks)
Rule Topic	First Prescription in Acute Phase	Prescriptions in Acute Phase after First Prescription	Prescriptions in Chronic Phase
Rule Citation	Rule 11 NCAC 23M .0201	Rule 11 NCAC 23M .0202	Rule 11 NCAC 23M .0203
Timeline	1 to 5-7 days	6-8 to 84 days (12 weeks)	>84 days (more than 12 weeks)
Prerequisite to prescribing an opioid	Document provider's medical opinion that non-pharmacological and non-opioid therapies are insufficient to treat the employee's pain.		
Number and type of opioids prescribed	Only one short-acting TCS* may be prescribed at a time.		Only one short-acting TCS may be prescribed at a time without documentation of justification in medical record. If justification is documented in medical record, up to two TCS's may be prescribed at a time, to include only one short-acting opioid and one long-acting or extended-release opioid.
Number of days' supply	Lowest number of days' supply necessary to treat the pain. Maximum 5 days' supply for pain. Maximum 7 days' supply for post-operative pain.	Lowest number of days' supply necessary to treat the pain.	
Dosage	Lowest effective dosage necessary to achieve the clinical goal. Maximum 50 mg MED/day, using short-acting opioids only. May prescribe >50 MED per day if employee was taking TCS immediately prior to first prescription. Dosage limit applies to prescription issued pursuant to this Rule.	Lowest effective dosage necessary to achieve the clinical goal. Maximum 50 mg MED/day, using short-acting opioids only. If justification is documented in the medical record (see rule for details), provider may prescribe more than 50 mg MED/day, but not >90 mg MED/day. (See rule for details.) Dosage limit applies to prescription issued pursuant to this Rule.	Lowest effective dosage necessary to achieve the clinical goal, not to exceed 50 MED per day. If justification is documented in the medical record, provider may prescribe more than 50 mg MED/day, but not more than 90 mg MED/day. (See rule for details.) If necessary to prescribe >90 mg MED/day, provider must seek preauthorization from carrier. (See rule for details.) Dosage limit applies to prescription issued pursuant to this Rule.
Non-oral opioids	No Schedule II or III transcutaneous, transdermal, transmucosal, or buccal opioid preparations without documentation in medical record that oral opioids are medically contraindicated for employee.		No Schedule II transcutaneous, transdermal, transmucosal, or buccal opioid preparations without documentation in medical record that oral opioids are medically contraindicated for employee. Schedule III non-oral preparations may be prescribed if appropriate.
Fentanyl	No fentanyl may be prescribed.		A provider must seek preauthorization for transdermal fentanyl.
Methadone	No methadone may be prescribed because only short-acting opioids may be prescribed.		A provider must seek preauthorization for methadone.
Benzodiazepines	No benzodiazepines may be prescribed for pain or as muscle relaxers.		
Carisoprodol	Carisoprodol may not be prescribed with a TCS in an acute phase.		A provider must seek preauthorization before prescribing carisoprodol with a TCS. The provider must advise the employee of the risks of combining both medications.
Medications prescribed by other providers	If an employee is already taking benzodiazepines or carisoprodol prescribed by another provider, a provider must not prescribe a TCS without advising the employee of related risks and advising the other provider of the prescription of a TCS.		
CSRS (Controlled Substances Reporting System)	Provider must check the CSRS and document the findings before the first prescription.	Provider must check the CSRS and document the findings every time an opioid is prescribed in the acute phase.	Provider must check the CSRS and document the findings at every appointment at which a TCS is prescribed or every three months, whichever is more frequent.
	Effective 11/1/18 or the date of application in S.L. 2017-74 (NC STOP Act), Section 15.(e), and any amendments thereto, whichever is earlier.		
Urine Drug Testing	No requirement in rule.	Before prescribing a TCS beyond 35-37 days in the acute phase, the provider must administer and document the results of a presumptive urine drug test. If the results show inappropriate drug use or irregularities with the prescribed drug, the provider shall obtain a confirmatory urine drug test and document the results. (See rule for additional information.)	Before first prescribing a TCS in a chronic phase, the provider must administer and document the results of a presumptive urine drug test. After the first urine drug test, a provider must administer 2-4 presumptive urine drug tests per year. Any additional testing must be authorized by the carrier. If the results of a presumptive urine drug test show inappropriate drug use or show irregularities with the prescribed drug, the provider shall obtain a confirmatory urine drug test and document the results. (See rule for additional information.)
Opioid risk evaluation tool	No requirement in rule.	Before prescribing a TCS beyond 35-37 days in the acute phase, the provider must administer and document the results of a tool for screening and assessing opioid risk. (See rule for examples.)	If an employee's care is transferred to a different health care practice than the one that administered an opioid risk tool in the acute phase, the new provider must administer and document the results of a tool for screening and assessing opioid risk. (See rule for examples.)
Review of increased opioid risk by provider	No requirement in rule.	If a CSRS check, urine drug test, or opioid risk tool indicates an increased risk of opioid-related harm and the provider prescribes an opioid, the provider must document in the medical record the reasons justifying the prescription.	

*The abbreviation "TCS" used in this table stands for "targeted controlled substance" or Schedule II and III opioids. The table is provided for easy reference, but does not contain all the information in the Opioid Utilization Rules.

MEDICARE COMPLIANCE

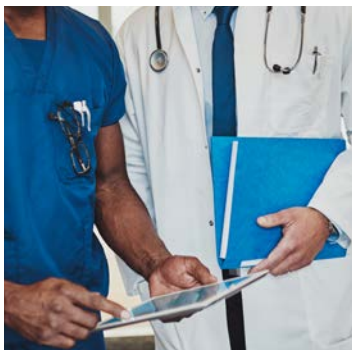
Medicare Definition

Medicare is health insurance provided by the federal government. Medicare acts as a secondary payor in the context of workers' compensation and liability claims involving bodily injury. The intent of Congress is to reduce federal spending and to protect Medicare's financial integrity by expanding its recovery rights.

Medicare Benefit Eligibility

An individual is eligible to receive Medicare benefits for certain medical and hospital expenses if they meet one of the following criteria:

- 65 years of age or older
- Receiving Social Security Disability benefits for at least twenty-four (24) months
- Suffering from end-stage renal disease or Lou Gehrig's disease



Medicare's Recovery Rights

Pursuant to 42 C.F.R. § 411.24(b), The Centers for Medicare and Medicaid Services (hereinafter "CMS") may initiate recovery upon learning that payment has been made or could have been made under workers' compensation, any liability or no-fault insurance or an employer's group health plan. As to the amount of recovery allowable, if CMS does not have to take legal action to recover, CMS can recover the lesser of the following:

- The amount of the Medicare primary payment
- The full primary payment amount that the primary payer is obligated to pay under this part without regard to any payment, other than a full primary payment that the primary payer has paid or will make, or in the case of a third-party payment recipient, the amount of the third-party payment.
- However, if legal action is undertaken by CMS, CMS may recover double the amount of the payment Medicare made as a primary payer.

Medicare Set-Aside (MSA)

A Medicare Set-Aside (MSA) is an account that is created in the settlement of a claim that is used to pay for future medical expenses that are attributed to Claimant's work-related or litigation-related injury and would otherwise be payable by Medicare.

2024

MEDICARE COMPLIANCE

When Medicare Set-Aside Requires CMS Approval

When settling a workers' compensation claim, a Medicare Set-Aside must be submitted to CMS for approval if the future medical aspect of the claim is being settled and one of the following exists:

- Claimant is currently Medicare eligible and the total settlement amount is greater than \$25,000; or
- The settlement amount exceeds \$250,000 and there is a "reasonable expectation" of Medicare enrollment within thirty (30) months.

Funding a Medicare Set-Aside Account

Two methods can be used to fund a set-aside. Specifically, a Medicare Set-Aside can be funded via a lump-sum payment or a structured settlement annuity. Structured settlements are an effective tool in funding Medicare Set-Asides because the cost of an annuity provides a savings to either the insured or the employer. If the set-aside is exhausted between annuity payments, Medicare assumes payment for qualified medical expenses until the release of the next annuity payment disbursement.

Administration & Terms of a Medicare Set-Aside Account

A Medicare Set-Aside can be self-administered by Claimant, a custodian or a guardian. A Medicare Set-Aside can also be managed by a third-party administrator. The account must be an interest-bearing account and the administrator of the account should only allow distribution for those medical expenses related to the injury that would otherwise be covered by Medicare, thereby preventing a burden shift to Medicare after settlement. Also, the administrator must provide CMS with an annual accounting of the expenditures paid from the account. If there is a questionable expense, the administrator of the account should obtain approval from CMS before paying that expense.

"Reasonable Expectation" Provision

A person can reasonably expect to become a Medicare beneficiary within thirty (30) months if, at the time of the settlement of their workers' compensation case, they:

- Are between the ages of 62 1/2 and 65
- Applied for or have been approved for Social Security Disability benefits
- Have been denied Social Security Disability benefits but anticipate appealing the decision
- Suffer from aforementioned renal disease or Lou Gehrig's but do not yet qualify for Medicare

Disclaimer:

In all settlements, the parties must consider Medicare's interests. CMS guidelines are "workload thresholds" and are not substantive "safe harbor" thresholds. While not required, Medicare Set-Asides are an effective mechanism for demonstrating that the parties considered Medicare's interests as a secondary payor.



OUR TEAM



T. Cory Ezzell
Group Leader
Partner | Greenville
cezzell@gwblawfirm.com
864.271.5345



H. Mills Gallivan
Partner | Greenville
mgallivan@gwblawfirm.com
864.271.5341



Wesley J. Shull
Of Counsel | Greenville
wshull@gwblawfirm.com
864.271.5378



Christine Bosco
Associate | Charleston
cbosco@gwblawfirm.com
843.414.8100



Allison Galafaro
Associate | Greenville
agalafaro@gwblawfirm.com
864.271.5351



Jared Simms
Partner | Charlotte
jsimms@gwblawfirm.com
704.227.1933



Deborah Casey Brown
Partner | Greenville
dbrown@gwblawfirm.com
864.271.5346



Casey P. Gonyea Partner |
Greenville
cgonyea@gwblawfirm.com
864.271.5385



Mason S. Turner
Associate | Greenville
mturner@gwblawfirm.com
864.271.5392



Michael Coletta
Associate | Charlotte
mcoletta@gwblawfirm.com
704.227.1942



Christine C. Ormand Partner |
Charleston
cormand@gwblawfirm.com
843.414.8078



T.J. Twehues
Of Counsel | Greenville
ttwehues@gwblawfirm.com
864.271.5364



Matthew B. Covington
Of Counsel | Charlotte
mcovington@gwblawfirm.com
704.227.1924



Jared M. Pretulak Partner |
Greenville
jpretulak@gwblawfirm.com
864.271.5354



Michelle D. Yarbrough
Partner | Greenville
myarbrough@gwblawfirm.com
864.271.5349



Amity S. Edmonds
Partner | Greenville
aedmonds@gwblawfirm.com
864.271.5383



Erika Fowler
Associate | Greenville
efowler@gwblawfirm.com
864.271.5417

GWB
GALLIVAN WHITE BOYD

OUR LOCATIONS

COLUMBIA
1201 Main Street, Suite 1200
Columbia, SC 29201
803.779.1833

GREENVILLE
55 Beattie Place, Suite 1200
Greenville, SC 29601
864.271.9580

CHARLESTON
40 Calhoun Street, Suite 315
Charleston, SC 29401
843.735.7600

CHARLOTTE
6805 Carnegie Blvd, Suite 200
Charlotte, NC 28211
704.552.1712

www.gwblawfirm.com

2024

GALLIVAN WHITE BOYD