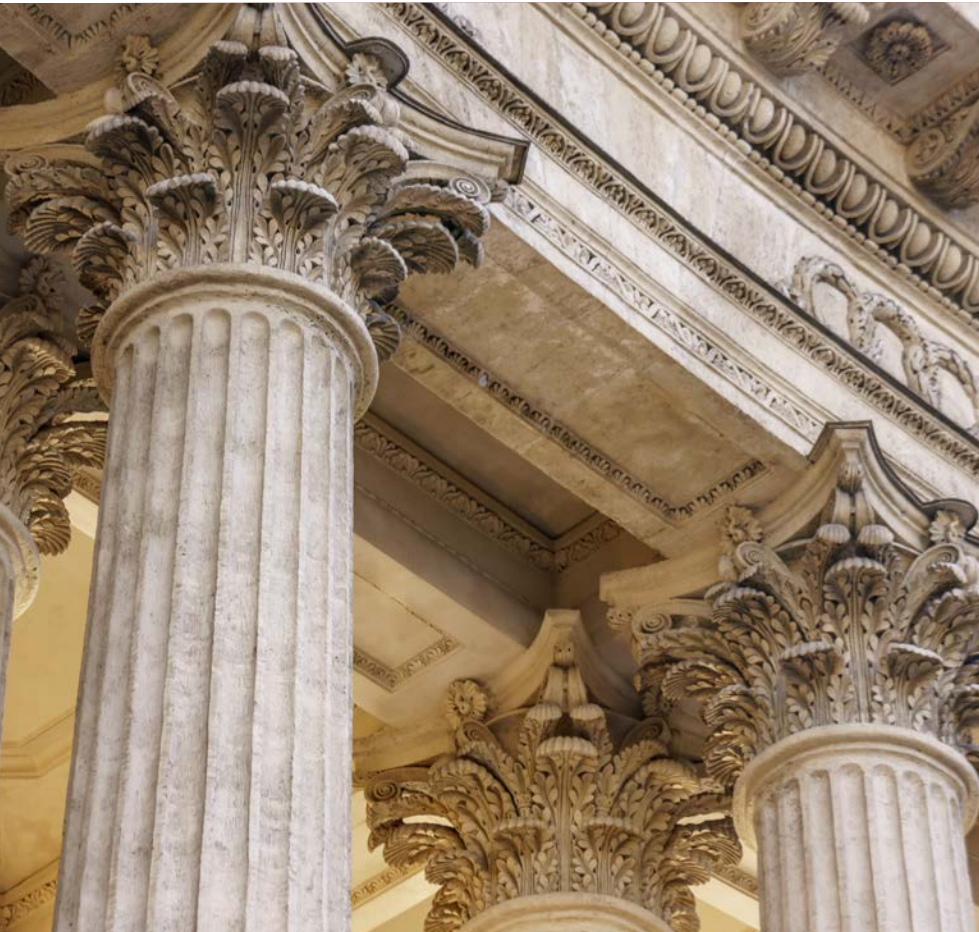




GALLIVAN WHITE BOYD



WORKERS' COMPENSATION DEFENSE GUIDE

2022

SOUTH CAROLINA | NORTH CAROLINA

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

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PHONE NUMBERS

South Carolina Workers' Compensation Commission (SCWCC)



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Melani Roark, Assistant	803.737.5697
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Renee Smith, Assistant	803.737.5692
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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

01/01/13	AWW	=	1,115.53	CR	\$743.72
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

Mileage Rate: 58.5 Cents per Mile

Effective January 1, 2022

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:

$$220 \text{ Weeks (Arm)} \times .10 \text{ (Disability)} \times \$200 \text{ (C/R)} = \$4,400.00$$



SOUTH CAROLINA HELPFUL HINTS (CONTINUED)



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.

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

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



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2022

SOUTH CAROLINA WORKERS' COMPENSATION NET PRESENT VALUE TABLE

Revised 2022 | 2% Annum

Week	Present Value	Week	Present Value	Week	Present Value	Week	Present Value	Week	Present Value
1	0.9996	51	50.4934	101	100.0063	151	147.6147	201	194.3165
2	1.9988	52	51.4736	102	100.9675	152	148.5576	202	195.2414
3	2.9977	53	52.4535	103	101.9282	153	149.5001	203	196.1659
4	3.9962	54	53.4329	104	102.8887	154	150.4422	204	197.0901
5	4.9942	55	54.4120	105	103.8487	155	151.3840	205	198.0140
6	5.9919	56	55.3907	106	104.8084	156	152.3254	206	198.9375
7	6.9892	57	56.3690	107	105.7677	157	153.2664	207	199.8606
8	7.9862	58	57.3470	108	106.7267	158	154.2071	208	200.7834
9	8.9827	59	58.3245	109	107.6853	159	155.1474	209	201.7058
10	9.9789	60	59.3017	110	108.6435	160	156.0874	210	202.6278
11	10.9747	61	60.2785	111	109.6013	161	157.0270	211	203.5496
12	11.9701	62	61.2550	112	110.5588	162	157.9663	212	204.4709
13	12.9651	63	62.2310	113	111.5159	163	158.9051	213	205.3919
14	13.9597	64	63.2067	114	112.4727	164	159.8437	214	206.3126
15	14.9539	65	64.1820	115	113.4290	165	160.7818	215	207.2329
16	15.9478	66	65.1570	116	114.3850	166	161.7196	216	208.1528
17	16.9413	67	66.1315	117	115.3407	167	162.6571	217	209.0724
18	17.9344	68	67.1057	118	116.2960	168	163.5941	218	209.9916
19	18.9271	69	68.0796	119	117.2509	169	164.5309	219	210.9105
20	19.9195	70	69.0530	120	118.2054	170	165.4672	220	211.8290
21	20.9114	71	70.0261	121	119.1596	171	166.4032	221	212.7472
22	21.9030	72	70.9988	122	120.1134	172	167.3389	222	213.6650
23	22.8942	73	71.9711	123	121.0668	173	168.2741	223	214.5825
24	23.8850	74	72.9430	124	122.0199	174	169.2091	224	215.4996
25	24.8754	75	73.9146	125	122.9726	175	170.1436	225	216.4164
26	25.8655	76	74.8858	126	123.9249	176	171.0778	226	217.3328
27	26.8552	77	75.8566	127	124.8769	177	172.0117	227	218.2488
28	27.8444	78	76.8271	128	125.8285	178	172.9451	228	219.1646
29	28.8334	79	77.7971	129	126.7797	179	173.8783	229	220.0799
30	29.8219	80	78.7668	130	127.7306	180	174.8110	230	220.9949
31	30.8100	81	79.7362	131	128.6811	181	175.7434	231	221.9096
32	31.7978	82	80.7051	132	129.6312	182	176.6755	232	222.8239
33	32.7852	83	81.6737	133	130.5810	183	177.6072	233	223.7378
34	33.7722	84	82.6419	134	131.5304	184	178.5385	234	224.6514
35	34.7588	85	83.6098	135	132.4795	185	179.4695	235	225.5646
36	35.7451	86	84.5772	136	133.4282	186	180.4001	236	226.4775
37	36.7310	87	85.5443	137	134.3765	187	181.3304	237	227.3901
38	37.7165	88	86.5111	138	135.3244	188	182.2603	238	228.3023
39	38.7016	89	87.4774	139	136.2720	189	183.1898	239	229.2141
40	39.6863	90	88.4434	140	137.2192	190	184.1190	240	230.1256
41	40.6707	91	89.4090	141	138.1661	191	185.0478	241	231.0367
42	41.6546	92	90.3743	142	139.1126	192	185.9763	242	231.9475
43	42.6382	93	91.3391	143	140.0587	193	186.9044	243	232.8580
44	43.6215	94	92.3036	144	141.0045	194	187.8322	244	233.7681
45	44.6043	95	93.2678	145	141.9499	195	188.7596	245	234.6778
46	45.5868	96	94.2315	146	142.8949	196	189.6866	246	235.5872
47	46.5689	97	95.1949	147	143.8396	197	190.6133	247	236.4962
48	47.5506	98	96.1579	148	144.7839	198	191.5396	248	237.4049
49	48.5319	99	97.1206	149	145.7279	199	192.4656	249	238.3133
50	49.5129	100	98.0828	150	146.6715	200	193.3912	250	239.2212

SOUTH CAROLINA WORKERS' COMPENSATION NET PRESENT VALUE TABLE

Revised 2022 | 2% Annum

Week	Present Value	Week	Present Value	Week	Present Value	Week	Present Value	Week	Present Value
251	240.1289	301	285.0689	351	329.1531	401	372.3977	451	414.8189
252	241.0362	302	285.9589	352	330.0261	402	373.2542	452	415.6590
253	241.9431	303	286.8486	353	330.8989	403	374.1103	453	416.4988
254	242.8497	304	287.7379	354	331.7713	404	374.9661	454	417.3383
255	243.7560	305	288.6269	355	332.6433	405	375.8215	455	418.1775
256	244.6619	306	289.5155	356	333.5150	406	376.6767	456	419.0163
257	245.5674	307	290.4039	357	334.3864	407	377.5314	457	419.8548
258	246.4726	308	291.2918	358	335.2575	408	378.3859	458	420.6930
259	247.3775	309	292.1794	359	336.1282	409	379.2401	459	421.5309
260	248.2820	310	293.0667	360	336.9986	410	380.0939	460	422.3684
261	249.1861	311	293.9537	361	337.8687	411	380.9473	461	423.2057
262	250.0900	312	294.8403	362	338.7384	412	381.8005	462	424.0426
263	250.9934	313	295.7265	363	339.6077	413	382.6533	463	424.8792
264	251.8965	314	296.6124	364	340.4768	414	383.5058	464	425.7154
265	252.7993	315	297.4980	365	341.3455	415	384.3580	465	426.5514
266	253.7017	316	298.3833	366	342.2139	416	385.2098	466	427.3870
267	254.6038	317	299.2682	367	343.0819	417	386.0614	467	428.2223
268	255.5055	318	300.1527	368	343.9496	418	386.9125	468	429.0573
269	256.4069	319	301.0369	369	344.8170	419	387.7634	469	429.8919
270	257.3080	320	301.9208	370	345.6841	420	388.6139	470	430.7263
271	258.2086	321	302.8043	371	346.5508	421	389.4641	471	431.5603
272	259.1090	322	303.6875	372	347.4172	422	390.3140	472	432.3940
273	260.0090	323	304.5704	373	348.2832	423	391.1636	473	433.2273
274	260.9086	324	305.4529	374	349.1489	424	392.0128	474	434.0604
275	261.8079	325	306.3351	375	350.0143	425	392.8617	475	434.8931
276	262.7069	326	307.2169	376	350.8793	426	393.7103	476	435.7255
277	263.6055	327	308.0984	377	351.7441	427	394.5585	477	436.5576
278	264.5038	328	308.9796	378	352.6084	428	395.4064	478	437.3894
279	265.4017	329	309.8604	379	353.4725	429	396.2540	479	438.2209
280	266.2993	330	310.7409	380	354.3362	430	397.1013	480	439.0520
281	267.1965	331	311.6210	381	355.1996	431	397.9482	481	439.8828
282	268.0934	332	312.5009	382	356.0626	432	398.7949	482	440.7133
283	268.9899	333	313.3803	383	356.9254	433	399.6412	483	441.5435
284	269.8861	334	314.2595	384	357.7877	434	400.4871	484	442.3733
285	270.7820	335	315.1382	385	358.6498	435	401.3328	485	443.2029
286	271.6775	336	316.0167	386	359.5115	436	402.1781	486	444.0321
287	272.5727	337	316.8948	387	360.3729	437	403.0231	487	444.8610
288	273.4675	338	317.7726	388	361.2340	438	403.8677	488	445.6896
289	274.3620	339	318.6500	389	362.0947	439	404.7121	489	446.5178
290	275.2561	340	319.5271	390	362.9551	440	405.5561	490	447.3458
291	276.1499	341	320.4039	391	363.8152	441	406.3998	491	448.1734
292	277.0433	342	321.2803	392	364.6749	442	407.2432	492	449.0007
293	277.9364	343	322.1564	393	365.5343	443	408.0862	493	449.8277
294	278.8292	344	323.0322	394	366.3934	444	408.9289	494	450.6544
295	279.7216	345	323.9076	395	367.2522	445	409.7713	495	451.4807
296	280.6137	346	324.7827	396	368.1106	446	410.6134	496	452.3068
297	281.5054	347	325.6574	397	368.9687	447	411.4551	497	453.1325
298	282.3968	348	326.5319	398	369.8264	448	412.2966	498	453.9579
299	283.2878	349	327.4059	399	370.6839	449	413.1377	499	454.7830
300	284.1785	350	328.2797	400	371.5410	450	413.9784	500	455.6077

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)

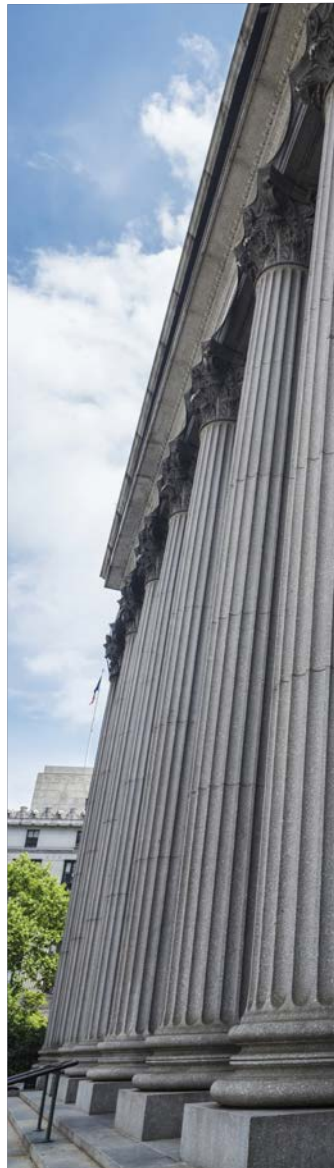
Information on how to register for and use EDFP is available at <http://www.ic.nc.gov/training.html>.

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.



2022

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
2008	\$786.00	2015	\$920.00
2009	\$816.00	2016	\$944.00
2010	\$834.00	2017	\$978.00
2011	\$836.00	2018	\$992.00
2012	\$862.00	2019	\$1,028.00
2013	\$884.00	2020	\$1,066.00
2014	\$904.00	2021	\$1,102.00

Minimum Compensation Rate: \$30.00
Mileage Rate: 56 cents per Mile as of
January 1, 2021



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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 drugs 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.

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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.



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