CHAPTER 15

Notice of Accident; Filing of Claims; Medical Attention and Examination

**SECTION 42‑15‑10.** State law under which claim is authorized to be filed.

Any employee covered by the provisions of this title is authorized to file his claim under the laws of the state where he is hired, the state where he is injured, or the state where his employment is located. If an employee shall receive compensation or damages under the laws of any other state, nothing contained in this section shall be construed to permit a total compensation for the same injury greater than that provided in this title.

HISTORY: 1962 Code Section 72‑121.1; 1974 (58) 2265; 1976 Act No. 532 Section 2.

**SECTION 42‑15‑20.** Notice to employer of accident or repetitive trauma.

(A) Every injured employee or his representative immediately shall on the occurrence of an accident, or as soon thereafter as practicable, give or cause to be given to the employer a notice of the accident and the employee shall not be entitled to physician's fees nor to any compensation which may have accrued under the terms of this title prior to the giving of such notice, unless it can be shown that the employer, his agent, or representative, had knowledge of the accident or that the party required to give such notice had been prevented from doing so by reason of physical or mental incapacity or the fraud or deceit of some third person.

(B) Except as provided in subsection (C), no compensation shall be payable unless such notice is given within ninety days after the occurrence of the accident or death, unless reasonable excuse is made to the satisfaction of the commission for not giving timely notice, and the commission is satisfied that the employer has not been prejudiced thereby.

(C) In the case of repetitive trauma, notice must be given by the employee within ninety days of the date the employee discovered, or could have discovered by exercising reasonable diligence, that his condition is compensable, unless reasonable excuse is made to the satisfaction of the commission for not giving timely notice, and the commission is satisfied that the employer has not been unduly prejudiced thereby.

HISTORY: 1962 Code Section 72‑301; 1952 Code Section 72‑301; 1942 Code Section 7035‑25; 1936 (39) 1231; 1974 (58) 2265; 2007 Act No. 111, Pt I, Section 25, eff July 1, 2007, applicable to injuries that occur on or after that date.

**SECTION 42‑15‑40.** Time for filing claim; filing by registered mail.

The right to compensation under this title is barred unless a claim is filed with the commission within two years after an accident, or if death resulted from the accident, within two years of the date of death. However, for occupational disease claims the two‑year period does not begin to run until the employee concerned has been diagnosed definitively as having an occupational disease and has been notified of the diagnosis. For the death or injury of a member of the South Carolina National Guard, as provided for in Section 42‑7‑67, the time for filing a claim is two years after the accident or one year after the federal claim is finalized, whichever is later. The filing required by this section may be made by registered mail, and the service within the time periods set forth in this section constitutes timely filing. For a "repetitive trauma injury" as defined in Section 42‑1‑172, the right to compensation is barred unless a claim is filed with the commission within two years after the employee knew or should have known that his injury is compensable but no more than seven years after the last date of injurious exposure. This section applies regardless of whether the employee was aware that his repetitive trauma injury was the result of his employment.

HISTORY: 1962 Code Section 72‑303; 1952 Code Section 72‑303; 1942 Code Section 7035‑27; 1936 (39) 1231; 1955 (49) 319; 1974 (58) 2265; 1978 Act No. 522 Section 6; 1979 Act No. 194 Part III Section 6; 1990 Act No. 612, Part II, Section 15C, eff June 13, 1990 (became law without the Governor's signature); 2007 Act No. 111, Pt I, Section 26, eff July 1, 2007, applicable to injuries that occur on or after that date.

**SECTION 42‑15‑50.** Limitation of time on notice or claim of mentally incompetent person or minor.

No limitation of time provided in this title for the giving of notice or making claim under this title shall run against any person who is mentally incompetent or a minor dependent as long as he has no guardian, trustee or committee.

HISTORY: 1962 Code Section 72‑304; 1952 Code Section 72‑304; 1942 Code Section 7035‑52; 1936 (39) 1231.

**SECTION 42‑15‑55.** Appointment of guardian ad litem for minors or mentally incompetent persons.

When a minor or mentally incompetent person is a party in a proceeding before the Workers' Compensation Commission of this State a guardian ad litem for the minor or mentally incompetent person may be appointed by a judge of probate, clerk of court, or master, if there is a master, of the county where the minor or mentally incompetent person resides or by any circuit judge or a member of the Workers' Compensation Commission.

HISTORY: 1986 Act No. 371, eff April 14, 1986.

**SECTION 42‑15‑60.** Time period medical treatment and supplies furnished; refusal to accept treatment; settled claims; total and permanent disability.

(A) The employer shall provide medical, surgical, hospital, and other treatment, including medical and surgical supplies as reasonably may be required, for a period not exceeding ten weeks from the date of an injury, to effect a cure or give relief and for an additional time as in the judgment of the commission will tend to lessen the period of disability as evidenced by expert medical evidence stated to a reasonable degree of medical certainty. In addition to it, the original artificial members as reasonably may be necessary must be provided by the employer. During any period of disability resulting from the injury, the employer, at his own option, may continue to furnish or cause to be furnished, free of charge to the employee, and the employee shall accept, an attending physician and any medical care or treatment that is considered necessary by the attending physician, unless otherwise ordered by the commission for good cause shown. The refusal of an employee to accept any medical, hospital, surgical, or other treatment or evaluation when provided by the employer or ordered by the commission bars the employee from further compensation until the refusal ceases and compensation is not paid for the period of refusal unless in the opinion of the commission the circumstances justified the refusal, in which case the commission may order a change in the medical or hospital service. If in an emergency, on account of the employer's failure to provide the medical care as specified in this section, a physician other than provided by the employer is called to treat the employee, the reasonable cost of the service must be paid by the employer, if ordered by the commission.

(B)(1) When a claim is settled on the commission's Agreement for Permanent Disability/Disfigurement Compensation form, the employer is not required to provide further medical treatment or medical modalities after one year from the date of full payment of the settlement unless the form specifically provides otherwise.

(2) Each award of permanency as ordered by the single commissioner or by the commission must contain a finding as to whether or not further medical treatment or modalities must be provided to the employee. If the employee is entitled to receive such benefits, the medical treatment or modalities to be provided must be set forth with as much specificity as possible in the single commissioner's order or the commission's order.

(3) In no case shall an employer be required to provide medical treatment or modalities in any case where there is a lapse in treatment of the employee by an authorized physician in excess of one year unless:

(a) the settlement agreement or commission order provides otherwise; or

(b) the employee has made reasonable attempts to obtain further treatment or modality from an authorized physician, but through no fault of the employee's own, is unable to obtain such treatment or modalities.

(C) In cases in which total and permanent disability results, reasonable and necessary nursing services, medicines, prosthetic devices, sick travel, medical, hospital, and other treatment or care shall be paid during the life of the injured employee, without regard to any limitation in this title including the maximum compensation limit. In cases of permanent partial disability, prosthetic devices shall be furnished during the life of the injured employee or for as long as such devices are necessary.

HISTORY: 1962 Code Section 72‑305; 1952 Code Section 72‑305; 1942 Code Section 7035‑28; 1936 (39) 1231; 1972 (57) 2339; 1980 Act No. 445; 2007 Act No. 111, Pt I, Section 27, eff July 1, 2007, applicable to injuries that occur on or after that date.

**SECTION 42‑15‑65.** Compensation for damage to prosthetic device, eyeglasses, or hearing aid.

Damage to a prosthetic device of an injured employee as the result of an injury by accident arising out of and in the course of the employment entitles the employee to compensation ensuring that the prosthetic device is repaired or replaced.

Damage to eye glasses or a hearing aid used by an injured employee as the result of an injury by accident arising out of and in the course of the employment entitles the employee to compensation ensuring that the eye glasses or the hearing aid is repaired or replaced.

HISTORY: 1992 Act No. 329, Section 1, eff May 4, 1992.

**SECTION 42‑15‑70.** Liability of employer for medical treatment; effect of malpractice.

The pecuniary liability of the employer for medical, surgical and hospital service or other treatment required, when ordered by the commission, shall be limited to such charges as prevail in the community for similar treatment of injured persons of a like standard of living when such treatment is paid for by the injured person and the employer shall not be liable in damages for malpractice by a physician or surgeon furnished by him pursuant to the provisions of this section, but the consequences of any such malpractice shall be deemed part of the injury resulting from the accident and shall be compensated for as such.

HISTORY: 1962 Code Section 72‑306; 1952 Code Section 72‑306; 1942 Code Section 7035‑29; 1936 (39) 1231.

**SECTION 42‑15‑80.** Submission to physical examinations; admissibility of communications to physician; autopsy; role of rehabilitation professionals.

(A) After an injury and so long as he claims compensation, the employee, if so requested by his employer or ordered by the commission, shall submit himself to examination, at reasonable times and places, by a qualified physician or surgeon designated and paid by the employer or the commission. The employee has the right to have present at the examination any qualified physician or surgeon provided and paid by him. A fact communicated to or otherwise learned by any physician or surgeon who may have attended or examined the employee, or who may have been present at any examination, is not privileged, either in hearings provided for by this title or any action at law brought to recover damages against an employer who may have accepted the compensation provisions of this title. If the employee refuses to submit himself to or in any way obstructs the examination requested by and provided for by the employer, his right to compensation and his right to take or prosecute a proceeding under this title must be suspended until the refusal or objection ceases and compensation is not payable at any time for the period of suspension unless in the opinion of the commission the circumstances justify the refusal or obstruction. The employer or the commission may require in any case of death an autopsy at the expense of the person requesting it.

(B) The commission shall promulgate regulations establishing the role of rehabilitation professionals and other similarly situated professionals in workers' compensation cases with consideration given to these persons' duties to both the employer and the employee and the standards of care applicable to the rehabilitation professional or other similarly situated professional as the case may be.

HISTORY: 1962 Code Section 72‑307; 1952 Code Section 72‑307; 1942 Code Section 7035‑30; 1936 (39) 1231; 2007 Act No. 111, Pt I, Section 28, eff July 1, 2007, applicable to injuries that occur on or after that date.

**SECTION 42‑15‑90.** Fees of attorneys and physicians and hospital charges approved by commission.

(A) Attorney fees, physician fees, and hospital charges for services under this title are subject to the approval of the commission, but a physician or hospital may not collect a fee from an employer or insurance carrier until the physician or hospital has made the reports required by the commission in connection with the case.

(B)(1) A person may not:

(a) receive a fee, gratuity, or other consideration for a service rendered pursuant to this title unless the fee, gratuity, or other consideration is approved by the commission or a court of competent jurisdiction; or

(b) make it a business to solicit employment for an attorney or himself with respect to a claim or award for compensation under this title.

(2) A violation of this section constitutes a misdemeanor and, upon conviction, each offense is subject to a fine of not more than five hundred dollars, imprisonment for not more than one year, or both.

(C)(1) The commission may adopt criteria to establish a new fee schedule or adjust an existing fee schedule to establish maximum allowable payments for medical services provided by medical practitioners exclusive of hospital inpatient services and hospital outpatient services and ambulatory surgery centers based in whole or in part on the requirements of a federally funded program, but if it adopts adjustments to an existing fee schedule, it must adopt these adjustments on an annual basis and the adjustments may not exceed the percentage change indicated by the federally funded program. The commission shall conduct an evidentiary hearing to review a proposed adjustment to increase or reduce these fees by more than ten percent annually to determine whether to:

(a) increase or reduce the proposed adjustment as the commission considers appropriate; or

(b) accept the proposed adjustment.

(2)(a) A decision of the commission to increase or reduce a fee schedule to establish maximum allowable payments for medical services provided by medical practitioners exclusive of hospital inpatient services and hospital outpatient services and ambulatory surgery centers by more than ten percent is reviewable by expedited appeal to the Administrative Law Court pursuant to the Administrative Procedures Act.

(b) On appeal, the court may:

(i) accept the increase or decrease;

(ii) impose a lesser increase or decrease;

(iii) revert the fee schedule as it was immediately prior to the annual adjustment;

(iv) adjust the appropriate conversion factors as necessary; or

(v) make other adjustments the court considers reasonable.

(c) The court shall issue a decision within ninety days after it receives the appeal.

(d) During the pendency of this appeal, the portion of the fee schedule under review must remain the same as it was immediately prior to the proposed changes, but all other portions of the fee schedule or conversion factors are effective and remain unchanged.

HISTORY: 1962 Code Section 72‑19; 1952 Code Section 72‑19; 1942 Code Section 7035‑67; 1936 (39) 1231; 1980 Act No. 318, Section 3; 2012 Act No. 183, Section 1, eff June 7, 2012.

**SECTION 42‑15‑95.** Release of medical records; communication of medical history by health care provider.

(A) Any employee who seeks treatment for any injury, disease, or condition for which compensation is sought under the provisions of this title shall be considered to have given his consent for the release of medical records relating to such examination or treatment under any applicable law or regulation. All information compiled by a health care facility, as defined in Section 44‑7‑130, or a health care provider licensed pursuant to Title 40 pertaining directly to a workers' compensation claim must be provided to the insurance carrier, the employer, the employee, their respective attorneys or certified rehabilitation professionals, or the South Carolina Workers' Compensation Commission, within fourteen days after receipt of written request. A health care facility and a health care provider may charge a fee for the search and duplication of a medical record in accordance with regulations promulgated by the Workers' Compensation Commission. Fee schedules established through regulations of the Workers' Compensation Commission shall apply only to claims under Title 42. If a health care provider fails to send the requested information within thirty days after receipt of the request, the person or entity making the request may apply to the commission for an appropriate penalty payable to the commission, not to exceed two hundred dollars.

(B) A health care provider who provides examination or treatment for any injury, disease, or condition for which compensation is sought under the provisions of this title may discuss or communicate an employee's medical history, diagnosis, causation, course of treatment, prognosis, work restrictions, and impairments with the insurance carrier, employer, their respective attorneys or certified rehabilitation professionals, or the commission without the employee's consent. The employee must be:

(1) notified by the employer, carrier, or its representative requesting the discussion or communication with the health care provider in a timely fashion, in writing or orally, of the discussion or communication and may attend and participate. This notification must occur prior to the actual discussion or communication if the health care provider knows the discussion or communication will occur in the near future;

(2) advised by the employer, carrier, or its representative requesting the discussion or communication with the health care provider of the nature of the discussion or communication prior to the discussion or communication; and

(3) provided with a copy of the written questions at the same time the questions are submitted to the health care provider. The employee also must be provided with a copy of the response by the health care provider.

Any discussion or communication must not conflict with or interfere with the employee's examination or treatment.

Any discussions, communications, medical reports, or opinions obtained in accordance with this section will not constitute a breach of the physician's duty of confidentiality.

(C) Any discussions, communications, medical reports, or opinions obtained in violation of this section must be excluded from any proceedings under the provisions of this title.

HISTORY: 1980 Act No. 318, Section 1; 1989 Act No. 186, Section 1, eff June 8, 1989; 1990 Act No. 476, Section 1, eff May 14, 1990; 1994 Act No. 468, Section 5, eff July 14, 1994; 2007 Act No. 111, Pt I, Section 29, eff July 1, 2007, applicable to injuries that occur on or after that date.