

# SC Workers' Compensation Commission



**House Legislative Oversight Committee  
Sub-Committee Briefing  
June 6, 2023**



## Introduction

**Who we are...**

**What we do...**

**How we do it...**

**How we plan to do it better...**



## Mission Statement

**To provide an equitable and timely system of benefits to injured workers and employers in the most responsive, accurate and reliable manner possible.**



## Guiding Principles

**Judiciously consider the facts of each case.**

**Render decisions based on application of facts to the law.**

**Treat all stakeholders fairly and equitably and in a timely manner.**

**Promote efficiency and effectiveness.**

**Remember ... a case involves a human being.**



# History of Workers' Compensation

## “The Grand Bargain”

Workers gave up the right to sue employers in civil court for workplace injuries.

Employees guaranteed treatment and compensation.

Created **no fault system with exclusive remedy** for injuries.



**Minimized cost to employers of lengthy trials.**

**Established values for medical care and compensation for temporary and permanent injuries.**

**In 1911, Wisconsin was first state to enact workers' compensation law.**

**Mississippi was the last state to enact a workers' compensation law in 1948.**



**In South Carolina...**

**Created in 1935 as the SC Industrial Commission (§42-3-10)**

**Changed to the SC Workers' Compensation Commission**

**Charged with administering the SC Workers' Compensation Act (the Act), Title 42, and Regulation 67**

**Every employer and employee, with exceptions, are presumed covered by the Act**



## Stakeholders

**Employers**

**Employees**

**Insurance Carriers**

- **Commercial**
- **Self-insurance**
- **State Accident Fund**

**Medical Service Providers**

**Attorneys**

**Uninsured Employers Fund**



# **Statutory/Regulatory Authority**

**Title 42 - Workers' Compensation  
Regulation 67**



# Commissioner

South Carolina Workers' Compensation Commission



Chairman

## T. Scott Beck

Commissioner Beck was appointed to the South Carolina Workers' Compensation Commission on June 30, 2008, serving as Chairman since 2010. He graduated with a BS degree from Penn State in 1981 and from the USC School of Law in 1999. **Prior to joining the Commission**, he served in various positions in Law Enforcement from 1979-1996 and most recently as an Assistant Attorney General from 2000-2008 prosecuting healthcare fraud cases. Commissioner Beck served as a city councilman in North Augusta, South Carolina from 1993-1996 and was elected to the South Carolina House of Representatives, serving from 1996-2000. **His term as a Commissioner ends June 30, 2026. His term as Chairman ends June 30, 2024.**



# Commissioner



**Vice-Chairman**

## Gene McCaskill

Commissioner Gene McCaskill was appointed for a term beginning on January 3, 2012. **Prior to his appointment**, he served for nine years as the Senior Executive Assistant in the SC Attorney General's Office under Attorney General Henry McMaster and Alan Wilson. Mr. McCaskill previously served as Director of Admissions for Camden Military Academy and worked for more than 20 years in his family's grocery business. Commissioner McCaskill has an extensive record of public service. Mr. McCaskill serviced on the SC Consumer Affairs Commission for over 9 years as a member and as the vice-chair. Mr. McCaskill has also served on the SC ETV Commission and as a member of Kershaw County Council. Commissioner McCaskill is a graduate of Pfeiffer University and holds membership in Phi Alpha Theta international history honor society. He has also served on numerous church and civic boards. Mr. McCaskill has been awarded life membership in Kiwanis International by his local club and has been awarded Key Club International's highest honor – the Key of Honor. **Commissioner McCaskill term expires June 30, 2024.**



# Commissioner



## Avery B. Wilkerson, Jr.

Commissioner Wilkerson was appointed to the SC Workers' Compensation Commission in June 2008. He served most recently as the Vice President of Countybank Insurance, Inc. and as the Mayor of the City of Cayce, SC since 1990. He is a graduate of Newberry College and has held numerous positions on various professional and civic boards. **Commissioner Wilkerson's term expires June 30, 2026.**



# Commissioner



## Melody L. James

Commissioner James was appointed to the SC Worker's Compensation Commission on April 26, 2012. **Before serving on the Commission**, Commissioner James was a partner in the law firm Mozingo & James, practicing primarily workers' compensation defense. Commissioner James is a 1984 graduate of the University of South Carolina with a B.S. in Accounting, and a 1987 graduate of the University of South Carolina School of Law. In addition to practicing law, Commissioner James served as municipal judge for the City of Cayce from 1988 until her appointment to the Commission. **Commissioner James' term expires June 30, 2028.**



# Commissioner



## Aisha Taylor

Commissioner Taylor was appointed to the SC Workers' Compensation Commission on January 31, 2013. **Before serving on the Commission**, Commissioner Taylor was a shareholder in the law firm Collins & Lacy, practicing primarily in workers' compensation defense and employment law. Commissioner Taylor graduated from USC in 2002 where she was a team captain of the 2002 Women's Track & Field National Championship Team. Commissioner Taylor went on to graduate from the USC School of Law in 2006. Following graduation from law school, Commissioner Taylor clerked for the Honorable Brooks P. Goldsmith of South Carolina's Sixth Judicial Circuit. She and her husband, Henry, live in Blythewood with their three children. **Commissioner Taylor's term expires June 30, 2026.**



# Commissioner



## R. Michael Campbell, II (Mike)

Commissioner Campbell was appointed by Governor Nikki Haley to the South Carolina Workers' Compensation Commission in 2014 and reappointed by Governor Henry McMaster in 2018. **Prior to his appointment to the commission**, Mr. Campbell was a candidate for Lt. Governor of South Carolina. He has an extensive background in politics and as a small business- man, having owned and operated businesses with varying interest. Mr. Campbell has also served on numerous corporate, charitable and community-oriented boards.

Governor Mark Sanford appointed him as Vice-Chairman of the South Carolina Department of Natural Resources Board, where he served from 2003 to 2011.

**His term on the Workers' Compensation Commission expires June 30, 2024.**



## Commissioner



### Cynthia Dooley

Commissioner Cynthia Dooley was appointed to the SC Workers' Compensation Commission on July 1, 2022. She graduated magna cum laude with a Bachelor of Science degree from the University of South Carolina in 1978. She worked for Aetna Casualty & Surety as a senior claims representative for 13 years. She then graduated from the University of South Carolina School of Law in 1997 and joined the insurance defense firm of Turner Padgett where she worked for 25 years specializing in Workers' Compensation Defense. She also became a certified mediator in 2007 and was inducted into the National Academy of Distinguished Neutrals in 2022. Cindy also served as the Chair of the Workers' Compensation Section of the South Carolina Bar 2021 - 2022. **Commissioner Dooley's term expires June 30, 2028.**



# Membership, terms of office, duties, chairman

§42-3-20

## 7 members

Appointed by Governor, advice and consent of Senate for 6 year staggered terms not required to be an attorney

## Chairman

Appointed by the Governor advice and consent of Senate for 2 year term

**Note:** 65 Commissioners included 29 attorneys and 36 non-attorneys (source: SC Dept of Archives and History and SC Bar)



## Commissioners

**The Commissioners serve two functions:** A Judicial function and a Public Policy/Quasi-legislative function.

The Judicial function involves conducting judicial hearings as jurisdictional Commissioner, Rule to Show Cause hearings, conduct Informal Conferences, approve settlements, motions, attorney fees and hear appeals of jurisdictional Commission Orders. (§42-3-20 (C))

The Public Policy/Quasi-legislative function involves approving Regulations, administrative policies and procedures, approve Medical Fee Schedules and applications for self-insurance.



## **Duties**

**§42-3-20**

**Hear and determine contested cases**

**Conduct Informal Conferences**

**Approve Settlements**

**Hear applications for full commission reviews**

**Handle other such matters for judicial disposition**



## **Salaries**

**(§42-3-40)**

**Annual salary of Commissioner is 85% of circuit court judges.**

**Commissioner - \$172, 256**

**Chairman - \$177,425**



## Ethics

### § 42-3-250

**(A) Commissioners bound by Judicial Code of Conduct as contained in Rule 501 of the SC Appellate Court Rules, and the State Ethics Commission is responsible for enforcement and administration of Rule 501 pursuant to Section 8-13-320. Commissioners must also comply with applicable requirements of Chapter 13, Title 8 Ethics, Government Accountability, and Campaign Reform.**

**(B) Commissioners and their administrative assistants must attend a workshop of at least three continuing education hours concerning ethics and the Administrative Procedures Act HISTORY: 2005 Act No. 36, Section 1, eff April 15, 2005.**



## **Chairman**

**(§42-3-25)**

**Chairman is Chief Executive Officer, executes policies established by Commission.**

**Executive Director reports to the Chairman and is responsible to the Commission.**



# **Commissioner's Administrative Assistant**

(§42-3-60)

**Each Commissioner is authorized to employ an administrative assistant to serve at the Commissioner's pleasure.**



## Executive Director

(§42-3-80)

The administrative department of the commission shall be under the direction of the executive director.

**Appointed by the commission, shall serve at its pleasure, and shall receive an annual salary not to exceed eighty-five percent of the salary paid to the commissioners.**

**(85% of the Commissioners Salary - \$146,417)**

The administrative director shall receive and be responsible for all files and records of the Workers' Compensation Commission.

Shall refer all claims to the judicial department for disposition and receive from that department reports, information and statistics as to the disposition of claims.



# Executive Director

(§42-3-80)

Responsible for the referral to the South Carolina Vocational Rehabilitation Department of all industrially injured persons that need vocational counseling or vocational evaluation, personal adjustment, training and placement.

**In the performance of his duties, the director is authorized to:**

- (a) with the approval of the chairman of the commission, appoint and discharge, if necessary, all support personnel within the administrative department except division directors;
- (b) compile all statistics and reports concerning the administration of workers' compensation laws and the disposition of claims related thereto;
- (c) conduct administrative operations of the commission in accordance with the provisions of this title and regulations promulgated thereunder.



# South Carolina Workers' Compensation Commission

Commissioner Commissioner Commissioner Commissioner Commissioner Commissioner Commissioner

Admin Coord II

Executive Director

## Administration

Executive Assistant

Attorney III

HR Manager

Fiscal Acct Tech III (vacant)

Attorney II

Law Clerk (PT)

## Claims

Director Program Mgr II

Ins Claims Analyst II

Ins Claims Analyst I

Ins Claims Analyst I

Ins Claims Analyst I

Ins Claims Analyst I

Records Analyst I (vacant)

Records Analyst I (vacant)

## Insurance & Medical Services

Director Program Mgr I

### Coverage

Program Manger I

Program Coord I

Admin Asst.

### Self-Insurance

Program Manger I

Admin Asst.

### Medical Services

Program Coord I

## Judicial;

Director Program Mgr II

### Appeals

Prog. Coord. II

Claims Analyst I

Program Asst.

### Disputed Claims

Claims Analyst I

Postal Center Dir I

Admin Specialist II

Program Coord II (PT)

## Information Services

Director Program Mgr II

IT Consultant I

Info Syst. Bus. Analyst I

Systems Prog. Dev IV

Info Syst Bus Analyst I (vacant)

Info Syst/Bus Analyst III



# Commissioners





# Departments

**Executive Director**

**Administration**

**Claims**

**Insurance &  
Medical  
Services**

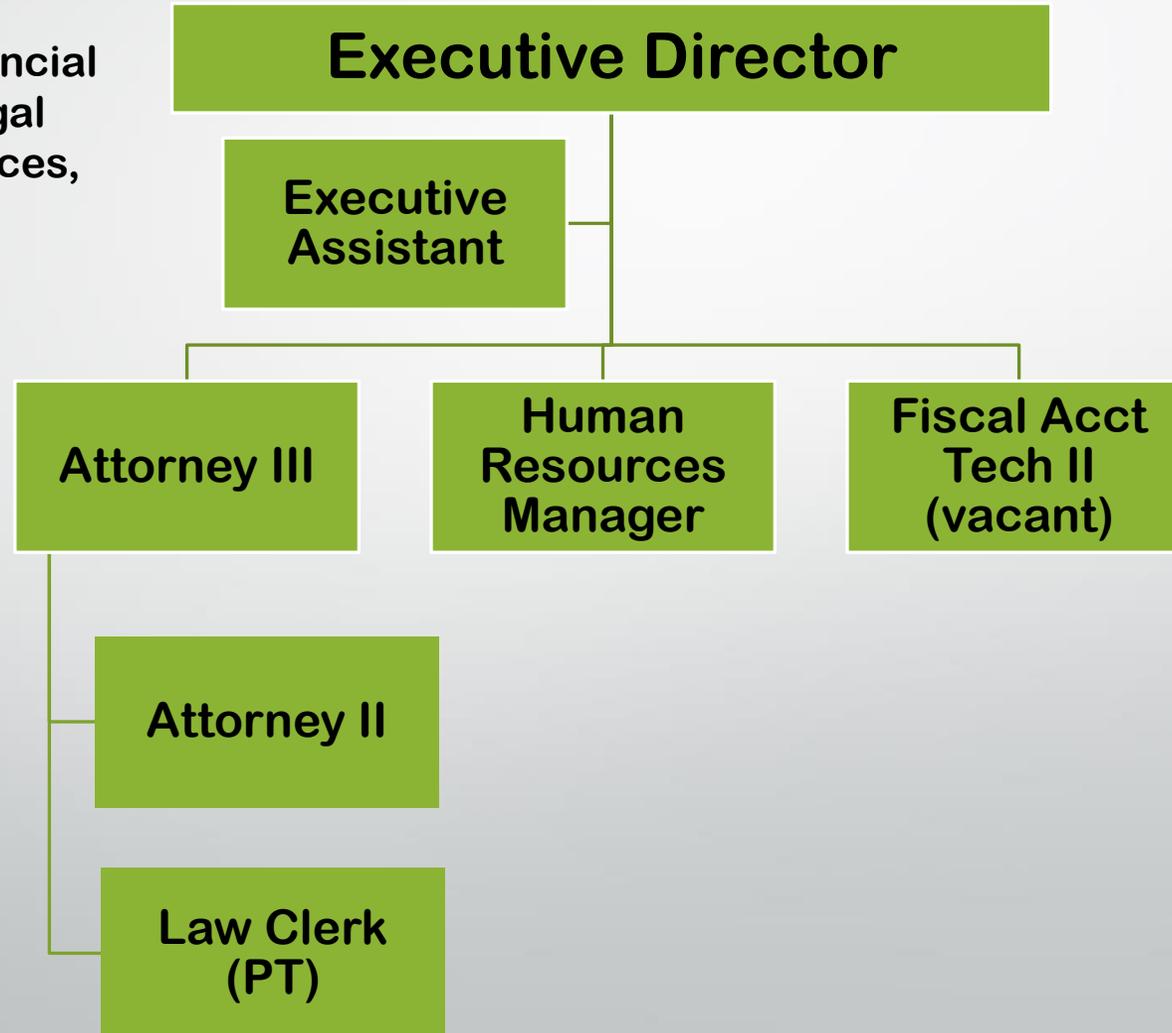
**Judicial**

**Information  
Services**



# Administration Department

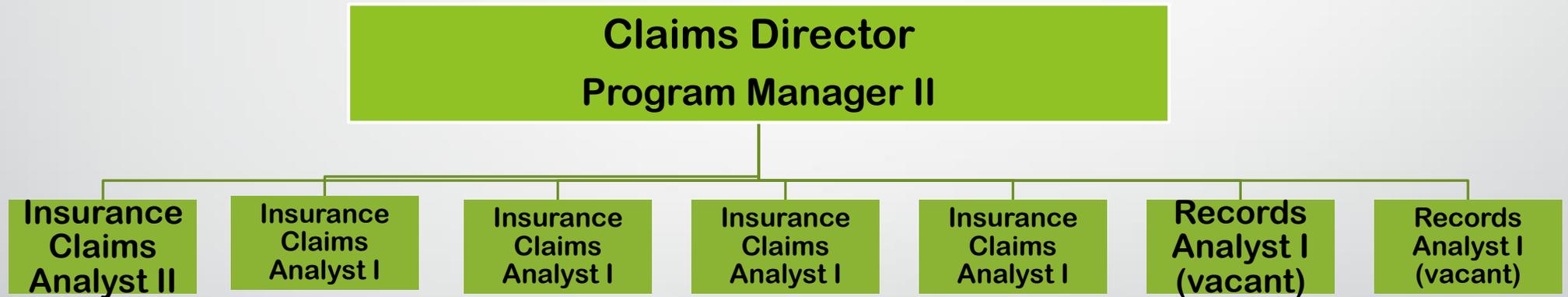
Administration is responsible for the financial budget, accounting, legal counsel, human resources, public information and ombudsman services.





# Claims Department

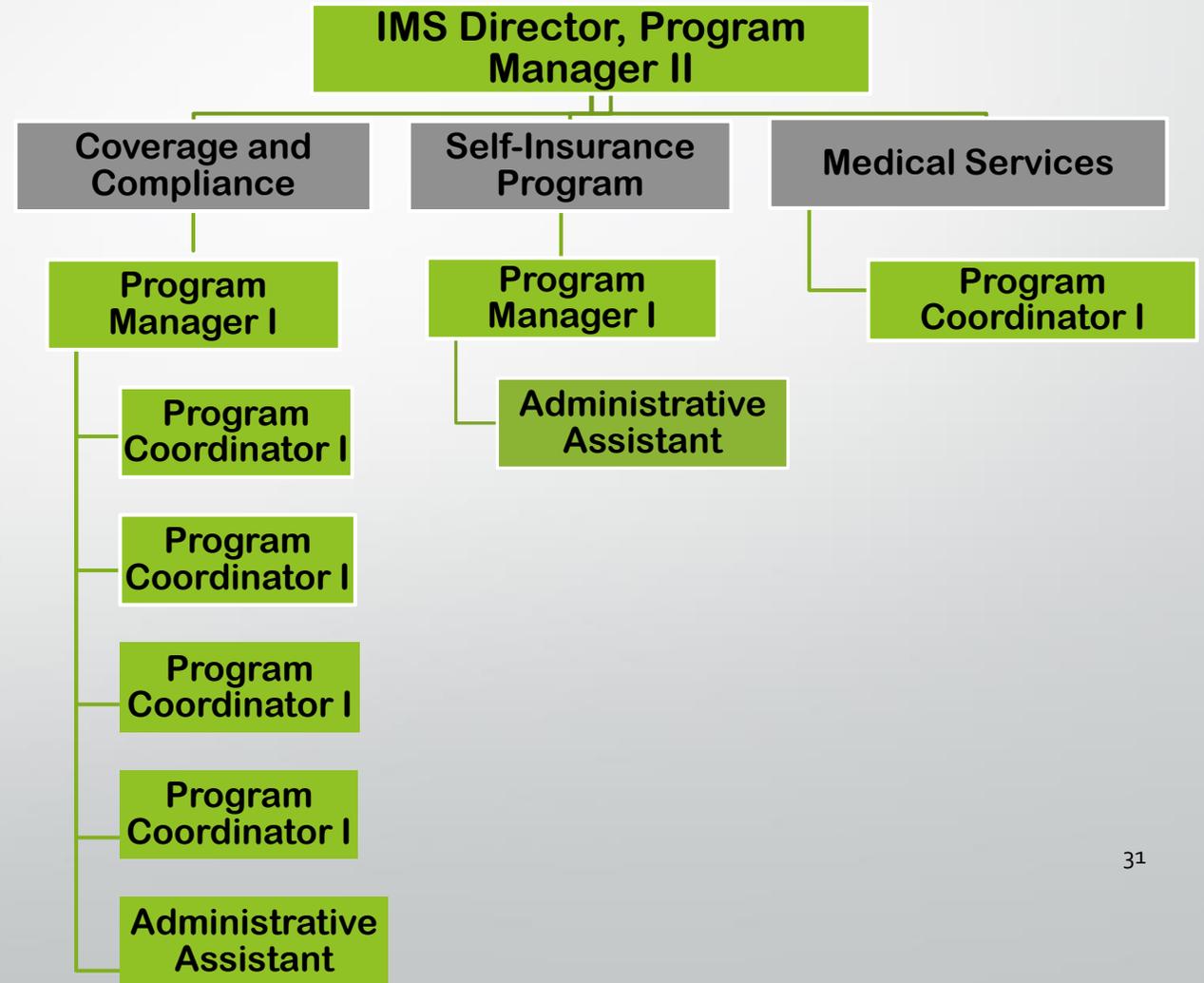
Responsible for ensuring insurance carriers meet the reporting requirements of the Workers' Compensation Act and Regulations.





# Insurance and Medical Services Department

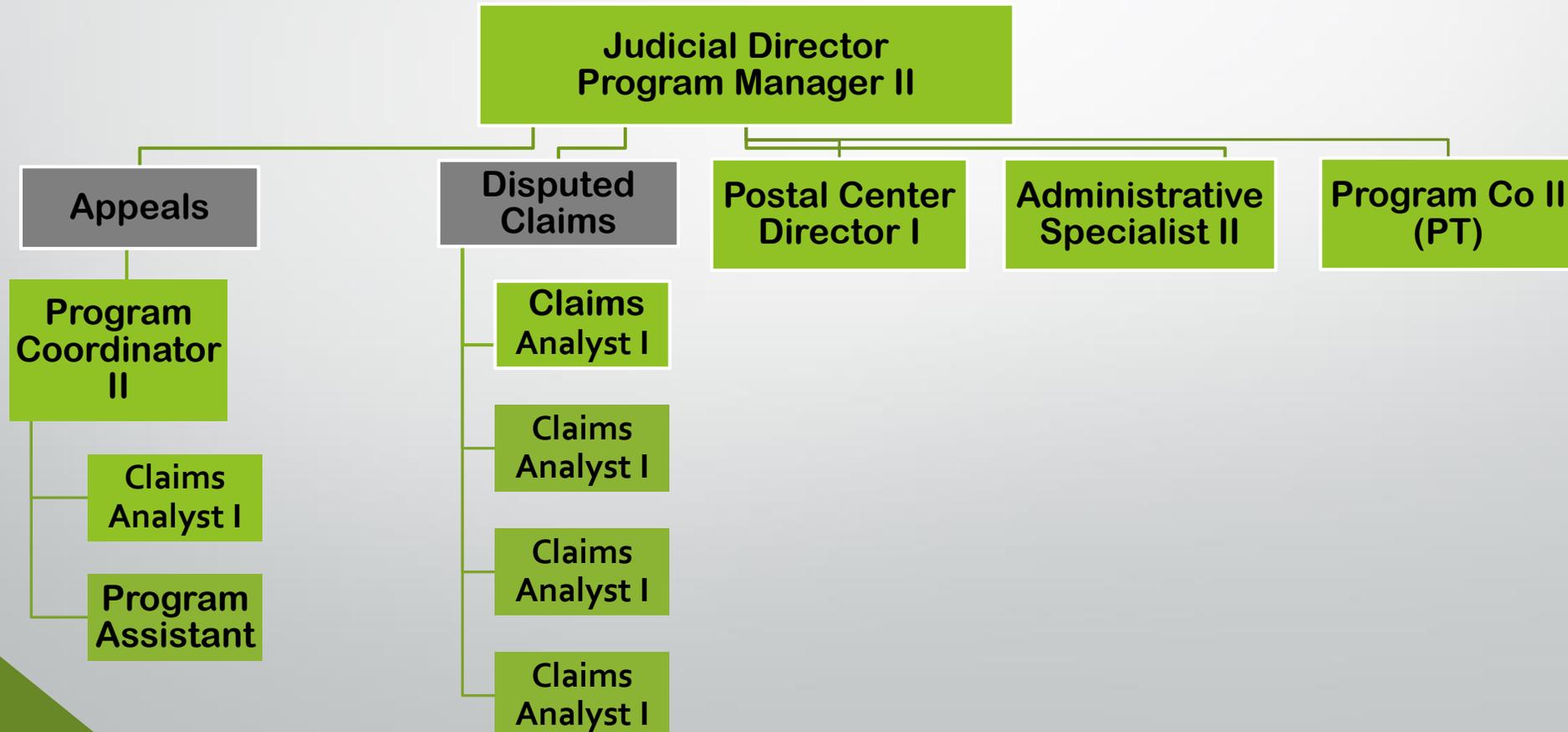
Responsible for ensuring employers comply with the insurance coverage requirements; the Medical Services Provider Manual updates and billing disputes; and the Self-Insurance Program.





# Judicial Department

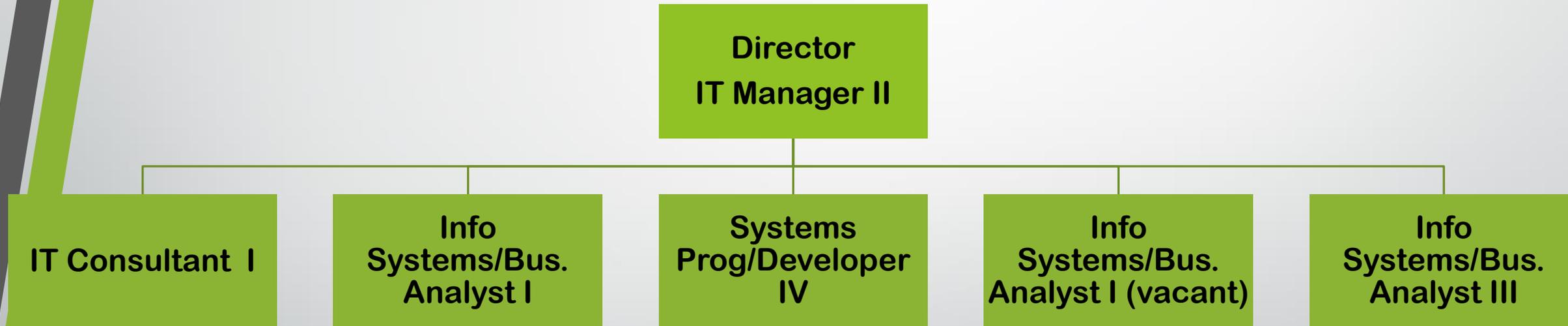
**Monitors, reviews and assigns all contested cases; coordinates venues for hearings; processes appeals for full Commission reviews; monitors mediations; coordinates Informal Conferences; oversees mail room and reception area.**





# Information Services Department

Management of agency's legacy claims management system, document imaging, on-site workstations; supports external stakeholders with electronic submission of forms and files.





## **Executive Director/Administration**

**The Executive Director is responsible for the oversight of the agency departments, Information Technology, Judicial, Claims, and Insurance and Medical Services.**

**The office is also responsible for the Administrative functions of the agency to include budget preparation; finance and accounting; procurement, legal, human resources, ombudsman and public information.**

**The agency has a Memorandum of Agreement for assistance with finance and accounting and procurement.**



# Insurance and Medical Services (IMS) Department

The IMS Department is divided into three functional divisions:

- Coverage and Compliance
- Medical Services
- Self-insurance

# Coverage Division





## **Coverage Division**

**The Coverage Division checks for insurance coverage on every claim.**

**Over 58,000 claims filed FY22.**

**If coverage is located a claim number is assigned.**

**If no coverage is located, the claim is assigned to the Compliance Division for investigation.**



# Coverage Requirements

## §42-1-360

**Every employer and employee in SC covered, with notable exceptions:**

- Businesses with less than 4 employees;
- Agricultural employees;
- Railroad & Railway companies;
- Federal employees in SC;
- Certain casual employees;
- Certain real estate salespersons;
- Corporate officers (by election).



# **Coverage Requirements**

**There is no coverage exemption form in South Carolina.**

**The Commission does not provide Workers' Compensation Insurance.**

**Coverage can be obtained through one of the following:**

**Commercial Carrier**

**Self Insured Fund**

**Individually Self Insured (requires SCWCC approval)**

**State Accident Fund (governmental entities)**

**SC Assigned Risk Pool (program administered by NCCI)**



## Coverage Requirements

- **4 or more employees; full-time or part-time**
- **Officers of a corporation**
  - counted as employees
- **Sole proprietors and partners**
  - not counted as employees
- **Corporate officers**
  - may opt out of coverage
  - complete a Form 5 for insurance carrier



## **R.67-402 Corporate Officer Rejection of Act**

**A corporate officer shall file a Form 5, Corporate Office Notice to Reject.**

**S.C. Code Ann. § 42-1-380 / R.67-403**

### **Election to Adopt the Act**

- **Exempt Employer operates under the terms of the Act by obtaining workers' compensation insurance.**
- **Employer exempt from the Act, may elect to operate under the Act.**
- **Employer shall operate under the Act until notice is filed with the Commission (Form 38)**



## Withdrawing from the Act (Form 38)

**S.C. Code Ann. § 42-1-390 / R.67- 404**

**Provides a process by which an exempt employer, who has previously elected to operate under the Act, may withdraw from the Act.**

**Notifications to insurance carrier and employees required and establishes effective dates.**

**Provides procedures for non-exempt employers becoming exempt for withdrawing from Act.**



# Coverage Verification System

Any stakeholder can register a policy with the Commission's Coverage Verification System to be notified of a midterm cancellation.

Go to the Commission's website: <http://www.wcc.sc.gov> and select the verify coverage tab at the top of the page. Then follow the prompts.

Once you have located your policy through the search portal, you can register that policy using your email address and you will be notified if that policy is cancelled prior to its expiration date.





## ➤ **Compliance Division**

### **How are we notified of uninsured employers?**

- ✓ Claims
- ✓ SCDEW data
- ✓ Anonymous calls and emails

### **Where do we receive our data?**

- ✓ Coverage data from NCCI
- ✓ Employer payroll & wage data from SCDEW

### **How do we use the data?**

- ✓ Comparative analysis
- ✓ NCCI POC records vs. SCDEW records



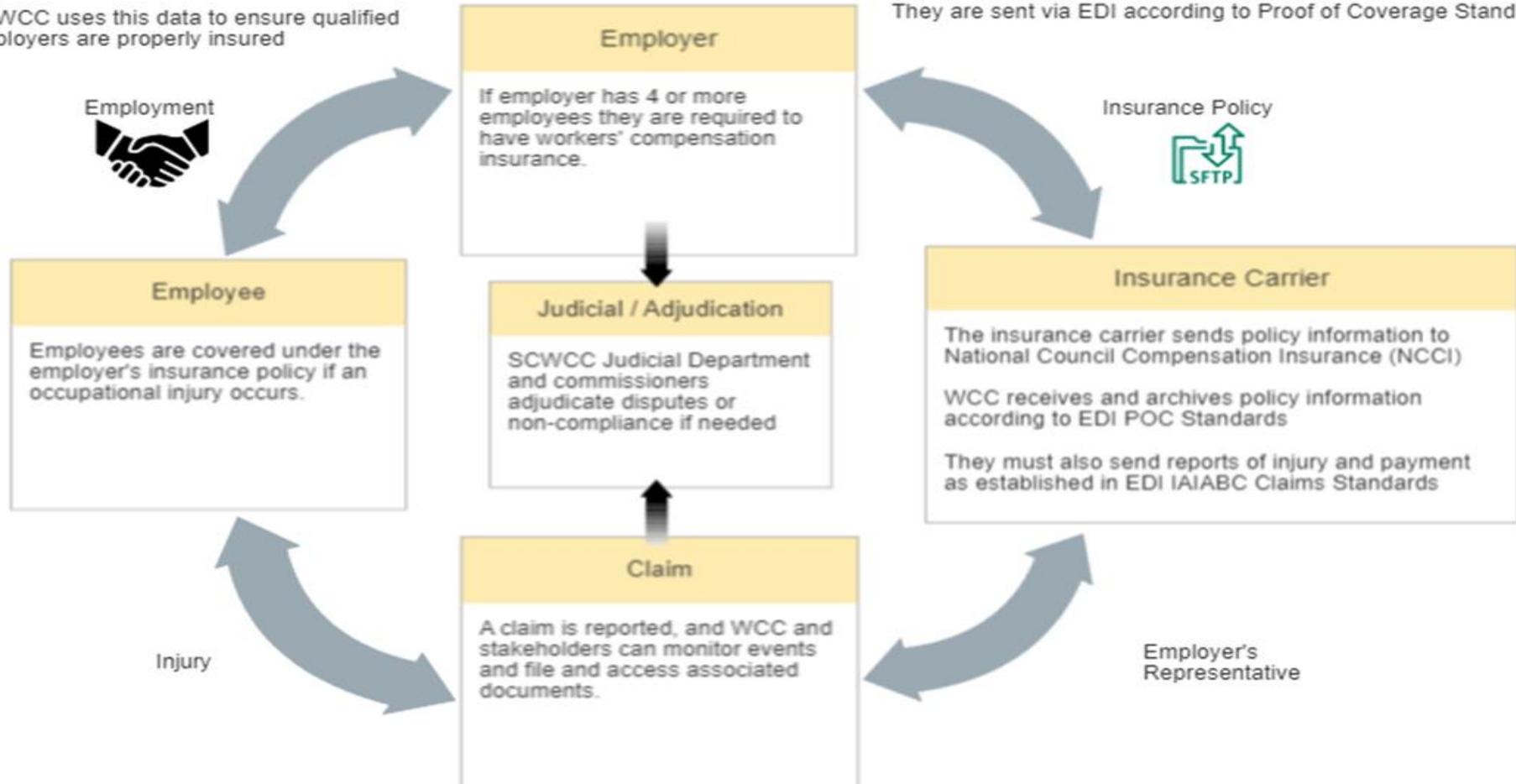
# South Carolina Workers' Compensation Commission

SC Department and Workforce (SCDEW) provides access to a quarterly file with active SC employer information

SCWCC uses this data to ensure qualified employers are properly insured

Insurance Carriers must send policy information and updates to National Council for Compensation Insurance (NCCI)

SCWCC receives and stores a copy of these records. They are sent via EDI according to Proof of Coverage Standards.





## Compliance Division

### ❖ Non-compliance Investigations

#### SC DEW

Shares wage records of employers

Cross check employers with 4 or more employees

NCCI Data base for insurance policies

#### Claims filed

Verifies coverage with NCCI data base

#### External Sources

Contacts from public of potential non-compliance



## Compliance Division

- Initiates an average of **1,700 investigations annually**
- Resulted in 460 employers obtaining coverage FY22
- Provided over 3,800 employees protection FY22
- **Assessed \$4.9 million in fines** and penalties FY22
- **Collected \$686,000 in fines** and penalties from employers who were found to be non-compliant FY22
- We work to educate and bring employers into compliance, not just to assess and collect fines.



## Investigation Process (X-file)

- Preliminary search
- NCCI, Prior claims, Sec of State, Google
- Questionnaire sent to Employer, claimant or claimant/attorney **20 days to respond**
- No response – send Notice of Violation letter, if non-compliant **20 days to respond**
- No response - case forwarded to Compliance Collections
- No response - set for Rule to Show Cause Hearing before Commission
- Fines and penalties assessed
- GEAR program used for non-collections on corporate entities



## **Medical Services Division**

- Oversees annual medical fee schedule update
- Resolves medical fee disputes
- Responds to payers, providers, and stakeholders
- Processed over 130 formal medical bill disputes FY22
- Processed over 1,000 medical billing inquiries FY22
- Processed over 160 medical bill pricing reviews FY22
- Processed 9 Bill Reviewer Certifications FY22



## Medical Fee Schedules

- **Hospital & Ambulatory Payment Manual**
  - Ambulatory Surgery Centers
  - Inpatient/Outpatient Hospital Facilities
  - Updated quarterly via CMS
- **Medical Services Provider Manual**
  - Medicare Based (CMS)
  - Resource-Based Relative Value Scale (RBRVS)
  - Current Conversion Factor (\$51.5)
  - Updated annually with partnering assistance of FAIR Health
  - Effective April 1



## **Self-Insurance Division**

**The Self-Insurance Division regulates current self-insured funds and self-insured employers to ensure compliance with Title 42 and WCC's Regulations, 67-1501.**



## What is Self-Insurance and why would an employer apply for it?

- Self-Insurance is **an alternative** to purchasing a commercial workers' compensation policy to ensure employees are covered.
- These employers **choose to self-insure** their worker compensation liabilities to cover their employees for reasons cost effectiveness, greater control over their claim's programs, and increase safety and loss control management.
- The success of a workers compensation self-insurance program is often dependent upon the effectiveness of loss control activities and claims supervision. Most self-insured employers' contract with third-party administrators to perform some of these services, while some decide to handle their own.



## Self-Insurance Division

- To become a part of the self-insurance program, the employer must qualify through an application process and meet specific financial requirements to be recommended for approval by the Director of Self-Insurance.
- The recommendation for approval is presented before the Commissioners at the WCC's monthly business meeting. Once the Commissioners issue the final approval, a certificate of self-insurance is issued to the employer, thus indicating approval into the self-insurance program.
- **Currently, there are 83 self-insured individual employers and 9 funds with over 2,053 employers covering approximately 260,000 employees that are regulated within the self-insured program.**



# Categories of the Self-Insurance Program

## § 42-5-20

- **Self-Insured Individual Employer**

Self-Insured individual employers are required to provide all appropriate workers' compensation benefits to their injured workers in accordance with the South Carolina Law.

- May add subsidiaries under their self-insured program

- **Self-Insured Fund R.67-1501**

Businesses similar in nature, pooling their liabilities, to ensure all appropriate workers are covered.

- May add members under their self-insured fund



## Self-Insured Individual Employer

To apply to become individually self-insured, pursuant R.67-1501 (A-D), an employer shall:

- File a Form 7, Application to Individually Self-Insure and
- Pay a \$250 application fee and
- Submit a statement describing in detail the proposed claims administration program including the resume of each member of the claims administration staff, if claims will be administered by the employer or a copy of the service contract and quote for service fee if claims will be administered by a TPA and
- Submit a description of an outside safety consultant and annual fee, if any and
- Submit three years of GAAP financial audited statements or the 10-K and
- Submit three quotes for excess insurance
- Each proposed subsidiaries may be added under the employer by filing out a Form 7A, Corporate Guaranty and paying a \$100 application fee



## Self-Insurance Fund

To apply for approval of a proposed Self-Insurance fund, an officer of the proposed fund, pursuant R. 67-1501 (E-G), shall:

- File a Form 6, Application to Create a Self-Insurance Fund and
- Pay a \$250 application fee and
- Submit a copy of the fund by-laws and
- Submit a current audited financial statement and
- Submit a list of estimated standard premiums collected by the fund, by month, for the first fiscal year and
- Submit a signed indemnity agreement that jointly and severally binds each member of the fund



## Self-Insurance Fund

To apply for approval of a proposed Self-Insurance fund, an officer of the proposed fund, pursuant R. 67-1501 (E-G), shall:

- Submit a statement describing in detail the proposed claims administration program including the resume of each member of the claims administration staff, if claims will be administered by the employer or a copy of the service contract and quote for service fee if claims will be administered by a TPA and
- Submit quotes for excess insurance and
- Submit with their Form 6 a Form 6A, Application for Membership in a Self-Insurance Fund for each proposed member and
- Proposed members must have a minimum combined net worth of one million dollars at time of application



## Monitoring

Once the application to become self-insured has been approved, each self-insured individual employer and fund is required to meet specific annual obligations to remain active in the self-insured program;

- **File a Form 10 (§ 42-5-190)**
- **Submit their GAAP financial statements for analysis of the self-insureds financial condition 90-120 days after the close of their FY (R.67-1510)**
- **Subject to an audit for all self-insured documents submitted for the past 2 years (R.67-1511)**
- **Maintain a letter of credit or surety bond (R.67-1505 or R.67-1507)**
- **Maintain excess insurance (R.67-1503)**



# Self-Insurance Tax

## Form 10

### §42-5-190

- The Form 10 reports the actual cost incurred on medical and indemnity claims and any expenses related to operating in the self-insurance program, for each fiscal year.
- The Self-Insurance Director assesses against actual cost incurred and collects a maintenance tax of 2.5% for the employer's self-insurance program.
- Self-insurance Tax generates \$5 million per year.
- The Commission retains the greater of 50% or \$2,200,000 to pay salaries and expenses of the Commission each FY.
- Balance of tax maintenance revenue is transferred to the General Fund

# Claims Department





## Claims Department

- **Responsible for ensuring that the insurance carriers meet the reporting requirements of the workers' compensation laws and regulations.**
- **Claims process all the workers' compensation forms, Form 61, Attorney Fee Petition, settlement documents and issue fines for noncompliance.**



# SC Workers' Compensation Forms

Claims Department ensures that all SC Workers' Compensation forms are filed accurately and timely. These forms are submitted by the carrier.

- Form 15, Temporary Compensation Report – *Reg. 67-503 & 67-504*
- Form 15s, Supplemental of Varying TP Payments- *Reg. 67-503*
- Form 17, Receipt of Compensation- *Reg. 67-505*
- Form 18, Periodic Report – *Reg. 67-413*
- Form 19, Status Report and Compensation Receipt – *Reg. 67-414*
- Form 20, Statement of Earning of Injured Employee- *Reg. 67-1603*

❖ **Claims process 80,000 forms annually**



## SC Workers' Compensation Forms (cont.)

- Form 50, Employee's Notice of Claim and/or Request for Hearing – *Reg. 67-206*
  - ❖ Process 2,880 Form 50's, Claim Only annually
- Form 61, Attorney Fee Petition – *Reg. 67-1204*
  - ❖ Process 8,400 Form 61, Attorney Fee Petitions annually



## Settlement Documents

- Agreement and Final Release/Clincher
- Form 16A –Agreement for Permanent Disability/Disfigurement Compensation
  - Claims process 12,000 Settlement Documents annually



## Fines for Non-Compliance

- Claims Department issues fines to insurance carriers for not filing forms timely and/or not responding when information is requested.
- Fines - \$200 all forms except Form 19
- Form 19 - \$50
- 3,600 fines issued annually
- \$731,800 assessed



## Employers Reporting Requirement

### R67- 411 Employer's Report of Injury Form 12A

- Provides employers to **keep records** of injuries on a Form 12A for **two years**.
- Injury less than \$500 medical, no lost time from work or permanency, not required to report to Commission.
- Employer's representative shall retain Form 12A for 2 years if medical treatments is less than \$2,500, no lost time or permanency. Must report these to Commission on 12M (Minor Medical).
- **Must file 12A with Commission within 10 business days** if medical treatment is more than \$2,500 or results in compensable lost time or permanency.

# Judicial Department





# Judicial Department

## Contested Cases

- Monitors, reviews, assigns all contested cases to jurisdictional Commissioner for docketing a hearing (**10,000 annually**).
- Coordinates with the venues and the jurisdictional Commissioner's office the for the place, date and time of the jurisdictional Commissioner hearings.
- Disputed claims are processed, assigned to jurisdictional and a hearing is scheduled within 94 days of receipt by the Judicial Department.



## Judicial Department

- **Processes Relief of Counsel Motions, for approval by Chairman or the jurisdictional Commissioner.**
- **Assigns cases to the jurisdictional Commissioner to schedule a Clincher Conference when the claimant is unrepresented.**



# Judicial Department

## Full Commission Review

### (Appeals)

- Processes 180 jurisdictional Commissioner's Decision and Orders appealed for full Commission review.
- Includes docketing, serving notices, 100 reviews, 100 Decisions and Orders and 40 appeals to higher court.



# Judicial Department

## Informal Conference

- Schedules over **3,100 informal conferences annually** on cases with which the cost of medical is below \$50,000.
- Manages the Informal Conference docket for the Claims Mediator.
- Coordinates venue for Informal Conference, if necessary.
- Processes settlements approved by a Commissioner.



# Judicial Department Mediation

- The Judicial Department reports over 1,100 mediations are scheduled annually.
- Of those, 750 are resolved and 180 resulted in an impasse.
- Not all mediations scheduled and conducted are reported.



# Judicial Process



## Attorney Practice Commencing Representation

- Unless the Claimant is acting *pro se* or the Employer is a sole proprietor or partner in a common-law partnership, [t]he parties must be represented by counsel at Single Commissioner Hearings and at Appellate Panel Hearings. **S.C. Code Regs. 67-1201(A).**
- When an attorney is retained to represent a party before the Commission, the attorney must send a letter of representation to the Commission's Judicial Department. **S.C. Code Regs. 67-1202(A).**
- Failure to send a letter of representation may result in a \$200 fine. See **S.C. Code Ann. § 42-19-30 (1986, as amended); S.C. Code Ann. § 42-3-105 (2003, as amended).**



## Filing and Processing a Claim

- Injured workers must **notify the employer within 90 days** after the occurrence of the accident & medical care provided (S.C. Code Ann. § 42-15-20(A)- (B)(2007, as amended)).
- **Claim must be filed with the commission within two years** after an accident or, if death resulted from the accident, two years from the date of death. S.C. Code Ann. § 42-15-40 (2007, as amended)
- The Commission's Coverage and Compliance Division checks for insurance coverage.
- If coverage is found, a WCC case number is assigned.



## Filing a Claim

- **R67-205 Defined**
  - Method of filing, electronic, first-class mail or by hand delivery
- **R67-206 Filing a Claim**
  - The injured worker may use the Form 50, Form 52 or a letter.
  - May or may not request hearing.
  - Commission notifies employer's representative of no hearing, employer not required to file a Form 51 or 53



- **The Coverage and Compliance Division checks for insurance coverage.**
- **If coverage is found a case number is assigned.**
- **If no coverage is found the employer is notified by letter requesting they contact the WCC.**
- **The employer is assessed a fine and required to obtain coverage.**



## Jurisdictional Commissioner Hearing

- The jurisdictional Commissioner schedules a hearing and sends a **30-day Notice of Hearing** to the parties of the time and place of the hearing.
- The Hearing is conducted in the district at a venue **no more than 75 miles** from the county seat of the county in which the injury occurred. S.C. Code Ann. § 42-17-20 (2018, as amended). District language was added by 2018 SC Act No. 233, SS 1, eff May 18, 2018.

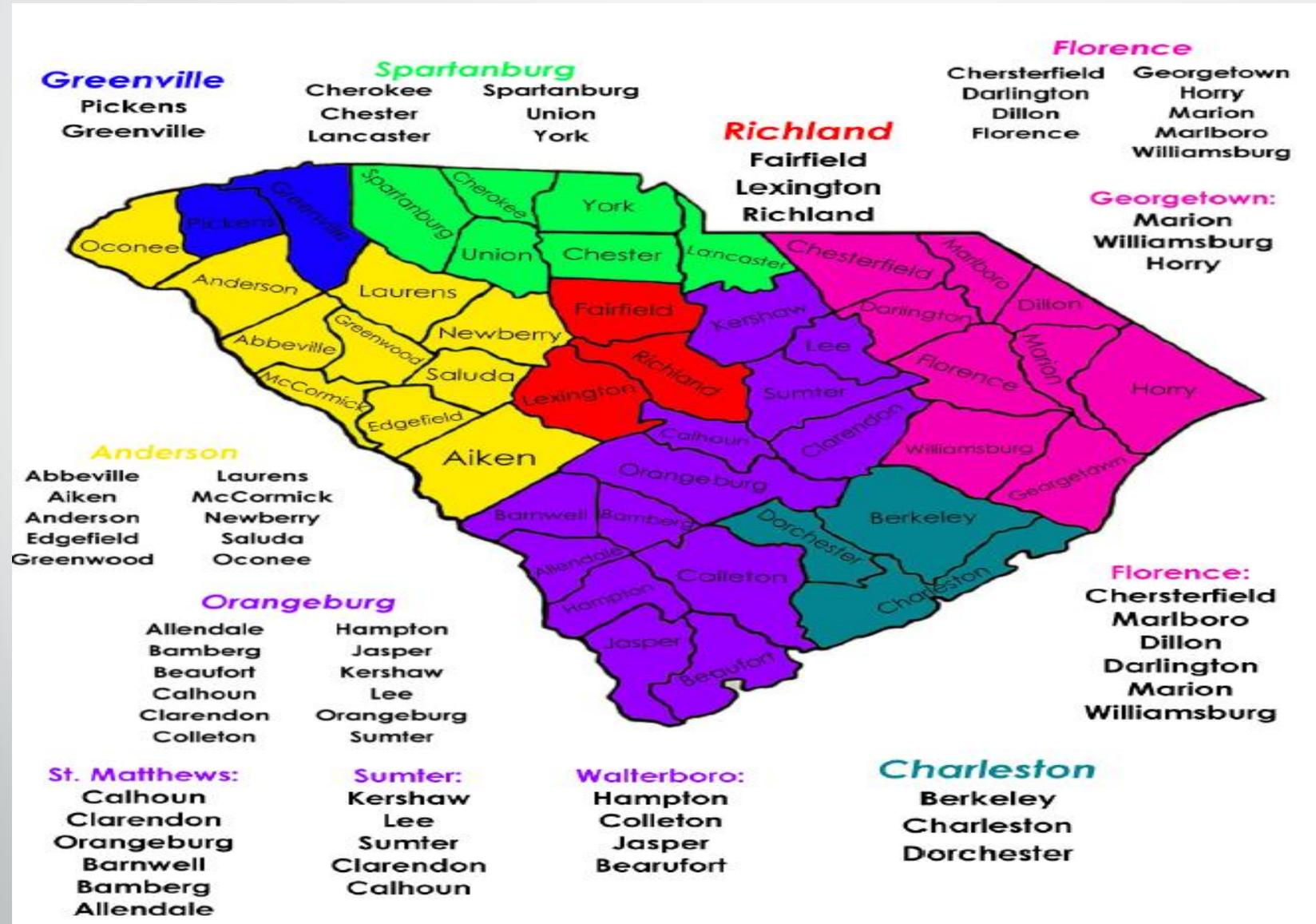


## Jurisdictional Districts

- **The State is divided into 7 districts in which hearings are held.**
- **The Commissioners rotate to a different district every 2 months.**
- **The districts were created to evenly disperse the case load among the Districts.**



# South Carolina Workers' Compensation Commission





## Jurisdictional Commissioner Hearings

### **§42-3-170 Manner in which Hearings Conducted**

Hearings shall be open to the public and stenographically reported.



## Burden of Proof

- The Claimant bears the burden to prove entitlement to benefits. “The claimant has the burden to prove facts that will bring the injury within the workers’ compensation law, and such an award must not be based upon surmise, conjecture, or speculation.” Crisp v. SouthCo., 401 S.C. 627 (2013).



## Evidence

### §1-23-330(1)(1979)

- The rules of evidence do not apply in workers' compensation hearings. *See S.C. Code Ann. 1-23-330(1)(1979)*.
- Hearsay is admissible in workers' compensation proceedings if corroborated by facts, circumstances, or other evidence. Hamilton v. Bob Bennett Ford, 339 S.C. 68 (2000).



## Discovery

- A party may subpoena persons or documents by completing and serving a Form 27. *See S.C. Code Regs. 67-214 (2018, as amended).*
- The commission will **not entertain** motions involving the merits of a claim, including, but not limited to, a motion for dismissal or summary judgment. *See S.C. Code Regs. 67-215 (B)(2018, as amended).*



## Discovery

- The moving party must provide the expert reports to be submitted as evidence at the hearing **15 days** prior to the hearing.
- The non-moving party must provide the expert reports to be submitted as evidence at the hearing **10 days** prior to the hearing.
- Failure to provide such reports may result in the exclusion of the evidence at the hearing.
- *See S.C. Code Regs. 67-612(2001, as amended).*



## Oaths, Depositions, Postponements

- The commission may administer oaths and affirmations, take depositions **and issue subpoenas** to compel the attendance of witnesses and the production of records deemed necessary in accordance with any proceeding under this title. **S.C. Code Ann. § 42-3-150(1980); See also S.C. Code Ann. 42-3-140(1980, as amended).**
- A Commissioner may postpone a hearing for good cause such as: an attorney's obligation to appear in another court, illness, additional discovery, a conflict of interest, or if it is premature to hear the case. **S.C. Code Regs. 67-613(2018, as amended).**
- A party can request a postponement by filing a motion. **S.C. Code Regs. 67-215(2018, as amended).**



## Jurisdictional Hearing Decision and Order

- After the Hearing, the Commissioner issues the Order Instructions to the prevailing party within **90 days**.
- Final Order and decision is issued and served on all parties.

| <b>Jurisdictional Commissioners' Orders</b> |                  |                  |                  |                  |                  |
|---|------------------|------------------|------------------|------------------|------------------|
| <b>FY2016-17</b>                            | <b>FY2017-18</b> | <b>FY2018-19</b> | <b>FY2019-20</b> | <b>FY2020-21</b> | <b>FY2021-22</b> |
| <b>2,381</b>                                | <b>2,718</b>     | <b>2,834</b>     | <b>2,460</b>     | <b>2,432</b>     | <b>2,248</b>     |



## South Carolina Workers' Compensation Commission

| <b>Workers' Compensation Commissioners Case Load</b> |               |                             |                          |
|--|---------------|-----------------------------|--------------------------|
|  | <b>FY2022</b> | <b>FYF2023<br/>(6 mths)</b> | <b>Projected<br/>YTD</b> |
| Pleadings Assigned - 971 code                        | 9,591         | 4,827                       | 9,654                    |
| Hearings Held - 220 code                             | 654           | 289                         | 578                      |
| Pre-Hearing Conferences Held - 385 code              | 172           | 98                          | 196                      |
| Motions Assigned - 241                               | 1,348         | 650                         | 1,300                    |
| Relief of Counsel Motions - 376 code                 | 772           | 425                         | 850                      |
| Clincher Conferences Requested- 008 code             | 1,635         | 810                         | 1,620                    |
| I/C Held - Meds over 50K - 378 code                  | 78            | 19                          | 38                       |
| Failed IC Hearings - 318                             | 261           | 96                          | 192                      |
|  |               |                             |                          |
| Single Commissioner Orders (Orders Report)           | 2,242         | 1,097                       | 2,194                    |
| Consent Orders                                       | 3,001         | 1,650                       | 3,300                    |
| Administrative Orders                                | 132           | 70                          | 140                      |
|  |               |                             |                          |
| Full Commissioner Hearings Held (Manual)             | 96            | 44                          | 88                       |
| FC Orders Served (Orders Report)                     | 133           | 50                          | 100                      |
| Attorney Fee Petitions Approved                      | 7,653         | 3,835                       | 7,670                    |

# Claims





## South Carolina Workers' Compensation Commission

|   | <b>Claims Filed</b> |                  |                  |                  |                  |                  |
|---|---------------------|------------------|------------------|------------------|------------------|------------------|
|   | <b>2017-2022</b>    |                  |                  |                  |                  |                  |
|   | <b>FY2016-17</b>    | <b>FY2017-18</b> | <b>FY2018-19</b> | <b>FY2019-20</b> | <b>FY2020-21</b> | <b>FY2021-22</b> |
| <b>Total Cases</b>                      | 64,802              | 67,255           | 65,827           | 66,825           | 58,327           | 57,986           |
| <b>A. New Cases</b>                     | 61,766              | 64,205           | 62,751           | 64,093           | 55,553           | 55,483           |
| <b>i. WCC Cases Created</b>             | 24,137              | 24,316           | 24,155           | 24,993           | 25,545           | 24,009           |
| <b>ii. Minor Medical Reported (12M)</b> | 37,629              | 39,889           | 38,596           | 39,100           | 30,008           | 31,474           |
| <b>Reopened Cases</b>                   | 3,036               | 2,872            | 3,076            | 2,732            | 2,774            | 2,503            |

Minor Medical = Less than \$2,500 in medical and no lost time.



## Types of Claims

### § 42-1-160(A) Injury By Accident

- Injury by accident arising out of and in the course of employment
- Can result in injury to a scheduled member or multiple body parts



# Types of Claims

## Mental-Mental Claims § 42-1-160(B)

- Stress, mental injuries, and mental illness arising out of and in the course of employment unaccompanied by physical injury and resulting in mental illness are **not considered an injury unless**: (1) the employee's employment conditions causing the stress, mental injury, or mental illness were extraordinary or unusual in comparison to the normal conditions of employment; and (2) the medical causation between the stress, mental injury, or mental illness and the employment conditions is established to a reasonable degree of medical certainty.
- Current legislation pending before the General Assembly would remove the "extraordinary or unusual" requirement for first responders (S. 81, S. 82. H. 3272)
- Not compensable if incidental normal employer/employee relations.



# Types of Claims

## Heart Attacks & Strokes § 42-1-160(C)

- **Compensable accident “if” it is induced by unexpected strain or over-exertion in the performance of the duties of his employment or by unusual and extraordinary conditions in the employment. Kearse v. SC Wildlife Resources Dep’t, 236 S.C. 540 (1960).**



## Types of Claims

### § 42-1-160(D) Aggravation of mental injury or illness

- **Compensable if the aggravation is:**
  - (1) **admitted by the employer/carrier;**
  - (2) **noted in the physician's record that the condition is at least partially causally related to the injury or accident;**
  - (3) **found to be causally related after evaluation by an authorized psychologist or psychiatrist; or**
  - (4) **noted in the medical record or report of the employee's physician as causally related to the injury or accident.**



## Types of Claims

§ 42-1-172 Repetitive Trauma Injury/

§ 42-15-20 Notice Requirements

- An injury which is gradual in onset and caused by the cumulative effect of repetitive traumatic events.
- A claimant must prove by a preponderance of the evidence that a causal connection exists between the repetitive activities at work and the injury. The causal connection must be established to a reasonable degree of medical certainty.
- Notice of a repetitive trauma injury must be given to the employer within **90 days** of the date that the employee discovered or should have discovered that the condition is compensable.



## Types of Claims

### § 42-9-35 Aggravation of pre-existing condition

- **Compensable if the claimant is able to show to a reasonable degree of medical certainty, by a preponderance of the evidence, that the subsequent injury aggravated the preexisting condition, or the preexisting condition aggravated the subsequent injury.**



## Types of Claims

### § 42-9-40 Compensation for hernia/ S.C. Code Regs. 67-1104

- A hernia resulting from an injury by accident is compensable if:
  - (1) there was an injury resulting in a hearing or rupture;
  - (2) the hernia or rupture appeared suddenly;
  - (3) it was accompanied by pain;
  - (4) the hernia or rupture immediately followed the accident;and
  - (5) the hernia or rupture was not a preexisting condition.
- If a claimant will be disabled by the hernia pending a hearing, the employer's representative may provide a truss without admitting liability.



# Types of Claims

## § 42-11-10 Occupational Disease

- Defined as a disease arising out of and in the course of employment that is due to hazards in excess of those ordinarily incident to employment and is peculiar to the occupation in which the employee is engaged.
- Claimant must prove by a **preponderance of the evidence** that the disease arose directly and naturally from exposure to hazards peculiar to the particular employment.
- Some diseases are excluded from the definition of occupational disease.



## Types of Claims

### § 42-13-10 Ionizing Radiation Injury

- “ionizing radiation injury” is any harmful change in the human organism, including damage to a prosthetic, arising out of and in the course of employment and caused by exposure to ionizing radiation.
- The employer, in whose employment an employee was last exposed, shall be liable for all awards of compensation but may apportion liability if claimant was exposed to radiation during the employment by multiple employers.



## Types of Claims

### §42-9-20 Compensation for partial disability

- An employee who is able to earn some wages following their accident is entitled to weekly payments of partial disability. The amount of compensation an employee is entitled to each week is calculated by taking 2/3 of the difference between the employee's pre-injury and post-injury wages.
- Weekly payments continue for as long as the employee is disabled, but the statute caps benefits to 340 weeks.
- In cases where the partial disability is permanent, the injured worker may be paid future compensation in a lump sum, discounted to present day value.



# TYPES OF WORKERS' COMPENSATION BENEFITS



## Types of Benefits

§ 42-9-30 Schedule of period of disability/ S.C. Code Regs. 67-1101 (LOU of member or organ)/ S.C. Code Regs. 67-1102 (Loss of Hearing/ S.C. Code Regs. 67-1105 (Loss of Vision)

- An employee whose injury is confined to a single body part is entitled to a set amount of compensation regardless of the actual impact on his or her ability to earn wages. **The statute provides 21 specific body parts and assigns them a value.** The statute further enables the Commission to promulgate regulations providing for the loss of additional body parts not listed in the statute. The statute also provides benefits for serious permanent disfigurement.
- The Commission enacted Article 11 of the SC Code of Regulations in accordance with the statute.
- **Reg. 67-1101** provides the value of the loss or partial loss of 49 additional specified body parts.
- Reg. 67-1102 provides for the value for loss of hearing.
- Reg. 67-1105 provides the value for loss of vision.



## Types of Benefits

### § 42-9-35 Compensation for aggravation of preexisting condition

- An employee is entitled to benefits if the injury aggravates a preexisting condition, or the employee has a preexisting condition that is aggravated by the injury.
- A claim for aggravation of a preexisting condition or permanent physical impairment must be supported by opinion or testimony from a licensed healthcare provider stated to a reasonable degree of medical certainty.



## Types of Benefits

### § 42-9-40 Compensation for hernia

- All hernia or rupture, inguinal, femoral or otherwise, proven to be the result of an injury by accident shall be treated in a surgical manner by a “radical operation.”
- An employee is entitled to compensation for any disability that remains after the operation.
- However, if an employee refuses to undergo the radical operation, the employee is not entitled to compensation, unless the Commission finds the employee has some chronic disease or other physical condition that makes it unsafe for the employee to undergo the radical operation.



# Types of Benefits

## § 42-9-150/ § 42-9-160/ § 42-9-170 Compensation for employee with a preexisting permanent disability

- If an employee has a permanent disability and sustains a subsequent injury, the employee is entitled to medical treatment and temporary disability.
- An employee with a preexisting disability is only entitled to permanent disability for the amount of disability that resulted from the later accident.
- An employee on a weekly award of temporary disability for an injury who sustains a subsequent injury shall not be entitled at the same time to compensation for both injuries but is entitled to temporary disability for whichever injury results in greater disability.
- An employee who sustains another permanent disability after having been awarded permanent disability for a previous injury is entitled to permanent disability for both injuries, but the compensation for both injuries may not exceed 500 weeks.



## Types of Benefits

### § 42-9-280 Payment of Compensation when employee dies from unrelated cause

- If an employee is entitled to permanent disability and dies from an unrelated cause, the balance of the award of permanent disability shall be paid to the Claimant's next of kin dependent on Claimant for support.
- The award is not paid to the deceased claimant's estate and is not subject to probate.



## Types of Benefits

### § 42-9-10 Compensation for total disability

- An employee who is totally incapacitated from work is entitled to weekly payments of compensation. The amount of compensation to which an employee is entitled each week is calculated by taking 2 /3 of his or her average weekly wage prior to the accident.
- Weekly payments continue for as long as the employee is disabled, but **the statute caps benefits to 500 weeks.** However, employees who are totally disabled as a result of paraplegia, tetraplegia, or permanent physical brain damage are entitled to benefits for life, not subject to the 500-week cap.
- In cases where the total disability is permanent, the injured worker may be paid future compensation in a lump sum, discounted to present-day value.



## Types of Benefits

### § 42-9-290 Compensation for Death

- If an employee dies resulting from an accident, the employer must pay **500 weeks of benefits**, with credit for any temporary disability benefits paid between the time of the accident and time of death.
- The employer also must pay funeral expenses up to \$12,000.00.
- The award is not paid to decedent's estate and is not subject to probate.



# Types of Benefits

## § 42-9-290 Compensation for Death Eligible Dependents

- The award is paid to anyone wholly dependent upon the employee for support at the time of the accident. Surviving spouses and children are presumed wholly dependent. All others must prove by a preponderance of evidence their dependency on Decedent. The award is divided equally among the Dependents, except a Surviving Spouse receives at least 50%.
- If no one was wholly dependent on decedent at the time of death, benefits are paid to anyone partially dependent on decedent, but only in proportion to the degree in which they were partially dependent.
- If no whole or partial dependents, benefits are paid to the surviving nondependent children. If no children, benefits are paid to the Father and Mother. If no Father or Mother, the employer must pay the actual costs of burial expenses, and the remainder of the 500 weeks escheats to the State, to be expended to pay claims under the Second Injury Fund.



# Types of Benefits

## § 42-15-60 Medical, surgical, hospital, and other treatment

- For the first ten weeks from the date of the injury, the Employer shall pay all medical, surgical, hospital and other treatment as reasonably may be required.
- After the first ten weeks, the Employer must provide all treatment that will, in the judgement of the Commission, tend to lessen the period of disability or effect a cure or give relief.
- **The Employer gets to select an authorized treating physician.**
- If an employee refuses medical treatment, the employee is not entitled to compensation during the period of refusal, unless the Commission finds the employee has shown good cause for refusing.
- If in an emergency and on the failure of the employer to provide medical care the employee incurs medical expenses from a non-authorized physician, the employer must pay the reasonable costs of the care.



## Types of Benefits

### § 42-15-60 Medical, surgical, hospital, and other treatment

- A claimant's entitlement to medical benefits is separate from the entitlement to compensation. "Section 42-15-60 'does not by its terms equate an employer's liability for medical treatment to another period of liability, for income compensation or otherwise.'")

Dodge v. Bruccoli, Clark, Layman, Inc., 334 S.C. 574, 581 (Ct. App. 1999)



## Types of Benefits

### § 42-15-65 Compensation for damage to prosthetic, eyeglasses, or hearing aid

- Damage to a prosthetic device, eye glasses, or hearing aids used by an injured employee as a result of an injury entitles the employee to repair or replacement of the prosthetic device, eye glasses, or hearing aid.



## Types of Benefits

**§ 42-15-80 / § 42-17-30 Commissioner may appoint doctor to examine injured employee**

- The commission may appoint a physician to provide an IME
- If a claimant fails to submit to the examination, the right to compensation and to prosecute the claim may be suspended.



### Paying Temporary Compensation

§ 42-9-200 / § 42-9-220 / § 42-9-260 / § 42-9-450  
Manner in which compensation paid

- Employer may begin paying compensation on the 8<sup>th</sup> calendar day of disability. The Claimant must be out of work for 7 days before being eligible to receive benefits. *See also* S.C. Code Regs. 67-503(A)(1)(1997, as amended).
- If a Claimant is out of work for more than 14 calendar days, the Employer may begin paying compensation on the 1<sup>st</sup> day of disability. *See also* S.C. Code Regs. 67-503(A)(1)(1997, as amended).
- Payment of compensation triggers the Employer's reporting responsibilities to file a Form 15 with the Commission and serve a copy on the Claimant with the first check. S.C. Code Regs. 67-503(B) (1997, as amended).
- The employer may pay compensation for **up to 150 days** without waiving any grounds for a good faith denial of the claim.
- Benefits are paid periodically, promptly, and directly to the person entitled thereto.
- The default method of payment is a weekly check. *See also* S.C. Code Regs. 67-1602(B)(2018, as amended).



## Temporary Compensation Due Under Agreement or Award

§ 42-9-230/ § 42-9-240

- The first installment of compensation payable under the terms of an agreement is due on the 14<sup>th</sup> day after the employer has knowledge of the injury or death. All compensation then due must be paid. Payments are made weekly thereafter unless the commission determines otherwise. The installments must be paid on the same day of the week.
- The first installment of compensation payable under an award of the commission or under the terms of a judgment of a court on appeal is due 7 days from the date of the award or judgment on appeal. All compensation then due must be paid including interest. Payments are made weekly thereafter unless the commission determines otherwise.



## Providing Medical Care

### § 42-15-60

#### Time period in which medical treatment and supplies furnished

- 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 10 weeks from the date of injury.
- Medical, surgical, hospital, and other treatment are allowed from the 1<sup>st</sup> day of injury. S.C. Code Regs. 67-503(A)(1997, as amended).
- The Employer may provide medical treatment 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.
- The provision of treatment may not estop the carrier from later contesting compensability.

*See* (Frampton v. S.C. DNR, 432 S.C. 247, 259 (Ct. App. 2020) (cert denied)( “DNR’s provision of treatment for Frampton’s injury does not estop it from later contesting its compensability under the Act.”); Dozier v. Am. Red Cross, 411 S.C. 274 292-293 (Ct. App. 2014) (“holding employer did not waive its right to contest the compensability of the claimant’s injury by providing treatment for 728 days...”)).



## Suspending or Terminating Temporary Compensation

§ 42-9-260 Notice to commission when payments have begun; suspension or termination of payments

### **WITHIN 150 DAYS OF THE INJURY**

- The statute sets forth 5 reasons that compensation may be terminated or suspended immediately within 150 days of the date of injury:
  - (1) EE returns to work;
  - (2) EE signs a Form 17 agreeing to stop temporary benefits;
  - (3) ER denies the claim in good faith after an investigation;
  - (4) EE released at MMI and ER offers suitable work depending on the work restrictions issued by the physician; or
  - (5) the EE refuses medical tx.
- EE may dispute the termination or suspension of benefits by filing a Form 15 III requesting a hearing. *See S.C. Code Regs. 67-504.*
- ER may request a hearing to terminate benefits if EE has reached MMI. Hearing must be held within 60 days.
- EE not entitled to compensation if suitable employment or medical treatment is refused. *See S.C. Code Ann. 42-9-190 (1962); S.C. Code Ann. 42-15-60(A)(2007, as amended).*



## Suspending or Terminating Temporary Compensation

§ 42-9-260 Notice to commission when payments have begun; suspension or termination of payments

### AFTER 150 DAYS OF THE INJURY

- Commission directed to promulgate regulations directing the method and procedure of terminating or suspending benefits.
- According to the statute, an evidentiary hearing must be held, and commission approval must be granted before terminating or suspending benefits UNLESS the hearing is waived in writing; the employee returns to work; or the employee signs a Form 17 agreeing he or she is able to return to work.
- Reg. 67-505/ 67-506 provide for the methods by which temporary compensation can be suspended or terminated after 150 days from the date of injury.
- The applicable regulations seem to draw a distinction between instances where compensation is “suspended” and instances where compensation is “terminated.”
- Practically, the effect on a claimant is the same: Benefits are stopped, and no payment is received.
- The Commission has consistently interpreted S.C. Code Ann. § 42-9-260 (1996, as amended) as controlling. **Benefits cannot be suspended without a hearing unless a claimant has signed a Form 17 or actually returned to work.**



## Paying Benefits for Permanent Disability

- “Workers Compensation benefits accrue along a time continuum: [Temporary] benefits are available from the date of injury through the date of MMI; post-MMI benefits may the be awarded either as a permanent total or permanent partial disability, or as a percentage of impairment to a scheduled member.”
- Maximum medical improvement (MMI) marks the end of entitlement to temporary benefits and the beginning of entitlement to permanent benefits, if warranted.
- An employer may be entitled to a credit for temporary benefits paid after a claimant reaches MMI.

Curiel v. Environmental Management Services, 376. S.C. 23, 29 (2007);  
See also Hendricks v. Pickens County, 335 S.C. 405, 414 (Ct. App. 1999)(fn. 2).



## Employer Credit for Overpayment of Benefits

§ 42-9-210

- Any payments made by an employer to an injured employee during the period of his disability, or to his dependents, which by the terms of this title were not due and payable when made may, subject to the approval of the commission, be deducted from the amount to be paid as compensation.
- The deduction is to be made by shortening the period during which compensation is paid and not by reducing the compensation rate.



## Informal Conference

### Parties may agree to Settlement

- Once claimant reaches Maximum Medical Improvement (MMI) as assigned by the treating physician. The parties may agree to settle the claim. S.C. Code Regs. 67-801 (A) – (C)

### Two Types of Workers' Compensation Settlements:

- Form 16 or 16A (Agreement for Permanent Disability/Disfigurement Compensation). Claimant retains the right to file for a hearing based upon a change in condition within 1 year from the last date of compensation payment.

Agreement and Final Release (Clincher). See S.C. Code Regs. 67-801(A)(2010). Relieves the Employer and Carrier from any further responsibility to pay compensation or medical.



# Informal Conference

## Informal Conference or Hearing Not Required

- If both parties are represented by an attorney, no appearance before a commissioner is required unless requested by the parties or the Commissioner. S.C. Code Regs. 67-801(A)(2010); S.C. Code Regs. 67-802(A)(3)(2018, as amended).
- The settlement agreement is then filed with the Commission. *See* S.C. Code Ann. § 42-9-390(2007, as amended). S.C. Code Regs. 67-802(A)(1)(c)(2018, as amended); S.C. Code Regs. 67-803(B)(2)(2010, as amended).



## Informal Conference

### Settlement Approval Required

- **Form 16/16A Settlement if the claimant is represented by counsel and the carrier is not represented.**
- **Settlement filed with the Commission, and it is reviewed by a Commissioner. Appearance before a Commissioner is not required.**

**S.C. Code Ann. 67-802(A)(2)(2018, as amended).**



# Informal Conference

## Required for Settlement Approval

- *Pro Se* Claimants settling a claim on either Clincher or a Form 16/16A. S.C. Code Regs. 67-802(A)(1)(2018, as amended); S.C. Code Regs. 67-803(B)(1)(2010, as amended).
- The commissioner will approve the proposed settlement if it is fairly made and in accordance with the provisions of the Act. *See* S.C. Code Regs. 67-803(C)(2010).
- A hearing is set if the parties Fail to reach an agreement at an informal conference. S.C. Code Regs. 67-802.



# Informal Conference

## Requesting an Informal Conference

- The employer's representative requests an informal conference by writing the Commission's Judicial Department and filing an updated Form 18 (Status of Compensation Report) and Form 14B (Final Medical Report). S.C. Code Regs. 67-802 (2018, as amended).
- The claimant may request an informal conference by writing the judicial department. *See also* S.C. Code Regs. 67-804(C)(2018, as amended).



# Informal Conference

## Failure to Appear

- **S.C. Code Ann. 67-804(G)(2018, as amended):** If a claimant fails to appear, the informal conference is rescheduled. If a claimant fails to appear a second time, the claim is administratively dismissed. Thereafter, a claimant can request that the Commission schedule another informal conference after a showing of good cause.



## **Attorney Practice**

### **Withdrawing Representation**

- **An attorney may withdraw as counsel by filing a motion to be relieved and obtaining an order from the Commission based upon a showing of good cause. S.C. Code Regs. 67-1203.**
- **If the attorney includes a Form 61, Attorney Fee Petition, with the Motion, the Commissioner may issue an order allowing for protection of the attorney's lien. S.C. Code Regs. 67-1203.**



## Attorney Practice Collecting a Fee

- Attorney fees, physician fees, and hospital charges are subject to the approval of the Commission. S.C. Code Ann. § 42-15-90 (2012, as amended); S.C. Code Ann. § 42-3-185 (1980).
- “The principal purpose of [§ 42-15-90] is to protect the workman from the charging of excessive fees”. See S.C. Op. Atty. Gen. 185 (1986), citing 1936-37 S.C. Op. Atty. Gen., p. 299.



## Attorney Practice Calculating a Fee

- An attorney may charge a **maximum** contingency fee of 33.3% of the total amount of compensation. **S.C. Code Regs. 67-1205.**
- “Compensation” is the money allowance payable to an employee or to his dependents. **S.C. Code Ann. § 42-1-100 (1962).**



## Attorney Practice Calculating a Fee

- An attorney may charge a fee on “compensation” but may not charge a fee on sums set aside for a claimant’s future medical care.
- A Claimant’s entitlement to medical care is separate from a Claimant’s entitlement to compensation.  
“[L]iability for medical benefits should be not diminished by the fact that, . . .income benefits are not payable.”

Larson’s Worker’s Compensation Law § 94.01 [3]; See also Dodge v. Bruccoli, Clark, Layman, Inc., 334 S.C. 574, 581 (Ct. App.1999)(citing Rice v. Froehling & Robertson, Inc., 267 S.C. 155, 159 (1976)(“Section 42-15- 60 ‘does not by its terms equate an employer’s liability for medical treatment to another period of liability, for income compensation or Otherwise.’”)



# Attorney Practice

## Reporting Contingent or Hourly Fees/Retainers

- An attorney reports a contingent fee by filing a Form 61, cost sheet, and proposed order with the Commission.
- An attorney reports an hourly fee or retainer by completing the appropriate section of the Form 19. **S.C. Code Regs. 67- 1204 (2010, as amended); S.C. Code Regs. 67-1206 (1992).**



## Full Commission Reviews

### §42-3-20

- Conducted by all Commissioners, excluding the original hearing Commissioner, or
- By three-member panels, excluding the original hearing Commissioner
- The commissioners reviewing the case confer and shall vote within 10 days of the date of review. A majority vote is required to reverse the Hearing Commissioner's decision.
- The Commissioner's decisions are recorded on vote sheets.
- Prevailing party is sent order instructions to draft the Appellate Panel Order.
- Three member panels have same force and effect as full Commission reviews

**S.C. Code Regs. 67-709(A),(C)-(E)(2010, as amended).**

# Appeals





# Full Commission Reviews

## Administrative Appeals Procedure

- The parties may appeal the Decision and Order of Single Commissioner within **14 days** by filing a Form 30 (Request For Commission to Review) along with a filing fee of \$150. S.C. Code Ann. § 42-17-50 (1989, as amended).
- The Claimant may request a waiver of the filing fee by filing a Form 32 with the Form 30. S.C. Code Regs. 67-702.
- Agency receives on **average 222 appeals per year**.



## Appeals Briefing Schedule

- The parties are served Notice of the hearing on a Form 31 least **30 days** prior to the hearing.
- The Notice includes date, time, place and purpose of the hearing.
- The Notice includes the due date of the appellant's brief.
- S.C. Code Regs. 67-704(1992).



## Oral Argument

### Time Allowed

- Each party is permitted 10 minutes for oral argument.
- The appellant is permitted 3 minutes for reply.
- If both parties have appealed, each party is entitled to 10 minutes of argument and 3 minutes in reply.
- Additional time may be requested by motion attached to the Form 30.

S.C. Code Regs. 67-706.



## Postponement

- **Either party may contact the Judicial Department to request a postponement.**
- **If an appellant has caused the postponement twice, the request for oral argument is waived.**

**S.C. Code Regs. 67-708.**



## Appeal to Higher Court

- **Workers' Compensation Commission appellate panel awards may be appealed within 30 days to the Court of Appeals (dates of injury after July 1, 2007).**
- **For claims with a date of injury prior to July 1, 2007, the parties may file their appeal with the Circuit Court. S.C. Code Ann. § 42-17-60(2007, as amended).**



## Service of Forms and Documents

S.C. Code Regs. 67-211 (2018, as amended)

- Authorizes the Commission to serve forms and documents electronically. Claimants are served via USPS.
- Commission serves the opposing party.



## Mediation

### S.C. Code Regs. 67-1801, et. seq.

- Mediation regulation was established July 1, 2013 to resolve disputes without a hearing.
- The Commissioner has the discretion to order mediation.
- Commissioner retains jurisdiction of those issues being mediated.
- Commissioner may order mediation for any pending claim, not limited by claims in S.C. Code Regs. 67-1802.



## Mediation

### S.C. Code Regs. 67-1802

Certain claims require mediation prior to a hearing:

- Permanent and total disability
- Third-party lien reduction
- Contested death claims
- Stress, mental injuries, and mental illness
- Concurrent jurisdiction with the Federal Longshore and Harbor Workers' Act



## Mediation

S.C. Code Regs. 67-1803 (2013)

S.C. Code Regs. 67-1804 (2013)

- Parties may request mediation by submission of Form 21, Form 50, Form 51 or the response to the Form 21.
- Parties may select a mediator that is duly qualified (certified by the SC Bar Association) within 10 days of the filing of the earliest pleading requesting mediation.
- Mediation must be completed within 60 days.



## Mediation

- Each party must have representative in person or available by phone with authority to negotiate settlement. S.C. Code Regs. 67-1805 (2013).
- All mediation communications are confidential. S.C. Code Regs. 67-1806 (2013).
- Expenses of mediation shared equally among parties. S.C. Code Regs. 67-1807 (2013).
- Parties refusing to act in good faith may be subject to a fine not to exceed actual cost of mediation. S.C. Code Regs. 67-1808 (2013).
- A Form 70 must be filed with the Judicial Department by the mediator. The is not part of the file. S.C. Code Regs. 67-1809 (2013).





## Budget

|              |  |
|--------------|--|
| <b>\$8.4</b> | <b>Annual Operating Budget</b><br><b>\$2.5 million General Fund</b><br><b>\$5.6 million Earmarked Fund</b> |
| <b>53</b>    | <b>FTE's</b>   |



# Budget

| <b>General Fund</b>                    |               |               |                |                             |
|--|---------------|---------------|----------------|-----------------------------|
| <b>Appropriations and Expenditures</b> |               |               |                |                             |
| <b>FY2019-23</b>                       |               |               |                |                             |
|  | <b>FY2021</b> | <b>FY2022</b> | <b>FY2023*</b> | <b>FY2023<br/>Projected</b> |
| <b>Appropriations</b>                  | \$ 2,819,026  | \$ 2,906,088  | \$ 2,876,742   | \$ 2,876,742                |
| <b>Expenditures</b>                    | \$ 2,672,585  | \$ 2,554,017  | \$ 1,373,166   | \$ 2,746,332                |
| <b>Variance</b>                        | \$ (146,441)  | \$ (352,071)  | \$ (1,503,576) | \$ (130,410)                |

\*Expenditures - July-Dec 2022



# South Carolina Workers' Compensation Commission

## Operating Revenues

| Earmarked Fund<br>Revenues<br>FY2021-23 |                    |              |                  |  |   |   |
|---|--------------------|--------------|------------------|--|---|---|
| Account                                 | FY2021             | FY2022       | Budget<br>FY2023 | YTD Actual Revenue<br>(12/31/22)<br>FY2023 | Projected Revenue<br>thru June 30<br>FY2023 | Projected Revenue<br>thru June 30<br>FY2023 |
|   | <b>Hearing Fee</b> | \$ 1,123,345 | \$ 1,016,800     | \$ 1,091,322                               | \$ 474,540                                  | \$ 949,080                                  |
| <b>Self Insurance App Fee</b>           | \$ 3,475           | \$ 7,350     | \$ 26,555        | \$ 1,075                                   | \$ 2,150                                    | \$ 4,300                                    |
| <b>Fines and Penalties</b>              | \$ 1,383,926       | \$ 1,539,252 | \$ 1,985,476     | \$ 646,215                                 | \$ 1,292,430                                | \$ 2,584,860                                |
| <b>Parking Fee</b>                      | \$ 5,220           | \$ 12,790    | \$ 5,900         | \$ 2,735                                   | \$ 5,470                                    | \$ 10,940                                   |
| <b>Award Review Fee</b>                 | \$ 19,070          | \$ 24,500    | \$ 32,251        | \$ 5,700                                   | \$ 11,400                                   | \$ 22,800                                   |
| <b>Training Conference</b>              | \$ 1,130           | \$ 800       | \$ -             | \$ -                                       | \$ -  | \$ -  |
| <b>Sale of Goods</b>                    | \$ -               | \$ -         | \$ -             | \$ -                                       | \$ -  | \$ -  |
| <b>Sales of Photocopies</b>             | \$ 54,914          | \$ 86,043    | \$ 25,300        | \$ 24,807                                  | \$ 49,613                                   | \$ 99,227                                   |
| <b>Sale of Services</b>                 | \$ 300             | \$ 2,205     | \$ -             | \$ -                                       | \$ -  | \$ -  |
| <b>Sale of Listings Labels</b>          | \$ 2,942           | \$ 2,603     | \$ 4,187         | \$ 475                                     | \$ 950                                      | \$ 1,900                                    |
| <b>Refund Prior Year</b>                | \$ 3,488           | \$ 11        | \$ -             | \$ -                                       | \$ -  | \$ -  |
| <b>Adj. - Agency Deposits</b>           | \$ (20)            | \$ (80)      | \$ -             | \$ (70)                                    | \$ (70)                                     | \$ (70)                                     |
| <b>Returned Checks</b>                  |                    | \$ (170)     | \$ -             | \$ -                                       | \$ -  | \$ <sup>148</sup> -                         |
| <b>Misc Revenue</b>                     | \$ 200             | \$ 50        | \$ -             | \$ 30,864                                  | \$ 30,864                                   | \$ 30,864                                   |
| <b>Total</b>                            | \$ 2,597,990       | \$ 2,692,154 | \$ 3,170,991     | \$ 1,186,340                               | \$ 2,341,887                                | \$ 4,652,981                                |



## Earmarked Fund

| <b>Earmarked Fund Expenditures</b> |                |                |   |                                     |
|------------------------------------|----------------|----------------|---|-------------------------------------|
|                                    | <b>FY2021</b>  | <b>FY2022</b>  | <b>Adjusted Budget v Actual Exp. FY2023</b> | <b>Projection thru June 30 2023</b> |
| <b>Budget</b>                      | \$ 5,607,845   | \$ 5,607,845   | \$ 5,607,845                                | \$ 5,607,845                        |
| <b>Expenditures</b>                | \$ 3,480,176   | \$ 3,634,406   | \$ 2,035,725                                | \$ 4,071,450                        |
| <b>Variance</b>                    | \$ (2,127,669) | \$ (1,973,439) | \$ (3,572,120)                              | \$ (1,536,395)                      |
| <b>Net Operating Results</b>       | \$ (882,186)   | \$ (942,252)   | \$ (1,135,266)                              | \$ (1,729,563)                      |



## IT Legacy System Modernization Project

| IT Legacy System Modernization Project |  |  |              |              |
|--|--|--|--------------|--------------|
|  |  |  | FY2021-22    | FY2022-23    |
| GF Appropriations                      |  |  | \$ 1,695,084 |              |
| GF Appropriations                      |  |  |              | \$ 5,000,000 |
| Total                                  |  |  | \$ 1,695,084 | \$ 5,000,000 |



## South Carolina Workers' Compensation Commission

# Budget Provisos

| <b>Workers' Compensation Commission<br/>FY2022-23 Budget Proviso Summary</b> |                      |   |  |
|--|----------------------|---|--|
| <b>Proviso</b>   | <b>Proviso Title</b> | <b>Short Summary</b>  | <b>Proviso Language</b>  |
| 74.1   | Educational Seminar  | Revenue from educational seminars retained by the Commission for expenses for future seminars.                      | All revenue earned from educational seminars shall be retained by the agency to be used for the printing of educational materials and other expenses related to conducting the seminar.  |
| 74.2   | Filing Fees          | Revenue from \$50.00 filing fee for a hearing, settlement, or motion to be retained and expended by the Commission. | The Workers Compensation Commission is authorized to retain and expend all revenues received as a result of a \$50.00 filing fee for each requested hearing, settlement, or motion. If it is determined that the individual is indigent, this filing fee must be waived. |
| 74.3   | Tax on Self-Insurers | Suspends sunset provision in Act 68 of 2017   | Notwithstanding another provision of law, the sunset provision provided for in Act 68 of 2017 is suspended for the current fiscal year to allow the commission to continue to collect tax on self-insurers. <sup>151</sup>   |



## Operating Revenue

### Filing and Copy Fees

- **\$50 - Hearing Requests (Forms 50, 52, 54, 21, 15 Section III, Dependency Hearings), Motions, Petitions for Hearing, Settlement Conferences, Consent Orders, Appellate Motions**
- **Authorization – Proviso 74.1, Part B, General Appropriations Act**
- **\$150 – Appeals (Form 30)**
- **Copy Requests - \$20 first 20 pages, \$.50 per page**



## Operating Revenue

### Fines

- **SECTION 42-19-30.** Penalty for failure to make required reports.
- Any employer or insurance carrier who refuses or neglects to submit required forms, records, and reports as may be necessary for the proper handling or adjudication of a claim is liable for a penalty of not less than ten dollars nor more than one hundred dollars for each refusal or neglect. The fine provided in this section may be assessed by the commission with the right of review and appeal as in other cases.
- \$200.00 per violation



# Operating Revenue

## Fines

- **SECTION §42-3-105.** Commission's authority to double fines and penalties; penalties for noncompliance by uninsured employers.
- The Worker's Compensation Commission is authorized to double the amount of fines and penalties assessed for each violation of the workers' compensation law, except that for employers found to be uninsured in violation of the workers' compensation law, the minimum amount of the penalty assessed shall be seven hundred fifty dollars a year of noncompliance and the maximum amount of the penalty shall be one thousand dollars a year of noncompliance. The commission is further authorized to retain and expend all revenues received as a result of these collections.
- **\$389.63 - Failure to appear at Informal Conference**



**Agency  
Partnerships/Collaboration**



## Partnerships

### SC Vocational Rehabilitation Department

- **Section §43-3-80 authorizes injured workers referrals to SCVRD. SCVRD has access to WCC data base. Annually SCVRD reports contacting over 2,500 injured workers to offer services, with the following outcomes: 1,500 declined, 13 made applications and 81 cases are pending.**



## Partnerships

- **Department of Employment and Workforce (DEW)**  
DEW shares employer wage records to cross check against the insurance coverage data base. Annually over 5,500 wage records are shared.
- **Department of Revenue**  
WCC participates in the GEAR program for collection of fines and assessments.



## Partnerships

- **Department of Insurance**  
DOI serves notices to insurance carriers of failure to submit required reports and fines and assessments.
- **Secretary of State**  
Employer data base
- **Department of Administration**  
Financial and procurement  
Information Technology contract with DTO
- **National Council on Compensation Insurance (NCCI)**  
Insurance coverage



## Partnerships

- **OSHA Division, SC Department of Labor, License and Regulation (§Sec. 4-3-195)**

**Provide claim information and statistics**



# Outreach to Stakeholders



## Presentations

- **WCC Seminars (Claims Administration Made Easy)**
- **SC Employers' Advocates Association**
- **SC Workers' Compensation Education Association**
- **SC Defense Trial Lawyers**
- **SC Bar**
- **SC Injured Workers' Advocates Association**



## Presentations

- **SC Independent Insurance Agents**
- **SC Municipal Insurance Trust**
- **NCOIL**
- **SC School of Law**
- **Charleston School of Law**
- **SC Contractors**
- **Insurance Carriers training for periodic reporting**



# Commissioner/Staff Development



## Continuing Education

### Commissioners/Staff

- **Commissioners and Assistants Ethics Training (3 hours required)**
- **National Association of Worker's Compensation Judiciary**
- **SAWCA**
- **IAIABC**
- **Regulators College**
- **All Employee Meetings**
- **Certified Public Manager Program**
- **LeadSC**



## Advisory Committee Members

§42-3-120

**William E. Shaughnessy, Esq. (2016)**

**William L Smith, Esq. (2016)**

**John F. Seibert (2014)**

**Millicent C. Williams (2014)**

**1 Vacancy**



## Ad Hoc Advisory Committees

- The Chairman has appointed Ad Hoc Advisory Committees to review specific issues and prepare recommendations to the Commission. Membership is usually 15 – 20 and representative of system stakeholders. Examples are:

**Mediation Regulation**

**Narcotics Use**

**Medical Fee Schedule**

**Implantable Medical Devices**

**TTD Payments**



## Fraud

- The Commission is required to report all cases of suspected false statement or misrepresentation, to the Insurance Fraud Division of the Office of the Attorney General S.C. Code Ann. §42-9-440 and Section §38-55-530(D)
- Reports are made by a Commissioner, usually following a hearing or staff reports
- For the period 2016-2022, 13 referrals were made to the Attorney General's Office



## Fraud

- **The Commission has no formal training or other measures to recognize or determine fraudulent activities.**
- **The jurisdictional Commissioner has the judicial discretion to determine if sufficient evidence exist based on the facts and circumstances of the individual case to trigger a report of suspected fraud.**



# Challenges





## Venues

- The Commission is required to have jurisdictional hearings pursuant S.C. Code Ann. Section 42-17-20.
- Local political subdivisions are not required to provide facilities for hearings for citizens of their city or county.
- The Commission has one FTE responsible for coordinating the hearing venue with each jurisdictional Commissioner for the 10,000 cases docketed per year.
- **The Commission currently has 82 facilities in the 7 districts with 100 rooms in which the hearings can be conducted.**
- These were obtained by staff identifying suitable sites in municipal facilities, county facilities, state agencies, regional government facilities and technical colleges.
- Not all rooms are available when needed.



## Staffing

- 53 Full Time Equivalent (FTE) funded positions.
- 51 FTE positions filled. One part-time position.

### Fact:

- 8 employees are working retirees.
- 10 employees are eligible to retire.
- 7 employees will be eligible to retire in 5 five year.
- 18 employees or 36% of the workforce can be gone at any time.
- 25 employees or 50% of the workforce can retire in five years.



## Staffing

- FY21-22 the agency had a 28 % turnover rate.
- During FY22-23 to date the agency has a 12 % turnover rate.
- **Reasons for turnover** are no growth opportunities, current salary, and finding better opportunities within and outside of state government.



## Staffing

- **The agency has been able to maintain several key staff members in positions of responsibility for several decades.**
- **Technology will eventually be able to process certain repetitious activities within the agency, but there will be need for experienced analysts to review and process claims that fall outside of those defined functions. The training and retention for those analysts will be an agency priority.**



## **Security**

### **Jurisdictional Hearings**

- In the current environment, security of the Commissioners has become more of a concern.
- The claimant or employer may be very unhappy with the outcome of the hearing.
- The Commission has experienced a number of communications from claimants that while they were not direct threats they could be considered veiled threats.
- Venues for jurisdictional Commissioner hearings are not guaranteed to be in a secure facility.



## Financial Stability

- General Fund Appropriations
- Earmarked Fund Revenue
- Earmarked Expenditures



## Hearing Process for Procurement Dispute

- In 2017 began the development project to upgrade a 30+ year old claims management system.
- Selected vendor using State Procurement System
- Small Development Application Process (SDAP)
- Accepted bid from vendor certified by State Procurement Office in July 2019
- Cost \$1.9 million.
- Vendor was to use an Agile development process, included 14 Milestones and 22 Minimal Marketable Feature set (MMI)



- **Contract started on Aug 18, 2018**
- **Contracted completion date October 2019**
- **System not completed nor delivered on time**
- **Extended completion to January 31, 2020**
- **Vendor terminated involvement in project Feb 14, 2020**
- **Commission paid over \$2.3 million to vendor**
- **Filed breach of contract with Chief Procurement Officer**
- **June 2020 Issued RFP for new vendor to develop a replacement system**



## South Carolina Workers' Compensation Commission

- One bidder with a projected cost of \$15 million.
- The response to the solicitation did not include a document management system or the ability to process electronic payments.
- These functions would require alternate vendors.
- Withdrew solicitation.
- **Hearing before the CPO conducted in April 2023.**



## South Carolina Workers' Compensation Commission





# IT Legacy System Modernization Project

## Electronic Payment Services and Online Form Uploads

- The agency is working with the new state procurement contract for Digital Governance Services using new options provided by vendors on existing state contracts to provide system enhancements to stakeholders.
- eCase – Redesigned and modernized display with additional information and features. Smart display capable for mobile device screens.
- OnBase – A new connection that allows documents to be viewed and printed locally.
- Progress – New software stability and support from the vendor to maintain and provide new functionality.



## IT Legacy System Modernization Project

- Tyler Technologies/SC.Gov –ePay and eFile; filing fees and fines electronically and the ability to upload forms and other case related documents electronically.
- This is a phased migration that will facilitate increased communication between the systems and allow for automation.
- The system will be able to provide additional security and reporting functionality. Increased efficiencies for external and internal stakeholders.



# Legislative Audit Council

## 2010 Report

### Findings and Recommendations

#### Ombudsman Role

- **Finding**: Failure to designate an ombudsman/ public affairs officer per S.C. Code Regs. 67-202A. In FY 05/06 the GA specifically funded a new position for an ombudsman. The Commission filled the position. When it became vacant in 2010, it was not filled.
- **Recommendation**: Hire an ombudsman/ PAO.
- **Current Status**: Executive Director has served as the ombudsman/ PAO since 2010 and has successfully assumed those duties without negative impact.



# Legislative Audit Council

## 2010 Report

### Findings and Recommendations

#### Hire Compliance Investigators

- **Finding:** In FY 09-10 1,100 compliance files were opened for investigation. There were only two compliance officer positions and one director position filled at that time. There were more employers in violation of the act (2,125) than current staff could address.
- **Recommendation:** Hire a 3<sup>rd</sup> compliance officer to increase revenues and bring more employers into compliance with the Act.
- **Current Status:** The Commission hired a 4<sup>th</sup> compliance officer in May 2023 to continue to implement this suggestion. The Commission is currently evaluating its collections procedures and looking for additional ways to improve efficiency and revenues utilizing the GEAR program, filing Judgments, and partnering with the Department of Insurance.



# Legislative Audit Council

2010 Report

Findings and Recommendations

## Partnering with SC Vocational Rehabilitation

- **Finding:** Improve efforts to refer claimants to vocational rehabilitation. At the time of the study, the Commission had an ongoing relationship with the Richland County Voc. Rehab office.
- **Recommendation:** Implement a formal vocational rehabilitation referral policy that includes vocational rehabilitation offices throughout the state. Develop a memorandum of understanding with the SC Vocational Rehab Department.
- **Current Status:** The Commission has provided the SC Vocational Rehabilitation Department (including all its regional offices) access to the SCWCC database. The SCVRD can choose the cases that fit their guidelines and follow-up accordingly. The Department has also spoken at the South Carolina Workers' Compensation Educational Conference.



# Legislative Audit Council

## 2010 Report

### Findings and Recommendations

#### Standardize the Informal Conference Process

- **Finding:** At the time of the audit, several Commission employees served as claims mediators. There was no formal training requirement or qualifications to serve in that capacity. The audit uncovered that Claimants were not consistently advised of their rights and claims mediators were considering factors other than how the injury impacted the employee's ability to earn wages.
- **Recommendation:** Develop checklists and guidelines to standardize the claims mediation process so that all claimants receive the same information regarding their rights, the process, and their settlements are handled similarly.
- **Current Status:** Claims mediator recommendations are approved by a Commissioner. The Commission monitors the results of the informal conferences by tracking the ratings, disability, and number of weeks of each settlement. The Commission currently employs only 1 claims mediator.



## Regulation Review

### S.C. Code Ann. § 1-23-120(J)

- Each state agency which promulgates regulations shall conduct a formal review of its regulations every 5 years.
- The Commission is currently reviewing its regulations in compliance with the statute and reviews its regulations on an as-needed basis.
- S.C. Code Regs. 67-610 was recently amended to allow parties to be added or removed by filing an amended pleading.



## Second Injury Fund

### S.C. Code Ann. §42-7-320

- **SECTION 42-7-320.** Termination of Second Injury Fund; schedule.
  - (A) Except as otherwise provided in this section, on and after July 1, 2013, the programs and appropriations of the Second Injury Fund are terminated. The State Fiscal Accountability Authority must provide for the efficient and expeditious closure of the fund with the orderly winding down of the affairs of the fund so that the remaining liabilities of the fund are paid utilizing assessments, accelerated assessments, annuities, loss portfolio transfers, or such other mechanisms as are reasonably determined necessary to fund any remaining liabilities of the fund. The Department of Insurance and the Workers' Compensation Commission may submit comments and suggestions to be considered by the State Fiscal Accountability Authority in planning for the closure of the fund. The State Fiscal Accountability Authority shall cause all necessary actions to be taken to provide appropriate staffing of the fund until such time as the staff services are no longer required to administer the obligations of the fund. The fund's administrative costs, including employee salaries and benefits, shall be paid from the Second Injury Fund Trust if the interest from the trust becomes insufficient to pay these obligations.



# Second Injury Fund

## S.C. Code Ann. §42-7-320

- (B) After December 31, 2011, the Second Injury Fund shall not accept a claim for reimbursement from any employer, self-insurer, or insurance carrier. The fund shall not consider a claim for reimbursement for an injury that occurs on or after July 1, 2008.
- (1) An employer, self-insurer, or insurance carrier must notify the Second Injury Fund of a potential claim by December 31, 2010. Failure to submit notice by December 31, 2010, shall bar an employer, self-insurer, or insurance carrier from recovery from the fund.
  - (2) An employer, self-insurer, or insurance carrier must submit all required information for consideration of accepting a claim to the Second Injury Fund by June 30, 2011. Failure to submit all required information to the fund by June 30, 2011, so that the claim can be accepted, compromised, or denied shall bar an employer, self-insurer, or insurance carrier from recovery from the fund.
  - (3) Insurance carriers, self-insurers, and the State Accident Fund remain liable for Second Injury Fund assessments, as determined by the State Fiscal Accountability Authority, in order to pay accepted claims. The fund shall continue reimbursing employers and insurance carriers for claims accepted by the fund on or before December 31, 2011.

**HISTORY:** 2007 Act No. 111, Pt II, Section 5, eff July 1, 2007, applicable to injuries that occur on or after that date.

### Code Commissioner's Note

At the direction of the Code Commissioner, references in this section to the offices of the former State Budget and Control Board, Office of the Governor, or other agencies, were changed to reflect the transfer



**The End!**  
**Questions?**