

South Carolina Workers' Compensation Update (12)

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Media Contact

Erica Gianetti

Marketing & Communications Supervisor

erica.gianetti@mgclaw.com

Legislative Update: Third-Party Liens and Medical Questionnaires

H.4321 seeks to amend South Carolina Code of Laws §42-1-560 (b) by:

1. **Removing** the requirement that an action against a third party be commenced not later than one year after the carrier accepts liability or makes payment pursuant to an award.
2. **Removing** the requirement to provide notice within 30 days of commencement of the third-party action to the Commission, employer and carrier. However, the amendment still maintains the notice requirement but does not specify a time frame.
3. **Adding** that failure to notify the Commission, employer and carrier does not constitute an election of remedies and does not cause dismissal of the workers' compensation claim or third-party action.

MGC's Analysis:

The amendment to §42-1-560 (b) will need to be married up with provisions in other portions of the act (such as assignment of the third party action to the carrier - §42-1-560 (c) - and language on the existing S-2 form) or there will be inconsistencies. There also should remain a time-sensitive mechanism to allow the employer/carrier to receive assignment of the action in order to allow the employer/carrier to protect their lien on the proceeds of the third party action. The removal of the election of remedies defense, in the absence of notice of the third party action, is somewhat vague. The issue remains if the defense is still available in cases where Plaintiff receives distribution of the settlement proceeds or judgment in the third-party action without providing notice to the employer and carrier of the third-party action.

Click [here](#) to learn more.

S.366 seeks to amend South Carolina Code of Laws §42-15-60 by:

1. **Adding** that "preponderance of the evidence contained in the medical records" is sufficient for the Commission to require the employer/carrier to provide medical, surgical, hospital and other treatment, including medical and surgical supplies
2. **Adding** that medical records and opinions of medical providers are admissible without regard to the rules of evidence.

MGC's Analysis:

Currently, Claimant is required to prove entitlement for additional medical to lessen the period of disability by medical opinion stated to a reasonable degree of medical certainty. This amendment changes this more stringent requirement by allowing the Commission to award medical care and treatment to lessen the period of disability if the preponderance of the evidence contained in the medical records supports such an award. S. 366's second revision, allowing medical certificates to come into evidence without regard to the rules of evidence, appears to be the Claimant's bar's efforts to allow their medical questionnaires to be admissible without objection and arguably controlling relative to causation in a workers' compensation case.

Click [here](#) to learn more.

Questions? Please contact an [MGC attorney](#).

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