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Emergency or Public Necessity Rule(s) Filing Form

Emergency and Public Necessity rules are effective from date of filing for a period of up to 165 days.

Agency/Board/Commission: Department of Labor and Workforce Development
Division: Workers' Compensation
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Rule Type :

Emergency Rule
 Public Necessity Rule

Revision Type (check all that apply):

Amendment
 New
 Repeal

Statement of Necessity:

Submitted herewith are proposed rule amendments to Chapter 0800-02-17, Medical Cost Containment Program, of the Tennessee Department of Labor and Workforce Development, Division of Workers' Compensation, for promulgation under the public necessity provision of the Uniform Administrative Procedures Act. The Commissioner of Labor and Workforce Development has adopted these rules pursuant to Tenn. Code Ann. § 4-5-209(a)(4), which authorizes an agency to adopt public necessity rules when "[t]he agency is required by an enactment of the general assembly to implement rules within a prescribed period of time which precludes utilization of rulemaking procedures described elsewhere in this chapter for the promulgation of permanent rules."

Public Chapter 1183 of the Acts of 2008 amended the Tennessee Workers' Compensation Act, Tenn. Code Ann. §§ 50-6-101, *et seq.* (Public Records Act). Section 8 of Public Chapter 1183 amends Tenn. Code Ann. § 50-6-246 to read:

"To assure employees, employers and the department have the information necessary to resolve a workers' compensation claim and to effectuate the legislative intent of Section 50-6-241, the Commissioner of Labor and Workforce Development shall establish rules, in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5, to govern the provision of a medical impairment rating required by Section 50-6-204(d)(3)(A). The commissioner shall promulgate these rules in conjunction with the advisory council on workers' compensation. The rules required by this section shall take effect on October 1, 2008. The commissioner is authorized to use public necessity rules under Section 4-5-209(a)(4) or emergency rules under Section 4-5-208, as appropriate, in order to have such rules in effect no later than October 1, 2008."

The Division of Workers' Compensation has developed the amended rule submitted herewith in order to improve the process by which a treating physician determines and records an injured employee's medical impairment rating. The injured employee's impairment rating is essential to determining the proper amount of compensation under the law. In addition, an impairment rating rendered by a treating physician is more persuasive than one rendered by an independent medical examiner because the treating physician is more knowledgeable of the injured employee's condition and is less likely to be biased. Accordingly, the amended rule will effectuate the General Assembly's mandate by allowing the parties to have access to a reliable impairment rating and engage in informed settlement negotiations sooner. Furthermore, the amended rule must be submitted under the public necessity provision due to the explicit requirements imposed by the General Assembly.

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables. Please enter only **ONE** Rule Number/RuleTitle per row)

Chapter Number	Chapter Title
0800-02-17	Medical Cost Containment Program
Rule Number	Rule Title
0800-02-17-.25	Impairment Ratings-Evaluations and in Medical Records

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Public Necessity Rules
of
Tennessee Department of Labor and Workforce Development
Chapter 0800-02-17
Medical Cost Containment Program

Amendments

Rule 0800-02-17-.25 Impairment Ratings-Evaluations and in Medical Records is amended by deleting the present language in its entirety and replacing it with the following:

- (1) This rule applies to treating physicians. This rule is not applicable to independent medical examinations ("IME") or impairment ratings rendered as a part of an IME pursuant to Rule 0800-02-17-.09. As used in this Rule 0800-02-17-.25 only, a treating physician is that physician, chiropractor or medical practitioner who determines the employee has reached maximum medical improvement regarding the condition or injury for which the physician has provided treatment. A treating physician may include any of the following:
 - (a) a physician chosen from the panel required by T.C.A. Section 50-6-204;
 - (b) a physician referred to by the physician chosen from the panel required by T.C.A. Section 50-6-204;
 - (c) a physician recognized and authorized by the employer to treat an injured employee for a work-related injury; or
 - (d) a physician designated by the Division to treat an injured employee for a work-related injury.
- (2) A treating physician is required and responsible for determining the employee's maximum medical improvement date and providing the employee's impairment rating for the injury the physician is treating. In some circumstances, a work-related accident may lead to multiple injuries that require multiple treating physicians. In such cases, the physician that is treating a distinct injury shall determine that the employee has reached maximum medical improvement as to that injury only and is required and responsible for providing an impairment rating for that injury only. A treating physician shall not be required or responsible for providing an impairment rating for an injury that the physician is not treating.
- (3) All impairment ratings shall be made pursuant to T.C.A Section 50-6-204(d)(3)(a).
- (4) Within twenty-one (21) calendar days of the date the treating physician determines the employee has reached maximum medical improvement, the treating physician shall submit to the Division and the parties a fully completed report on a form prescribed by the Commissioner.
- (5) Upon determination of the employee's impairment rating, the treating physician shall enter the employee's impairment rating into the employee's medical records. In a response to a request for medical records pursuant to T.C.A. Section 50-6-204, a provider, treating physician or hospital shall include the portion of the medical records that includes the impairment rating.
- (6) The treating physician is required and responsible for providing the impairment rating, fully completing the report on a form prescribed by the Commissioner, and submitting the report to the Division and the parties as required by these Rules. For these services, the treating physician shall charge a fee of no more than \$250.00 to be paid by the employer. The payment shall only be made to the treating physician. The treating physician shall not require prepayment of such fee.
- (7) Failure to comply with this rule in any way shall constitute a violation of this Chapter, 0800-02-17, and shall subject the alleged offender to penalties pursuant to this Chapter.

Authority: T.C.A. §§ 50-6-204, 50-6-233 and 50-6-246.

* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of emergency or public necessity rules, lawfully promulgated and adopted.

Date: 12-2-08

Signature: James Neeley

Name of Officer: James G. Neeley

Title of Officer: Commissioner of Labor and Workforce Development



Subscribed and sworn to before me on: 12/2/08

Notary Public Signature: Rosemary S. Cole

My commission expires on: 8/18/12

All emergency or public necessity rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.
Robert E. Cooper, Jr.
Attorney General and Reporter

12-23-08
Date

Department of State Use Only

Filed with the Department of State on: 1/8/09

Effective for: 165 *days

Effective through: 6/22/09

* Temporary rules may be effective for up to 165 days from the date of filing.

Riley C. Darnell

Riley C. Darnell
Secretary of State

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Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to TCA 4-5-226(i)(1).

- (A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The amended rule requires a treating physician to provide an impairment rating to an injured employee within twenty-one (21) days of the date that the injured employee reaches maximum medical improvement. Under the previous rule, the treating physician was not required to provide the impairment rating. Under both the previous and amended rule, the physician can charge no more than \$250 for providing the impairment rating.

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Tenn. Code Ann. § 50-6-246 requires the Commissioner of Labor and Workforce Development to promulgate rules regarding the provision of impairment ratings to injured employees.

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Employers and their insurance carriers urge adoption of the amended rule because it will allow them to receive the impairment rating sooner and make an informed settlement offer to the injured employee. Likewise, injured employees and their attorneys will be able to settle cases and receive compensation sooner.

- (D)** Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

There have been no Attorney General opinions or judicial rulings relevant to these rules.

- (E)** An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

There are no anticipated increases or decreases in state and local government revenues and expenditures resulting from promulgation of the amended rule.

- (F)** Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Landon Lackey, attorney for the Division of Workers' Compensation, may be contacted for more information.

- (G)** Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Landon Lackey will explain the rule at a scheduled meeting of the committees.

- (H)** Office address and telephone number of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

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- (I)** Any additional information relevant to the rule proposed for continuation that the committee requests.

None

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

1. The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule: The amended rule will affect all employers and insurance carriers that are subject to the workers' compensation laws. Such employers and insurance carriers will benefit by receiving the impairment rating from the treating physician sooner than under the current rule. Health care providers that choose to treat injured employees will be required to provide an impairment rating and may charge a fee of up to \$250 for this service.
2. The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record: Health care providers who choose to treat injured employees will need to be familiar with the Sixth Edition of the AMA Guides in order to provide the impairment rating.
3. A statement of the probable effect on impacted small businesses and consumers: Employers and employees will have quicker access to impairment ratings than under the current rule. As such, the amended rule will allow the parties to settle the compensation claim sooner, which should save legal and administrative costs. Health care providers who choose to treat injured employees will be required to provide the impairment rating within twenty-one (21) days, but will also be able to charge a fee for this service.
4. A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business: There are no less burdensome methods to achieve the purposes and objectives of the amended rule.
5. Comparison of the proposed rule with any federal or state counterparts: No other similar rules exist in this state or on the federal level.
6. Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule: Any exemption would slow the process by which an injured employee's impairment rating is determined and would thwart the purposes and objectives of the amended rule.