

**Department of State
Division of Publications**

312 Rosa L. Parks Avenue, 8th Floor Snodgrass/TN Tower
Nashville, TN 37243
Phone: 615-741-2650
Fax: 615-741-5133
Email: register.information@tn.gov

For Department of State Use Only

Sequence Number: 03-08-14
Rule ID(s): 5673-5674
File Date: 4/1/14
Effective Date: 6/30/14

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission:	Tennessee Department of Labor and Workforce Development
Division:	Workers' Compensation
Contact Person:	Josh Baker
Address:	220 French Landing Drive, Nashville, Tennessee
Zip:	37243
Phone:	(615) 253-6909
Email:	Josh.baker@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0800-02-21	Mediation and Hearing Procedures
Rule Number	Rule Title
0800-02-21-.01	Scope
0800-02-21-.02	Definitions
0800-02-02-.03	Computation of Time
0800-02-21-.04	Ombudsman
0800-02-21-.05	Representation by Counsel
0800-02-21-.06	Foreign Attorneys
0800-02-21-.07	Fees
0800-02-21-.08	Forms
0800-02-21-.09	Service of Documents
0800-02-21-.10	Commencement of Alternative Dispute Resolution
0800-02-21-.11	Alternative Dispute Resolution Proceedings
0800-02-21-.12	Request for Hearing and Docketing of Cases
0800-02-21-.13	Initial Hearing
0800-02-21-.14	Expedited Hearing and Decision on the Record
0800-02-21-.15	Copies of Medical Records
0800-02-21-.16	Discovery
0800-02-21-.17	Post-Discovery Alternative Dispute Resolution
0800-02-21-.18	Compensation Hearing Procedure
0800-02-21-.19	Settlement Approvals
0800-02-21-.20	Voluntary Dismissal – Nonsuit
0800-02-21-.21	State Employee Claims

Chapter Number	Chapter Title
----------------	---------------

0800-02-22	Board of Workers' Compensation Appeals
Rule Number	Rule Title
0800-02-22-.01	Filing the Request for Appeal
0800-02-22-.02	Docketing Appeal, Filing Briefs and Rendering Decision
0800-02-22-.03	Appeals of Workers' Compensation Cases Filed Against the State

(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>)

Chapter 0800-02-21
Mediation and Hearing Procedures

New Rules

Rule 0800-02-21-.01 Scope

These rules govern the procedures for resolution of workers' compensation disputes, including informal resolution and practice before the court of workers' compensation claims. They are intended to provide for an efficient and expedient resolution of issues within the jurisdiction of the Division.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 106

Rule 0800-02-21-.02 Definitions

- (1) Appeals Judge. A judge of the board of workers' compensation appeals.
- (2) Appeals Board. Unless otherwise provided or clearly inapplicable in context, appeals board shall mean the board of workers' compensation appeals.
- (3) Catastrophic Injury. For the purposes of this section only, any of the following injuries shall be catastrophic:
 - (a) Spinal cord injury involving severe paralysis of an arm, a leg, the trunk or any combination of these;
 - (b) Amputation of an arm, a hand, a foot, a leg or any combination of these involving the effective loss of use of that appendage;
 - (c) Severe brain or closed head injury as evidenced by:
 1. Severe sensory or motor disturbances;
 2. Severe communication disturbances;
 3. Severe complex integrated disturbances of cerebral function;
 4. Severe disturbances of consciousness; or
 5. Severe episodic neurological disorders;
 - (d) Second or third degree burns to twenty-five percent (25%) or more of the body as a whole or third degree burns to five percent (5%) or more of the face or hands;
 - (e) Total or industrial blindness; or
 - (f) Total loss of hearing.
- (4) Chief Judge. The chief judge is the supervisor and coordinator of all activities in the court of workers' compensation claims. The chief judge is responsible for administration of the day-to-day operations of the court and supervision of its judges. The chief judge may also preside over hearings of workers' compensation cases. The chief judge has the authority to issue orders in furtherance of these responsibilities.

- (5) Claim. For the purposes of these rules, a claim shall refer to the assertion of the entitlement to a remedy

provided by the workers' compensation law as a result of an injury described therein.

- (6) Clerk. Unless otherwise provided, clerk shall mean the clerk of the court of workers' compensation claims.
- (7) Compensation Order. A compensation order is an order by a workers' compensation judge following conclusion of a full evidentiary hearing or a decision on the record and shall include a decision issued by a judge following a hearing related to an open medicals provision in a previously issued order or approved settlement. The parties may, by joint stipulation, request a compensation order resolving the issues in dispute without a hearing.
- (8) Court. Unless otherwise provided, court shall mean the court of workers' compensation claims.
- (9) Decision on the Record. After a Request for Hearing has been filed, the Division may select cases where no material fact is in dispute for determination on the record. The parties will be afforded an opportunity to submit written position statements regarding the law that support their respective positions as well as an opportunity to respond to the written position statement of the other party. The case shall be assigned to a judge for a decision on the record. Review of a decision on the record shall proceed as set forth in the Tennessee Workers' Compensation Law and these rules.
- (10) Dispute Certification Notice. The notice filed by the mediator with the clerk following the completion of alternative dispute resolution proceedings stating that, following mediation, a dispute concerning the issues set forth in the notice still exists. Unless permission is granted by the court, no issue that is not contained within the dispute certification notice may be submitted to the judge for adjudication.
- (11) Division. Unless otherwise provided, division shall mean the Division of Workers' Compensation.
- (12) Electronic signature. A pleading, order, or other document that is transmitted by electronic mail or other means of electronic transmission to or from the Division may be signed or verified electronically in the manner approved by the Division for such transmissions.
- (13) Expedited Hearing. A hearing to determine an issue of appropriateness of temporary disability or medical benefits prior to a hearing that results in a compensation order, conducted pursuant to these rules. A workers' compensation judge may issue an interlocutory order either awarding or denying temporary disability or medical benefits based on a review of the documents submitted and without convening a formal hearing. A workers' compensation judge shall have discretion to convene a hearing of a motion for temporary disability or medical benefits if the judge determines that convening a hearing is necessary to determine the issues presented.
- (14) Filed. For purposes of this chapter, a pleading or other document required to be sent to the court shall be considered filed only on the date and time received by the clerk if delivered by hand to the clerk's offices in Nashville or any other office maintained by the Division during normal business hours; on the date posted to the clerk if sent by U.S. certified or registered mail, return receipt requested, or other equivalent manner as established by the Division; or when the material being transmitted reaches the Division or its designated agent, if transmitted by first-class mail, facsimile, electronic mail or other means of electronic transmission approved or required by the Division.
- (15) Initial Hearing. With the exception of a hearing of temporary disability or medical benefit issues conducted on an expedited basis, an initial hearing shall be the first hearing before a workers' compensation judge where the judge will consider issues related to the efficient processing of the case.
- (16) Interlocutory Order. An interlocutory order is an order by a workers' compensation judge that awards or denies temporary disability or medical benefits following a review of the submitted material, or a hearing if one is convened at the discretion of the workers' compensation judge, as a result of a motion for expedited hearing. An interlocutory order may be reviewed by the board of workers' compensation appeals upon timely request of a party. No other review of an interlocutory order is permitted.
- (17) Judge or Workers' Compensation Judge. A judge of the court of workers' compensation claims.
- (18) Motion for Expedited Hearing. A motion for an expedited hearing is a request filed with the clerk for a

workers' compensation judge to issue an interlocutory order for temporary disability or medical benefits. An employee may file a motion for expedited hearing with the clerk at any time after a dispute certification notice has been filed and the claim has been placed on the docket for an initial hearing.

(19)Petition for Benefit Determination. A petition for benefit determination is a request for the Division to provide assistance in the resolution of any disputed issues in a workers' compensation claim. Any party may file a petition for benefit determination, on a form approved by the Division, with the Division at any time after a dispute arises in a claim for workers' compensation benefits.

(20)Request for Hearing. A request to the clerk to schedule a hearing before a workers' compensation judge for the adjudication of a disputed issue that has been certified by a mediator on a dispute certification notice.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 76, 79, 82, 83, 106

Rule 0800-02-21-.03 Computation of Time

- (1) Unless otherwise noted, the time required for completing any actions provided in these rules shall be calculated in the manner provided by Rule 6.01 of the Tennessee Rules of Civil Procedure.
- (2) Except in regard to filing a petition for benefit determination pursuant to T.C.A. § 50-6-203 and a request for hearing pursuant to T.C.A. § 50-6-239(a), when an act is required to be done at or within a specified time, the workers' compensation judge or board of workers' compensation appeals board judge may, at any time:
 - (a) Order the period enlarged, without notice, if the request is made before the expiration of the period originally prescribed or extended by a previous order; or
 - (b) Order the period enlarged, thereby permitting the act to be done late, upon motion made after the expiration of the period originally prescribed if the failure to complete the act within the prescribed period was the result of excusable neglect.
- (3) Nothing in this section shall be construed to allow any ex parte communications with a workers' compensation judge or workers' compensation appeals board judge concerning any issue in the proceeding that would be prohibited by T.C.A. § 4-5-304.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 79, 106

Rule 0800-02-21-.04 Ombudsman

- (1) The workers' compensation ombudsman program provides assistance to employees, employers or any other party or participant in a workers' compensation claim that is not represented by legal counsel. The ombudsman can provide information on workers' compensation law and rules, inform participants of their rights and obligations under the law, assist participants in completing forms, obtaining medical records and scheduling appointments, and perform any other duties as required by the administrator.
- (2) Any party that is not represented by counsel may request the services of a workers' compensation ombudsman by contacting the Division.
- (3) An ombudsman shall have authority including, but not limited to:
 - (a) Meeting with and providing information to unrepresented parties about their rights and responsibilities under the law;
 - (b) Investigating claims and attempting to resolve disputes without resorting to alternative dispute resolution and court proceedings;
 - (c) Communicating with all parties and providers in the claim;
 - (d) Assisting the parties in the completion of forms; and

- (e) Facilitating the exchange of medical records.
- (4) An ombudsman cannot provide legal advice.
- (5) An ombudsman cannot be called to testify in any proceeding and no statement or representation made to an ombudsman shall be considered by a workers' compensation judge for any purpose.
- (6) Any unrepresented person or entity seeking the services of an ombudsman shall contact the Division. The Division shall assign an ombudsman to assist the person or entity qualified to receive the services of an ombudsman. Access to the services provided by an ombudsman is a privilege, not a right, and the Division has sole authority to determine whether a person or entity qualifies for ombudsman services and the nature of the services to be provided by the ombudsman.
- (7) If a person or entity receiving the services of an ombudsman obtains legal counsel in the case or dispute for which the services of an ombudsman were sought, the person or entity shall immediately notify the Division of the representation and shall discontinue use of the services provided by an ombudsman.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 77

Rule 0800-02-21-.05 Representation by Counsel

- (1) At any hearing or mediation proceeding:
 - (a) Any party may be represented by a Tennessee licensed attorney in good standing. An attorney licensed outside of Tennessee may apply for admission pro hac vice.
 - (b) Any party that is a natural person may represent himself or herself at any hearing or mediation proceeding.
 - (c) Any corporation or other artificial person may participate through a duly authorized representative such as an officer, director or appropriate employee, but must be represented by counsel in all proceedings occurring the in court of workers' compensation claims and the board of workers' compensation appeals.
 - (d) No party may be represented by a non-attorney.
- (2) Immediately upon engaging in representation of a party, an attorney shall file a notice with the Division indicating their appearance. After a licensed attorney has appeared on behalf of any party, all pleadings, motions, notices and other documents shall be served upon the attorney. In lieu of filing formal notice, an attorney's signing of a petition for benefit determination, request for hearing, proposed initial hearing order, wage statement, pretrial statement or any other document that is filed with the clerk or the Division shall satisfy the notice of appearance requirement.
- (3) Representation shall continue until the case is concluded, including any appeals to the board of workers' compensation appeals, or until withdrawal from representation has been approved by a judge. All withdrawals of an attorney following an appearance shall be upon motion with reasonable notice provided to the represented party. No motion to withdraw shall be granted unless the motion is accompanied by an affidavit from the attorney setting forth the last known address of the client and a statement declaring that the attorney has provided notice to the client of both the effects of the attorney's withdrawal from the case and of any scheduled proceedings.
- (4) If a party is represented by an attorney, then all pleadings, motions, and other documents filed with the Division shall be signed by at least one attorney of record. If a party is not represented by an attorney, then the party must include his or her signature on the filing. Individuals signing a filing must include their address and an attorney signing a filing must also include the attorney's Tennessee board of professional responsibility number. Unless otherwise required by statute or regulation, signatures do not need to be accompanied by affidavit. The signature of an individual signifies that the individual has read the filing, the filing is well grounded in fact and is warranted by existing law or an extension or modification of existing law, and the filing is not made for any improper purpose.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 106

Rule 0800-02-21-.06 Foreign Attorneys

Unless permission has been granted by the court, only attorneys who have been admitted to practice law by the Tennessee Supreme Court may appear before judges of the court of workers' compensation claims. The Division may admit foreign attorneys to appear pro hac vice upon application on a form approved by the Division.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 79, 106

Rule 0800-02-21-.07 Fees

A filing fee of \$150 shall be paid to the clerk by the employer at the time of settlement approval or at the conclusion of a case. The filing fee shall be submitted to the clerk before a scheduled settlement approval hearing or within five (5) business days after the fee has been assessed by the workers' compensation judge. Payment shall be made in a form, and submitted in a manner, approved by the Division.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Section 82

Rule 0800-02-21-.08 Forms

All documents filed with the Division, including those allowed or required to be filed electronically, shall be in the form approved by the Division.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 106

Rule 0800-02-21-.09 Service of Documents

Copies of a petition for benefit determination, request for hearing, request for appeal and any other documents filed with the Division, the court of workers' compensation appeals or the appeals board shall be served upon all parties to the dispute or upon their attorneys, if represented. Service must be accomplished either before filing with the Division or within a reasonable time thereafter. Service may be accomplished by hand delivery, mail or common carrier, facsimile, electronic mail in PDF format, or other electronic means approved by the Division. Unless otherwise required by the Division, proof of service shall be by certification of the sender on the document filed with the Division. Such certification shall include the name of the person served, the date, the manner of service and the address where service was made.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 106

Rule 0800-02-21-.10 Commencement of Alternative Dispute Resolution

- (1) Resolution of a dispute over a claim for workers' compensation benefits shall commence by the filing of a petition for benefit determination, on a form approved by the Division, with the Division within the applicable time frames provided by T.C.A. § 50-6-203. If a petition for benefit determination is not filed within the applicable time frames provided by T.C.A. § 50-6-203, then the right to compensation under the Workers' Compensation Law relating to the dispute shall be forever barred.
- (2) After a petition for benefit determination is filed, each party shall promptly provide the other parties with copies of any medical records in their possession. Further, each party shall provide copies of any medical reports received during the course of the proceeding, as they receive them, to all other parties within fourteen (14) calendar days of receipt. The mediator may refer any party that does not comply with the requirements of this rule for the assessment of a civil penalty.
- (3) Within three (3) business days of the first scheduled alternative dispute resolution proceedings, the employer shall provide a wage statement, on a form approved by the Division, detailing the employee's wages over the fifty-two (52) week period preceding the injury. The form must be fully completed and signed by the employer or counsel. If the employee was employed by the employer for less than fifty-two (52) weeks, the employer shall provide a wage statement detailing the employee's wages over the entire

period of employment. The statement shall be filed with the Division and served upon the employee in the manner provided by these rules. The presiding mediator shall refer any employer who does not file a wage statement with the Division within the timeframe provided by this section for assessment of a civil penalty.

- (4) After a petition for benefit determination is filed, the case shall be assigned to a mediator who will schedule alternative dispute resolution proceedings under the procedures provided by these rules.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 76, 106

Rule 0800-02-21-.11 Alternative Dispute Resolution Proceedings

- (1) Once a case has been assigned to a mediator, the mediator shall conduct alternative dispute resolution proceedings in any manner that is practical for the effective resolution of the issues in dispute, including allowing for telephonic, electronic, or in-person interactions.
- (2) The parties shall cooperate with the mediator and provide any information necessary for the resolution of the dispute. If the mediator determines that a party is not cooperating or is not negotiating in good faith, then the mediator shall refer the party for a penalty as provided by T.C.A. § 50-6-118. When a party is referred by the mediator for the assessment of civil penalty pursuant to this section, the referral shall be assigned to another employee of the Division who shall consider the referral and make a decision of whether assessment of a penalty is appropriate.
- (3) If the parties are able to reach a resolution of all disputed issues, the mediator shall reduce the terms of the resolution to a settlement agreement, on a form approved by the Division, and file the agreement with the clerk. The clerk shall place the case on the docket and assign the case to a workers' compensation judge for a settlement approval hearing.
- (4) If the parties are unable to reach a resolution of all disputed issues, the mediator shall issue a dispute certification notice to the parties. The mediator shall note any issues that the parties have agreed upon in the notice as well as the remaining issues that are still in dispute including all defenses to the claim that were raised during the mediation.
- (5) If any party disagrees with the contents of the dispute certification notice issued pursuant to paragraph (4), then such party is required to file an objection with the mediator within five (5) business days of receipt. In the objection, the party shall provide a list of any additional disputed issues that it believes should be included in the dispute certification notice. The mediator shall issue an amended dispute certification notice and file the dispute certification notice with the clerk.
- (6) If the employee fails to appear at any scheduled alternative dispute resolution proceeding, the mediator shall issue a dispute certification notice stating that the employee has failed to appear for a scheduled alternative dispute resolution proceeding. The clerk shall place the case on the dismissal calendar for a show cause hearing and send notice of the show cause hearing to the parties as provided in rule 0800-02-21-.12(1). If the case is dismissed following the show cause hearing, the employee may revive the case by attending alternative dispute resolution proceedings within sixty (60) days of the date of the order as provided in T.C.A. § 50-6-203(f).

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 33, 73, 79, 106

Rule 0800-02-21-.12 Request for Hearing and Docketing of Cases

- (1) Immediately after a dispute certification notice has been filed with the clerk, either party seeking further resolution of any disputed issues shall file a request for hearing with the clerk on a form approved by the Division and serve a copy of the request on the opposing party or their counsel, if any. If no request for hearing is filed within sixty (60) calendar days after the date of issuance of the dispute certification notice, the clerk shall docket the case and place the case on a separate dismissal calendar for a show cause hearing. The clerk shall send notice of the hearing to the parties, via regular or electronic mail, indicating the claim number, the time of the hearing and the judge assigned to the case. Either party may appear to show cause as to why the case should not be dismissed.

- (2) Except in cases where an employee has suffered a catastrophic injury or for similar reasons as determined by the Division, all cases shall be placed on the docket by the clerk in the order that the request for hearing is received. If the dates are available, the clerk will assign a date for the hearing based upon available dates provided by the parties, in coordination with the mediator assigned to the case.
- (3) The clerk shall consolidate all requests for hearing related to a single dispute certification notice into a single referral to the docket. If two or more filings that should be consolidated are not consolidated, then the cases shall be combined and assigned to the judge that was given the assignment for the first request that was filed, unless otherwise directed by the chief judge. Consolidation may occur upon the motion of a party or on a judge's own motion.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 79, 82, 106

Rule 0800-02-21-.13 Initial Hearing

- (1) All parties to any case shall participate in an initial hearing with a workers' compensation judge no more than thirty (30) calendar days after a request for hearing is filed.
- (2) After the initial hearing has been set, the clerk shall send a docketing notice to all parties, via regular or electronic mail, indicating the case number, the time of the initial hearing and the judge assigned to the case. The clerk shall also send information to the parties detailing the actions required to prepare for and participate in the initial hearing. Unless the judge determines that an in-person hearing is necessary, all initial hearings shall be conducted telephonically or through other electronic means as determined by the workers' compensation judge.
- (3) At the initial hearing, the parties shall discuss and agree upon a discovery plan and a scheduling order designed to ensure timely and efficient resolution of the case. The parties shall jointly submit a proposed initial hearing order, in a format provided by the Division, to the judge for consideration. The proposed order shall be submitted via electronic mail, unless another method of delivery is required by the Division, within three (3) business days of the conclusion of the initial hearing.
- (4) At the conclusion of the initial hearing, the judge shall set dates for post-discovery alternative dispute resolution proceedings and the compensation hearing. Absent extraordinary circumstances as determined by the judge, the date of the compensation hearing shall not be modified.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 79, 82, 106

Rule 0800-02-21-.14 Expedited Hearing and Decision on the Record

- (1) After a case is placed on the docket, if there is a dispute over temporary disability or medical benefits, either party may request an expediting hearing of the issue of temporary disability or medical benefits by indicating its desire for an expedited hearing on the request for hearing form or by a filing a separate motion. The indication of the desire for an expedited hearing on the request for hearing form shall serve as the motion for expedited hearing.
 - (a) All motions for expedited hearing must be accompanied by affidavits and any other information demonstrating that the employee is entitled to temporary disability or medical benefits.
 - (b) Immediately upon receiving the motion, but in no event later than five (5) business days after the motion is filed with the clerk, the opposing party shall submit all information in its possession demonstrating that the employee is not entitled to temporary disability or medical benefits. The party shall also indicate if it believes that the motion should be set for an evidentiary hearing and provide an explanation of why a hearing is necessary.
 - (c) Seven (7) business days after the motion is filed with the clerk, the clerk shall compile the file and the motion shall be assigned to a workers' compensation judge. Upon receipt of the file, the judge shall have discretion to either set the matter for a hearing or enter an interlocutory order based on a review of the file upon determining that no additional information is needed to

determine whether the employee is likely to prevail at a hearing on the merits of the claim.

- (d) Any party aggrieved by an interlocutory order may appeal the interlocutory order to the board of appeals in the manner provided by the Tennessee Workers' Compensation Law and these rules.
 - (e) An interlocutory order awarding or denying temporary disability or medical benefits shall not be binding on the workers' compensation judge assigned to preside over the compensation hearing.
- (2) The parties may request that a case be decided by a workers' compensation judge on the record and a compensation order issued based on a judge's review of the written materials and without the benefit of a hearing.
- (a) All cases in which the parties have agreed that the case should be submitted to the judge for an on-the-record determination will be placed on a separate docket for a decision on the record. The assigned workers' compensation judge shall determine whether an on-the-record determination is appropriate under the circumstances and may decline to issue a decision on the record and order the parties to appear for a hearing.
 - (b) If a case is selected for an on-the-record determination, the clerk shall send a docketing notice to all parties, via regular or electronic mail, indicating the file number and the judge assigned to the request for hearing. The clerk shall also send information to the parties detailing the actions required to present the case to the judge for a decision on the record.
- (3) If, as a result of the expedited hearing, the claim is denied on the grounds of compensability, the claim shall continue as provided in these rules. The aggrieved party may file an appeal pursuant to Rule 0800-02-22-.01(1)(a). If the denial on the grounds of compensability is affirmed by the appeals board or if no appeal is taken, the employer may file a motion to dismiss with the assigned workers' compensation judge. If a motion to dismiss pursuant to this paragraph is filed, the employer shall serve a copy on the employee, or the employee's counsel, and the employee shall have thirty (30) calendar days to file a written response. Thereafter, the motion shall be set for a hearing and the judge shall issue an appropriate order.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 79, 82, 106

Rule 0800-02-21-.15 Copies of Medical Records

- (1) A medical care provider attending to an injured employee shall, upon request from an employer or an employee, furnish a copy of required records, at no cost except for a nominal copying charge that shall not exceed the charges allowed by T.C.A. § 50-6-204 for paper records and rule 0800-02-14-.24 for non-paper records. The medical care provider shall make the records available to both the employee and employer within thirty (30) days after admission or treatment as required by T.C.A. § 50-6-204(a)(2)(A). After the records have been made available, the medical care provider shall provide the requested records within ten (10) business days of receipt of a written request for records. The records may be sent by email, facsimile, regular mail or common carrier and may be provided in paper or electronic format.
- (2) A medical care provider is entitled to a reasonable fee, not to exceed the maximum allowable charges provided by rule 0800-02-17-.15(4), for preparation of a narrative report written in response to a request from a party.
- (3) For the purposes of paragraphs (1) and (2) of this rule, medical provider shall include the authorized treating physician, a hospital, and any other entity or person who has provided medical care to the injured employee for the work-related injury that is the subject of the claim for workers' compensation benefits at issue pursuant to the employer's obligation under T.C.A. § 50-6-204. Acceptance of care from a medical provider for the work-related injury shall be deemed consent for the release of these records and no further consent shall be necessary.
- (4) Medical provider shall not include any physician, hospital or other person or entity that has provided treatment to the injured worker for injuries or conditions that was not provided pursuant to the employer's obligation under T.C.A. § 50-6-204 for treatment of the work-related injury that is the subject of the claim for workers' compensation benefits at issue.

- (5) Records from a medical provider as defined in Paragraph (4) of this rule may be provided with the appropriate HIPAA compliant written authorization of the employee which the employee shall be required to provide if ordered to do so by the presiding workers' compensation judge.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 35, 73, 106

Rule 0800-02-21-.16 Discovery

- (1) Parties are encouraged, where practicable, to attempt to achieve any necessary discovery informally, in order to avoid undue expense and delay. When such attempts have failed, or where the complexity of the case is such that informal discovery is not practicable, discovery shall be sought and effectuated in accordance with the Tennessee Rules of Civil Procedure unless these rules provide an alternative procedure.
- (2) Discovery disputes. All discovery related motions shall be decided on the written materials provided by the parties unless the workers' compensation judge, in the judge's discretion, determines that argument is needed to resolve the dispute. Affidavits may be provided in support of any motion or response; live testimony is prohibited. Any motion to compel discovery, motion to quash, motion for protective order, or other discovery-related motion shall:
 - (a) Quote verbatim the interrogatory, request, question, or subpoena at issue, or be accompanied by a copy of the interrogatory, request, subpoena, or excerpt of a disposition which shows the question and objection or response if applicable;
 - (b) State the reason or reasons supporting the motion; and
 - (c) Be accompanied by a statement certifying that the moving party or his or her counsel has made a good faith effort to resolve, by agreement, the issues raised in the motion and that agreement has not been achieved. Details of the effort to resolve the dispute shall be set forth with particularity in the statement.
- (3) Filing of Discovery Materials. Unless the subject of a discovery dispute, discovery materials shall not be filed with the court.
- (4) Interrogatories. A party may serve interrogatories on any other party at any time after a case has been docketed by the clerk.
 - (a) All interrogatories must be answered under oath and the responding party shall be required to update its answers in a timely manner whenever additional information becomes available or the responses provided in a prior response have changed.
 - (b) Interrogatories shall be answered within the timeframe provided by the discovery plan in the initial hearing order and, unless ordered by a workers' compensation judge, no party shall be required to answer interrogatories before the initial hearing order has been entered.
 - (c) No party may serve more than twenty (20) interrogatories, including subparts, on any other party, but the presiding workers' compensation judge shall have discretion to increase the number of interrogatories that may be served.
 - (d) The workers' compensation judge shall have authority to increase or decrease the time allowed for answering interrogatories.
 - (e) Except as required when filing a discovery-related motion, no interrogatories or answers shall be filed with the court.
- (5) Depositions. All depositions shall be taken within the timeframe provided by the discovery plan in the initial hearing order. Absent extraordinary circumstances to be determined at the discretion of the workers' compensation judge, no scheduled hearing may be continued to provide a party additional time to secure deposition testimony.

- (a) The deposition may be taken on oral examination or upon written questions in the manner provided by the Tennessee Rules of Civil Procedure.
 - (b) Written notice shall be provided to all parties at least five (5) business days before any scheduled deposition when the deposition is to be taken in the employee's county of residence. When the locale of the deposition is in a county other than the employee's county of residence, written notice of the deposition shall be provided to all parties at least seven (7) business days before the scheduled deposition.
 - (c) No oral deposition shall continue for more than four (4) hours. Time used for breaks shall be excluded.
- (6) Medical Records. All medical records shall be exchanged among the parties in the manner provided by these rules.
- (a) All medical records designated by the parties to be presented as evidence at a scheduled hearing shall be filed with the Division no later than (10) business days before the scheduled hearing date. Except for good cause shown, failure to comply may result in the exclusion of any medical record that is not filed timely or the assessment of costs or sanctions against the party or the attorney of the party designating the medical record. Absent good cause as determined by a workers' compensation judge, no other medical records shall be filed with the Division.
 - (b) All medical records signed by a physician or accompanied by a certification that the records are true and accurate which has been signed by the medical provider or custodian of records shall be admissible. The Division shall provide a certification form for the parties' use. There is no requirement that the certification be accompanied by an affidavit.
 - (c) All medical records designated to be presented as evidence at a scheduled hearing that exceed ten (10) pages shall include a chronological table of contents. The medical records designated shall be filed with the Division and each of the records shall be identified by author and date and numbered as in the table of contents.
 - 1. It shall be the duty of the parties, not the medical providers, to prepare the chronological table of contents required by part (c) of paragraph (6).
 - 2. A party proceeding pro se may, but shall not be required, to provide the chronological table of contents required by part (c) of paragraph (6).
- (7) Subpoenas compelling document production and deposition testimony. A workers' compensation judge at the request of any party shall issue signed subpoenas in blank in accordance with the Tennessee Rules of Civil Procedure.
- (a) Parties shall complete and serve their own subpoenas.
 - (b) Service of subpoenas for records may be by certified return receipt mail in addition to means of service provided by the Tennessee Rules of Civil Procedure.
 - (c) Any party or person that fails to timely respond to a subpoena for documents or testimony may be assessed a civil penalty.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 79, 82, 106

Rule 0800-02-21-.17 Post-Discovery Alternative Dispute Resolution

- (1) Unless the presiding judge determines that additional mediation is unnecessary, the parties reach an agreed settlement, or the petition for benefit determination is voluntarily non-suited, all parties shall participate in alternative dispute resolution proceedings with a workers' compensation mediator following the completion of the discovery plan provided in the initial hearing order.

- (2) The judge shall include a date for post-discovery alternative dispute resolution proceedings in the initial hearing order.
- (3) Alternative dispute resolution proceedings under this section shall be conducted in the manner provided by rule 0800-02-21-.11.
- (4) If the parties do not reach settlement of all issues, the mediator shall file a new dispute certification notice setting forth all issues that the parties have agreed upon, all disputed issues and all defenses to the claim proffered by the parties. If any party disagrees with the contents of the dispute certification notice, the party may file objections and an amended notice will be issued under the process provided by rule 0800-02-21-.11(5). Thereafter, the parties shall appear before the court for a compensation hearing at the time provided in the initial hearing order. The parties shall not file a request for hearing.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 76, 82, 106

Rule 0800-02-21-.18 Compensation Hearing Procedure

- (1) The compensation hearing shall be conducted at the time and place established in the initial hearing order. Absent extraordinary circumstances, no motion for a continuance shall be considered at the compensation hearing. If the parties reach a settlement of all issues prior to a scheduled compensation hearing, the parties shall immediately give written notice to the court and contact the clerk to schedule a settlement approval hearing.
- (2) No more than ten (10) business days before the date of a scheduled compensation hearing or as otherwise directed by the judge, each party shall file, either jointly or separately, a prehearing statement on a form provided by the Division.
- (3) Concurrently with the submission of the prehearing statement, each party shall file the following:
 - (a) A copy of each proposed exhibit except for those intended for impeachment or rebuttal purposes; and
 - (b) A copy of the transcript of the deposition of any medical expert that the party intends to present at the hearing.
- (4) With the exception of witness testimony and exhibits intended for impeachment or rebuttal purposes, no witness whose name and address was not included in the prehearing statement may testify at the hearing and no exhibit that was not included in the list of proposed exhibits in the prehearing statement may be presented at the hearing unless permission to present the testimony or exhibit is granted by the presiding workers' compensation judge. Permission may be granted by the judge only upon finding that:
 - (a) The party seeking to present the witness or exhibit did not have knowledge of the witness or exhibit prior to submitting the prehearing statement and could not have discovered the witness or exhibit despite reasonable investigation; and
 - (b) Prohibiting the presentation of the witness or exhibit would result in prejudice.
- (5) Absent good cause shown, a party failing to provide a prehearing statement as required by these rules may be sanctioned by the judge, up to and including prohibiting the party from introducing evidence or exhibits, or calling witnesses except for impeachment or rebuttal purposes.
- (6) Subpoenas compelling witnesses' attendance at trial. A workers' compensation judge at the request of any party shall issue signed subpoenas in blank in accordance with the Tennessee Rules of Civil Procedure.
 - (a) Parties shall complete and serve their own subpoenas.
 - (b) Service of subpoenas compelling witness attendance to a trial or a hearing shall be made through

the means provided by the Tennessee Rules of Civil Procedure and a signed copy of the original must be filed with the clerk.

- (c) All subpoenas compelling witness attendance to a trial or a hearing must be served no later than five (5) days before the scheduled trial or hearing unless the presiding workers' compensation judge has given leave to extend this period.
- (d) Any party or person that fails to appear at a scheduled trial or hearing pursuant to a properly served subpoena issued pursuant to paragraph (6) of this rule may be assessed a civil penalty.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 82, 106

Rule 0800-02-21-.19 Settlement Approval

- (1) In any case where the parties reach a full and final settlement, the settlement shall not become effective until it has been signed by both parties and approved by a workers' compensation judge.
- (2) Unless the settlement is of a disputed claim, as provided by T.C.A. § 50-6-240(e), the settlement agreement must contain language stating that the employee is receiving, substantially, the benefits provided by the Tennessee Workers' Compensation Law.
- (3) If the settlement is of a disputed case pursuant to T.C.A. § 50-6-240(e), the settlement agreement must contain language stating that the settlement is in the best interest of the employee.
- (4) If there is a settlement of future medicals, a workers' compensation judge shall advise the claimant of the consequences of the settlement, if any, with respect to Medicare and TennCare benefits and liabilities and all settlements shall contain a statement that the claimant has been so advised.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 84, 106

Rule 0800-02-21-.20 Voluntary Dismissal – Non-suit

- (1) On no more than one occasion, a party may voluntarily non-suit a petition for benefit determination at any time after it has been filed unless the employee has been awarded temporary benefits through an interlocutory order.
- (2) A notice of voluntary non-suit shall not become binding until an order of non-suit has been issued by a workers' compensation judge.
- (3) If a claim is voluntarily non-suited, the party that has voluntarily non-suited the claim shall be required to pay a filing fee of \$150. The fee shall be due and payable on the date the order of non-suit is entered.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 82, 106

Rule 0800-02-21-.21 Workers' compensation claims against the state.

The court of workers' compensation claims is without jurisdiction to consider a claim for workers' compensation benefits filed against the state by a state employee.

Authority: T.C.A. §§ 4-3-1409, 9-8-307, 9-8-402

Chapter 0800-02-22 Board of Workers' Compensation Appeals

New Rules

Rule 0800-02-22-.01 Filing the Request for Appeal

- (1) Any party may appeal any order of a workers' compensation judge by filing a request for appeal, on a form approved by the Division, with the clerk. The request for appeal must be filed:
 - (a) Within seven (7) business days of the date the order was entered by the workers' compensation judge if the order appealed is interlocutory; or
 - (b) Within thirty (30) calendar days of the date the order was entered by the workers' compensation judge for appeal of a compensation order.
- (2) A copy of the request for appeal must be served upon the opposing party.
- (3) Upon receipt of a request for appeal of an interlocutory order, the clerk shall assemble the record from the judge and submit the appeal to the board of appeals for review. No transcript is required to be filed. Within seven (7) business days of the date the appeal is submitted to the board by the clerk, the board shall review the record and enter an opinion affirming or reversing the decision of the judge. The opinion of the appeals board shall not be subject to further appeal.
- (4) For an appeal of a compensation order, within fifteen (15) calendar days after the request for appeal is filed, the party that filed the request for appeal shall file a copy of the transcript of the proceedings before the workers' compensation court or shall file notice that no transcript will be provided. A copy of this transcript or notice shall be served upon the opposing party. The party may file a statement of the evidence in lieu of a transcript. The following additional rules shall apply:
 - (a) Upon receipt of a request for appeal, the clerk shall forward a copy of the request for appeal and the transcript or statement of the evidence, if any, to the workers' compensation judge that issued the order.
 - (b) Within ten (10) business days after receiving a copy of the notice of appeal and the transcript or statement of the evidence, the judge shall review the information provided by the clerk and determine whether the transcript or statement of the evidence accurately reflects the proceedings at the hearing. Thereafter, the judge shall review the case record to ensure that it is complete, compile the contents of the record and forward the record to the clerk for submission to the board of appeals.
 - (c) If a transcript or statement of the evidence is not timely filed, the workers' compensation judge may certify the record of proceedings if the judge believes that the record provides an accurate reflection of the proceedings that occurred at trial. If the judge determines that the record cannot be certified, the workers' compensation judge may either deny the request for appeal or issue an order compelling the party who filed the appeal to provide a copy of the transcript or a statement of the evidence.
- (5) Any request for appeal that is not received by the clerk within the time provided by paragraph (1) will be dismissed.
- (6) A request for appeal that is not timely filed will not toll the statute of limitations for filing an appeal to the Supreme Court pursuant to T.C.A. § 50-6-225(a)(1).

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 79, 80, 83, 106

Rule 0800-02-22-.02 Docketing Appeal, Filing Briefs and Rendering Decision

- (1) The board of workers' compensation appeals will docket the appeal upon receipt of the record from the clerk of the court of workers' compensation claims.
- (2) After the record is received by the board, the appeal shall be docketed and assigned to an appeals board judge for review. A docketing notice shall be sent to all parties.
- (3) For appeals of compensation orders, the parties shall have fifteen (15) calendar days after the docketing notice provided in paragraph (2) is issued to submit briefs to the board for consideration. Review on

appeal of interlocutory orders shall be on the record and briefing shall not be required. However, any party opposing the appeal of an interlocutory order may submit a response, in accordance with rules provided by the board, for consideration.

- (4) After the fifteen (15) calendar day period for the filing of briefs ends, or for appeals of interlocutory orders, after the appeal is filed, the board shall issue its decisions either certifying the order of the workers' compensation judge or remanding the case for further proceedings within:
 - (a) Seven (7) business days for an appeal of an interlocutory order awarding or denying temporary disability or medical benefits; or
 - (b) Forty-five (45) calendar days for an appeal of a compensation order issued pursuant to T.C.A. § 50-6-239(c)(2).
- (5) In rendering its decision, the board shall base its decision on a review of the record and the briefs or responses of the parties, if any. No oral argument shall be allowed.
- (6) Immediately upon issuing a decision on any appeal, the board shall forward a copy of the decision to the parties by regular or electronic mail.
- (7) Interlocutory orders.
 - (a) If the board affirms an interlocutory order awarding temporary disability or medical benefits, the employer shall begin making payments of benefits within five (5) business days from the date the opinion affirming the order is issued by the appeals board. Failure to begin benefit payments within five (5) business days may result in the assessment of a civil penalty pursuant to T.C.A. § 50-6-118.
 - (b) Following the issuance of a decision either affirming or remanding an interlocutory order of temporary disability benefits, the claim shall continue in the manner provided by T.C.A. § 50-6-239 and by these rules.
- (8) Compensation orders.
 - (a) If the board remands the case following an appeal of a compensation order, the clerk shall send a docketing notice to the parties, by regular or electronic mail, setting forth the procedure for preparing for and scheduling the hearing. The clerk shall also return the record to the previously assigned judge, unless otherwise directed by the Chief Judge.
 - (b) If the board certifies a compensation order as final, the time for filing an appeal to the supreme court pursuant to T.C.A. § 50-6-225 shall begin to run on the date the order is certified as final by the board. If no further appeal is filed, the compensation order shall become final and binding in thirty (30) calendar days and the benefits provided through the compensation order must be paid within five (5) business days after the order becomes final.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013), Sections 73, 79, 80, 83, 106

Rule 0800-02-22-.03 Appeal of Workers' Compensation Cases Filed Against the State

The board of workers' compensation appeals is without jurisdiction to consider an appeal of any decision of the claims commission either awarding or denying workers' compensation benefits to a state employee.

Authority: T.C.A. §§ 4-3-1409, 9-8-307, 9-8-402

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Division of Workers' Compensation (board/commission/ other authority) on January 10, 2014, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 08/23/13

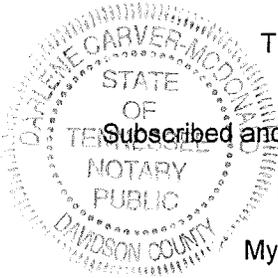
Rulemaking Hearing(s) Conducted on: (add more dates). 10/15/13

Date: January 10, 2014

Signature: Abbie Hudgens

Name of Officer: Abbie Hudgens

Title of Officer: Administrator, Division of Workers' Compensation



Subscribed and sworn to before me on: January 10, 2014

Notary Public Signature: Darlene Carver-McDonnell

My commission expires on: May 8, 2017

All rulemaking hearing 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.
 Attorney General and Reporter
3-18-14
 Date

Department of State Use Only

Filed with the Department of State on: 4/11/14

Effective on: 01/30/14

Tre Hargett
 Tre Hargett
 Secretary of State

RECEIVED
 2014 MAR 21 PM 2:06
 OFFICE OF
 SECRETARY OF STATE

Reselected
 3/25/14
[Signature]

OFFICE OF
 SECRETARY OF STATE
 2014 APR -1 PM 12:40

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

PUBLIC COMMENTS AND RESPONSES

Comment: There is no process provided for obtaining subpoenas.

Response: The Division agrees with the comment. The rules have been revised to include instructions on how to obtain subpoenas.

Comment: The requirement in the rules that a hearing be held within sixty days is not feasible.

Response: The Division disagrees with the comment. The rules do not require that a hearing be held within sixty days but only require that a hearing be requested within sixty days.

Comment: The requirement in rule 0800-02-21-.10 that parties exchange medical records on an ongoing basis within five (5) business days of receipt of the records is too burdensome.

Response: The Division agrees with the comment. Rule 0800-02-21-.10 has been revised to increase the time period for parties to provide copies of medical records on an ongoing basis to fourteen (14) calendar days after receipt.

Comment: The requirement in rule 0800-02-21-.10 that the employer provide a wage statement within five (5) business days of the filing of a petition for benefit determination is too burdensome.

Response: The Division agrees with the comment. Rule 0800-02-21-.10 has been so that a wage statement must be provided to the employee, or employee's counsel, and filed with the Division no later than three (3) business days before the first scheduled alternative dispute resolution session.

Comment: Rule 0800-02-21-.11 paragraph five, which allows a party to object to the inclusion of disputed issues in a dispute certification notice should be removed. The requirement is unnecessary and provides an inappropriate amount of authority to mediator to narrow the areas of dispute.

Response: The Division agrees with the comment. Rule 0800-02-21-.11 has been revised so that any disputed issue which any party has advocated for inclusion in the dispute certification notice will be included.

Comment: The language is unclear on when a dispute certification notice is filed triggering the requirement that a party request a hearing within sixty days.

Response: The Division agrees with the comment. The rule has been revised to clarify the date when a dispute certification notice is filed with the court.

Comment: Rule 0800-02-21-.14 paragraph one should provide be entitled to a hearing when a motion for an expedited hearing is filed. These hearings are extremely important in that the decision of whether an employee is entitled to temporary disability or medical benefits often turn upon the credibility of the employee.

Response: The Division agrees with the comment. Rule 0800-02-21-.14 has been revised so that a judge assigned the motion shall have the discretion to convene a hearing if the judge believes a hearing is necessary to rule on the motion.

Comment: Rule 0800-02-21-.14 paragraph two allows a workers' compensation judge to enter a decision on the record without the consent of the parties. Giving this authority to the Division may result in a denial of due process.

Response: The Division agrees with the comment. Rule 0800-02-21-.14 has been revised to allow the workers' compensation judge issue a decision on the record, without a hearing, only upon the written agreement of the parties to the claim.

Comment: Rule 0800-02-21-.16 subparagraph four limits the number of interrogatories to twenty. The rules should allow for thirty interrogatories as provided by the rules of civil procedure.

Response: The Division disagrees. No changes will be to the rule in response to this comment.

Comment: Rule 0800-02-21-.17 provides for post-discovery litigation in all cases unless the presiding judge deems it unnecessary. Requiring the parties to participate in post-discovery mediation could be counter-productive and create an unneeded drain on human resources.

Response: The Division disagrees. No changes will be made to the rule in response to this comment.

Comment: Rule 0800-02-21-.15 should be revised to provide additional clarity as to which medical provider is required to provide medical records.

Response: The Division agrees with the comment. Rule 0800-02-21-.15 has been revised to clarify which medical providers bear the responsibility to provide records.

Comment: Rule 0800-02-21-.15 contains timeframes for the employer and employee to exchange medical records but does not indicate the deadline for medical providers to distribute records upon request from the parties. In order to expedite the claim, the rules should also address the amount of time in which a medical provider must distribute records.

Response: The Division agrees with the comment. The rule has been revised to clarify the number of days a medical provider has to distribute records when records are requested by a party to the claim.

Comment: The five-day timeframe for requesting an appeal of an interlocutory order, as provided in rule 0800-02-22-.01, is too short. Suggest increasing this timeframe to 10 or 14 days.

Response: The Division disagrees with this comment. The timeframe for filing an appeal of an interlocutory order is statutory and increasing the timeframe would violate the statute. No changes will be made to the rule in response to this comment.

Comment: The rules do not contain a definition of bad faith. Specifically, a rule stating that a party's refusal to make an offer of settlement in a case where the party maintains that it has no liability is not bad faith should be included.

Response: The Division neither agrees nor disagrees with this comment. However, any rulemaking related to a definition of the term bad faith will be addressed in future rules. No changes will be made to these rules in response to this comment.

Comment: The rules do not define the scope of physicians that may serve on a panel. Specifically, the statute provides for the inclusion of specialty practice groups on a panel but the definition of this phrase is not clear.

Response: The Division disagrees with this comment. While the Division understands that the meaning of this phrase will need to be established, the Division has determined that these rules are not the appropriate document for addressing this issue. No changes will be made to these rules in response to this comment.

Comment: The rules do not provide an adequate explanation of what it means for a physician to "provide" notice of a referral to the employer/carrier. Recommend a revision to the rule requiring that the referral must be made on a form.

Response: This comment falls outside the purview of the rules presented. No changes will be made to these rules in response to this comment.

Comment: The three day time limit for an employer/carrier to provide an alternate panel of specialist upon receipt of a referral to a specialist by the authorized treating physician is too short. Suggest increasing the time period to seven business days.

Response: This comment falls outside the purview of the rules presented. Further, the law requires that the panel be provided within three (3) business days so any rule that extended this period would conflict with the statute. No changes will be made to these rules in response to this comment.

Comment: The scope of the initial mediation is not defined. It is impractical to require the parties to articulate all possible disputed issues before discovery has been completed.

Response: The Division agrees with this comment. Rule 0800-02-21-.17 has been revised so that the mediator will be required to submit a new dispute certification notice following post-discovery alternative dispute resolution.

Comment: The rules do not contain any method for recoupment of funds paid pursuant to an interlocutory order for temporary disability or medical benefits that is later overturned. There should be a section in the rules that addresses recoupment.

Response: The Division disagrees with this comment. Case law provides that an employer who pays temporary disability or medical benefits pursuant to an interlocutory order can seek recoupment from the party to whom the funds were paid. No changes will be made to these rules in response to this comment.

Comment: The rules are unclear as to whether the parties will be required to attend mediation in person.
Response: The Division disagrees with this comment. The rules provide that mediation may be accomplished in the manner chosen by the mediator including in-person, telephonic or video conferencing options. No changes will be made to these rules in response to this comment.

Comment: Rule 0800-02-21-.05 is unclear as to whether a corporation or other artificial person must be represented by counsel.

Response: The Division agrees with this comment. Rule 0800-02-21-.05 has been revised to clarify that an artificial person must be represented by counsel during all proceedings in the court of workers' compensation claims and in the board of workers' compensation appeals.

Comment: The rules state that an ombudsman can provide advice and assistance but prohibit the ombudsman from giving legal advice. Suggest that additional clarification on the limits of the activities of ombudsman is needed.

Response: The Division disagrees with this comment. The prohibition on the provision of legal advice is clearly stated and the meaning of what constitutes the unauthorized practice of law has been addressed by the Supreme Court. No changes will be made to these rules in response to this comment.

Comment: The rules do not provide an adequate explanation of what it means for a physician to "provide" notice of a referral to the employer/carrier so it is unclear when the three day period for providing an alternate panel begins to run. Recommend a revision to the rule to clarify this issue.

Response: This comment falls outside the purview of the rules presented. No changes will be made to these rules in response to this comment.

Comment: The reform law allows for the release of medical records related to the workers' compensation injury without the provision of a medial release and rule 0800-02-21-.15 governs the release and exchange of these records by the authorizing treating physician. The rule as drafted does not provide sufficient clarity concerning which physicians/entities are required to release records or the scope of the records that the physician/entity is required to release and the circumstances under which release is required.

Response: The Division agrees with this comment. Rule 0800-02-21-.15 has been revised to address the issues raised in this comment.

Comment: Rule 0800-02-21-.02(3) should remove the language "severe" as an adjective describing "paralysis" as the language is redundant. Any paralysis of a limb or trunk is catastrophic.

Response: The Division disagrees with the comment. There are some situations where paralysis of a limb or trunk can be very significant and in other cases the paralysis may be slight and effecting only a small portion of the area or may be temporary in nature. In any event, the question of degree of paralysis will factor into the decision on whether the claim should be given priority on the docket. No changes will be made to these rules in response to this comment.

Comment: Rule 0800-02-21-.02(15) "Initial Hearing" should include "hearing of medical benefit issues" and not just "hearing of temporary benefit issues," as the former may require an expedited hearing also.

Response: The Division agrees with this comment. Rule 0800-02-21-.02(15) has been revised to incorporate the change suggested by this comment.

Comment: Rule 0800-02-21-.04 (4) "Ombudsman cannot provide legal advice" should be omitted as inconsistent with .04 (3) providing for the ombudsman to provide information "to unrepresented parties about their rights and responsibilities under the law."

Response: The Division disagrees with this comment. No changes will be made to these rules in response to this comment.

Comment: Rule 0800-02-21-.10(3) regarding wage statement should include language that the wage statement must be "fully completed," as the common practice of employers has been to omit information about the number of days worked in a week. When numerous days have been lost, the AWW would need to be adjusted under the statute.

Response: The Division agrees with this comment. Rule 0800-02-21-.10(3) has been revised to incorporate the change suggested by this comment.

Comment: Rule 0800-02-21-.11(6) regarding dismissal for failure to appear at an alternative dispute resolution proceeding should include not only sanctions for the employee's absence but should also include sanctions for the employer's failure to appear.

Response: The Division neither agrees nor disagrees. However, the Division will be addressing sanctions for an employer who fails to appear in a subsequent set of rules. No changes will be made to these rules in response to this comment.

Comment: Rule 0800-02-21-.14(3) states the following: "If the denial of temporary benefits is affirmed by the appeals board or if no appeal is taken, the employer may file a motion to dismiss with the assigned workers' compensation judge." This rule should state "denial of compensability" rather than denial of temporary benefits as grounds for dismissal, as many cases are compensable without temporary benefits.

Response: The Division agrees with this comment. Rule 0800-02-21-.14(3) has been revised to incorporate the change suggested by this comment.

Comment: Suggest removing the phrase "medical fee schedule" from rule 0800-02-21-.15(1) and replacing it with references to T.C.A. § 50-6-204 and rule 0800-02-17-.24 to clarify the differences between allowable charges for paper and non-paper medical records.

Response: The Division agrees with this comment. Rule 0800-02-21-.15(1) has been revised to incorporate the change suggested by this comment.

Comment: Suggest removing the phrase "medical fee schedule" in rule 0800-02-21-.15(2) and replacing it with a reference to rule 0800-02-17-.15(4) and removing the phrase "if the report requires significant research or preparation" from this same rule. Removing this phrase will improve efficiency by removing a possible point of dispute over the validity of a charge for this action.

Response: The Division agrees with this comment. Rule 0800-02-21-.15(2) has been revised to incorporate the change suggested by this comment.

Comment: Suggest replacing the term "physician" with the phrase "medical providers" in rule 0800-02-21-.16(6)(b). The change will reflect the real-world practice where medical records are sometimes prepared by persons other than the physician and the change is consistent with language used on rule 0800-02-21-.15.

Response: The Division agrees with this comment. Rule 0800-02-21-.16(6)(b) has been revised to incorporate the change suggested by this comment.

Comment: Suggest adding language to rule 0800-02-21-.16(6)(c) to clarify that physicians will not be required to complete the "chronological table of contents" required by this rule.

Response: The Division agrees with this comment. The rules have been revised to incorporate the change suggested by this comment. Additional language has also been added to exempt pro se parties from completing this task.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

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 rules will affect small employers that fall under the Tennessee Workers' Compensation Laws, which would be employers with at least five employees, or in the construction industry, at least one employee. The rule amendments are largely procedural and administrative in nature, except for the filing fee, which is capped by statute at \$150.00. However, the filing fee to be paid at the settlement or conclusion of a claim upon entry of a final order is less than the fees currently paid to state trial courts so the fee does result in a savings when compared to the current process and could be viewed as a benefit.
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: Generally, record keeping and administrative duties will be performed by employers' insurance carriers or third party administrators and the record keeping staff-persons in physicians' offices. The recordkeeping and distribution requirements will be similar to the requirements under current law. Accordingly, any administrative impact to small businesses should be minimal.
3. A statement of the probable effect on impacted small businesses and consumers: Since these rules are largely procedural, there would be no expected impact other than the assessment of the \$150 filing fee. However, the impact of the fee would be minimal as the fee is capped at \$150.00, and parties to a workers' compensation claim are currently paying approximately \$200 to \$350 in filing fees for claims adjudicated in state trial courts. Accordingly, the fees would be a reduction of those currently paid
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 these rules.
5. Comparison of the proposed rule with any federal or state counterparts: None.
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: It would be detrimental to small businesses that fall under the Tennessee Workers' Compensation Laws to be exempt from these rules because they are intended to provide speedier and more predictive outcomes in workers' compensation claims.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

Local governments have the option to accept the provisions of the workers' compensation laws pursuant to T.C.A. § 50-6-106(6), but are not required to do so. For those local governments that do accept the provisions of the workers' compensation laws, the impact of the rule amendments will be minimal.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 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;

These rules provide the procedures and practices for the mediation, filing, and disposition of claims in the Tennessee Court of Workers' Compensation Claims and the Board of Workers' Compensation Appeals which are two special administrative courts created in the executive branch by Public Chapters 282 and 289 (2013). As these are all new rules, there is no change to any existing regulations. However, Public Chapter 289 (2013) presented a marked deviation from previous procedure in workers' compensation jurisprudence by requiring that all claims having a date of injury that is on or after July 1, 2014, be filed in the Court of Workers' Compensation Claims instead of a state trial court.

- (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;

As noted above, Public Chapters 282 and 289 made many statutory changes to the Tennessee Workers' Compensation Law and the adjudication of workers' compensation claims. These rules effectuate those changes.

- (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;

Many groups will be affected by the rule including all attorneys practicing workers' compensation law; all employees that suffer an injury, on or after July 1, 2014, that is compensable under the Tennessee Workers' Compensation Law; all employers employing employees that suffer an injury, on or after July 1, 2014, that is compensable under the Tennessee Workers' Compensation Law; the Tennessee Bar Association; the Tennessee Chamber of Commerce; the National Federation of Independent Businesses, the Tennessee Medical Association, all doctors who treat workers' compensation patients, the Tennessee Hospital Association, and the AFL-CIO. None of these groups has urged adoption or rejection of the rules but the Tennessee Chamber has expressed satisfaction with the rules.

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

None

- (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;

Local governments have the option to accept the provisions of the workers' compensation laws pursuant to T.C.A. § 50-6-106(6), but are not required to do so. For those local governments that do accept the provisions of the workers' compensation laws, the fiscal impact of the rule amendments will be minimal as these are largely procedural rules. The state government is subject to some provisions of the workers' compensation laws, but not all, and will not be impacted by these rule amendments.

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

Josh Baker, Administrative Attorney, Division of Workers' Compensation

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

Josh Baker, Administrative Attorney, Division of Workers' Compensation

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

220 French Landing Drive
Floor 1-B
Nashville, TN 37243
(615) 253-6909
Josh.baker@tn.gov

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

None



STATE OF TENNESSEE
BUREAU OF WORKERS' COMPENSATION
220 FRENCH LANDING DRIVE
NASHVILLE, TENNESSEE 37243

December 9, 2016

TO: Cody York, Director of Publications
Office of the Tennessee Secretary of State

FROM: Troy Haley, Director – Administrative Legal Services
Tennessee Bureau of Workers' Compensation

RE: Correction of error in rule filing

Hello Cody:

It has come to my attention that there is a typographical error in Rule 0800-02-21-.15. The Mediation and Hearing Procedures rules filed by the Bureau of Workers' Compensation on April 1, 2014, which have Rule IDs 5673-5674, and which went into effect on June 30, 2014, contain a numbering error that needs to be corrected. Rule 0800-02-21-.15(1), stated in part: "A medical care provider...allowed by T.C.A. § 50-6-204 for paper records and rule 0800-02-14-.24 for non-paper records...."

The language in Rule 0800-02-21-.15(1) referring to 0800-02-14-.24 should refer to 0800-02-17-.24. Please confirm that this correction will be made through the publication process to show the reference as 0800-02-17-.24.

I apologize for any inconvenience this has caused and thank you for the assistance in correcting it.

If you would like to discuss, please call me at (615) 532-0179.

Very truly yours,

Troy Haley
Bureau of Workers' Compensation
troy.haley@tn.gov
615-532-0179

RECEIVED
2016 DEC -9 PM 4:09
SECRETARY OF STATE
PUBLICATIONS

Tennessee Secretary of State
Tre Hargett



Publications Division
312 Rosa L. Parks Avenue, 8th Floor
Nashville, Tennessee 37243-1102

Cody Ryan York
Director of Publications

615-253-4564
Cody.York@tn.gov

December 13, 2016

Mr. Troy Haley
Director
Administrative Legal Services
Tennessee Bureau of Workers' Compensation
Department of Labor and Workforce Development
220 French Landing Drive, 1-B
Nashville, TN 37243-1002

Dear Mr. Haley,

Per your letter received December 9, 2016, we have corrected the typographical error in Rule 0800-02-21-.15.

If you have any questions, please feel free to contact my office at 615-741-2650.

Sincerely,


Cody Ryan York
Director of Publications