

Proposed Rule Amendments
Of
The Tennessee Department of Labor and Workforce Development
Division of Workers' Compensation

Chapter 0800-2-7
General Rules of the Workers' Compensation Program
Case Management

Presented herein are proposed rules of the Tennessee Department of Labor and Workforce Development submitted pursuant to T.C.A. Section 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Tennessee Department of Labor and Workforce Development to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed rules are published. Such petition to be effective must be filed with the Workers' Compensation Division, Second Floor of the Andrew Johnson Tower located at 710 James Robertson Parkway, Nashville, TN 37243-0661 and in the Department of State, Eighth Floor, Tennessee Tower, William Snodgrass Building, 312 8th Avenue North, Nashville, TN 37243, and must be signed by twenty-five (25) persons who will be affected by the rule, or submitted by a municipality which will be affected by the rules, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of these proposed rules, contact: E. Blaine Sprouse, Tennessee Department of Labor and Workforce Development, Division of Workers' Compensation, 2222 Metro Center Blvd., Nashville, TN 37228, (615) 253-1457.

The text of the amendments follows:

Amendments

Paragraph (1) of Rule 0800-2-7-.01 Definitions is amended by deleting the phrase at the end of the sentence "in all cases where medical care expenses are expected to exceed a threshold set by this chapter" so that as amended the new paragraph shall read:

- (1) "Case management" means medical case management or the ongoing coordination of medical care services provided to an injured or disabled employee.

Authority: T.C.A. §§ 4-5-202, 50-6-102, 50-6-122, 50-6-123.

Paragraph (4) of Rule 0800-2-7-.01 Definitions is amended by adding the phrase "and Workforce Development" after the word "Labor" at the end of the sentence so that as amended the new paragraph shall read:

- (4) "Commissioner" means the Commissioner of Labor and Workforce Development.

Authority: T.C.A. §§ 4-5-202, 50-6-102, 50-6-122, 50-6-123.

Paragraph (6) of Rule 0800-2-7-.01 Definitions is amended by adding the phrase "and Workforce Development" after the word "Labor" and deleting the phrase "[Section 10 of Public Chapter 900]" at the end of the sentence so that as amended the new paragraph shall read:

- (6) "Medical Director" means the Medical Director appointed by the Commissioner of Labor and Workforce Development pursuant to T.C.A. § 50-6-126.

Authority: T.C.A. §§ 4-5-202, 50-6-102, 50-6-122, 50-6-123.

Rule 0800-2-7-.01 Definitions is amended by adding a new additional paragraph after paragraph (6), which shall be numbered paragraph (7) and defines "Catastrophic Injury" so that as amended paragraph (7) of Rule 0800-2-7-.01 Definitions shall read:

- (7) "Catastrophic injury" means any injury which is one of the following:
 - (a) Spinal cord injury involving severe paralysis of an arm, a leg, or the trunk;
 - (b) Amputation of an arm, a hand, a foot, or a leg 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;
 - 5. Severe episodic neurological disorders; or
 - 6. Other conditions at least as severe in nature as any condition provided in subparagraphs 1.through 5. of this paragraph;
 - (d) Second or third degree burns over 25 percent of the body as a whole or third degree burns to 5 percent or more of the face or hands; or
 - (e) Total or industrial blindness.

Authority: T.C.A. §§ 4-5-202, 50-6-102, 50-6-122, 50-6-123.

Subparagraph (a) of Paragraph (1) of Rule 0800-2-7-.02 Case Management System is amended by deleting the word "shall" in the first and second sentences and replacing both with the word "may," by deleting the word "all" in first sentence, by deleting the phrase "which meet the threshold established by Rule 0800-2-7-.03" at the end of the first sentence, and by deleting the phrase "required by this chapter for workers' compensation cases" at the end of the second sentence and replacing this phrase with the word "provided" so that as amended the new subparagraph shall read:

- (a) Each insurer who provides workers' compensation insurance regulated by the provisions of T.C.A., Title 50, Chapter 6, or self-insured employer, may provide for a system of case management for cases involving compensable injuries under TCA, Title 50, Chapter 6. Any insurer providing workers' compensation insurance under TCA, Title 50, Chapter 6, may provide for or contract for case management services when such services are provided.

Authority: T.C.A. §§ 4-5-202, 50-6-102, 50-6-122, 50-6-123.

Subparagraph (b) of Paragraph (1) of Rule 0800-2-7-.02 Case Management System is amended by deleting the words "the required" in the first sentence and by deleting the phrase "and the insurer

is relieved of its duty to provide case management services” at the end of the second sentence so that as amended the new subparagraph shall read:

- (b) The insured employer may choose to provide case management services itself or through a third party administrator. If so, the insured employer shall inform its insurer in writing of its choice.

Authority: T.C.A. §§ 4-5-202, 50-6-102, 50-6-122, 50-6-123.

Paragraph (2) of Rule 0800-2-7-.02 Case Management System is amended by deleting the phrase “of Labor” after the word “Commissioner” so that as amended the new subparagraph shall read:

- (2) The Commissioner shall provide or contract for certain case management services. The case management services which are provided or contracted for shall include, but not limited to, providing;

Authority: T.C.A. §§ 4-5-202, 50-6-102, 50-6-122, 50-6-123.

Rule 0800-2-7-.03 Case Management Threshold is deleted in its entirety and is replaced with the following new rule:

- (1) An employer or insurer is encouraged, but not required, to provide case management services if such services would prove to be beneficial.
- (2) In all cases in which case management is undertaken, if the employee suffered a catastrophic injury there shall be at least one face-to-face meeting between the case manager and the employee within fourteen (14) calendar days after the date of injury. After the initial meeting, there shall be face-to-face meetings between the case manager and the employee at least every three months thereafter for the first year and at least every six months during the second year. Should an employee suffering a catastrophic injury experience a significant change in medical condition, there shall be a face-to-face meeting between the case manager and the employee within fourteen (14) calendar days of such a change. If the employee suffered a non-catastrophic injury, then there shall be at least one face-to-face meeting within twelve (12) weeks of the date of injury. Documentation evidencing the face-to-face meetings shall be submitted to the Medical Director of the Tennessee Department of Labor and Workforce Development within a reasonable time.

Authority: T.C.A. §§ 4-5-202, 50-6-102, 50-6-122, 50-6-123.

Subparagraph (c) of Paragraph (2) of Rule 0800-2-7-.04 Elements of Case Management is amended by deleting the words “of Labor” in the second sentence after the word “Commissioner” so that as amended the new subparagraph shall read:

- (c) The contractor shall report any instances of inappropriate case management services or inadequate supervision to the Medical Director. The Medical Director shall report any instance of failure to appropriately supervise a case manager assistant, negligence or other unprofessional or malpractice conduct by a case manager to the Commissioner and to either the Board of Medical Examiners or the Board of Nursing for appropriate disciplinary proceedings.

Authority: T.C.A. §§ 4-5-202, 50-6-102, 50-6-122, 50-6-123.

Paragraph (1) of Rule 0800-2-7-.06 Confidentiality of Records is amended by deleting the words "of Labor" in the paragraph after the word "Commissioner" so that as amended the new paragraph shall read:

- (1) Subject to any applicable requirement of law concerning confidentiality of records, a case manager or a firm providing case management services shall provide the Commissioner, or the Commissioner's designee, with any appropriate case management records or permit the Commissioner or the Commissioner's designee to inspect, review, or copy such records in a responsible manner.

Authority: T.C.A. §§ 4-5-202, 50-6-102, 50-6-122, 50-6-123.

Paragraph (2) of Rule 0800-2-7-.06 Confidentiality of Records is amended by adding the words "and Workforce Development" after the words "Department of Labor" in the paragraph so that as amended the new paragraph shall read:

- (2) For case management purposes, the Department of Labor and Workforce Development and its contractor will maintain any required confidentiality of any personally identifying information concerning employees claiming workers' compensation benefits which the Department may obtain. Provision of these records pursuant to this rule shall not constitute a waiver of an applicable privilege or confidentiality.

Authority: T.C.A. §§ 4-5-202, 50-6-102, 50-6-122, 50-6-123.

The proposed rule amendments set out herein were properly filed in the Department of State on the 20th day of March, 2007, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 27th day of July, 2007. (FS 03-21-07, DBID 2463)