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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:	Bureau of Workers' Compensation
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Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Amendment

Chapter Number	Chapter Title
0800-02-07	Case Management
Rule Number	Rule Title
0800-02-07-.01	Definitions
0800-02-07-.02	Case Management System
0800-02-07-.03	Case Management Threshold
0800-02-07-.04	Elements of Case Management
0800-02-07-.05	Investigation of Complaints; Sanctions and Appeals of Agency Decisions
0800-02-07-.06	Confidentiality of Records
0800-02-07-.07	Case Management Information

New

Chapter Number	Chapter Title
0800-02-07	Case Management
Rule Number	Rule Title
0800-02-07-.08	Registration and Continuing Education Requirements

(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>)

Substance of Proposed Amendments

Rules 0800-02-07-.01 through 0800-02-07-.07 are amended by deleting their current text and substituting instead the following language so that each rule reads as follows:

Rule 0800-02-07-.01 Definitions – General

As used in this chapter, the following terms are used as follows:

- (1) "Administrator" means the administrator of the Tennessee Bureau of Workers' Compensation.
- (2) "Bureau" means the Tennessee Bureau of Workers' Compensation.
- (3) "Case management" means medical case management or the ongoing coordination of medical care services provided to an injured or disabled employee and for the purpose of this chapter shall only be provided by a registered case manager or case manager assistant under the direct supervision of a registered case manager.
- (4) "Case manager" means an individual who provides or supervises the provision of case management services under this chapter and who is either:
 - (a) A licensed registered nurse, licensed under T.C.A., Title 63, Chapter 7, who possesses one or more of the following:
 1. A Master's Degree in Vocational Rehabilitation Counseling; or
 2. Certification as a Certified Disability Management Specialist (CDMS); or
 3. Certification as a Certified Rehabilitation Registered Nurse (CRRN); or
 4. Certification as a Certified Occupational Health Nurse (COHN); or
 - (b) Certified as a Certified Case Manager (CCM).
- (5) "Case manager assistant" means an individual who provides case management services under the direct supervision of a case manager and who meets one of the following:
 - (a) The individual is a registered nurse, licensed under TCA, Title 63, Chapter 7; or
 - (b) The individual possesses one of the following:
 1. A master's degree in vocational rehabilitation counseling; or
 2. Certification as a Certified Insurance Rehabilitation Specialist (CIRS). (Note: This certification is now called "Certified Disability Management Specialist" (CDMS); or
 3. Certification as a Certified Rehabilitation Counselor (CRC).
 - (c) Registered Case Manager Assistants may continue their present duties under direct supervision of a Registered Case Manager for 24 months from the date of the effect of these rules. A Case Manager Assistant, at the end of a 24-month period must be certified by one of the categories under the definition of a Case Manager or their registration with the Bureau will terminate. Persons who are not current Case Manager Assistants shall have a 24-month period from the date they become Case Manager Assistants under the supervision of a Registered Case Manager to obtain certification.
- (6) "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.

- (7) "Commissioner" means the Commissioner of the Department of Labor and Workforce Development.
- (8) "Contractor" means that organization or organizations referred to in T.C.A. § 50-6-124 [Section 8 of Public Chapter 900 of the Acts of 1992].
- (9) "Department" means the Tennessee Department of Labor and Workforce Development.
- (10) "Medical Director" means the Medical Director appointed by the Administrator of the Bureau of Workers' Compensation pursuant to T.C.A. § 50-6-126.

Authority: T.C.A. §§ 4-5-202, 50-6-102, 50-6-122, 50-6-123, 50-6-124, 50-6-126 [Section 2 of Chapter 900 of the Public Acts of 1992.], 50-6-233, and Public Chapters 282 & 289 (2013). Administrative History: Original rule filed January 28, 1993; effective May 13, 1993. Amended by Public Chapter 467; effective May 31, 1993. Amendment filed March 20, 2007; effective July 27, 2007. Amendment filed December 26, 2013; effective March 26, 2014.

Rule 0800-02-07-.02 Case Management System

- (1) An insurer who provides workers' compensation insurance regulated by the provisions of T.C.A., Title 50, Chapter 6 or a self-insured employer may provide for a system of case management for cases involving compensable injuries under T.C.A., Title 50, Chapter 6.
 - (a) Any insurer providing workers' compensation insurance under T.C.A., Title 50, Chapter 6, may provide for or contract for case management services when such services are provided.
 - (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.
- (2) The Administrator may provide or contract for certain case management services. The case management services which may be provided or contracted for may include, but are not limited to, providing:

- (a) A review of an individual case when an employee, employer, or health care provider seeks review of a decision or action by the employer's case manager by the Bureau of Workers' Compensation;
 - (b) A review of case management services provided by case managers or case management firms for an employer for workers' compensation cases; and
 - (c) Development of reports and summaries of case management of medical care and services in workers' compensation cases in Tennessee.
- (3) It shall be the responsibility of every employer who elects to provide case management services to injured workers, either directly or through its insurer or third party administrator, to give basic information to and encourage the injured worker's participation in case management. It shall further be the responsibility of those parties to inform the injured worker of the identity of the contractor and of the case management providers for workers' compensation cases for the employer, and of the possibility that the injured worker will be contacted by the case management provider for the employer. Those parties shall also inform the injured worker that provision of information to the contractor and to the case management provider for the employer for purposes of case management is strongly encouraged.
- (4) In all cases in which the employer uses case management services, it is the responsibility of the injured worker to cooperate with the case manager in all reasonable requests including, but not limited to, requests for information, provider appointments (and changes to provider appointments), and other communication relevant to helping the employee progress toward the best medical outcome.

Authority: T.C.A. §§ 4-5-202, 50-6-102, 50-6-122, 50-6-123, 50-6-126, 50-6-233 [Sections 3 and 7 of Chapter 900 of the Public Acts of 1992.], and Public Chapters 282 & 289 (2013). Administrative History: Original rule filed January 28, 1993; effective May 13, 1993. Amendment filed March 20, 2007; effective July 27, 2007. Amendment filed December 26, 2013; effective March 26, 2014.

Rule 0800-02-07-.03 Case Management Threshold

- (1) **Catastrophic Injuries.** An employer or insurer should provide case management services in all cases where an employee has suffered a catastrophic injury. The employer or insured should assign a case manager within seven (7) calendar days of receiving notice that the employee has suffered a catastrophic injury. There shall be one face-to-face meeting within fourteen calendar days after the assignment. After the initial meeting, there should be face-to-face meetings or other communications as necessary for the progress of the patient until such time as case management services are concluded. Should an employee experience a significant decline in their medical condition, there should be a face-to-face meeting between the case manager and the employee within fourteen (14) calendar days of notification of such a change. Documentation evidencing the first face-to-face meetings shall be submitted to the Medical Director of the Tennessee Bureau of Workers' Compensation within thirty (30) calendar days of the first meeting on the Bureau's required case management form.
- (2) **Non-catastrophic Injuries.** For non-catastrophic injuries, there should be one initial face-to-face meeting if and when a case manager is assigned to the claim. This should occur within 14 days of the assignment. It is appropriate to consider case management services if medical expenses over \$10,000 (ten thousand dollars), an impatient hospitalization, or lost work time over three months is anticipated. Further meetings and communication should occur as the case warrants. Documentation evidencing the initial face-to-face meetings shall be submitted to the Medical Director of the Tennessee Bureau of Workers' Compensation within thirty (30) calendar days, if medical expenses over \$10,000 (ten thousand dollars), an impatient hospitalization, or lost work time over three months is anticipated, on the Bureau's required case management form.

Authority: T.C.A. §§ 4-5-202, 50-6-102, 50-6-122, 50-6-123, 50-6-233(c)(6) [Section 3 of Chapter 900 of the Public Acts of 1992.] Administrative History: Original rule filed January 28, 1993; effective May 13, 1993. Amendment filed May 13, 1997; effective July 27, 1997. Amendment filed March 20, 2007; effective July 27, 2007.

Rule 0800-02-07-.04 Elements of Case Management

- (1) Case management services shall include, but not be limited to, the following elements required in T.C.A. §50-6-123 [Section 7(b) of Public Chapter 900]:
 - (a) Developing a treatment plan to provide appropriate medical services to an injured or disabled employee;
 - (b) Systematically monitoring the treatment rendered and the medical progress of the injured or disabled employee;
 - (c) Assessing whether alternate medical care services are appropriate and delivered in a cost-effective manner based on acceptable medical standards;
 - (d) Ensuring that the injured or disabled employee is following the prescribed medical care plan; and
 - (e) Formulating a plan for return to work with due regard for the employee's recovery and restrictions and limitations, if any.
- (2) A case manager shall not:
 - (a) Prepare the panel of physicians or influence the employee's choice of physician;
 - (b) Determine whether the case is work related;
 - (c) Question the physician or employee regarding issues of compensability;
 - (d) Conduct or assist any party in claims negotiation, investigation, or any other non-rehabilitative activity;
 - (e) Advise the employee as to any legal matter including settlement options or procedures, monetary recovery, claims evaluation, or the applicability of the workers' compensation act to the employee's claim;
 - (f) Accept any compensation or reward from any source as the result of settlement;
 - (g) Discuss with the employee or physician what the impairment rating should be;
 - (h) Reschedule medical appointments without first discussing the scheduling change with the employee;
 - (i) Refuse to provide case management reports to parties to the claim;
 - (j) Assist in any way in recording the employee's activity for the purposes of disproving the employee's claim; or
 - (k) Deny or authorize treatment for the purpose of guaranteeing prepayment or precertification.
- (3) Any case manager that commits any of the actions provided in paragraph (2) may be assessed a civil penalty of up to five hundred dollars (\$500) for each action committed. The Administrator shall have discretion to suspend the registration of any case manager assessed more than three (3) penalties in any two (2) year period for up to sixty (60) days. The Administrator shall have discretion to suspend the registration of any case manager for up to one (1) year for offenses after the three-penalty limit within any two (2) year period. Any case manager suspended by the Administrator pursuant to this paragraph shall not provide case management services to any employee receiving treatment for a workers' compensation injury during the period of suspension. Any case manager who has had their registration suspended by the Administrator who provides case management services during the period of suspension shall be assessed a civil penalty of one thousand dollars (\$1,000) and shall have their registration suspended for six (6) months
- (4) Failure to submit the required forms within thirty (30) days of referral and within thirty (30) days of closing the case may result in a civil penalty of one hundred dollars (\$100) per occurrence.

- (5) It is the intent of the case management system to expedite communication and provide a conduit for improving the efficiency and timeliness of care in all cases where case management is undertaken. To that end, all providers, injured workers, adjusters and employers should utilize case management to its fullest extent and provide expedited responses to the case manager's requests.

Authority: T.C.A. §§ 4-5-202, 4-5-301, 50-6-102, 50-6-118, 50-6-122, 50-6-123, 50-6-126, 50-6-233 [Section 7 of Chapter 900 of the Public Acts of 1992.] Administrative History: Original rule filed January 28, 1993; effective May 13, 1993. Amendment filed March 20, 2007; effective July 27, 2007. Amendment filed December 26, 2013; effective March 26, 2014.

Rule 0800-02-07-.05 Investigation of Complaints; Sanctions and Appeals of Agency Decisions

- (1) Any physician, other provider, or an injured employee who is receiving case management services may report instances of inappropriate case management services to the Bureau of Workers' Compensation Medical Director. The Medical Director may investigate and report the results of the investigation to the Administrator. At the discretion of the Administrator, a report may be sent to the Board of Nursing or other certifying board for appropriate disciplinary proceedings.
- (2) Failure by an party to comply with any requirement in this Chapter 0800-02-07 shall subject such party to a penalty of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00) per violation at the discretion of the Administrator. The Bureau may also institute a temporary or permanent suspension of the right to perform case management services for workers' compensation claims, if the utilization review agent has established a pattern of violations.
- (3) An agency decision assessing sanctions and/or civil penalties shall be communicated to the party to whom the decision is issued, and the party to whom it is issued shall have fifteen (15) calendar days from the date of issuance to either appeal the decision pursuant to the procedures provided for under the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-101, et seq., or to pay the assessed penalties to the Bureau or otherwise comply with the decision.
- (4) In order for a party to appeal an agency decision assessing sanctions and/or civil penalties, the party must file a petition with the Commissioner within fifteen (15) calendar days of the issuance of the decision. This petition shall be considered a request for a contested case hearing within the Department pursuant to the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-101, et seq., and the procedural rules of Chapter 0800-02-13 are incorporated as if set forth fully herein. The Department is authorized to conduct the hearing pursuant to T.C.A. § 50-6-118.
- (5) If the agency decision assessing sanctions and/or civil penalties is not appealed within fifteen (15) calendar days of its issuance, the decision shall become a final order of the Department not subject to further review.

Authority: T.C.A. §§ 4-5-314, 50-6-102, 50-6-118, 50-6-123 and 50-6-126. Administrative History: Original rule filed January 28, 1993; effective May 13, 1993.

Rule 0800-02-07-.06 Confidentiality of Records

- (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 Administrator, or the Administrator's designee, with any appropriate case management records or permit the Administrator or the Administrator's designee to inspect, review, or copy such records in a responsible manner.
- (2) For case management purposes, the Bureau of Workers' Compensation and its contractor(s) will maintain any required confidentiality of any personally-identifying information concerning employees claiming workers' compensation benefits which the Bureau 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, 50-6-126, 50-6-233, and Public Chapters 282 & 289 (2013); [Section 2 of Chapter 900 of the Public Acts of 1992.] Administrative History: Original rule filed January

28, 1993; effective May 13, 1993. Amendment filed March 20, 2007; effective July 27, 2007. Amendment filed December 26, 2013; effective March 26, 2014.

Rule 0800-02-07-.07 Case Management Information

- (1) The contractor or the employer's case management provider shall have the right to contact the injured or disabled worker, employer, insurer, third party administrator, legal representative, and all health care providers involved in the case. The contacted parties shall have the duty and responsibility to cooperate and provide information to the contractor or employer's case management provider, to the same extent as provided in Rule 0800-02-06-.02 of these rules.
- (2) All injured or disabled workers and their legal representatives are required to cooperate with the contractor or employer's case management provider with respect to all reasonable requests for information necessary for case management purposes. The contractor shall report any refusal to cooperate to the Medical Director.
- (3) Any dispute concerning the reasonableness of any request for information may be submitted, in writing, to the Bureau of Workers' Compensation's Medical Director. The determinations of the Medical Director concerning the reasonableness of such requests are final.
- (4) Any party that fails to provide information pursuant to a request for information that the Medical Director has determined to be a reasonable request may be assessed a civil penalty of up to five hundred dollars (\$500).

Authority: T.C.A. §§50-6-123 [Section 7 of Chapter 900 of the Public Acts of 1992.] Administrative History: Original rule filed January 28, 1993; effective May 13, 1993.

New Rule

Rule 0800-02-07-.08 Registration and Continuing Education Requirements

- (1) The provision of case management services to employees who have suffered a workers' compensation injury is a privilege and no case manager or case manager assistant may provide case management services in workers' compensation cases in Tennessee unless the case manager or case manager assistant has registered with the Bureau and paid the appropriate fee.
 - (a) All case managers and case manager assistants must complete the registration form provided by the Bureau and submit the form and pay the fee of one hundred dollars (\$100) to the Bureau. Case managers and case manager assistants who are currently registered shall be required to pay the renewal fee of fifty dollars (\$50) only when the regular renewal date occurs. The initial registration fee shall be due and payable commencing with existing renewal registration dates, beginning 90 days from the effective date of these rules.
 - (b) Every two (2) years thereafter, all case managers and case manager assistants must complete a registration renewal form and submit the form and a renewal fee of fifty dollars (\$50) to the Bureau when the regular renewal date occurs.
 - (c) Upon receipt of the completed form and fee, the Bureau shall review the registration and issue a registration letter to the case manager. A registration letter for a case manager assistant shall be sent to the supervising case manager as well as the case manager assistant. If the registration is rejected, the Bureau shall return to registration form and fee to the case manager.
 - (d) The above-referenced fees shall be in effect for registrations received by the Bureau thirty (30) or more days from the effective date of these rules.
- (2) All case managers must undergo at least four (4) hours of continuing education every year that is specific to the treatment of injured workers, under the Tennessee Workers' Compensation law and procedures.
- (3) All case managers must complete the continuing education requirement before the case manager can renew their registration with the Bureau. No registration renewal form will be accepted by the

Bureau unless the case manager has completed the continuing education requirement and supplied the Bureau with documentation.

Authority: T.C.A. §§50-6-123 [Section 7 of Chapter 900 of the Public Acts of 1992.] Administrative History: Original rule filed January 28, 1993; effective May 13, 1993.

* 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 proposed rules, lawfully promulgated and adopted by the (board/commission/other authority) on 10/27/2015 (date as mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222. The Secretary of State is hereby instructed that, in the absence of a petition for proposed rules being filed under the conditions set out herein and in the locations described, he is to treat the proposed rules as being placed on file in his office as rules at the expiration of sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State.

Date: October 27, 2015

Signature: Abbie Hudgens

Name of Officer: Abbie Hudgens

Title of Officer: Administrator, Bureau of Workers' Compensation



Subscribed and sworn to before me on: October 27, 2015

Notary Public Signature: Shara Hamlett

My commission expires on: January 24, 2016

All proposed 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.

Herbert H. Staty III

Herbert H. Staty III
Attorney General and Reporter

5/24/2016
Date

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Filed with the Department of State on: 5/31/16

Effective on: 8/29/16

Tre Hargett

Tre Hargett
Secretary of State

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: Proposed Rule 0800-02-07-.03 regarding the assignment of a case manager being made within seven (7) business days for non-catastrophic injuries: this time frame is too short and may not require case management at all.

Response: The Bureau agrees with this comment. Time frames for non-catastrophic injuries are too tight. This section has been amended upon review by the Bureau to reflect the changes suggested by this comment.

Comment: Proposed Rule 0800-02-07-.03 is too restrictive regarding face-to-face meetings where there has been a non-catastrophic injury. Face-to-face meetings should not be required regarding non-catastrophic injuries.

Response: The Bureau agrees in part with this comment. There should be more flexibility in face-to-face meetings and times. The Rule has been amended. However, there should be at least one face-to-face meeting in all cases involving case management.

Comment: Proposed Rule 0800-02-07-.04 regarding the prohibition on the case manager to provide a written panel of physicians is inconsistent with the principles of case management found elsewhere in the rules.

Response: The Bureau does not agree with this comment. If the case manager developed and presented a defective panel to the injured worker, the penalty would fall on the employer and/or carrier. The case manager should be a neutral facilitator and should be the messenger of the document. Case managers may advise adjusters on the formation of a panel.

Comment: Proposed Rule 0800-02-07-.04 concerning the prohibition on the case manager to question the physician or employee regarding compensability is inconsistent with the principles of workers' compensation. There will likely be questions of what is appropriate medical care for a compensable injury.

Response: The Bureau does not agree with the comment regarding the questioning of the physician about compensability. Questions concerning the extent of the injury and treatment of the patient are appropriate, but questions regarding compensability or about payment by the case manager to the physician or patient are inappropriate.

Comment: Proposed Rule 0800-02-07-.01 regarding the definition of "case manager" should be amended to add Certified Rehabilitation Counselor (CRC) as a qualifying credential. Also, newly-registered Case Manager Assistants should be allowed to perform case management duties under the direct supervision of a Registered Case Manager and must obtain certification within 24 months.

Response: The Bureau disagrees with the comment regarding the CRC as a stand-alone designation. The Bureau agrees with the comment concerning Case Manager Assistants and has made changes regarding certification of Case Manager Assistants.

Comment: Proposed Rule 0800-02-07-.04 should be amended to allow the case manager to request an impairment rating from the physician, so long as the case manager does not engage the physician in discussions on what impairment rating should be applied to an injured worker.

Response: The Bureau disagrees with this comment. Even indirect questions by the case manager to the physician give an appearance to the injured worker and/or counsel for the injured worker that the case manager is on the side of the employer and insurance carrier. Avoiding the appearance of impropriety is prudent.

Comment: Proposed Rule 0800-02-07-.04 should be amended to clarify the penalty process and appeal process within the Bureau regarding the civil penalties in this section.

Response: The Bureau agrees with this comment. The Bureau's current penalty rules have an appeals process in place with a contested case hearing through the UAPA process, and Proposed Rule 0800-02-07-.05 has been amended to clarify the penalty and appeal process.

Comment: Regarding the registration and renewal fees, the Bureau should take into consideration additional fees incurred by a case manager, such as TN nursing license, CCM renewal, etc.

Response: The Bureau agrees with the comment and understands the financial implications of these amended case management rules. Therefore, current registrants at the time of the adoption of these rules would only pay the renewal fee.

Comment: Will there be any thought to "grandfathering" the Case Manager Assistant (CMA) who is currently working in Tennessee as a CMA?

Response: The Bureau disagrees with this suggestion. The CMA will have 24 months to obtain certification.

Comment: Under Rule 0800-02-07-.07(1) and (10) do not mirror 0800-02-07-.02(4) regarding cooperation with the case manager.

Response: The Bureau disagrees. Rule 0800-02-07-.07 discusses cooperation with the case manager, while Rule 0800-02-07-.02(4) deals with information to be provided to the case manager.

Comment: Currently the case manager has the practice of sending the C30A form to the physician in order that the physician may address the rating. Can the case manager continue this practice, sending the form and any supporting correspondence to the physician?

Response: The Bureau disagrees with this comment and with this practice of the case manager discussing matters unrelated to medical care with the physician.

Comment: Injured workers sometimes change medical appointments without notifying the case manager, and when the doctor's office notifies the case manager, the case manager will change the appointment back to the original date and time. As long as the case manager discusses the change in the appointment time with the injured worker prior to the appointment, can the appointment be changed by the case manager?

Response: The Bureau agrees with this comment, but the rule provides that the rescheduling of appointments when a case manager is assigned should be a reciprocal responsibility of notification. No change is needed in the rules.

Comment: How will there be due process regarding the penalty provisions in these rules?

Response: The Bureau agrees with this concern, and the Bureau's penalty program is already in place and will investigate and determine whether penalties are appropriate. Aggrieved parties may appeal through a contested case hearing in accordance with T.C.A. § 4-5-301 and the Bureau's administrative rules.

Comment: Can a CRC be added as a definition of who can do case management in Tennessee?

Response: The Bureau agrees with this comment. A CRC can be a Case Management Assistant as defined in 0800-02-07-.01(3)(c).

Comment: By phasing out case manager assistants, the insurance carrier will have no leeway to hire someone and train the person while in the process of being certified.

Response: The Bureau agrees in part with this comment. The rules have been amended to not only allow Case Manager Assistants to continue their duties for 24 months from the effective date of the rules if under the supervision of a Registered Case Manager but also for new Case Manager Assistants to provide services while under the supervision of a Registered Case Manager during the training period.

Comment: The terms "issues of compensability" and "non-rehabilitative activity" in Rule 0800-02-07-.04 need further definition and are overly broad.

Response: The Bureau disagrees with this comment. The Bureau relies upon the ordinary meaning of these words in everyday usage.

Comment: The term "recording" needs further definition.

Response: The Bureau disagrees with the comment. The term "recording" is broad enough to include electronic recording but may also include notes taken in writing.

Comment: The proposed rules require the Medical Director to report unprofessional conduct or malpractice to the Administrator of the Bureau and to the Board of Nursing. This means the Medical Director is making these determinations without the right to due process.

Response: The Bureau agrees with the comment. The Board of Nursing has its own administrative processes, as does the Bureau's penalty unit.

Comment: The registration and renewal fees are much higher than in other states. For independent and part-time case managers, this could create undue financial burdens. A graduated schedule of fees would be recommended based upon full time, part time, over the age of 65, or inactive but wanting license to remain current.

Response: The Bureau neither agrees nor disagrees with the comment. The fees are about average from a review of other states. The Bureau has amended these fees to \$100.00 for the initial registration fee and \$50.00 for the renewal fee. The part-time status would be difficult to monitor.

Comment: Section (2) in proposed Rule 0800-02-07-.03 should be deleted to allow employers to use case management as needed to help their injured workers without the concern of incurring unnecessary expenses. The time frames involved are too short and the face-to-face meeting requirements are inefficient and impractical.

Response: The Bureau agrees with the comment regarding the time frames and numbers of visits for non-catastrophic injuries and has amended this section in response to this comment.

Comment: All case management vendors should be URAC accredited.

Response: The Bureau disagrees with this comment. URAC is an organizational certification, not individual, although within their certification are individual criteria. It would be a stretch for most of the case management organizations to pay for URAC accreditation, which is approximately \$27,000 for a two-year accreditation.

Comment: Insurance adjusters should be licensed in Tennessee.

Response: The Bureau neither agrees nor disagrees with these comments. Licensing of adjusters is beyond the scope of these rules.

Comment: If case management organizations are required to hire nurses with a CCM credential, where will the pool of applicants come from?

Response: The Bureau neither agrees nor disagrees with this comment. The concern is valid. The pool of medical care providers is a concern, but the rule has been amended to address this concern and to allow a 24-month training period for Case Manager Assistants to become Certified Case Managers.

Comment: Instead of requiring CCM designation upon hire and additional fees and CEUs, if the intent of these rules is to address concerns with problematic case managers, reporting these individuals to their respective governing bodies (such as the Board of Nursing) or retract a state registration if there is an infraction would be a better course of action.

Response: The Bureau agrees with the comment in part and disagrees in part. Concerning fees, the Bureau has reduced the fees accordingly as a result of these concerns. Concerning training and the provision of appropriate medical care, the Bureau believes that requiring CCM designation is an important method to insure quality medical care in Tennessee.

Comment: The case management amendments are well written and justified.

Response: The Bureau agrees with this comment.

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 under the Tennessee Workers' Compensation Laws, which would be employers with at least five employees, or in the construction industry with at least one employee. The rules address medical case management and the requirements for case managers.
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. Accordingly, any administrative impact to small businesses should be minimal.
3. A statement of the probable effect on impacted small businesses and consumers: Any impact on small businesses and consumers should be minimal.
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 ensure the effective administration of claims. It is expected that these rules would promote better outcomes in workers' compensation claims which should prove beneficial to the overall health of the Tennessee economy.

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 changes to the existing case management rules.

- (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;

T.C.A. §§ 50-6-122 and 50-6-123 provide for the establishment of a medical case management program for coordinating medical care services provided to injured workers under the workers' compensation law.

- (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 rules, including insurance carriers and case managers. Feather Case Management and Consulting, LLC, urged adoption of the rules as drafted. Many other groups have provided comments which the Bureau has addressed.

- (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;

Troy Haley, Administrative Attorney and Legislative Liaison, Bureau of Workers' Compensation

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

Troy Haley, Administrative Attorney and Legislative Liaison, Bureau 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;

220 French Landing Drive
Floor 1-B
Nashville, TN 37243
(615) 532-0179
troy.haley@tn.gov

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

None

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File Date: _____

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: Bureau of Workers' Compensation
Contact Person: Troy Haley
Address: 220 French Landing Drive 1-B, Nashville, TN 37243
Phone: 615-532-0179
Email: troy.haley@tn.gov

Revision Type (check all that apply):

- Amendment
- New
- Repeal

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

Amendment

Chapter Number	Chapter Title
0800-02-07	Case Management
Rule Number	Rule Title
0800-02-07-.01	Definitions
0800-02-07-.02	Case Management System
0800-02-07-.03	Case Management Threshold
0800-02-07-.04	Elements of Case Management
0800-02-07-.05	Investigation of Complaints; Sanctions and Appeals of Agency Decisions
0800-02-07-.06	Confidentiality of Records
0800-02-07-.07	Case Management Information

Revision Type (check all that apply):

- Amendment
- New
- Repeal

New

Chapter Number	Chapter Title
0800-02-07	Case Management
Rule Number	Rule Title
0800-02-07-.08	Registration and Continuing Education Requirements

(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>)

Substance of Proposed Amendments

Rules 0800-02-07-.01 through 0800-02-07-.07 are amended by deleting their current text and substituting instead the following language so that each rule reads as follows:

Rule 0800-02-07-.01 Definitions – General

As used in this chapter, the following terms are used as follows:

- (1) "Administrator" means the administrator of the Tennessee Bureau of Workers' Compensation.
- (2) "Bureau" means the Tennessee Bureau of Workers' Compensation.
- (3) "Case management" means medical case management or the ongoing coordination of medical care services provided to an injured or disabled employee and for the purpose of this chapter shall only be provided by a registered case manager or case manager assistant under the direct supervision of a registered case manager.
- (4) "Case manager" means an individual who provides or supervises the provision of case management services under this chapter and who is either:
 - (a) A physician licensed under T.C.A. Title 63, Chapter 6; or
 - (a) A licensed registered nurse, licensed under T.C.A., Title 63, Chapter 7, who possesses one or more of the following:
 1. A master's degree in vocational rehabilitation counseling; or
 2. Certification as a Certified Disability Management Specialist (CDMS); or
 3. Certification as a Certified Rehabilitation Registered Nurse (CRRN); or
 4. Certification as a Certified Occupational Health Nurse (COHN); or
 - (b) Certified as a Certified Case Manager (CCM). ~~Any individual currently providing case management services in Tennessee and pursuing certification as a Certified Case Manager may continue to provide these services through February 15, 1994.~~
- (5) "Case manager assistant" means an individual who provides case management services under the direct supervision of a case manager and who meets one of the following:
 - (a) The individual is a registered nurse, licensed under TCA, Title 63, Chapter 7; or
 - (b) The individual possesses one of the following:
 1. A master's degree in vocational rehabilitation counseling; or
 2. Certification as a Certified Insurance Rehabilitation Specialist (CIRS). (Note: This certification is now called "Certified Disability Management Specialist"(CDMS); or
 3. Certification as a Certified Rehabilitation Counselor (CRC).
 - (c) Registered Case Manager Assistants may continue their present duties under direct supervision of a Registered Case Manager for 24 months from the date of the effect of these rules. A Case Manager Assistant, at the end of a 24-month period must be certified by one of the categories under the definition of a Case Manager or their registration with the Bureau will terminate. Persons who are not current Case Manager Assistants shall have a 24-month

period from the date they become Case Manager Assistants under the supervision of a Registered Case Manager to obtain certification.

- (6) "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.
- (7) "Commissioner" means the Commissioner of the Department of Labor and Workforce Development.
- (8) "Contractor" means that organization or organizations referred to in T.C.A. § 50-6-124 [Section 8 of Public Chapter 900 of the Acts of 1992].
- (9) "Department" means the Tennessee Department of Labor and Workforce Development.
- (10) "Medical Director" means the Medical Director appointed by the Commissioner of Labor and Workforce Development Administrator of the Bureau of Workers' Compensation pursuant to T.C.A. § 50-6-126.

Authority: T.C.A. §§ 4-5-202, 50-6-102, 50-6-122, 50-6-123, 50-6-124, 50-6-126 [Section 2 of Chapter 900 of the Public Acts of 1992.], 50-6-233, and Public Chapters 282 & 289 (2013). Administrative History: Original rule filed January 28, 1993; effective May 13, 1993. Amended by Public Chapter 467; effective May 31, 1993. Amendment filed March 20, 2007; effective July 27, 2007. Amendment filed December 26, 2013; effective March 26, 2014.

Rule 0800-02-07-.02 Case Management System

- (1) ~~An~~Each insurer who provides workers' compensation insurance regulated by the provisions of T.C.A., Title 50, Chapter 6, a or self-insured employer, may provide for a system of case management for cases involving compensable injuries under T.C.A., Title 50, Chapter 6.
- (a) Any insurer providing workers' compensation insurance under T.C.A., Title 50, Chapter 6, may provide for or contract for case management services when such services are provided.
 - (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.
- (2) The ~~Commissioner~~ Administrator may provide or contract for certain case management services. The case management services which may be provided or contracted for may include, but not limited to, providing:

- (a) A review of an individual case when an employee, employer, or health care provider seeks review of a decision or action by the employer's case manager by the Bureau of Workers' Compensation;
 - (b) A review of case management services provided by case managers or case management firms for an employer for workers' compensation cases; and
 - (c) Development of reports and summaries of case management of medical care and services in workers' compensation cases in Tennessee.
- (3) It shall be the responsibility of every employer, who elects to provide case management services to injured workers, either directly or through its insurer or third party administrator, ~~who elects to provide case management services to injured workers~~ to give basic information to and encourage the injured worker's participation in case management. It shall further be the responsibility of those parties to inform the injured worker of the identity of the contractor and of the case management providers for workers' compensation cases for the employer, and of the possibility that the injured worker will be contacted by the case management provider for the employer. Those parties shall also inform the injured worker that provision of information to the contractor and to the case management provider for the employer for purposes of case management is strongly encouraged.
- (4) In all cases in which the employer uses case management services, it is the responsibility of the injured worker to cooperate with the case manager in all reasonable requests including, but not limited to, requests for information, provider appointments (and changes to provider appointments) and other communication relevant to helping the employee progress toward the best medical outcome.

Authority: T.C.A. §§ 4-5-202, 50-6-102, 50-6-122, 50-6-123, 50-6-126, 50-6-233 [Sections 3 and 7 of Chapter 900 of the Public Acts of 1992.], and Public Chapters 282 & 289 (2013). Administrative History: Original rule filed January 28, 1993; effective May 13, 1993. Amendment filed March 20, 2007; effective July 27, 2007. Amendment filed December 26, 2013; effective March 26, 2014.

Rule 0800-02-07-.03 Case Management Threshold

- (1) ~~Catastrophic Injuries. An employer or insurer is encouraged, but not required, to provide case management services if such services would prove to be beneficial. An employer or insurer should provide case management services in all cases where an employee has suffered a catastrophic injury. The employer or insured should assign a case manager within seven (7) calendar days of receiving notice that the employee has suffered a catastrophic injury. There shall be one face-to-face meeting within fourteen calendar days after the assignment. After the initial meeting, there should be face-to-face meetings or other communications as necessary for the progress of the patient until such time as case management services are concluded. Should an employee experience a significant decline in the medical condition, there should be a face-to-face meeting between the case manager and the employee within fourteen (14) calendar days of notification of such a change. Documentation evidencing the first face-to-face meetings shall be submitted to the Medical Director of the Tennessee Bureau of Workers' Compensation within thirty (30) calendar days of the first meeting, on the Bureau's required case management form.~~
- (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.~~
- (2) Non-catastrophic Injuries. For non-catastrophic injuries, there should be one initial face-to-face meeting if and when a case manager is assigned to the claim. This should occur within 14 days of the assignment. It is appropriate to consider case management services if medical expenses over \$10,000

(ten thousand dollars), an inpatient hospitalization, or lost work time over three months is anticipated. Further meetings and communication should occur as the case warrants. Documentation evidencing the initial face-to-face meetings shall be submitted to the Medical Director of the Tennessee Bureau of Workers' Compensation within thirty (30) calendar days if medical expenses over \$10,000 (ten thousand dollars), an inpatient hospitalization, or lost work time over three months is anticipated, on the Bureau's required case management form.

Authority: T.C.A. §§ 4-5-202, 50-6-102, 50-6-122, 50-6-123, 50-6-233(c)(6) [Section 3 of Chapter 900 of the Public Acts of 1992.] Administrative History: Original rule filed January 28, 1993; effective May 13, 1993. Amendment filed May 13, 1997; effective July 27, 1997. Amendment filed March 20, 2007; effective July 27, 2007.

Rule 0800-02-07-.04 Elements of Case Management

- (1) Case management services shall include, but not be limited to, the following elements required in T.C.A. §50-6-123 [Section 7(b) of Public Chapter 900]:
 - (a) Developing a treatment plan to provide appropriate medical services to an injured or disabled employee;
 - (b) Systematically monitoring the treatment rendered and the medical progress of the injured or disabled employee;
 - (c) Assessing whether alternate medical care services are appropriate and delivered in a cost-effective manner based on acceptable medical standards;
 - (d) Ensuring that the injured or disabled employee understands and is following the prescribed medical care plan; and
 - (e) Formulating a plan for return to work with due regard for the employee's recovery and restrictions and limitations, if any.

~~2) a) Case management services under this chapter may only be provided by a case manager or by a case manager assistant under the direct supervision of a case~~

~~b) A case manager shall be responsible for any case management services rendered by a case manager assistant. A case manager shall not permit a case manager assistant to render inappropriate, inadequate, negligent, or unprofessional services. Before rendering case management services, each case manager assistant shall be assigned to a case manager who shall be responsible for all services related to~~

~~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.~~

(2) A case manager shall not:

- (a) Prepare the panel of physicians or influence the employee's choice of physician;
- (b) Determine whether the case is work related;
- (c) Question the physician or employee regarding issues of compensability;
- (d) Conduct or assist any party in claims negotiation, investigation or any other non-rehabilitative activity;

- (e) Advise the employee as to any legal matter including settlement options or procedures, monetary recovery, claims evaluation or the applicability of the workers' compensation act to the employee's claim;
- (f) Accept any compensation or reward from any source as the result of settlement;
- (g) Discuss with the employee or physician what the impairment rating should be;
- (h) Reschedule medical appointments without first discussing the scheduling change with the employee;
- (i) Refuse to provide case management reports to parties to the claim;
- (j) Assist in any way in recording the employee's activity for the purposes of disproving the employee's claim; or
- (k) Deny or authorize treatment for the purpose of guaranteeing prepayment or precertification.

(3) Any case manager that commits any of the actions provided in paragraph (2) may be assessed a civil penalty of up to five hundred dollars (\$500) for each action committed. The Administrator shall have discretion to suspend the registration of any case manager assessed more than three (3) penalties in any two (2) year period for up to sixty (60) days. The Administrator shall have discretion to suspend the registration of any case manager for up to one (1) year for offenses after the three penalty limit within any two (2) period. Any case manager suspended by the Administrator pursuant to this paragraph shall not provide case management services to any employee receiving treatment for a workers' compensation injury during the period of suspension. Any case manager who has had their registration suspended by the Administrator who provides case management services during the period of suspension shall be assessed a civil penalty of one thousand dollars (\$1,000) and shall have their registration suspended for six (6) months.

(4) Failure to submit the required forms within thirty (30) days of referral and within thirty (30) days of closing the case may result in a civil penalty of one hundred dollars (\$100) per occurrence.

(5) It is the intent of the case management system to expedite communication and provide a conduit for improving the efficiency and timeliness of care in all cases where case management is undertaken. To that end, all providers, injured workers, adjusters and employers should utilize case management to its fullest extent and provide expedited responses to the case manager's requests.

Authority: T.C.A. §§ 4-5-202, 4-5-301, 50-6-102, 50-6-118, 50-6-122, 50-6-123, 50-6-126, 50-6-233, [Section 7 of Chapter 900 of the Public Acts of 1992.] Administrative History: Original rule filed January 28, 1993; effective May 13, 1993. Amendment filed March 20, 2007; effective July 27, 2007. Amendment filed December 26, 2013; effective March 26, 2014.

Rule 0800-02-07-.05 Investigation of Complaints; Sanctions and Appeals of Agency Decisions

- ~~(1) The Medical Director may inquire into or investigate instances where the medical treatment or the physical rehabilitation provided appears to be deficient or incomplete. Upon a complaint from an injured employee, employer, health care provider, or a referral from the contractor, and upon reasonable cause, the Medical Director may investigate the allegations.~~
- ~~(2) In cases where the inquiry or investigation substantiates that medical treatment or physical rehabilitation is deficient or incomplete, the Medical Director shall recommend appropriate corrective action.~~
- (1) Any physician, other provider or an injured employee who is receiving case management services, may report instances of inappropriate case management services to the Bureau of Workers' Compensation Medical Director. The Medical Director may investigate and report the results of the investigation to the Administrator. At the discretion of the Administrator, a report may be sent to the Board of Nursing or other certifying board for appropriate disciplinary proceedings.

- (2) Failure by an party to comply with any requirement in this Chapter 0800-02-07 shall subject such party to a penalty of not less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000.00) per violation at the discretion of the Administrator. The Bureau Division may also institute a temporary or permanent suspension of the right to perform case management services for workers' compensation claims, if the utilization review agent has established a pattern of violations.
- (3) An agency decision assessing sanctions and/or civil penalties shall be communicated to the party to whom the decision is issued, and the party to whom it is issued shall have fifteen (15) calendar days from the date of issuance to either appeal the decision pursuant to the procedures provided for under the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-101, et seq., or to pay the assessed penalties to the Bureau or otherwise comply with the decision.
- (4) In order for a party to appeal an agency decision assessing sanctions and/or civil penalties, the party must file a petition with the Commissioner within fifteen (15) calendar days of the issuance of the decision. This petition shall be considered a request for a contested case hearing within the Department pursuant to the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-101, et seq., and the procedural rules of Chapter 0800-02-13 are incorporated as if set forth fully herein. The Department is authorized to conduct the hearing pursuant to T.C.A. § 50-6-118.
- (5) If the agency decision assessing sanctions and/or civil penalties is not appealed within fifteen (15) calendar days of its issuance, the decision shall become a final order of the Department not subject to further review.

Authority: T.C.A. §§50-6-123 and 50-6-126 [Sections 7 and 10 of Chapter 900 of the Public Acts of 1992.]
 Administrative History: Original rule filed January 28, 1993; effective May 13, 1993.

Rule 0800-02-07-.06 Confidentiality of Records

- (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~~ Administrator, or the ~~Commissioner's~~ Administrator's designee, with any appropriate case management records or permit the ~~Commissioner~~ Administrator or the ~~Commissioner's~~ Administrator's designee to inspect, review, or copy such records in a responsible manner.
- (2) For case management purposes, the ~~Department of Labor and Workforce Development~~ Bureau of Workers' Compensation and its contractor(s) will maintain any required confidentiality of any personally-identifying information concerning employees claiming workers' compensation benefits which the ~~Department~~ Bureau 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, 50-6-126, 50-6-233, and Public Chapters 282 & 289 (2013); [Section 2 of Chapter 900 of the Public Acts of 1992.] Administrative History: Original rule filed January 28, 1993; effective May 13, 1993. Amendment filed March 20, 2007; effective July 27, 2007. Amendment filed December 26, 2013; effective March 26, 2014.

Rule 0800-02-07-.07 Case Management Information

- (1) The contractor or the employer's case management provider shall have the right to contact the injured or disabled worker, employer, insurer, third party administrator, legal representative, and all health care providers involved in the case. The contacted parties shall have the duty and responsibility to cooperate and provide information to the contractor or employer's case management provider, to the same extent as provided in Rule 0800-02-06-.02 of these rules.
- (2) All injured or disabled workers and their legal representatives are required to cooperate with the contractor or employer's case management provider with respect to all reasonable requests for information necessary for case management purposes. The contractor shall report any refusal to cooperate to the Medical Director.
- (3) Any dispute concerning the reasonableness of any request for information may be submitted, in writing, to the Bureau of Workers' Compensation's Medical Director. The determinations of the Medical Director concerning the reasonableness of such requests are final.

- (4) Any party that fails to provide information pursuant to a request for information that the Medical Director has determined to be a reasonable request may be assessed a civil penalty of up to five hundred dollars (\$500).

Authority: T.C.A. §§50-6-123 [Section 7 of Chapter 900 of the Public Acts of 1992.] Administrative History: Original rule filed January 28, 1993; effective May 13, 1993.

New Rule

Rule 0800-02-07-.08 Registration and Continuing Education Requirements

- (1) The provision of case management services to employees who have suffered a workers' compensation injury is a privilege and no case manager or case manager assistant may provide case management services in workers' compensation cases in Tennessee unless the case manager or case manager assistant has registered with the Bureau and paid the appropriate fee.
- (a) All case managers and case manager assistants must complete the registration form provided by the Bureau and submit the form and pay the fee of one hundred dollars (\$100) to the Bureau. Case managers and case manager assistants who are currently registered shall be required to pay the renewal fee of fifty dollars (\$50) only when the renewal date occurs. The initial registration fee shall be due and payable commencing with existing renewal registration dates, beginning 90 days from the effective date of these rules.
- (b) Every two (2) years thereafter, all case managers and case manager assistants must complete a registration renewal form and submit the form and a renewal fee of fifty dollars (\$50) to the Bureau when the regular renewal date occurs.
- (c) Upon receipt of the completed form and fee, the Bureau shall review the registration and issue a registration letter to the case manager. A registration letter for a case manager assistant shall be sent to the supervising case manager as well as the case manager assistant. If the registration is rejected, the Bureau shall return to registration form and fee to the case manager.
- (d) The above-referenced fees shall be in effect for registrations received by the Bureau thirty (30) or more days from the effective date of these rules.
- (2) All case managers must undergo at least four (4) hours of continuing education every year that is specific to the treatment of injured workers, under the Tennessee Workers' Compensation law and procedures.
- (3) All case managers must complete the continuing education requirement before the case manager can renew their registration with the Bureau. No registration renewal form will be accepted by the Bureau unless the case manager has completed the continuing education requirement and supplied the Bureau with documentation.

Authority: T.C.A. §§50-6-123 [Section 7 of Chapter 900 of the Public Acts of 1992.] Administrative History: Original rule filed January 28, 1993; effective May 13, 1993.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: _____

Signature: _____

Name of Officer: _____

Title of Officer: _____

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

Department of State Use Only

Filed with the Department of State on: _____

Tre Hargett
Secretary of State

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 under the Tennessee Workers' Compensation Laws, which would be employers with at least five employees, or in the construction industry with at least one employee. The rules address medical case management and the requirements for case managers.
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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 ensure the effective administration of claims. It is expected that these rules would promote better outcomes in workers' compensation claims which should prove beneficial to the overall health of the Tennessee economy.

Impact on Local Governments

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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

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

These rules provide changes to the existing case management rules.

- (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;

T.C.A. §§ 50-6-122 and 50-6-123 provide for the establishment of a medical case management program for coordinating medical care services provided to injured workers under the workers' compensation law.

- (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 rules, including insurance carriers and case managers. Feather Case Management and Consulting, LLC, urged adoption of the rules as drafted. Many other groups have provided comments which the Bureau has addressed.

- (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;

Troy Haley, Administrative Attorney and Legislative Liaison, Bureau of Workers' Compensation

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

Troy Haley, Administrative Attorney and Legislative Liaison, Bureau 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

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Nashville, TN 37243
(615) 532-0179
troy.haley@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
Department of Labor and Workforce Development
220 French Landing Dr. #1-B
Nashville, TN 37243

August 2, 2016

Cody York, Director of Publications
Tennessee Tower
312 Rosa L. Parks Blvd., 8th floor
Nashville, TN 37243

Dear Cody:

It has come to our attention that there is a typographical error in the Rulemaking Hearing Filing Form that was filed in your office on May 31, 2016, concerning Rule 0800-02-07 (Case Management).

In Rule 0800-02-07-.08 (Registration and Continuing Education Requirements), the last sentence of 0800-02-07-.08(1)(c) on page 7 presently reads: "If the registration is rejected, the Bureau shall return to registration form and fee to the case manager." The first use of the word "to" in this sentence should read "the". The sentence should read "If the registration is rejected, the Bureau shall return the registration form and fee to the case manager."

Please let me know if you have any questions. Thank you for your prompt attention to this matter.

Sincerely,

Troy Haley, Director
Administrative Legal Services

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Cody Ryan York
Director of Publications

615-253-4564
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August 4, 2016

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

Dear Mr. Haley,

Per your letter received August 4, 2016, we have corrected the typographical error in Rule 0800-02-07-.08(1)(c). If you have any questions, please feel free to contact my office at 615-741-2650.

Sincerely,

Cody Ryan York
Director of Publications