

Notice of Rulemaking Hearing
Tennessee Department of Labor and Workforce Development
Division of Workers' Compensation

There will be a hearing before the Tennessee Department of Labor and Workforce Development, Division of Workers' Compensation, to consider the promulgation of rules pursuant to Tenn. Code Ann. §§ 4-5-202, 4-5-204, 50-6-204, 50-6-205 and 50-6-233. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Hearing Room, 1st Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, Tennessee 37243 at 9:00 a.m. CDST on the 23rd day of September, 2005.

Any individuals with disabilities who wish to participate in these proceedings (or to review these filings) should contact the Department of Labor and Workforce Development, Division of Workers' Compensation, to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings), to allow time for the Department to determine how it may reasonably provide such aid or service. Initial contact may be made with the Department's ADA Coordinator, Mr. Jewel Crawford, at Andrew Johnson Tower, 8th Floor, 710 James Robertson Parkway, Nashville, Tennessee 37243-0655 and (615) 741-8805.

For a copy of the entire text of this notice of rulemaking hearing contact: Vickie Gregory, Administrative Assistant, Tennessee Department of Labor and Workforce Development, Division of Workers' Compensation, Andrew Johnson Tower, Second Floor, 710 James Robertson Parkway, Nashville, TN 37243-0661, (615) 253-1613.

Substance of Proposed Rules

Chapter 0800-2-18
Medical Fee Schedule

New Rules
Table of Contents

- 0800-2-18-.01 Medicare-basis for System, Applicability, Effective Date and Coding References
- 0800-2-18-.02 General Information and Instructions for Use
- 0800-2-18-.03 General Guidelines
- 0800-2-18-.04 Surgery Guidelines
- 0800-2-18-.05 Anesthesia Guidelines
- 0800-2-18-.06 Injections Guidelines
- 0800-2-18-.07 Ambulatory Surgical Centers and Outpatient Hospital Care (Including Emergency Room Facility Charges)
- 0800-2-18-.08 Chiropractic Services Guidelines
- 0800-2-18-.09 Physical and Occupational Therapy Guidelines
- 0800-2-18-.10 Durable Medical Equipment Guidelines
- 0800-2-18-.11 Orthotics, Prosthetics and Implants Guidelines
- 0800-2-18-.12 Pharmacy Schedule Guidelines
- 0800-2-18-.13 Ambulance Services Guidelines
- 0800-2-18-.14 Clinical Psychological Service Guidelines
- 0800-2-18-.15 Penalties for Violations of Fee Schedules

0800-2-18-.01 Medicare-basis for System, Applicability, Effective Date and Coding References

- (1) The Medical Fee Schedule of the Tennessee Division of Workers' Compensation ("TDWC") is a Medicare-based system, but with multiple conversion factors. Only one geographical practice index is recognized in Tennessee under Medicare, therefore these Medical Fee Schedule rates apply state-wide. The Medical Fee Schedule is based upon the Centers for Medicare and Medicaid Services ("CMS") (formerly the Health Care Financing Administration's) ("HCFA") Medicare Resource Based Relative Value Scale ("RBRVS"), utilizing CMS' national relative value units and Tennessee specific conversion factors adopted by the Tennessee Division of Workers' Compensation. Anyone using this schedule must consult and be familiar with the Division's Medical Cost Containment Program rules, 0800-2-17-.01 et seq., the In-patient Hospital Fee Schedule rules, 0800-2-19.01 et seq., the most current American Medical Association ("AMA") CPT Codes, Health Care Financing Administration Common Procedure Coding System ("HCPCS"), American Society of Anesthesiologists ("ASA") Relative Value Guide, and the most current effective Medicare procedures and guidelines.
- (2) This Medical Fee Schedule must be used in conjunction with Medical Cost Containment Program Rules and the In-patient Hospital Fee Schedule Rules. The definitions set out in those rules, as well as the other general provisions, including but not limited to those regarding prompt payment of provider's bills, are adopted by reference as if set forth fully herein and those Rules must be used in conjunction with these Medical Fee Schedule Rules.
- (3) The Medical Fee Schedule Rules are effective July 1, 2005 and apply to all services provided on or after July 1, 2005. The most current versions of the American Medical Association's CPT and the Medicare RBRVS shall automatically be applicable and are adopted by these Rules by reference upon their effective dates. Fees shall be calculated using the edition of the CPT and RBRVS effective on the date of service.

Authority: T.C.A. §§ 50-6-204, 50-6-205 (Supp. 2004), 50-6-233 (Repl. 1999).

0800-2-18-.02. General Information and Instructions for Use

(1) Format

This schedule consists of the following sections: General Medicine (including Evaluation and Management), General Surgery, Neuro- and Orthopedic Surgery, Radiology, Pathology, Anesthesiology, Injections, Durable Medical Equipment, Implants and Orthotics, Pharmacy, Physical and Occupational Therapy, Ambulatory Surgical Centers and Outpatient Hospital Care, Chiropractic, Ambulance Services and Clinical Psychological Services. Providers should use the section(s) containing the procedure(s) they perform, or the service(s) they render.

(2) Reimbursement

- (a) Unless otherwise indicated herein, the most current Medicare procedures and guidelines are hereby adopted and incorporated as part of these Rules as if fully set out herein and effective upon adoption and implementation by the CMS. Whenever there is no specific fee or methodology for reimbursement set forth in these Rules for a service, diagnostic procedure, equipment, etc., then the amount of reimbursement shall be at 100% of the most current effective CMS' Medicare allowable amount. The most current effective Medicare guidelines and procedures shall be followed in arriving at the correct amount. For purposes of

these Rules, the Medicare amount may be adjusted upward annually based upon the annual Medicare Economic Index adjustment, but this amount shall never fall below the effective 2005 Medicare amount. Whenever there is no applicable Medicare code or method of reimbursement, the service, equipment, diagnostic procedure, etc. shall be reimbursed at the lesser of the usual and customary amount, or the prevailing charge amount, and shall be billed By Report (“BR”).

(b) Reimbursement to all providers shall be the lesser of the following:

1. The provider’s usual charge;
2. The fee calculated according to the TDWC Fee Schedule Rules (includes 100% of Medicare if no other specific fee or methodology is set forth in these Rules);
3. The MCO/PPO or any other contracted price;
4. In no event shall reimbursement be in excess of these TDWC Fee Schedules, unless otherwise provided in the Division’s rules. Reimbursement in excess of the TDWC Medical Fee Schedule may result in civil penalties, at the Commissioner’s discretion, of \$10,000.00 per violation for each violation assessed severally against the provider accepting such fee and the carrier or employer paying the excessive fee, should a pattern or practice of such activity be found. At the Commissioner’s discretion, such provider may also be reported to the appropriate certifying board or other appropriate authority, and may be subject to exclusion from participating further in providing care under the Tennessee Workers’ Compensation Act (“Act”).

(3) Fee Schedule Calculations

The TDWC Medical Fee Schedule amount can be calculated for any specific CPT code by multiplying the national “transitioned nonfacility total relative value units” (“RVUs”) by the conversion factor applicable to that CPT. Certain areas listed below do not have a conversion factor and the maximum reimbursement amount allowed is the usual and customary amount, as indicated. Other areas not listed below, such as dentistry, have a maximum reimbursement amount of 100% of the Medicare allowable amount calculated in accordance with then current effective Medicare guidelines and methodology.

(4) Conversion Factors—based on the CMS’ 2005 Tennessee unit amount of 37.8975

(a) The conversion factors applicable under this Medical Fee Schedule are:

	<u>Conversion Factor</u>	<u>As a percent of TN Medicare Rate</u>
Anesthesiology.....	Usual and Customary Amount	
Chiropractic Care.....	\$49.27	130%
General Surgery.....	\$75.80	200%
Home Health Care.....	100% of LUPA*	

the Rules. Any party notified of an alleged violation, whether or not they are assessed civil penalties hereunder, shall be entitled to a contested case hearing before the Commissioner, Commissioner's Designee, or an agency member appointed by the Commissioner pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-101 et seq., if a written request is submitted to the Division by the party within fifteen (15) calendar days of issuance of notice of such violations and of any civil penalty. Failure to make a timely request will result in the violation and penalty decision becoming a final order and not subject to further review.

Authority: T.C.A. §§ 50-6-204, 50-6-205 (Supp. 2004), 50-6-233 (Repl. 1999).

0800-2-18-.03 General Guidelines

- (1) Guidelines define items that are necessary to appropriately interpret and report the procedures and services contained in a particular section and provide explanations regarding terms that apply only to a particular section.
- (2) The Guidelines found in the most current edition of the AMA's CPT apply to the following: General Medicine (includes Evaluation and Management), General Surgery, Neuro-surgery, Orthopedic Surgery, Chiropractic, Physical and Occupational Therapy, Home Health Care, Home Infusion, Ambulatory Surgical Centers and Outpatient Hospital Services, Radiology, Clinical Psychological, and Pathology. CDT-3 Codes of current dental terminology prescribed by the American Dental Association, including the terminology updates and revision issued in the future by the American Dental Association shall be used for all Dentistry services.
- (3) In addition to the Guidelines found in the AMA's CPT, the following Division's Guidelines also apply. Whenever a conflict exists between these Medical Fee Schedule Rules and any other fee schedule, rule or regulation, these Medical Fee Schedule Rules shall govern.

Authority: T.C.A. §§ 50-6-204, 50-6-205 (Supp. 2004), 50-6-233 (Repl. 1999).

0800-2-18-.04 Surgery Guidelines

- (1) Multiple Procedures: Reimbursement shall be based on 100% of the physician's usual charge for the major procedure (not to exceed 100% of the TDWC Medical Fee Schedule amount allowable) plus 50% of the physician's usual charge for the lesser or secondary procedure (s) (not to exceed 50% of the TDWC Medical Fee Schedule allowable).
- (2) Services Rendered by More Than One Physician:
 - (a) Concurrent Care: One attending physician shall be in charge of the care of the injured employee. However, if the nature of the injury requires the concurrent services of two or more specialists for treatment, then each physician shall be entitled to the listed fee for services rendered.
 - (b) Surgical Assistant: A physician who assists at surgery may be reimbursed as a surgical assistant. To identify surgical assistant services provided by physicians, Modifier 80 or 81 shall be added to the surgical procedure code which is billed. A physician serving as a surgical assistant must submit a copy of the operative report to substantiate the services rendered. Reimbursement is limited to the lesser of the surgical assistant's usual charge or 20% of the maximum allowable Medical Fee Schedule amount. Duly licensed physician assistants may serve as

surgical assistants as deemed appropriate by the physician, and if so, the licensed physician assistants' reimbursement shall not exceed the physician assistant fee due for the procedure as calculated pursuant to Medicare guidelines, not the conversion factors contained in the workers' compensation Medical Fee Schedule.

- (c) Two Surgeons: For reporting see the most current CPT. Each surgeon must submit an operative report documenting the specific surgical procedure(s) provided. Each surgeon must submit an individual bill for the services rendered. Reimbursement must not be made to either surgeon until the carrier has received each surgeon's individual operative report and bill. Reimbursement to both surgeons shall not exceed 150% of the maximum allowable Fee Schedule amount of the first surgeon and shall be allocated between the surgeons as agreed by them.
- (3) When a surgical fee is chargeable, no office visit charge shall be allowed for the day on which this surgical fee is earned, except if surgery is performed on the same day as the physician's first examination. All exceptions require use of the appropriate modifiers and shall be filed BR.
- (4) Certain of the listed procedures in the Medical Fee Schedule are commonly carried out as an integral part of a total service and, as such, do not warrant a separate charge.
- (5) Lacerations ordinarily require no aftercare except removal of sutures. The removal is considered a routine part of an office or hospital visit and shall not be billed separately unless such sutures are removed by a provider different from the provider administering the sutures.

Authority: T.C.A. §§ 50-6-204, 50-6-205 (Supp. 2004), 50-6-233 (Repl. 1999).

0800-2-18-.05 Anesthesia Guidelines

- (1) General Information and Instructions.
 - (a) The current ASA Relative Value Guide, by the American Society of Anesthesiologists will be used to determine reimbursement for anesthesia codes that do not appear in the RBRVS. These values are to be used only when the anesthesia is personally administered by an Anesthesiologist or Certified Registered Nurse Anesthetist ("CRNA") who remains in constant attendance during the procedure, for the sole purpose of rendering such anesthesia service. To order the Relative Value Guide, write to the American Society of Anesthesiologists, 520 N Northwest Highway; Park Ridge, IL 60068-2573, or call (847) 825-5586.
 - (b) When anesthesia is administered by a CRNA not under the medical direction of an anesthesiologist, reimbursement shall be 90% of the provider's usual and customary charge. No payment will be made to the surgeon supervising the CRNA.
 - (c) When anesthesia is administered personally by an anesthesiologist or administered by a care team involving an anesthesiologist and CRNA, reimbursement shall not exceed 100% of the provider's usual and customary charge.

(2) Anesthesia Values

(a) Each anesthesia service contains two value components which make up the charge and determine reimbursement: a Basic Value and a Time Value.

(b) **Basic Value:** This relates to the complexity of the service and includes the value of all usual anesthesia services except the time actually spent in anesthesia care and any modifiers. The Basic Value includes usual preoperative and postoperative visits, the anesthesia care during the procedure, the administration of fluids and/or blood products incidental to the anesthesia or surgery and interpretation of non-invasive monitoring (ECG, temperature, blood pressure, oximetry, capnography, and mass spectrometry). When multiple surgical procedures are performed during an operative session, the Basic Value for anesthesia is the Basic Value for the procedure with the highest unit value. The Basic Values in units for each anesthesia procedure code are listed in the current ASA Relative Value Guide.

(c) **Time Value:** Anesthesia time starts when the anesthesiologist or CRNA begins to prepare the patient for induction of anesthesia and ends when the personal attendance of the anesthesiologist or CRNA is no longer required and the patient can be safely placed under customary, postoperative supervision. Anesthesia time must be reported on the claim form as the total number of minutes of anesthesia. For example, one hour and eleven minutes equals 71 minutes of anesthesia. The Time Value is converted into units for reimbursement as follows:

1. Each 15 minutes or any fraction thereof equals one (1) time unit. For example, 71 minutes of anesthesia time would have the following time units: $71/15 = 5$ Time Units.
2. No additional time units are allowed for recovery room observation monitoring after the patient can be safely placed under customary post-operative supervision.

(3) Total Anesthesia Value

The total anesthesia value ("TAV") for an anesthesia service is the sum of the Basic Value (units) plus the Time Value which has been converted into units. The TAV is calculated for the purpose of determining reimbursement.

(4) Billing

Anesthesia services must be reported by entering the appropriate anesthesia procedure code and descriptor into Element 24 D of the HCFA 1500 Form. The provider's usual total charge for the anesthesia service must be entered in Element 24 F on the HCFA 1500 Form. The total time in minutes must be entered in Element 24 G of the HCFA 1500 Form.

(5) Reimbursement

Reimbursement for anesthesia services must be no more than the provider's usual and customary charge.

(6) Medical Direction Provided by Anesthesiologists

When an anesthesiologist is not personally administering the anesthesia but is providing medical direction for the services of a nurse anesthetist who is not employed by the anesthesiologist, the anesthesiologist may bill for the medical direction. Medical direction includes the pre and post-operative evaluation of the patient. The anesthesiologist must remain within the operating suite, including the pre-anesthesia and post-anesthesia recovery areas, except in extreme emergency situations. Reimbursement shall not exceed 100% of the provider's usual and customary charge.

(7) Anesthesia by Surgeon

(a) Local Anesthesia

When infiltration, digital block or topical anesthesia is administered by the operating surgeon or surgeon's assistant, reimbursement for the procedure and anesthesia are included in the global reimbursement for the procedure.

(b) Regional or General Anesthesia

1. When regional or general anesthesia is provided by the operating surgeon or surgeon's assistant, the surgeon may be reimbursed for the anesthesia service in addition to the surgical procedure.

(i) To identify the anesthesia service, list the CPT surgical procedure code and add Modifier 47.

(ii) Reimbursement shall not exceed the provider's usual and customary charge.

(iii) The operating surgeon must not use the diagnostic or therapeutic nerve block codes to bill for administering regional anesthesia for a surgical procedure.

(8) Unlisted Service, Procedure or Unit Value. When an unlisted service or procedure is provided or without specified unit values, the values used shall be substantiated BR.

(9) Procedures Listed In The ASA Relative Value Guide Without Specified Unit Values. For any procedure or service that is unlisted or without specified unit value, the physician or anesthetist shall establish a unit value consistent in relativity with other unit values shown in the current ASA Relative Value Guide. Pertinent information concerning the nature, extent and need for the procedure or service, the time, the skill and equipment necessary, etc., shall be furnished. Sufficient information shall be furnished to identify the problem and the service(s).

(10) Actual time of beginning and duration of anesthesia time may require documentation, such as a copy of the anesthesia record in the hospital file.

(11) Special Supplies. Supplies and materials provided by the physician over and above those usually included with the office visit or other services rendered may be listed separately. Drugs, materials provided, and tray supplies shall be listed separately. Supplies and materials provided in a hospital or other facility must not be billed separately by the physician or CRNA. These charges must be billed by the hospital.

- (12) Separate or Multiple Procedures. It is appropriate to designate multiple procedures that are rendered on the same date by separate entries.

Authority: T.C.A. §§ 50-6-204, 50-6-205 (Supp. 2004), 50-6-233 (Repl. 1999).

0800-2-18-.06 Injections Guidelines

Reimbursement for injection(s) (such as J codes) includes allowance for CPT code 90782 in addition to average wholesale price of each drug. In cases where multiple drugs are given as one injection, only one administration fee is owed. Surgery procedure codes defined as injections include the administration portion of payment for the medications billed. J Codes are found in the Health Care Financing Administration Common Procedure Coding System ("HCPCS").

Authority: T.C.A. §§ 50-6-204, 50-6-205 (Supp. 2004), 50-6-233 (Repl. 1999).

0800-2-18-.07 Ambulatory Surgical Centers and Outpatient Hospital Care (Including Emergency Room Facility Charges)

When medically appropriate, surgical procedures may be performed on an outpatient basis to reduce unnecessary hospitalization and to shift care to a less costly setting.

- (1) For the purpose of the TDWC Medical Fee Schedule, "ambulatory surgical center" means an establishment with an organized medical staff of physicians; with permanent facilities that are equipped and operated primarily for the purpose of performing surgical procedures, with continuous physicians and registered nurses on site or on call; which provides services and accommodations for patients to recover for a period not to exceed twenty-three (23) hours after surgery. An ambulatory surgical center may be a free standing facility or may be attached to a hospital facility. For purposes of workers' compensation reimbursement to ASCs, the facility must be an approved Medicare ASC.
- (2) The CMS has implemented a prospective payment system ("PPS") under Medicare for hospital outpatient services. All services paid under the new PPS are classified into groups called Ambulatory Payment Classifications ("APC"). Services in each APC are similar clinically and in terms of the resources they require. The CMS has established a payment rate for each APC.
- (3) The most current Medicare APC rates shall be used as the basis for facility fees charged for services provided in an ambulatory surgical center ("ASC") and shall be reimbursed at a maximum of 150% of current value for such services at ASCs. Depending on the services provided, ASCs may be paid for more than one APC for an encounter. When multiple procedures are performed during the same surgical session, the reimbursement shall be made at 100% of the appropriate rate for the highest charge procedure and 50% of the appropriate rate for all additional procedures. Only separate and distinct surgical procedures shall be billed. When applicable, the Medicare Guidelines shall be used in determining separate and distinct surgical procedures.
- (4) All other outpatient hospital care, including but not limited to observation and emergency room facility fees, shall be calculated in accordance with the most current Medicare rules and procedures applicable to such service and shall be reimbursed at a maximum rate of 150% of the current value of Medicare reimbursement for outpatient hospital care.
- (5) Facility services do not include (the following services may be billed separately from the facility fees):

- (a) Physician services
 - (b) Laboratory services
 - (c) X-rays
 - (d) Diagnostic procedures not related to the surgical procedure
 - (e) Prosthetic devices
 - (f) Ambulance services
 - (g) Orthotics
 - (h) Implantables
 - (i) DME for use in the patient's home
 - (j) CRNA or Anesthesia Physician Services (supervision of CRNA is included in the facility)
 - (k) Take home medications
 - (l) Take home supplies
- (6) The above list of services and supplies shall be reimbursed according to the TDWC Fee Schedule Rules or at the usual and customary charge (for items not listed in the fee schedule rules).
- (7) There may be occasions in which the patient was scheduled for out patient surgery and it becomes necessary to admit the patient. All ambulatory patients who are admitted to the hospital and stay longer than 23 hours past ambulatory surgery will be paid according to the Inpatient Hospital Fee Schedule Rules, 0800-2-19.01 et seq.
- (8) Pre-admission lab and x-ray may be billed separately from the Ambulatory Surgery bill when performed 24 hours or more prior to admission, and will be reimbursed the lesser of billed charges or the payment limit of the fee schedule. Pre-admission lab and radiology are not included in the facility fee.
- (9) Facility fees for surgical procedures not listed shall be reimbursed BR at the usual and customary rate.

Authority: T.C.A. §§ 50-6-204, 50-6-205 (Supp. 2004), 50-6-233 (Repl. 1999).

0800-2-18-.08 Chiropractic Services Guidelines

- (1) Charges for chiropractic services shall not exceed 130% of the participating fees prescribed in the Medicare RBRVS System fee schedule. The number of approved visits shall be limited pursuant to any restrictions in T.C.A. § 50-6-204. The same procedures for certification applicable to physical therapy and occupational therapy services under Rule 0800-2-18-.09(5) below apply to chiropractic services (such as UR review after 12

visits), except that the thirty (30) day time period therein shall not apply to chiropractic services.

- (2) For chiropractic services, an office visit shall not be billed on the same day as a manipulation is billed.
- (3) If allowable payment for chiropractic services is not paid by employers or insurers for chiropractic services provided to employees who have suffered a compensable work-related injury under the Workers' Compensation Law within thirty-one (31) days from the date of receipt by the employer or insurer of the bill for chiropractic services provided to such an employee, interest at the rate of 25% per annum of the payment allowed pursuant to these rules, compounded monthly, may be charged and paid as set forth in Rule 0800-2-11-.10 of the Medical Cost Containment Program Rules.
- (4) There shall be no fee allowable for any modalities performed in excess of four (4) modalities per day per employee. The Medicare definition of modality is applicable.
- (5) There shall be no charge for either hot packs or cold packs provided to an employee who has suffered a compensable work-related injury under the Workers' Compensation Law.

Authority: T.C.A. §§ 50-6-204, 50-6-205 (Supp. 2004), 50-6-233 (Repl. 1999).

0800-2-18-.09 Physical and Occupational Therapy Guidelines

- (1) Charges for physical and/or occupational therapy services shall be reimbursed on a bifurcated sliding scale based upon physician interest in the facility providing services. For the purpose of this Medical Fee Schedule, a "physician-affiliated" facility is one in which the referring physician has any type of financial interest, which includes, but is not limited to, any type of ownership, interest, debt, loan, lease, compensation, remuneration, discount, rebate, refund, dividend, distribution, subsidy, or other form of direct or indirect benefit of any kind, whether in money or otherwise, between the facility to whom the physician refers a person for services and that physician. Any hospital-based PT or OT facility shall also be deemed "physician-affiliated" if the referring physician is an employee of such hospital, or if he or she receives a benefit of any kind from the referral.
 - (a) Independently-owned and operated facilities' reimbursement shall not exceed one hundred fifty percent (150%) of the participating fees prescribed in the Medicare RBRVS System fee schedule (Medicare Fee Schedule) for the first six (6) visits, and shall not exceed one hundred thirty percent (130%) for visits 7 through 12. For all visits after visit 12, reimbursement shall not exceed one hundred percent (100%).
 - (b) Physician-affiliated facilities' reimbursement shall not exceed one hundred thirty percent (130%) of the participating fees prescribed in the Medicare RBRVS System fee schedule for the first six (6) visits, and shall not exceed one hundred five percent (105%) for visits 7 through 12. For all visits after visit 12, reimbursement shall not exceed one hundred percent (100%).
- (2) For physical therapy and/or occupational therapy, there shall be no charge for either hot packs or cold packs provided to an employee who has suffered a compensable work-related injury under the Workers' Compensation Law.
- (3) For physical therapy and/or occupational therapy, there shall be no fee allowable for any modalities performed in excess of four (4) modalities per day per employee. The Medicare definition of modality is applicable.

- (4) Any procedure for which an appropriate Medicare code is not available, such as a Functional Capacity Evaluation or work hardening, shall be billed BR. The lesser of the prevailing charge or the usual and customary charge shall be the maximum amount reimbursable for such services.
- (5) Whenever physical therapy and/or occupational therapy services exceed twelve (12) sessions/visits or a period over thirty (30) days, whichever comes first, then such treatment shall be reviewed pursuant to the carrier's utilization review program in accordance with the procedures set forth in 0800-2-6 of the Division's Utilization Review rules before further physical therapy and/or occupational therapy services may be certified for payment by the carrier. Such certification shall be completed within two (2) business days of any request for certification to assure no interruption in delivery of needed services. Failure to properly certify such services as prescribed herein shall result in the forfeiture of any payment for uncertified services. The initial utilization review of physical therapy and/or occupational therapy services shall, if necessary and appropriate, certify an appropriate number of sessions/visits. If necessary, further subsequent utilization review shall be conducted to certify additional physical therapy and/or occupational therapy services as is appropriate.

Authority: T.C.A. §§ 50-6-204, 50-6-205 (Supp. 2004), 50-6-233 (Repl. 1999).

0800-2-18-.10 Durable Medical Equipment Guidelines

All durable medical equipment shall be reimbursed at a maximum of the invoice amount plus the lesser of 15% of invoice or \$1,000.00, and coded using the HCPCS codes. Charges for durable medical equipment are in addition to, and shall be billed separately from, all facility and professional service fees. Supplies and equipment not addressed in this fee guideline shall be reimbursed at a reasonable amount, as defined in these Rules and coded 99070 if appropriate codes are not available in the HCPCS. All billing must contain the brand name, model number, and catalog number. Codes to be used are found in the HCPCS. Charges should be submitted on a HCFA 1500 form.

- (1) **Quality.** The reimbursement for supplies/equipment in this fee guideline is based on a presumption that the injured worker is being provided the highest quality of supplies/equipment. All billing must contain the brand name, model number, and catalog number.
- (2) **Rental/Purchase.** Rental fees are applicable in instances of short-term utilization (30-60 days). If it is more cost effective to purchase an item rather than rent it, this must be stressed and brought to the attention of the insurance carrier. The first month's rent should apply to the purchase price. However, if the decision to purchase an item is delayed by the insurance carrier, subsequent rental fees cannot be applied to the purchase price. When billing for rental, identify with modifier "RR".
- (3) **TENs Units.** All bills submitted to the carrier for Tens and Cranial Electrical Stimulator (CES) units should be accompanied by a copy of the invoice, if available.
 - (a) **Rentals**
 1. **Include the following supplies:**
 - (i) lead wires;
 - (ii) two (2) rechargeable batteries;

- (iii) battery charger;
- (iv) electrodes; and
- (v) instruction manual and/or audio tape.

2. Supplies submitted for reimbursement must be itemized. In unusual circumstances where additional supplies are necessary, use modifier 22 and "BR"
3. Limited to 30 days trial period.

(b) Purchase:

1. Prior to the completion of the 30-day trial period, the prescribing doctor must submit a report documenting the medical justification for the continued use of the unit. The report should identify the following:
 - (i) Describe the condition and diagnosis that necessitates the use of a TENS unit.
 - (ii) Does the patient have any other implants which would affect the performance of the TENS unit or the implanted unit?
 - (iii) Was the TENS unit effective for pain control during the trial period?
 - (iv) Was the patient instructed on the proper use of the TENS unit during the trial period?
 - (v) How often does the patient use the TENS unit?
2. The purchase price should include the items below if not already included with the rental:
 - (i) lead wires;
 - (ii) two (2) rechargeable batteries; and
 - (iii) a battery charger.
3. Only the first month's rental price shall be credited to purchase price.
4. Provider shall indicate TENS manufacturer, model name, and serial number.

(4) Continuous and Passive Motion (Use Code D0540)

Use of this unit in excess of 30 days requires documentation of medical necessity by the doctor. Only one (1) set of soft goods will be allowed for purchase.

0800-2-18-.11 Orthotics, Prosthetics and Implants Guidelines

Implants, orthotics and prosthetics should be coded according to the HCFA Common Procedures Coding System (HCPCS). Copies may be obtained from the American Orthotic and Prosthetic Association, 1650 King Street, Suite 500, Alexandria, VA 22314, (703) 836-7116. Implants, orthotics and prosthetics shall be reimbursed at the supplier's invoice amount, plus 15% of the invoice amount or \$1,000.00, whichever is less, and coded using the HCPCS code. Charges for these items are in addition to, and shall be billed separately from, all facility and professional service fees. Supplies and equipment should be coded 99070 if appropriate codes are not available in the HCPCS. All billing must contain the brand name, model number, and catalog number. Charges should be submitted on a HCFA 1500 form.

Authority: T.C.A. §§ 50-6-204, 50-6-205 (Supp. 2004), 50-6-233 (Repl. 1999).

0800-2-18-.12 Pharmacy Schedule Guidelines

The Pharmaceutical Fee Guideline Amount for prescribed drugs (medicines by pharmacists and dispensing practitioners) under the Tennessee workers' compensation laws is the lesser of:

- (1) The provider's usual charge;
- (2) A negotiated contract amount; or
- (3) The fees established by the formula for brand-name and generic pharmaceuticals as described in subsection (5) of this section.
- (4) Prescribed Medication Services
 - (a) "Drug" has the meaning set out in T. C. A. § 63-10-204.
 - (b) Medicine or drugs may only be dispensed by a currently licensed pharmacist or a dispensing practitioner.
 - (c) Carriers may contract with pharmacy benefit managers to process and administer claims for reimbursement of pharmacy services and review the relatedness and appropriateness of prescribed services. Carriers and pharmacists may also negotiate alternative reimbursement schedules and amounts, so long as the reimbursement amount does not exceed the fee schedule amount set out in these Rules.
 - (d) For the purposes of these TWCD Medical Fee Schedule Rules, medicines are defined as drugs prescribed by an authorized health care provider and include only generic drugs or single-source patented drugs for which there is no generic equivalent, unless the authorized health care provider writes that the brand name is medically necessary and includes on the prescription "dispense as written."
- (5) Reimbursement
 - (a) The pharmaceutical reimbursement formula for prescribed drugs (medicines by pharmacists and dispensing practitioners) is the lesser of:

Average Wholesale Price* ("AWP") + \$5.10 filling fee, the provider's usual charge, or a negotiated contractual amount.

* The Commissioner may at any time adopt and implement a different base price other than AWP (such as average sales price), should medical reimbursement standards and/or local or other practices warrant, at the Commissioner's discretion.

- (b) Reimbursement to pharmacists must not exceed the amount calculated by the pharmaceutical reimbursement formula for prescribed drugs. A generic drug must be substituted for any brand name drug unless: 1) there is no pharmaceutical and bioequivalent drug available, or 2) the prescribing physician indicates that substitutions are prohibited by including the words "Dispense as Written", or "No Substitution Allowed" in the prescriber's own handwriting, along with a statement that the brand name drug is medically necessary. A prescribing physician may also prohibit substitution of generic drugs by oral or electronic communication to the pharmacist so long as the same content is conveyed that is required in a written prescription. A lower cost, therapeutically equivalent drug may be substituted for a prescribed drug if the requirements set out in Title 63, Chapter 10, Part 2 of Tennessee Code Annotated are all met.

1. A bill or receipt for a prescription drug shall include all of the following:
 - (i) When a brand name drug with a generic equivalent is dispensed, the brand name and the generic name shall be included unless the prescriber indicates "do not label."
 - (ii) If the drug has no brand name, the generic name, and the manufacturer's name or the supplier's name, shall be included, unless the prescriber indicates "do not label."
 - (iii) The strength, unless the prescriber indicates "do not label."
 - (iv) The quantity dispensed.
 - (v) The dosage.
 - (vi) The name, address, and federal tax ID# of the pharmacy.
 - (vii) The prescription number, if available.
 - (viii) The date dispensed.
 - (ix) The name of the prescriber.
 - (x) The name of the patient.
 - (xi) The price for which the drug was sold to the purchaser.
 - (xii) The National Drug Code Number ("NDC Number").
2. The AWP shall be determined from the appropriate monthly publication. The monthly publication that shall be used for calculation shall be the same as the date of service. When an AWP is changed

during the month, the provider shall still use the AWP from the monthly publication. The publications to be used are:

- a. Primary reference. Price Alert from First Data Bank.
 - b. Secondary reference (for drugs NOT found in PriceAlert). Red Book from Medical Economics.
3. Dietary supplements such as minerals and vitamins shall not be reimbursable unless a specific compensable dietary deficiency has been clinically established in the injured employee as a result of the work-related injury.
 4. A compounding fee not to exceed Twenty-five Dollars (\$25.00) per compound prescription may be charged if two (2) or more prescriptive drugs require compound preparation when sold by a hospital, pharmacy, or provider of service other than a physician.
 5. If allowable payment for prescriptive drugs is not paid by employers or carriers for prescriptions provided to employees who have suffered a compensable work-related injury under the Workers' Compensation Law within thirty-one (31) days from the date of receipt by the employer or insurer of the bill for prescriptive drugs provided to such an employee, interest at the rate of 2.08% /month of the payment allowed pursuant to these rules may be charged by a hospital, pharmacy, or provider of such service as set forth in Rule 0800-2-11-.10 of the Medical Cost Containment Program Rules.
 6. If a workers' compensation claimant chooses a brand-name medicine when a generic medicine is available and allowed by the prescriber, the claimant shall pay the difference in price between the brand-name and generic medicine and shall not be eligible to subsequently recover this difference in cost from the employer or carrier.
- (6) "Patent" or "Proprietary Preparations"
- (a) "Patent" or "Proprietary preparations," frequently called "over-the-counter drugs," are sometimes prescribed for a work-related injury or illness instead of a legend drug.
 - (b) Generic substitution as discussed in (4)(b) above applies also to "over-the-counter" preparations.
 - (c) Pharmacists must bill and be reimbursed their usual and customary charge for the "over-the-counter" drug(s).
 - (d) The reimbursement formula does not apply to the "over-the-counter" drugs and no filling fee may be reimbursed.
- (7) Dispensing Practitioner

- (a) Dispensing practitioners shall be reimbursed the same as pharmacists for prescribed drugs (medicines), except such practitioners shall not receive a filling fee.
- (b) "Patent" or "proprietary preparations" frequently called "over-the-counter drugs," dispensed by a physician(s) from their office(s) to a patient during an office visit should be billed as follows:
 - 1. Procedure Code 99070 must be used to bill for the "proprietary preparation" and the name of the preparation, dosage and package size must be listed as the descriptor.
 - 2. An invoice indicating the cost of the "proprietary preparation" must be submitted to the carrier with the HCFA 1500 Form.
 - 3. Reimbursement is limited to the lesser of the provider's charge or 20 percent above the actual cost of the item.

Authority: T.C.A. §§ 50-6-204, 50-6-205 (Supp. 2004), 50-6-233 (Repl. 1999).

0800-2-18-.13 Ambulance Services Guidelines

- (1) All non-emergency ground and air ambulance service provided to workers' compensation claimants shall be pre-certified. Emergency ground and air ambulance services shall be retro-certified within 24 hours of the service or on the next business day.
- (2) All ground and air ambulance services shall be medically necessary and appropriate. Documentation, trip sheets, shall be submitted with the bill that states the condition that indicates the necessity of the ground and air ambulance service provided. It should readily indicate the need for transport via this mode rather than another less expensive form of transportation. The service billed shall be supported by the documentation submitted for review.
- (3) Billing shall be submitted to the employer or carrier on a properly completed HCFA 1500 claim form by HCPCS code. Hospital based or owned providers must submit charges on a HCFA 1500 form by HCPCS code.
- (4) Reimbursement shall be:

Based upon the lesser of the submitted charge or the prevailing reimbursement rate for ambulances within the geographic locality. These charges shall not exceed the prevailing charges in that locality for comparable services under comparable circumstances and commensurate with the services actually performed. Ambulance services shall be paid on a two (2) part basis, the first level being the level of care, the second being a mileage allowance. The services rendered are independent of the type of call received.

Authority: T.C.A. §§ 50-6-204, 50-6-205 (Supp. 2004), 50-6-233 (Repl. 1999).

0800-2-18-.14 Clinical Psychological Service Guidelines

- (1) Reimbursement for psychological treatment services by any clinician other than a licensed psychiatrist shall be based on reasonableness and necessity and shall be reimbursed at 100% of the participating fees prescribed in the Medicare RBRVS System

fee schedule (Medicare Fee Schedule). Treatment by a licensed psychiatrist shall be reimbursed as any other evaluation and management medical treatment under this Medical Fee Schedule.

- (2) Whenever such psychological treatment services exceed fifteen (15) sessions/visits, then such treatment shall be reviewed pursuant to the carrier's utilization review program in accordance with the procedures set forth in 0800-2-6 of the Division's Utilization Review rules before further psychological treatment services may be certified for payment by the carrier. Failure to properly certify such services as prescribed herein shall result in the forfeiture of any payment for uncertified services. The initial utilization review of psychological treatment services after the first fifteen (15) sessions/visits shall, if necessary and appropriate, certify an appropriate number of sessions/visits. If necessary, further subsequent utilization review shall be conducted to certify additional psychological treatment services as is appropriate.

Authority: T.C.A. §§ 50-6-118, 50-6-125, 50-6-128, 50-6-204, 50-6-205 (Supp. 2004), 50-6-233 (Repl. 1999).

0800-2-18-.15 Penalties for Violations of Fee Schedules

- (1) Providers shall not accept and employers or carriers shall not pay any amount for health care services provided for the treatment of a covered injury or illness or for any other services encompassed within the Medical Cost Containment Program Rules, Medical Fee Schedule Rules or the In-patient Hospital Fee Schedule Rules, when that amount exceeds the maximum allowable payment established by these Rules. Any provider accepting and any employer or carrier paying an amount in excess of the TDWC Medical Cost Containment Program Rules, Medical Fee Schedule Rules or the In-patient Hospital Fee Schedule Rules shall be in violation of these Rules and may, at the Commissioner's discretion, be subject to civil penalties of ten thousand dollars (\$10,000.00) per violation for each violation, which may be assessed severally against the provider accepting such fee and the carrier or employer paying the excessive fee whenever a pattern or practice of such activity is found. At the discretion of the Commissioner, the Commissioner's Designee, or an agency member appointed by the Commissioner, such provider may also be reported to the appropriate certifying board, and may be subject to exclusion from participating in providing care under the Act. Any other violation of the Medical Cost Containment Program Rules, Medical Fee Schedule Rules, or the In-patient Hospital Fee Schedule Rules shall subject the violator(s) to a civil penalty of not less than one hundred dollars (\$100.00) nor more than ten thousand dollars (\$10,000.00) per violation, at the discretion of the Commissioner, Commissioner's Designee, or an agency member appointed by the Commissioner.
- (2) A provider, employer or carrier found to be in violation of these Rules, whether a civil penalty is assessed or not, may request a contested case hearing by requesting such hearing in writing within fifteen (15) calendar days of issuance of a Notice of Violation and, if applicable, notice of assessment of civil penalties.
- (3) The request for a hearing shall be made to the Division in writing by an employer, carrier or provider which has been notified of its violation of these Rules, and if applicable, assessed a civil penalty.
- (4) Any request for a hearing shall be filed with the Division within fifteen (15) calendar days of the date of issuance of the Notice of Violation and, if applicable, of civil penalty by the Commissioner. Failure to file a request for a hearing within fifteen (15) calendar days of the date of issuance of a Notice of Violation shall result in the decision of the

Commissioner, Commissioner's Designee, or an agency member appointed by the Commissioner being deemed a final order and not subject to further review.

- (5) The Commissioner, Commissioner's Designee, or an agency member appointed by the Commissioner shall have the authority to hear any matter as a contested case and determine if any civil penalty assessed should have been assessed.
- (6) Upon receipt of a timely filed request for a hearing, the Commissioner shall issue a Notice of Hearing to all interested parties.

Authority: T.C.A. §§ 50-6-204, 50-6-205 (Supp. 2004), 50-6-233 (Repl. 1999).

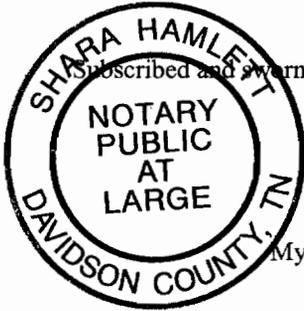
Person to contact to answer any questions regarding the notice of rulemaking hearing:

E. Blaine Sprouse, Attorney
 Division of Workers' Compensation
 TN Dept. of Labor & Workforce Development
 Andrew Johnson Tower, Second Floor
 710 James Robertson Parkway
 Nashville, TN 37243-0661
 Telephone: (615) 253-0064

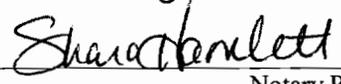
I certify that this is an accurate and complete representation of the intent and scope of rulemaking proposed by the Tennessee Department of Labor and Workforce Development, Division of Workers' Compensation.



 James Neeley
 Commissioner



Subscribed and sworn to before me this the 16th day of July, 2005.



 Shara Hamlett
 Notary Public

My commission expires on the 24th day of November, 2007.

The notice of rulemaking set out herein was properly filed in the Department of State on the 20 day of July, 2005.



 Riley C. Darnell
 Secretary of State

By: 

RECEIVED
 2005 JUL 20 AM 11:47
 SECRETARY OF STATE
 PUBLICATIONS