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**For Department of State Use Only**

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 End Effective Date: ~~02/29/2012~~

# Emergency Rule Filing Form

*Emergency rules are effective from date of filing for a period of up to 180 days.*

<b>Agency/Board/Commission:</b>	Department of Labor and Workforce Development
<b>Division:</b>	Workers' Compensation
<b>Contact Person:</b>	Landon Lackey
<b>Address:</b>	220 French Landing Drive Nashville, Tennessee
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**Rule Type:**

Emergency Rule

**Revision Type (check all that apply):**

Amendment  
 New  
 Repeal

**Statement of Necessity:**

Pursuant to T.C.A. 50-6-204(i), the Commissioner of Labor & Workforce Development is authorized to implement and update a medical fee schedule for services provided to workers' compensation claimants. The medical fee schedule that was implemented in 2005, and has been updated periodically since that time, is based upon a percentage above Medicare rates. Changes to Medicare rates in 2011 have caused a severe increase in the medical fee schedule rates, which led the National Council on Compensation Insurance ("NCCI") to file a rate increase of 6.3% with the Commissioner of Commerce & Insurance on August 2, 2011. Such a rate increase will result in Tennessee employers paying significantly higher workers' compensation insurance premiums than was originally anticipated. At a time when the national and state economies are struggling to recover, it is imperative that the Department take all necessary steps to keep premiums at an appropriate level. Accordingly, this emergency rule amendment will alleviate the burden on employers by lessening this sudden increase in their workers' compensation premiums.

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

Chapter Number	Chapter Title
0800-02-18	Medical Fee Schedule
Rule Number	Rule Title
0800-02-18-.02	General Information and Instructions for Use

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

Chapter 0800-02-18  
Medical Fee Schedule

Amendments

0800-02-18-.02 General Information and Instructions for Use, section (4) is amended by deleting the section in its entirety and replacing it with the following:

- (a) Effective December 1, 2011, practitioner fees shall be based on the most current Tennessee Medicare rates. The conversion factors listed below should be applied to the CPT code in order to calculate the appropriate amount. In no event shall the amount be determined by the practitioner's certification or eligibility status with any specialty board.

Service Category	TN Conversion Factor
Anesthesiology.....	\$75.00 per unit
Surgery (Codes 20000-29999 & 61000-64999).....	275% of current Medicare
(all other surgical codes).....	200% of current Medicare
Radiology.....	200% of current Medicare
Pathology.....	200% of current Medicare
Physical/Occupational Therapy.....	130% of current Medicare
Chiropractic.....	130% of current Medicare
General Medicine (including evaluation & management).....	160% of current Medicare
Emergency Care.....	130% of current Medicare
Dentistry.....	100% of current Medicare

- (b) Notwithstanding subsection (a), if the most current Medicare conversion factor falls below 30.00, then 30.00 shall be used to calculate the amounts in subsection (a) in lieu of the most current Medicare conversion factor until such time as the most current Medicare conversion factor exceeds 30.00.

Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

\* 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)

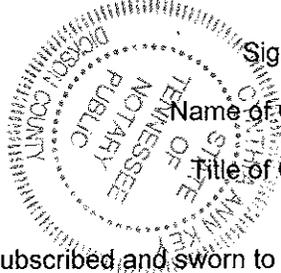
I certify that this is an accurate and complete copy of an emergency rule(s), lawfully promulgated and adopted.

Date: 8/5/11

Signature: *Karla Davis*

Name of Officer: Karla Davis

Title of Officer: Commissioner of Labor and Workforce Development



Subscribed and sworn to before me on: 8/5/11

Notary Public Signature: *Cynthia Ann Key*

My commission expires on: 7/23/2012

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

*Robert E. Cooper, Jr.*  
 Robert E. Cooper, Jr. *##*  
 Attorney General and Reporter  
8-19-11  
 Date

**Department of State Use Only**

Filed with the Department of State on: 09/02/2011

Effective for: 180 \*days

Effective through: ~~02/29/2012~~

\* Emergency rule(s) may be effective for up to 180 days from the date of filing.

*Tre Hargett*  
 Tre Hargett  
 Secretary of State

## **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 change will be to decrease their workers' compensation insurance premiums.

**Additional Information Required by Joint Government Operations Committee**

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

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

The medical fee schedule has been in place since 2005. The rates in the medical fee schedule are based upon a percentage above Medicare rates. Changes to Medicare's reimbursement formula have caused a steep increase in these rates that was not previously anticipated. The rule amendment would return the rates to more moderate levels, which will alleviate the burden on Tennessee employers.

- (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;

Pursuant to T.C.A. 50-6-204(i), the Commissioner of Labor & Workforce Development is required to implement and update a medical fee schedule for services provided to workers' compensation claimants. While the Department's rules base the medical fee schedule's reimbursement rates on the federally-administered Medicare program, the state statutes do not mandate such.

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

Employers, insurers, and medical providers will be affected by this rule. Since these amendments will reduce some of the reimbursement rates for medical services, insurance companies and employers would urge adoption. Medical providers may urge rejection because of the reduced rates, but those rates are still well above Medicare rates and more generous than most other states' fee schedules.

- (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;

State and 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 governmental agencies that do adhere to the medical fee schedule, their workers' compensation premiums should decrease, though it is difficult at this time to ascertain by exactly how much.

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

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

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

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

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

220 French Landing Drive  
Nashville, Tennessee 37243  
615-532-0370

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

None.

### STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

1. The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule: The amended rules will affect small employers that fall under the Tennessee Workers' Compensation Laws, which would be employers with at least five employees, or in the construction industry, at least one employee. The proposed rule amendment would result in a premium decrease for such employers.
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: Employers' insurance carriers will be responsible for complying with changes to the medical fee schedule, so no administrative impact would be expected for small businesses.
3. A statement of the probable effect on impacted small businesses and consumers: Employers will pay lower workers' compensation premiums, which is a benefit that can then be passed on to employees and consumers.
4. A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business: There are no less burdensome methods to achieve the purposes and objectives of the amended rule.
5. Comparison of the proposed rule with any federal or state counterparts: The medical fee schedule rates are based on a percentage above Medicare rates.
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 the medical fee schedule.

**RULES  
OF  
TENNESSEE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT  
DIVISION OF WORKERS' COMPENSATION**

**CHAPTER 0800-02-18  
MEDICAL FEE SCHEDULE**

**0800-02-18-.02 GENERAL INFORMATION AND INSTRUCTIONS FOR USE.**

**(4) (a)**

Monetary Conversion Factors are based on the CMS' unit amount in effect on March 4, 2008. These Factors are subject to change based upon any change in the Medicare unit amount. If the Medicare Conversion Factor falls below the unit amount in effect on March 4, 2008, the Department will adjust the Tennessee Medical Fee Schedule Conversion Factors listed on the Division's website to maintain the equivalent maximum allowable reimbursement which would have been allowed had the Medicare Conversion Factor remained at the amount in effect on March 4, 2008. In no event shall reimbursement amounts under this Chapter be less than the amounts applicable on March 4, 2008.

Effective December 1, 2011, practitioner fees shall be based on the most current Tennessee Medicare rates. The conversion factors listed below should be applied to the CPT code in order to calculate the appropriate amount. In no event shall the amount be determined by the practitioner's certification or eligibility status with any specialty board.

<u>Service Category</u>	<u>TN Conversion Factor</u>
<u>Anesthesiology.....</u>	<u>\$75.00 per unit</u>
<u>Surgery</u>	
<u>(Codes 20000-29999 &amp; 61000-64999).....</u>	<u>275% of current Medicare</u>
<u>(all other surgical codes).....</u>	<u>200% of current Medicare</u>
<u>Radiology.....</u>	<u>200% of current Medicare</u>
<u>Pathology.....</u>	<u>200% of current Medicare</u>
<u>Physical/Occupational Therapy.....</u>	<u>130% of current Medicare</u>
<u>Chiropractic.....</u>	<u>130% of current Medicare</u>
<u>General Medicine</u>	
<u>(including evaluation &amp; management).....</u>	<u>160% of current Medicare</u>
<u>Emergency Care.....</u>	<u>130% of current Medicare</u>
<u>Dentistry.....</u>	<u>100% of current Medicare</u>

**—(b)**

The appropriate conversion factor must be determined by the type of CPT code for the procedure performed in all cases except those involving orthopedic and neurosurgery. Board-eligible and certified neurosurgeons and orthopedic surgeons shall use the separate neurosurgery and orthopedic surgery conversion factors listed on the Division's website for all surgery CPT codes.

Notwithstanding subsection (a) above, if the most current Medicare conversion factor falls below 30.00, then 30.00 shall be used to calculate the amounts in subsection (a) in lieu of the most current Medicare conversion factor until such time as the most current Medicare conversion factor exceeds 30.00.