

**Department of State
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For Department of State Use Only

Sequence Number: 11-19-09
Rule ID(s): 4536
File Date: 11/16/2009
Effective Date: ~~04/30/2010~~

[Petition for rulemaking hearing filed 12/14/09.](#)

Proposed Rule(s) Filing Form

Proposed rules are submitted pursuant to T.C.A. §4-5-202, 4-5-207 in lieu of a rulemaking hearing. It is the intent of the Agency to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within sixty (60) days of the first day of the month subsequent to the filing of the proposed rule with the Secretary of State. To be effective, the petition must be filed with the Agency and be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly. The agency shall forward such petition to the Secretary of State.

Agency/Board/Commission: Labor and Workforce Development
Division: Workers' Compensation
Contact Person: Landon Lackey
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Revision Type (check all that apply):

- Amendment
 New
 Repeal

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

Chapter Number	Chapter Title
0800-02-07	General Rules of the Workers' Compensation Program – Case Management
Rule Number	Rule Title
0800-02-07-.03	Case Management Threshold

(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 0800-02-07
General Rules of the Workers' Compensation Program
Case Management

Amendments

Rule 0800-02-07-.03, Case Management Threshold, paragraph (2) is amended by deleting the current language in its entirety and replacing it with the following:

- (2) In all cases in which any type of case management is undertaken, 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 referral to case management. After the initial meeting, there shall be face-to-face meetings between the case manager and the employee at least every sixty (60) calendar days thereafter until the employee reaches maximum medical improvement; provided that this requirement is not limited to injuries producing temporary total disability but must be applied to all injuries until the employee reaches maximum medical improvement. Should an employee be released to return to work with restrictions before reaching maximum medical improvement, there shall be a face-to-face meeting between the case manager and the employee within ten (10) business days of the employee's return to work. 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 change. Documentation evidencing all face-to-face meetings required by this rule shall be submitted to the Medical Director of the Tennessee Workers' Compensation Division within a reasonable time or upon request.

Authority: TCA §§ 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.]

* 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 10/22/09 (date as mm/dd/yyyy), and is in compliance with the provisions of TCA 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: 22 Oct 09

Signature: James Neeley

Name of Officer: James G. Neeley

Title of Officer: Commissioner of Labor and Workforce Development

Subscribed and sworn to before me on: October 22, 2009

Notary Public Signature: Vickie H. Gregory

My commission expires on: December 31, 2012

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.

Robert E. Cooper, Jr.
 Robert E. Cooper, Jr.
 Attorney General and Reporter

11-5-09
 Date

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Filed with the Department of State on: 11/16/09

Effective on: ~~4/20/10~~

Tre Hargett
 Tre Hargett
 Secretary of State

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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.

(If applicable, insert Regulatory Flexibility Addendum here)

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: Companies that provide case management services to injured workers would be affected, as well as employers and insurers that choose to utilize those services. Many case managers already comply with the timeframes in the amended rule as a general practice, but for those that do not, there may be some additional costs. Any such additional costs should be outweighed by the benefit to all parties from the rule amendment because case managers will facilitate medical care for injured workers and assist injured workers with their return to work more effectively. According to the National Council on Compensation Insurance, claim costs decrease and claims close faster when case management services are utilized.
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: Case managers are already required to report to the Workers' Compensation Division, so no additional costs should be involved.
3. A statement of the probable effect on impacted small businesses and consumers: The workers' compensation laws do not require that employers or insurers utilize case management services. For those companies that do so, there may be some additional costs for the services if an increase in face-to-face meetings between the case manager and injured worker occurs. Those costs should be outweighed by the benefits of the face-to-face meetings because the case manager will be better able to formulate a treatment plan and assist the injured worker in returning to work. A return to work is ideal for all parties because injured workers can resume earning their normal pay while employers and insurers will save costs on temporary benefits.
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, less intrusive or less costly methods of achieving these purposes and objectives.
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: Employers and insurers are not required to utilize case management services.

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 amended rule would require face-to-face meetings between case managers and injured workers within fourteen (14) days of referral to the case manager and every sixty (60) days thereafter until the injured worker reaches maximum medical improvement. Currently, the rule already requires similar thresholds for catastrophic injuries, but only one (1) face-to-face meeting for non-catastrophic injuries.

- (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. § 50-6-123 requires the Commissioner to “establish, pursuant to the commissioner’s rule and regulation-making authority, a system of case management for coordinating the medical care services provided to employees claiming benefits under this chapter.” Likewise, T.C.A. § 50-6-233(c)(6) authorizes the Commissioner to promulgate rules regarding case management and specifically authorizes the establishment of thresholds for case management.

- (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;

The rule amendment will most directly affect case management providers, who urge adoption of the amendment.

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

The Attorney General has opined that attorneys or physicians cannot deny the case manager access to the injured worker. Tenn. Op. Atty. Gen. No. 94-100.

- (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;

No increase or decrease. State and local governments are excluded from the workers’ compensation laws unless they opt to accept the provisions. See T.C.A. § 50-6-106(6). Even if a governmental entity opts to accept the provisions, case management is not mandatory, but is rather at the option of the employer. With regard to collecting forms and data from the case management providers, the Workers’ Compensation Division already performs this function and the amendments should have no significant impact.

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

Landon Lackey, attorney for the Workers’ Compensation Division

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

Landon Lackey, attorney for the Workers’ Compensation Division

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

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

None.