

Rulemaking Hearing Rules
of
The Tennessee Department of Commerce and Insurance
Insurance Division

Chapter 0780-01-82
Rating Appeals Before the Commissioner

New Rules

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0780-01-82-.01 Purpose.

The purpose of this Chapter is to:

- (1) Set forth requirements for insurers and rate service organizations in providing a process whereby insureds of workers' compensation policies may request a review of the application of the insurer's or rate service organization's rating system to the insured's coverage in this state;
- (2) Establish procedures for such insureds in this state to appeal to the commissioner an insurer's or rate service organization's application of the rating system to the insured's insurance coverage; and
- (3) Provide guidelines in determining what information an insurer must provide to insureds seeking pertinent information under T.C.A. § 56-5-309(a), the length of time an insurer has to provide such information, and what an insurer may charge for such information.

Authority: T.C.A. §§ 56-2-301 and 56-5-309.

0780-01-82-.02 Scope.

This Chapter applies to all insureds of workers' compensation policies delivered in the State of Tennessee.

Authority: T.C.A. §§ 56-2-301 and 56-5-309.

0780-01-82-.03 Authority.

This Chapter is promulgated pursuant to the authority contained in T.C.A. §§ 56-5-309(d), 4-5-102, 4-5-219, 56-2-301.

Authority: T.C.A. §§ 4-5-102, 4-5-219, 56-2-301 and 56-5-309(d).

0780-01-82-.04 Definitions.

- (1) "Administrative Procedures Division" means the Administrative Procedures Division of the Office of the Secretary of State, 312 Eighth Avenue, 8th Floor, William R. Snodgrass Tower, Nashville, Tennessee 37243, Telephone (615) 741-7008.
- (2) "Commissioner" means the Commissioner of the Tennessee Department of Commerce and Insurance or the commissioner's designee.
- (3) "Costs of the appeal" means the charges of the Administrative Procedures Division and Court Reporters, for participating in any appeal brought under this Chapter. The charges of the Court Reporters shall also include transcription costs.
- (4) "Department" means the Tennessee Department of Commerce and Insurance.
- (5) "Division" means the Insurance Division of the Tennessee Department of Commerce and Insurance.
- (6) "Improper classification" means any classification not done in conformity with the established rules and guidelines of the designated rate service organization.
- (7) "Insurer" means all corporations, associations, partnerships, pools established under T.C.A. § 50-6-405(c)(1), or individuals engaged as principals in the business of workers' compensation insurance.
 - (a) "Insurer" includes the Tennessee Workers' Compensation Insurance Plan developed by the commissioner pursuant to T.C.A. § 56-5-314(c).
 - (b) "Insurer" does not include a surplus lines insurance company.
- (8) "Party" means:
 - (a) The named person whose legal rights, duties and privileges or immunities are being adjudicated in the appeal;
 - (b) Any other person who is duly granted intervention in the appeal; and
 - (c) Any agency named as a party to the adjudicative proceeding entitled to or permitted by the law being enforced to participate fully in the proceeding.
- (9) "Person" means an individual or business entity.
- (10) "Rate Service Organization" means a rate service organization licensed by the commissioner pursuant to T.C.A. § 56-5-310.

- (11) "Rating System" means the systematic process of determining workers' compensation premium based upon rules published in the applicable manuals, workers' compensation statutes, and the insurer's rate pages.
- (12) "Uniform Administrative Procedures Act" means the act compiled in T.C.A. Title 4, Chapter 5, including the contested case provisions of the Act in Part 3 thereof.

Authority: T.C.A. §§ 4-5-301 et seq., 50-6-405, 56-1-102, 56-5-309, 56-5-320(b) and (c).

0780-01-82-.05 Request to Review.

- (1)
 - (a) Every insurer and rate service organization doing business in this state shall provide a process by which insureds may request the review of the application of the insurer's or rate service organization's rating system to that person's insurance coverage.
 - (b) At a minimum, each process required in Subparagraph (a) of this Paragraph shall contain the following:
 - 1. The insurer or rate service organization shall have thirty (30) days, after receipt by the insurer or rate service organization of a written request to review, to consider the request to review and communicate its decision to the requesting party.
 - 2. The insurer or rate service organization shall provide its decision on the merits of the request in writing to the requesting party and shall specify the reason for its decision.
- (3) Every insurer shall provide to its insureds a copy of its process at the time of the initial issuance of the insurance policy. In the event an insurer changes its process, it shall notify its insureds no later than at the time of the next renewal.

Authority: T.C.A. §§ 56-5-309(b) and (d) and 56-5-314(c).

0780-01-82-.06 Filing of Appeals.

- (1) Any person aggrieved by a decision on the merits of the appeal rendered pursuant to Rule 0780-01-82-.05, or any person that does not receive a written decision on a request for review submitted pursuant to Rule 0780-01-82-.05 within forty-five (45) days from the date the insured sends the request to review to the insurer or rate service organization, shall have the right to appeal the decision of the insurer or rate service organization to the commissioner, subject to the conditions set forth in this Chapter. The commissioner shall presume that after the expiration of forty-five days, the insurer or rate service organization has failed to act within the required thirty (30) day period provided for in T.C.A. § 56-5-309(b).
- (2) In order to be considered, any appeal filed pursuant to this Chapter must meet the following requirements:
 - (a) The appeal must be filed with the commissioner within thirty (30) days of either:
 - 1. The receipt of the decision; or

2. Expiration of the forty-five (45) day period provided for in Rule 0780-01-82-.06(1);
- (b) The appeal must contain a short and plain statement as to what portion of the decision is being appealed and the basis for such appeal;
 - (c) The appeal must be accompanied by the written decision rendered by the insurer or rate service organization or if applicable, a written statement from the insured that a request for review was made over forty-five days (45) ago and that no response has been received;
 - (d) The appeal should specify the date in which the insured would like to have the hearing consistent with the dates provided in Rule 0780-01-82-.07(1); and
 - (e) The appeal must be accompanied by a certification from the insured or the insured's attorney that a copy of any materials filed with the commissioner have also been sent to the Administrative Procedures Division of the Office of the Secretary of State and all parties to the dispute.
1. In sending the appeal, the insured may use any method allowed by law for legal service of process.
 2. The appeal to the commissioner shall be sent to the Department of Commerce and Insurance, Davy Crockett Tower, Actuarial Services Section, 4th Floor, 500 James Robertson Parkway, Nashville, Tennessee 37243.

Authority: T.C.A. § 56-5-309(b), (c) and (d).

0780-01-82-.07 Scheduling of Appeals.

- (1) The Division shall establish hearing dates in consultation with the Administrative Procedures Division. The Division shall place on its web-site the dates on which appeals may be heard. Appellants shall use only such dates in meeting the requirements of Rule 0780-01-82-.06(2)(d). Where practical, the appellant shall attempt to contact all parties to the dispute in order to schedule the hearing on a date agreeable to all the parties.
- (2) Upon receipt of a petition for appeal and a requested hearing date, the Division shall issue a Notice of Hearing to all parties to the appeal specifying the date, place and time in which the matter will be heard. A hearing shall not be conducted earlier than thirty (30) days following the issuance of the Notice of Hearing.
- (3) Any request for continuance or postponement of a hearing shall be filed with and heard by the administrative law judge appointed by the Administrative Procedures Division.

Authority: T.C.A. §§ 4-5-307, 4-5-308, 56-5-309(b), (c) and (d), and Tenn. Comp. R. & Regs. 1360-4-1-.10.

0780-01-82-.08 Procedure for Appeals.

- (1) All hearings conducted pursuant to this Chapter shall be held in conformity with the Uniform Administrative Procedures Act provisions for contested cases and the Rules of Procedure for Contested Cases of the Rules of the Secretary of State as compiled at Chapter 1360-4-1.

- (2) All appeals heard under this Chapter shall be heard by the commissioner in the presence of an administrative judge appointed by the Administrative Procedures Division.
- (3) The Division may intervene in any appeal brought under this Chapter:
 - (a) If in the Division's opinion, the appeal involves issues or the outcome of the appeal could directly or indirectly affect the regulatory responsibilities of the Division;
 - (b) The Division believes that the commissioner should consider imposing the sanctions authorized under T.C.A. § 56-5-309(c), in which case the Division shall give notice of the proposed imposition of sanctions through its notice of intervention; or
 - (c) For other good cause.
- (4) At the end of the hearing, the commissioner may:
 - (a) Make a ruling and may order one or more of the parties to submit a draft order for consideration. Any such ruling shall either assess one of the parties the costs of the appeal, or request argument from the parties as to the issue as to which party should be assessed such costs; or
 - (b) Order one or more party to submit proposed Findings of Fact and Conclusions of Law for consideration by the commissioner. All such proposed Findings of Fact and Conclusions of Law shall address the issue of which party should be assessed the costs of the appeal.

Authority: T.C.A. §§ 4-5-301 et seq., 4-5-219, and 56-5-309(b), (c), and (d).

0780-01-82-.09 Settlement of Appeals.

- (1) In lieu of having an appeal, the parties may agree at any time to the informal settlement of the matter being appealed.
- (2) All settlement agreements shall provide for the payment of all costs of the appeal. In the event the settlement agreement does not contain any such provision, the commissioner may assess all costs against the insurer or rate service organization that was a party to the appeal.

Authority: T.C.A. §§ 4-5-105 and 56-5-309(b) and (d).

0780-01-82-.10 Final Order.

- (1) The commissioner shall issue an order within sixty (60) days of the date of the receipt of the transcript of the hearing or the receipt of any proposed Findings of Fact and Conclusions of Law, whichever is later. The commissioner may have additional time to render a Final Order upon waiver, consent of the parties to such extended period, or for good cause shown in accordance with T.C.A. § 4-5-314(g).
- (2) Orders issued under Paragraph (1) of this Rule:
 - (a) Shall contain Findings of Fact based exclusively upon the evidence of record in the adjudicative proceeding and on matters officially noticed in that proceeding;

- (b) May utilize the commissioner's experience, technical competence and specialized knowledge in the evaluation of evidence
 - (c) Shall contain Conclusions of Law as to whether there was a proper application of the insurer's or rate service organization's rating system to the appellant's insurance coverage;
 - (d) Shall order the payment of any unpaid premiums owed by the insured to the insurer as a result of the proper application of the insurer's or rate service organization's rating system to the appellant's insurance coverage;
 - (e) Shall order the return or crediting of premiums paid by a insured that were not lawfully owed due to the improper application of the insurer's or rate service organization's rating system to the appellant's insurance coverage;
 - (f) Shall specify the amount of time the insured has to make payment;
 - (g) Shall assign the costs of the appeal, in the commissioner's discretion, to the non-prevailing party;
 - (h) Shall order that an insurer is not entitled to premiums invoiced or billed to the insured due to the incorrect application of the insurer's or rate service organization's rating system to the appellant's insurance coverage; and
 - (i) May impose civil penalties of up to ten thousand dollars (\$10,000) per occurrence upon a finding that a workers' compensation insurer, without any lawful basis, has assessed an employer premium:
 - 1. For individuals who are not employees; or
 - 2. On the basis of improper classification of employees.
 - 3. In determining whether to impose a civil penalty, under T.C.A. § 56-5-309(c), the Commissioner may take into account the facts and circumstances of the particular appeal under review, including whether the action by the insurer was in good faith based on the information available to it at the time the action was taken.
 - 4. Any penalties assessed under this Chapter shall be made payable to the Department.
- (3) Any order issued under this Rule shall be considered a Final Order of the Department.
- (4) All orders issued under this Rule shall be sent by the commissioner to each party. The commissioner shall also cause to be published on the Division's web-site all final non-appealable orders issued under this Rule for at least ten (10) years from the date of entry.

Authority: T.C.A. §§ 4-5-314 and 56-5-309(b), (c) and (d).

0780-01-82-.11 Judicial Review.

A person who is aggrieved by a Final Order entered pursuant to this Chapter is entitled to judicial review pursuant to T.C.A. § 4-5-322.

Authority: T.C.A. §§ 4-5-322 and 56-5-309(b), (c) and (d).

0780-01-82-.12 Information Provided to Insureds.

- (1) To the extent applicable, every insurer or rate service organization shall, within a reasonable time after receipt of a written request and upon payment of a reasonable charge, furnish to any insured affected by a rate published by it, all pertinent information as to such rate. However, the insurer's obligation to furnish loss run history to an insured shall be consistent with the requirements of T.C.A. § 56-5-323.
- (2) For purposes of this Rule:
 - (a) A "reasonable time" means the later of thirty (30) days from the date of the receipt of the request or fourteen (14) days from the date of payment of the reasonable fee;
 - (b) A "reasonable charge" means a fee not to exceed twenty-five dollars (\$25). However, with respect to loss sensitive plans the fee must not exceed fifty dollars (\$50); and
 - (c) "Pertinent information" means the following:
 1. The schedule rating worksheet if applicable to the insured;
 2. The insured's experience modification worksheet and an explanation as to how the policyholder can obtain the National Council on Compensation Insurance's publication, "The ABC's of Experience Rating";
 3. Applicable premium discount and small deductible tables if applicable; and
 4. With respect to loss sensitive plans,
 - (i) The insurer's worksheets, including their loss rating model and the development of the insurance charges;
 - (ii) A statement as to how much the company has built in for claims and loss control expenses, profit, as well as general expenses and taxes; and
 - (iii) A detailed statement as to how the insurer arrived at the premium.

Authority: T.C.A. §§ 56-2-301 and 56-5-309(a) and (d).

The rulemaking hearing rules set out herein were properly filed in the Department of State on the 11th day of December, 2007, and will become effective on the 24th day of February, 2008. (FS 12-12-07; DBID 2790)

Economic Impact Statement:

1. Types of small businesses directly affected:

The type or types of small businesses that might be affected by the requirements of the proposed rules includes small businesses that maintain workers' compensation insurance as required by law. These entities are often required to submit information to the rate service organization and the insurance companies. The insurance company assesses premiums based upon the rate provided by the rate service organization. The proposed rules allow these insureds to appeal the rate or the premium assessed by the insurance company.

2. Projected reporting, recordkeeping, and other administrative costs:

The administrative costs are thought to be minimal to implement.

3. Probable effect on small businesses:

The rules will not have an adverse impact on small businesses operating as insurers. Conversely, the proposed rules would be beneficial for insureds operating a small business in Tennessee because the proposed rules provide a forum for these insureds to appeal the application of a rate.

4. Less burdensome, intrusive, or costly alternative methods:

The proposed rules are the least burdensome means of meeting the objectives of the General Assembly.

5. Comparison with federal and state counterparts:

A search has been conducted to determine which states have taken the described actions notated in the proposed rules. A number of states have issued bulletins, or adopted similar regulations or legislation, including:

- Alaska
- Arkansas
- California
- Kentucky
- Missouri
- Pennsylvania

6. Effect of possible exemption of small businesses:

Small businesses cannot be exempted due to the nature and importance of these regulations. These regulations are designed to implement procedures to create a more efficient process by making available pertinent information to all parties that may be involved in an appeal. It should also be noted, that the Rule allows the insurer or rate service organization to assess a nominal charge to provide the information.