

Emergency Rules  
of  
The Tennessee Department of Labor and Workforce Development  
Division of Workers' Compensation

Chapter 0800-2-18  
Medical Fee Schedule

Statement of Necessity Requiring Emergency Rule Amendments

Pursuant to Tenn. Code Ann. §§ 4-5-208 and 50-6-204(i)(5), I hereby promulgate these emergency rule amendments to Medical Fee Schedule Rules ("Rules") 0800-2-18-.02 and 0800-2-18-.09 as part of the comprehensive medical fee schedule and related system applicable to all medical treatment under the Workers' Compensation Law as administered by the Workers' Compensation Division of the Tennessee Department of Labor and Workforce Development ("Department"). These emergency Rules are necessary because Tenn. Code Ann. § 50-6-204(i) requires the comprehensive medical fee schedule and related system be in place and effective on and after July 1, 2005. Tenn. Code Ann. § 50-6-204(i)(5).

Rules 0800-2-18-.02 and 0800-2-18-.09 are currently in effect as emergency rules and will expire on March 24, 2007. Rule 0800-2-18-.09(1) imposes a discretionary civil penalty for any physician who is not validly and currently board-certified by the American Board of Medical Specialties in certain specialties to refer a patient to a "physician-affiliated" facility for physical therapy or occupational therapy.

A rulemaking public hearing was held on these Rules on September 19, 2006. After responding to the oral and written comments received during the rulemaking public hearing as required by Tenn. Code Ann. § 4-5-222, the Department, in relevant part, has removed the discretionary penalty in Rule 0800-2-18-.09(1), thus allowing physicians to refer patients to "physician-affiliated" facilities for physical or occupational therapy. On December 8, 2006, the Department submitted the rulemaking hearing Rules for approval by the Attorney General, who approved them on December 20, 2006. The Rules were filed with the Secretary of State on January 4, 2007, and will become effective on March 20, 2007.

Presently, a physical therapy provider filed a lawsuit challenging the validity and constitutionality of Rule 0800-2-18-.09(1), alleging that the Department cannot impose the civil penalty currently in effect. The lawsuit is pending in the Davidson County Chancery Court and the provider has filed a motion for summary judgment that will be heard on February 9, 2007.

I hereby find there is an immediate danger to the public health, safety or welfare and that no other form of rulemaking authorized by Title 4, Chapter 5 will adequately protect the public in this instance because the current emergency Rules in place, if invalidated, would create a void during which there would be no effective Rules in violation of Tenn. Code Ann. § 50-6-204(i)(5). Medical providers, employees, employers and insurers are statutorily mandated to comply with the medical fee schedule rules, of which these Rules are an integral part, on and after July 1, 2005, in providing all workers' compensation medical benefits. Thus, failure to have these rules in place to provide applicable medical fees, guidelines and procedures would jeopardize injured employees' ability to receive prompt and adequate medical care, constituting an immediate danger to the public health, safety, and welfare. Tennessee Annotated Section 50-6-204(i)(5) specifically authorizes adoption of these rules as emergency rules.

James Neeley, Commissioner  
Tennessee Department of Labor &  
Workforce Development

For copies of these emergency rule amendments contact: E. Blaine Sprouse, Tennessee Department of Labor and Workforce Development, Division of Workers' Compensation, 2222 Metro Center Blvd., Nashville, TN 37228, (615) 253-1457.

Table of Contents

- 0800-2-18-.02 General Information and Instructions for Use
- 0800-2-18-.09 Physical and Occupational Therapy Guidelines

The text of the rule amendments is as follows:

Amendments

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

Subparagraph (a) of paragraph (4) of rule 0800-2-18-02 General Information and Instructions for Use is amended by deleting the current subparagraph in its entirety and replacing it with a new subparagraph, so that as amended the subparagraph shall read:

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

	<u>Conversion Factor</u>	<u>As a Percentage of National Medicare</u>
Anesthesiology.....	Usual and Customary Amount	
Chiropractic Care.....	\$49.27	130%
Dentistry.....	\$37.90	100%
General Surgery.....	\$75.80	200%
Home Health Care.....	Usual and Customary Amount	
Home Infusion.....	Usual and Customary Amount	
Gen. Medicine (includes unlisted specialties, Evaluation & Management, etc.)		
Office visits, E&M, etc. CPT codes	\$60.64	160%
Office visits, E&M, etc. CPT codes	\$60.64	160%
Emergency care CPT codes	\$75.80	200%
Neurosurgery (board-eligible or certified physicians)	\$104.14	275%
(Surgery by non-board eligible physicians paid general surgery rate)		
Orthopedic Surg. (board-eligible or cert. physicians)	\$104.14	275%
(Surgery by non-board eligible physicians paid general surgery rate)		
Pathology.....	Usual and Customary Amount	
Physical and Occupational Therapy		
Independently-owned Facilities-For First 6 visits ....	\$56.85	150%
Visits 7-12 .....	\$49.27	130%
Visits over 12.....	\$37.90	100%
Physician-affiliated Facilities-For First 6 visits .....	\$49.27	130%
Visits 7-12.....	\$39.79	105%
Visits over 12.....	\$37.90	100%
Radiology .....	\$75.80	200%

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

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

Paragraph (1) of rule 0800-2-18-.09 Physical and Occupational Therapy Guidelines is amended by deleting the paragraph in its entirety and replacing it with the following new paragraph, so that as amended the paragraph shall read:

- (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. All PT/OT services, wherever performed (hospital, freestanding facility, etc.) shall be reimbursed under this methodology.
  - (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%).

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

Paragraph (2) of rule 0800-2-18-.09 Physical and Occupational Therapy Guidelines is amended by adding the following after the word “scale” at the end of the first sentence: “based on the number of visits. The number of visits shall start over whenever surgery related to the injury is performed,” so that as amended the paragraph shall read as follows:

- (2) Charges for physical and/or occupational therapy services shall be reimbursed on a sliding scale based on the number of visits. The number of visits shall start over whenever surgery related to the injury is performed.

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

Paragraph (5) of rule 0800-2-18-.09 Physical and Occupational Therapy Guidelines is amended by adding additional language at the end of the paragraph so that as amended the paragraph shall read as follows:

- (5) For any procedure for which an appropriate Medicare code is not available, such as a Functional Capacity Evaluation or work hardening, the usual and customary charge, as defined in Rule 0800-2-17-.03(80), shall be the maximum amount reimbursable for such

services. The current Medicare CPT codes available for Functional Capacity Evaluations are not appropriate for use under the TN Workers' Compensation Medical Fee Schedule, thus, usual and customary is the proper reimbursement methodology for these procedures.

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

Paragraph (6) of rule 0800-2-18-.09 Physical and Occupational Therapy Guidelines is amended by deleting the current paragraph and replacing it with a new paragraph (6) so that as amended the paragraph shall read as follows:

- (6) Whenever physical therapy and/or occupational therapy services exceed six (6) visits, or in cases which are post-operative, twelve (12) visits, 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 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 and 50-6-233 (Repl. 2005).

The emergency rule amendments set out herein were properly filed in the Department of State on the 8th day of January, 2007, and will be effective from the day of filing for a period of 165 days. These emergency rules will remain in effect through the 22nd day of June, 2007. (01-02-07)