

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 Rules

The Commissioner of the Tennessee Department of Labor and Workforce Development ("Commissioner") makes this statement pursuant to Tenn. Code Ann. §§ 4-5-208 (2005 Repl.) and 50-6-204(i)(5) (2005 Repl.) The Commissioner hereby promulgates the following emergency rule amendments to the Medical Fee Schedule Rules under the Workers' Compensation Law as administered by the Workers' Compensation Division of the Tennessee Department of Labor and Workforce Development.

Tennessee Code Annotated § 50-6-204(i)(1) (2005 Repl.), mandates the Commissioner establish a comprehensive medical fee schedule and related system. There are currently permanent rulemaking hearing rules which make up the Medical Fee Schedule Rules filed with the secretary of state that will become effective on May 1, 2006. These emergency amendments to those rules are necessary because the Commissioner has been advised that many medical providers may elect not to serve Tennessee workers' compensation injured employees if these amendments are not made. If these medical providers refuse to provide medical care to workers' compensation injured employees then these workers may not have access to quality medical care here in Tennessee. Thus, an immediate danger to the public health, safety and welfare exists and the fact that the new rulemaking hearing rules become effective May 1, 2006 precludes utilization of the other rulemaking procedures for the promulgation of permanent rule amendments. These amendments are being filed in proposed rule amendment format at this time as well to be in place before these emergency rule amendments expire.

James Neeley, Commissioner
Tennessee Department of Labor &
Workforce Development

For copies of these emergency rule amendments, contact: Rhonda Hutt, Administrative Secretary, 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) 532-1471.

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

The text of the emergency amendments is as follows:

Amendments

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

Subparagraph (b) of paragraph (1) of rule 0800-2-18-.07 Ambulatory Surgical Centers and Outpatient Hospital Care (Including Emergency Room Facility Charges) is amended by deleting the following current

language in the last sentence, “(subject to wage-price index adjustment),” so that as amended the subparagraph shall read:

- (b) The CMS has implemented the Outpatient Prospective Payment System (“OPPS”) under Medicare for reimbursement for hospital outpatient services at most hospitals. All services paid under the new OPPS 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. Current APC Medicare allowable payment amounts and guidelines are available online at: <http://www.cms.hhs.gov/HospitalOutpatientPPS>. The payment rate for each APC group is the basis for determining the maximum total payment to which an ASC or hospital will be entitled.

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

Subparagraph (e) of paragraph (1) of rule 0800-2-18-.07 Ambulatory Surgical Centers and Outpatient Hospital Care (Including Emergency Room Facility Charges) is amended by deleting the current language in its entirety and replacing it so that as amended the subparagraph shall read:

- (e) Reimbursement for all outpatient services is based on the Medicare Ambulatory Payment Classification (“APC”) national unadjusted base rates, which can be obtained from the Centers for Medicare and Medicaid Services. There are no adjustments for wage-price indices and these are not hospital-specific APC rate calculations. Reimbursements for Critical Access Hospitals (“CAH”) are not based on CAH methodology but on the national unadjusted APC base rates as described in the preceding sentence.

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

Legal contact and/or party who will approve final copy for publication:

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Signature of the agency officer or officers directly responsible for proposing and/or drafting these rule amendments:

E. Blaine Sprouse, Assistant Administrator
Division of Workers’ Compensation

I certify that this is an accurate and complete copy of emergency rule amendments lawfully promulgated and adopted by the Tennessee Department of Labor and Workforce Development on the _____ day of _____, 2006

James Neeley
Commissioner

Subscribed and sworn to before me this the _____ day of _____, 2006.

Notary Public

My commission expires on the _____ day of _____, 200____.

All emergency rule amendments 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.

Paul G. Summers
Attorney General and Reporter

The emergency rule amendments set out herein were properly filed in the Department of State on the 27th day of April, 2006, and will be effective from the day of filing for a period of 165 days. These emergency rule amendments will remain in effect through the 9th day of October, 2006.