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# Emergency or Public Necessity Rule(s) Filing Form

*Emergency and Public Necessity rules are effective from date of filing for a period of up to 165 days.*

**Agency/Board/Commission:** Department of Labor and Workforce Development  
**Division:** Workers' Compensation  
**Contact Person:** Landon Lackey  
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**Rule Type :**

- Emergency Rule  
 Public Necessity Rule

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

- Amendment  
 New  
 Repeal

**Statement of Necessity:**

Submitted herewith are proposed rule amendments to Chapter 0800-02-17, Medical Cost Containment Program, of the Tennessee Department of Labor and Workforce Development, Division of Workers' Compensation, for promulgation under the public necessity provision of the Uniform Administrative Procedures Act. The Commissioner of Labor and Workforce Development has adopted these rules pursuant to Tenn. Code Ann. § 4-5-209(a)(4), which authorizes an agency to adopt public necessity rules when "[t]he agency is required by an enactment of the general assembly to implement rules within a prescribed period of time which precludes utilization of rulemaking procedures described elsewhere in this chapter for the promulgation of permanent rules."

Public Chapter 1183 of the Acts of 2008 amended the Tennessee Workers' Compensation Act, Tenn. Code Ann. §§ 50-6-101, *et seq.* (Public Records Act). Section 8 of Public Chapter 1183 amends Tenn. Code Ann. § 50-6-246 to read:

"To assure employees, employers and the department have the information necessary to resolve a workers' compensation claim and to effectuate the legislative intent of Section 50-6-241, the Commissioner of Labor and Workforce Development shall establish rules, in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5, to govern the provision of a medical impairment rating required by Section 50-6-204(d)(3)(A). The commissioner shall promulgate these rules in conjunction with the advisory council on workers' compensation. The rules required by this section shall take effect on October 1, 2008. The commissioner is authorized to use public necessity rules under Section 4-5-209(a)(4) or emergency rules under Section 4-5-208, as appropriate, in order to have such rules in effect no later than October 1, 2008."

The Division of Workers' Compensation promulgated a similar public necessity rule on January 8, 2009, which will expire on June 22, 2009. With the present public necessity rule, the Division is contemporaneously filing a rulemaking hearing rule that will codify this Rule 0800-02-17-.25, as well as other rules, in permanent form. The Division held a rulemaking hearing on March 20, 2009, in which several comments were made that required responses. Since rulemaking hearing rules do not go into effect until 75 days after filing pursuant to Tenn. Code Ann. § 4-5-207, the permanent rule will not be in effect until after the January 8, 2009 public necessity rule expires. As such, without the present public necessity rule, a gap would exist between June 22 and the date that the permanent rule goes into effect. To avoid that gap and the accompanying confusion, the Division is re-filing Rule 0800-02-17-.25 as a public necessity rule. Due to the public interest in this rule and the delays in conducting a rulemaking hearing, the Division finds it necessary to file the present public necessity rule.

**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)

<b>Chapter Number</b>	<b>Chapter Title</b>
0800-02-17	Medical Cost Containment Program
<b>Rule Number</b>	<b>Rule Title</b>
0800-02-17-.25	Impairment Ratings-Evaluations and in Medical Records

(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>)

Public Necessity Rules  
of  
Tennessee Department of Labor and Workforce Development  
Chapter 0800-02-17  
Medical Cost Containment Program

Amendments

Rule 0800-02-17-.25 Impairment Ratings-Evaluations and in Medical Records is amended by deleting the present language in its entirety and replacing it with the following:

- (1) This rule applies to treating physicians. This rule is not applicable to independent medical examinations ("IME") or impairment ratings rendered as a part of an IME pursuant to Rule 0800-02-17-.09. As used in this Rule 0800-02-17-.25 only, a treating physician is that physician, chiropractor or medical practitioner who determines the employee has reached maximum medical improvement regarding the condition or injury for which the physician has provided treatment. A treating physician may include any of the following:
  - (a) a physician chosen from the panel required by T.C.A. Section 50-6-204;
  - (b) a physician referred to by the physician chosen from the panel required by T.C.A. Section 50-6-204;
  - (c) a physician recognized and authorized by the employer to treat an injured employee for a work-related injury; or
  - (d) a physician designated by the Division to treat an injured employee for a work-related injury.
- (2) A treating physician is required and responsible for determining the employee's maximum medical improvement date and providing the employee's impairment rating for the injury the physician is treating. In some circumstances, a work-related accident may lead to multiple injuries that require multiple treating physicians. In such cases, the physician that is treating a distinct injury shall determine that the employee has reached maximum medical improvement as to that injury only and is required and responsible for providing an impairment rating for that injury only. A treating physician shall not be required or responsible for providing an impairment rating for an injury that the physician is not treating. The treating physician shall only be required to provide an impairment rating when the physician believes in good faith that the employee retains a permanent impairment upon reaching maximum medical improvement. If, after completion of the rating, it is determined that the employee has an impairment rating of zero, then the provisions of Rule 0800-02-17-.25(6) shall still apply. If the treating physician does not have a good faith belief that the employee retains a permanent impairment upon reaching maximum medical improvement, then the treating physician shall not be required to provide an impairment rating and shall not charge a fee for an impairment rating.
- (3) All impairment ratings shall be made pursuant to T.C.A. Section 50-6-204(d)(3)(A).
- (4) Within twenty-one (21) calendar days of the date the treating physician determines the employee has reached maximum medical improvement, the treating physician shall submit to the employer or carrier, as applicable, a fully completed report on a form prescribed by the Commissioner. The employer or carrier, as applicable, shall submit a fully completed form to the Division and the parties within thirty (30) calendar days of the date the treating physician determines the employee has reached maximum medical improvement.
- (5) Upon determination of the employee's impairment rating, the treating physician shall enter the employee's impairment rating into the employee's medical records. In a response to a request for medical records pursuant to T.C.A. Section 50-6-204, a provider, treating physician or hospital shall include the portion of the medical records that includes the impairment rating.
- (6) The treating physician is required and responsible for providing the impairment rating, fully completing the report on a form prescribed by the Commissioner, and submitting the report to the employer or carrier, as applicable, as required by these Rules. Notwithstanding Rule 0800-02-17-.15, the treating physician shall

receive payment of no more than \$250.00 for these services to be paid by the employer or carrier. The payment shall only be made to the treating physician. The treating physician shall not require prepayment of such fee.

- (7) Failure to fully complete the form and submit it within the appropriate timeframes shall subject the employer, carrier or treating physician, as applicable, to a civil penalty of \$100 for every fifteen (15) calendar days past the required date until the fully completed form is received by the Division.

Authority: T.C.A. §§ 50-6-204, 50-6-233 and 50-6-246.

\* 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 emergency or public necessity rules, lawfully promulgated and adopted.



Date: April 14, 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: April 14, 2009

Notary Public Signature: Vickie H. Gregory

My commission expires on: December 31, 2012

All emergency or public necessity 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

5-3-09  
Date

**Department of State Use Only**

Filed with the Department of State on: 5/19/09

Effective for: 165 \*days

Effective through: 10/31/09

\* Temporary rules may be effective for up to 165 days from the date of filing.

Tre Hargett  
Tre Hargett  
Secretary of State

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**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 requires a treating physician to provide an impairment rating to an injured employee within twenty-one (21) days of the date that the injured employee reaches maximum medical improvement. Under the previous rule, the treating physician was not required to provide the impairment rating. Under both the previous and amended rule, the physician can receive no more than \$250 for providing the impairment rating.

- (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;

Tenn. Code Ann. § 50-6-246 requires the Commissioner of Labor and Workforce Development to promulgate rules regarding the provision of impairment ratings to injured employees, and requires the use of a public necessity rule if necessary.

- (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 and their insurance carriers urge adoption of the amended rule because it will allow them to receive the impairment rating sooner and make an informed settlement offer to the injured employee. Likewise, injured employees and their attorneys will be able to settle cases and receive compensation sooner. Physician groups have also supported the reimbursement of \$250 in the impairment rating rule.

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

There have been no Attorney General opinions or judicial rulings relevant to this rule.

- (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;

There are no anticipated increases or decreases in state and local government revenues and expenditures resulting from promulgation of the amended rule.

- (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 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