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Sequence Number: 06-14-12
 Notice ID(s): 1859-1863
 File Date: 06-12-12

Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Department of Labor and Workforce Development
Division:	Workers' Compensation
Contact Person:	Landon Lackey
Address:	220 French Landing Drive Nashville, TN 37243
Phone:	615-532-0370
Email:	landon.lackey@tn.gov

Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	Evelyn Gaines-Guzman
Address:	220 French Landing Drive Nashville, TN 37243
Phone:	615-253-1331
Email:	evelyn.gaines.guzman@tn.gov

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	TN Department of Labor and Workforce Development 220 French Landing Drive Tennessee Room, 1 st Floor, Side A		
Address 2:			
City:	Nashville		
Zip:	37243		
Hearing Date :	August 16, 2012		
Hearing Time:	10:00 a.m.	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Additional Hearing Information:

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Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
0800-02-01	General Rules of the Workers' Compensation Program

Rule Number	Rule Title
0800-02-01-.02	Definitions
0800-02-01-.06	First Report of Injury

Chapter Number	Chapter Title
0800-02-06	General Rules of the Workers' Compensation Program - Utilization Review
Rule Number	Rule Title
0800-02-06-.12	Repealed

Chapter Number	Chapter Title
0800-02-13	Penalty Program
Rule Number	Rule Title
0800-02-13-.15	Review of Initial Order

Chapter Number	Chapter Title
0800-02-15	Uninsured Employers Fund
Rule Number	Rule Title
0800-02-15-.10	Representation at Show Cause Hearing

Chapter Number	Chapter Title
0800-02-20	Medical Impairment Rating Registry Program
Rule Number	Rule Title
0800-02-20-.01	Definitions
0800-02-20-.04	Requisite Physician Qualifications for Inclusion on Medical Impairment Rating Registry
0800-02-20-.05	Application Procedures for Physicians to Join the Registry
0800-02-20-.06	Request for a MIR Registry Physician
0800-02-20-.07	Payment/Fees
0800-02-20-.09	Communication with Registry Physicians
0800-02-20-.11	Requirements for the "MIR Impairment Rating Report"
0800-02-20-.12	Peer Review
0800-02-20-.13	Removal of a Physician from the Registry
0800-02-20-.14	Other Penalties

(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 0800-02-01
General Rules

Amendments

Rule 0800-02-01-.01 Definitions, subsection (2) is amended by deleting the current language and replacing it with the following:

- (2) "Director" shall mean the Director of the Workers' Compensation Division of the Tennessee Department of Labor. As of the date of filing these rules, the Director may be contacted as follows:

Director, Division of Workers' Compensation
Tennessee Department of Labor and Workforce Development
220 French Landing Drive
Nashville, Tennessee 37243

Rule 0800-02-01-.01 Definitions, subsection (4) is amended by deleting the current language and replacing it with the following:

- (4) "Filing" shall be effective when received by the Division and shall be done through electronic data interchange whenever possible.

Authority: T.C.A §§50-6-101 et seq. and 50-6-102.

Rule 0800-02-01-.06 First Report of Injury is amended by deleting the current language and replacing it with the following:

0800-02-01-.06 First Report of Injury.

Each employer, self-insured employer, and/or insurer shall file a Form C-20 (Tennessee Employer's First Report of Work Injury or Illness) in accordance with the following:

- (1) The Form C-20 shall be filed with the Division in all cases where the injury or illness results in the receipt of medical treatment outside of the employer's premises, absence from work, retention of a permanent impairment, or death. Except as provided in paragraph (2) of this Rule, in no event shall the requirement to file Form C-20 differ based upon the number of days between the injury or illness and the employee's return to employment.
- (2) Employers, other than self-insured employers, shall report the injuries or illnesses described in paragraph (1) of this Rule to their insurer within one (1) business day of knowledge of the injury or illness. Insurers, and self-insured employers, shall file the Form C-20 with the Division as soon as possible, but not later than fourteen (14) days after knowledge of an injury or illness of a nature that an employee does not return to his or her employment within seven (7) days after the occurrence of the injury or illness. Reports of injuries or illnesses in which an employee returns to his or her employment within seven (7) days or fewer shall be filed as soon as possible, but not later than the fifteenth (15th) day of the month following the month in which the injury or illness occurred.
- (3) The penalty for non-compliance with Rule 0800-02-01-.06 is \$25 for each fifteen (15) days past the required date for filing. Where non-compliance is the result of the employee's failure to provide the employer with notice of the injury, the employer shall submit written evidence of the lack of knowledge of the injury upon the Division's request. The Division may adjust and/or eliminate the penalty based on such written evidence.

Authority: T.C.A. §§50-3-701; 50-3-702; 50-6-102; 50-6-118; 50-6-201; and 50-6-233.

Chapter 0800-02-06
General Rules of the Workers' Compensation Program
Utilization Review

Amendments

Rule 0800-02-06-.12 Repealed is amended by renaming the rule "Appeals for Pain Management Services" and adding the following as the new language:

The Division shall charge a fee of \$200 per utilization review appeal for any utilization review conducted pursuant to Public Chapter 1100 (2012). The fee shall be paid by the employer within 30 calendar days of the Division's completion of the appeal. If the fee is not paid within such timeframe, then a 10% interest payment shall accrue for every 30 calendar days that the fee remains unpaid.

Authority: T.C.A. §§ 4-5-202, 4-5-203, 50-6-124, 50-6-126, and 50-6-233.

Chapter 0800-02-13
Penalty Program

Amendments

Rule 0800-02-13-.15 Review of Initial Order, subsection (5) is amended by deleting the current language and replacing it with the following:

- (5) If no action is taken by the Commissioner within twenty (20) calendar days of filing of the petition for review, the petition is deemed denied and the Initial Order shall become the Final Order. Otherwise, the Commissioner shall consider the petition for review of the Initial Order and enter a Final Order or remand the matter for further proceedings at the contested hearing level with instruction.

Authority: T.C.A. §§ 4-5-317, 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).

Chapter 0800-02-15
Uninsured Employers Fund

Amendments

Rule 0800-02-15-.10 Representation at Show Cause Hearing, section (3) is amended by deleting the current language and replacing it with the following:

- (3) All notices of appearance shall be delivered to the Commissioner or Commissioner's designee or mailed to:

Tennessee Department of Labor and Workforce Development
Division of Workers' Compensation
Uninsured Employers Fund
220 French Landing Drive
Nashville, TN 37243-1002

Authority: T.C.A. §§ 50-6-118, 50-6-233, 50-6-412, and 50-6-801.

Chapter 0800-02-20
Medical Impairment Rating Registry Program

Amendments

Rule 0800-02-01-.01 Definitions is amended by adding the following as a new section (3) and renumbering the existing sections:

(3) "Business day(s)" means any day upon which the Division is open for business.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-01-.01 Definitions, Section (11) is amended by adding "or the Medical Director's designee" at the end of the sentence.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.04 Requisite Physician Qualifications for Inclusion on Medical Impairment Rating Registry, section (1)(d) is amended by deleting the current language and replacing it with the following:

- (d) Furnish satisfactory proof of carrying the minimum medical malpractice insurance coverage amounts enumerated in Tenn. Code Ann. § 29-20-403; and

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.04 Requisite Physician Qualifications for Inclusion on Medical Impairment Rating Registry, section (1) is amended by adding the following as a new subsection (e):

- (e) Be trained on these program rules, either in-person or by telephone, by the Program Coordinator.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.05 Application Procedures for Physicians to Join the Registry, section (1) is amended by deleting the current language and replacing it with the following:

- (1) Appointment to the MIR Registry shall expire upon a physician's decision to withdraw from the Registry or the Division's removal of a physician from the Registry. The Division reserves the right to charge physicians a non-refundable application fee upon appointment or reinstatement to the MIR Registry. For each application, an advisory panel of three (3) current MIR Registry physicians shall be randomly selected by the Program Coordinator to review the application. The Panel shall include one member from each grand division of the state who shall have been on the MIR Registry for at least five (5) years without any disciplinary actions imposed by the Department. Each member of the panel shall vote to either recommend or not recommend the applicant for inclusion on the MIR Registry. The Commissioner, upon the advice of the Medical Director, Program Coordinator, and the advisory panel, shall have the sole and exclusive authority to approve or reject applications for inclusion on the MIR Registry.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.05 Application Procedures for Physicians to Join the Registry, section (3) is amended by deleting the current language and replacing it with the following:

- (3) Physicians denied appointment to the MIR Registry by the Commissioner or Commissioner's designee on their initial application may seek reconsideration of their application by submitting a request for reconsideration stating the grounds for such reconsideration to the Program Coordinator within fifteen (15) calendar days of the issuance of the Notice of Denial of their application. The Commissioner may affirm or reverse the initial determination upon reconsideration of the initial decision. The Commissioner shall issue a Notice of Final Determination which shall be the final decision. If the Commissioner does not act on the request for reconsideration within twenty (20) calendar days, then the request shall be deemed to have been denied, which shall be the final decision.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.06 Requests for a MIR Registry Physician, section (1) is amended by changing "0800-2-20-.01(5)" to "0800-02-20-.06."

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.06 Requests for a MIR Registry Physician is amended by adding a new section (2), and

renumbering the existing sections, which shall read:

- (2) The requesting party shall send a copy of the Form to the opposing party. The Program Coordinator's decision to accept or deny the Form is final for administrative purposes.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.06 Requests for a MIR Registry Physician, current section (2)(c) is amended by adding the following sentence at the end:

If a panel of physicians has been provided to the employee in accordance with T.C.A. § 50-6-204, then a completed Form C-42 must accompany the request form;

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.06 Requests for a MIR Registry Physician, current section (3) is amended by designating the current language as section (a) and changing the parenthetical language to read "(which shall mean within an approximate one hundred (100) mile straight-line radius of the employee's home zip code)." The section is further amended by adding the following as a new subsection (b):

- (b) If the Program Coordinator determines that there are an inadequate number of qualified physicians within a 100 mile straight-line radius of the employee's home zip code, the Program Coordinator may produce a state-wide listing of all registry physicians qualified to give the rating.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.06 Requests for a MIR Registry Physician, current section (9)(d) is amended by deleting the current language and replacing it with the following:

- (d) Medical bills, adjustor notes, surveillance tapes, denials, vocational rehabilitation reports, case manager records, commentaries, depositions, or any other document deemed by the Commissioner to compromise the impartiality of the review shall not be submitted to the MIR Registry physician.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.07 Payment/Fees, section (1) is amended by adding the following sentence at the end of the opening paragraph:

The following timeframes shall exclude legal holidays.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.07 Payment/Fees, section (1)(a)-(d) is amended by deleting the phrase "scheduling the appointment" in each subsection and replacing it with "completing the examination."

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.07 Payment/Fees, section (2) is amended by deleting the current language and replacing it with the following:

- (2) The evaluation fee includes normal record review, the evaluation, and production of a standard "MIR Report." At the Commissioner's sole discretion, the evaluation fee may be increased up to an additional \$250.00 if the time required for the record review, evaluation, or production of the MIR Report is extraordinary. All non-routine test(s) for an impairment rating essential under the applicable edition of the AMA Guides to the Evaluation of Permanent Impairment shall have been performed prior to the evaluation. Routine tests necessary for a complete evaluation, such as range of motion or spirometry tests, should be performed by the MIR Registry physician as part of the evaluation at no additional cost. Any additional x-rays that the registry physician deems necessary to render the MIR Report must be approved in writing by the Program Coordinator and are subject to the Medical Fee Schedule.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.07 Payment/Fees, section (3) is amended by deleting the section in its entirety and renumbering the remaining sections.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.07 Payment/Fees, current section (4)(a) is amended by deleting the word "penalty" where it appears in the first sentence of that subsection.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.09 Communication with Registry Physicians, section (2) is amended by deleting the word "evaluation" in the first sentence and replacing it with the phrase "Program Coordinator's acceptance and distribution of the final MIR Report."

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.09 Communication with Registry Physicians is amended by adding a new section (4), which shall read:

- (4) This Rule 0800-02-20-.09 shall also apply to any MIR physician selected to perform peer review pursuant to Rule 0800-02-20-.12.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.11 Requirements for the "MIR Impairment Rating Report," section (4) is amended by deleting the current language in its entirety and replacing it with the following:

- (4) Services rendered by an MIR Registry physician shall conclude upon the Commissioner's acceptance of the final "MIR Report." An MIR report is final and accepted for the purpose of these Rules when it includes the requested determination regarding final medical impairment rating, along with any necessary worksheets, and is signed by the Program Coordinator. Once the report has been accepted, the Program Coordinator will distribute copies of the report to the parties and the Workers' Compensation Specialist, if one is currently assigned. After acceptance of the "MIR Report" the medical records file, including the final "MIR Report," shall be stored and/or disposed of by the MIR registry physician in a manner used for similar health records containing private information and within a time frame consistent with all applicable federal, state and local laws and the Tennessee Board of Medical Examiners' rules.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.11 Requirements for the "MIR Impairment Rating Report" is amended by adding a new section (5), which shall read as follows:

- (5) Any addendums or changes to the MIR Report after it has been deemed accepted shall be approved and signed by the Program Coordinator prior to distribution to the parties.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.12 Peer Review is amended by deleting the current language in its entirety and replacing it with the following:

- (1) All MIR Reports are subject to peer review for appropriateness and accuracy by either the Medical Director or a physician selected randomly by the Program Coordinator who shall have been on the MIR Registry for at least five (5) years without any disciplinary actions and shall comply with Rule 0800-02-20-.05(2); provided, however, that the peer review shall not include a physical examination of the claimant. If the peer review is performed by a MIR Registry physician, then such physician shall be entitled to a fee of \$250.00 to be paid by the employer in advance of the peer review.
- (2) The peer review shall be completed within ten (10) business days of referral from the Program Coordinator. The Medical Director or peer review physician may recommend an MIR Report for reconsideration by the examining MIR physician if the Medical Director or peer review physician deems

the report to be incomplete, inaccurate, or unclear pursuant to the requirements of Rule 0800-02-20-.11. Reconsideration and any revision shall be completed by the examining MIR physician within ten (10) business days of referral from the Program Coordinator.

- (3) The time limits in Rule 0800-02-20-.07(1) shall be tolled while a MIR Report is being reviewed or reconsidered pursuant to this rule; provided, however, that if the examining MIR physician or the peer review physician does not comply with the time requirements in paragraph (2), then the Program Coordinator may reduce their respective fees.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.13 Removal of a Physician from the Registry, section (2)(d) is amended by adding the following sentence at the end of the section:

If the Commissioner does not act on the request for reconsideration within twenty (20) calendar days, then the request shall be deemed to have been denied, which shall be the final decision.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.14 Other Penalties, is amended by changing the rule title to "Penalties" and is further amended by deleting the current language and replacing it with the following:

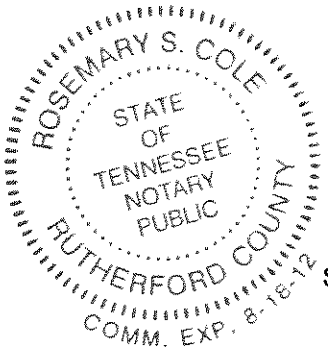
- (1) Failure by an employer or insurer to pre-pay the evaluation fee shall allow the physician to charge the employer a \$100.00 late fee in addition to the evaluation fee. If the evaluation fee and/or late fee remains unpaid fifteen (15) calendar days following the date of the evaluation, an additional \$250.00 penalty is authorized. If any portion of a fee or penalty remains unpaid after an additional thirty (30) calendar day period, an additional \$500.00 penalty is authorized, and again for each additional thirty (30) calendar day period, or portion thereof, that it remains unpaid until all fees and/or penalties are fully paid.
- (2) If an employer or insurer fails to pay the cancellation fee of \$300.00, an additional \$250.00 penalty is authorized. If any portion of a fee or penalty remains unpaid after an additional thirty (30) calendar day period, an additional \$500.00 penalty is authorized, and again for each additional thirty (30) calendar day period, or portion thereof, that it remains unpaid until all fees and/or penalties are fully paid.
- (3) Failure by a MIR Registry physician to timely refund any unearned evaluation fee shall allow the employer or insurer to recover in addition to the unearned fee a \$100.00 late fee from that MIR Registry physician. If the unearned fee and/or late fee remains unpaid fifteen (15) calendar days following the date of the evaluation, an additional \$250.00 penalty against the MIR Registry physician is authorized. If any portion of the unearned fee or penalty remains unpaid after an additional thirty (30) calendar day period, an additional \$500.00 penalty is authorized, and again for each additional thirty (30) calendar day period, or portion thereof, that it remains unpaid until all fees and/or penalties are fully paid.
- (4) If any party engages in unauthorized communications with the MIR physician, then the Commissioner or Commissioner's designee is authorized to assess a penalty of up to \$500.00 per violation against that party.
- (5) Notwithstanding any other provision in these rules to the contrary, and in addition to any other penalty provided for in these Rules and the Act, failure by any party to comply with these Rules in a manner for which no penalty has specifically been set forth herein may subject that party to civil penalties of \$100.00 per violation, as determined by the Commissioner.
- (6) Any party assessed a monetary penalty by the Division may request a contested case hearing in accordance with the Penalty Program Rules of the Division, 0800-2-13, by submitting a request for such hearing within fifteen (15) days of issuance of the notice of violation and assessment of civil penalties hereunder.

Authority: T.C.A. §§ 4-5-202, 50-6-118, 50-6-204 and 50-6-233 (2005).

Chapter 0800-02-20 Medical Impairment Rating Registry Program shall be further amended to delete the phrase "MIR Impairment Rating Report" wherever it appears and replace it with "MIR Report."

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.



Date: 6/11/12

Signature: *Karla Davis*

Name of Officer: Karla Davis

Title of Officer: Commissioner of Labor and Workforce Development

Subscribed and sworn to before me on: 6/11/12

Notary Public Signature: *Rosemary S. Cole*

My commission expires on: 8-18-12

Department of State Use Only

Filed with the Department of State on: 06/12/12

Tre Hargett

Tre Hargett
Secretary of State

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