

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

Chapter 0800-2-5
Benefit Review Process Rules

Presented herein are proposed rules of the Tennessee Department of Labor and Workforce Development submitted pursuant to T.C.A. Section 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Tennessee Department of Labor and Workforce Development to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed rules are published. Such petition to be effective must be filed with the Workers' Compensation Division, Second Floor of the Andrew Johnson Tower located at 710 James Robertson Parkway, Nashville, TN 37243-0661 and in the Department of State, Eighth Floor, Tennessee Tower, William Snodgrass Building, 312 8th Avenue North, Nashville, TN 37243, and must be signed by twenty-five (25) persons who will be affected by the rule, or submitted by a municipality which will be affected by the rules, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of these proposed rules, contact: E. Blaine Sprouse, Tennessee Department of Labor and Workforce Development, Division of Workers' Compensation, 710 James Robertson Parkway, Andrew Johnson Tower, Second Floor, Nashville, TN 37243 (615) 253-8937.

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0800-2-5-.06 Discovery
0800-2-5-.09 Exhaustion of the Benefit Review Conference Process

The text of the amendments follows:

Amendments

Subparagraph (d) of paragraph (3) of Rule 0800-2-5-.06 Discovery is amended by deleting the last sentence of subparagraph (d) in its entirety and replacing it so that as amended the new subparagraph shall read:

- (d) The Designated Discovery Attorney shall decide any motion relating to discovery. The Designated Discovery Attorney shall decide any request relating to all discovery under these Rules. Decisions on such discovery requests shall be final within the Department and are subject to enforcement by the Department as provided in Tenn. Code Ann. § 4-5-311(b).

Authority: T.C.A. §§ 50-6-203, 236, 238, and 4-5-311.

Paragraph (1) of Rule 0800-2-5-.09 Exhaustion of the Benefit Review Conference Process is amended by deleting the current subparagraph (a) in its entirety, re-numbering the remaining subparagraphs, adding new subparagraphs (c) and (d) and adding parts 1., 2. and 3. to the newly numbered subparagraph (d), so that as amended the new paragraph shall read:

- (1) The Benefit Review Conference Process shall be deemed exhausted only upon occurrence of any of the following:
 - (a) Reaching of a mediated settlement, as evidence by a signed document executed by the proper parties, including the Workers' Compensation Specialist;

- (b) Issuance of an impasse report signed and dated by the Workers' Compensation Specialist;
- (c) The parties conduct and complete mediation by hiring a private Rule 31 mediator, provided the Department has failed to conduct a BRC within 60 days of receipt of such a request pursuant to Tenn. Code Ann. § 50-6-239(c).
- (d) Issuance of a written waiver signed by the Director of the Benefit Review Program or the Director's designee:
 - 1. A waiver may be requested only after a request for benefit review conference has been filed;
 - 2. A waiver must be requested by a letter explaining the basis for the request, indicating that extraordinary circumstances require such waiver;
 - 3. A waiver may be requested after a workers' compensation specialist has denied benefits on the basis of compensability;
 - 4. If Reconsideration of a Specialist's Order is requested, no waiver will be issued until the Reconsideration process is complete.

Authority: T.C.A. §§ 50-6-101 through 50-6-103, 50-6-118, 50-6-233, 50-6-236 through 50-6-242, 4-5-202.

A Notice of Withdrawal was filed on September 13, 2007.

The proposed rule amendments set out herein were properly filed in the Department of State on the 9th day of July, 2007, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, would have become effective on the 28th day of November, 2007. (FS 07-07-07; DBID 2603)