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Sequence Number: 09-07-22
Notice ID(s): 3556
File Date: 9/12/2022

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:	Bureau of Workers' Compensation
Contact Person:	Amanda Terry
Address:	220 French Landing Dr. 1-B, Nashville, TN 37243
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Any individuals with disabilities who wish to participate in these proceedings (to review these filings) and require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	Amanda Terry
Address:	220 French Landing Dr. 1-B, Nashville, TN 37243
Phone:	615-253-1847
Email:	amanda.terry@tn.gov

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

Address 1:	Tennessee Room		
Address 2:	220 French Landing Drive, 1-A		
City:	Nashville, TN		
Zip:	37243		
Hearing Date:	November 8, 2022		
Hearing Time:	1:00 pm	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Additional Hearing Information:

Please bring identification so that you may be checked into the building.

Written comments will be accepted until close of business on **November 22, 2022** and can be sent to amanda.terry@tn.gov.

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
0800-02-18	Medical Fee Schedule
Rule Number	Rule Title
0800-02-18-.01	Medicare-Basis for System, Applicability, Effective Date and Coding References
0800-02-18-.02	General Information and Instructions for Use
0800-02-18-.03	General Guidelines
0800-02-18-.04	Surgery Guidelines
0800-02-18-.05	Anesthesia Guidelines
0800-02-18-.06	Injections Guidelines
0800-02-18-.07	Ambulatory Surgical Centers and Outpatient Hospital Care (Including Emergency Room Facility Charges)
0800-02-18-.08	Chiropractic Services Guidelines
0800-02-18-.09	Outpatient Physical, Speech, and Occupational Therapy Guidelines
0800-02-18-.10	Durable Medical Equipment and Implantables
0800-02-18-.11	Orthotics and Prosthetics Guidelines
0800-02-18-.12	Pharmaceutical Schedule Guidelines
0800-02-18-.13	Ambulance Services Guidelines
0800-02-18-.14	Clinical Psychological Service Guidelines
0800-02-18-.15	Penalties for Violations of Fee Schedules

Amended Rules
Chapter 0800-02-18
Medical Fee Schedule

Rule 0800-02-18 is hereby amended by deleting the prior rule and substituting instead the following:

0800-02-18-.01 Medicare-Basis for System, Applicability, Effective Date and Coding References.

- (1) The Medical Fee Schedule of the Tennessee Bureau of Workers' Compensation (Bureau) is a Medicare-based system, with Tennessee Specific Conversion Percentages. These Medical Fee Schedule Rules apply to all injured employees claiming benefits under the Tennessee Workers' Compensation Law. The Medical Fee Schedule is based upon the Centers for Medicare and Medicaid Services ("CMS") Resource Based Relative Value Scale ("RBRVS") system, utilizing the CMS' relative value units ("RVUs") adjusted for the Tennessee Geographic Practice Index ("GPCI"). CMS base units are used for anesthesia services. Tennessee Specific Conversion Percentages adopted by the Tennessee Bureau of Workers' Compensation are applied in these Rules. Services that are not valued by Medicare are gap filled, when possible, based on FAIR Health data. These Medical Fee Schedule Rules shall be used in conjunction with the current American Medical Association's (AMA) Current Procedural Terminology (CPT®), CMS' Healthcare Common Procedure Coding System ("HCPCS"), the National Correct Coding Initiative edits ("NCCI") and current effective Medicare procedures and guidelines, unless specifically exempted in these rules. Providers rendering medically appropriate care outside of the state of Tennessee to an injured employee pursuant to the Tennessee Workers' Compensation Law may be paid in accordance with the medical fee schedule, law, and rules governing in the jurisdiction where such medically appropriate care is provided, upon waiver granted by the Bureau.
- (2) These Medical Fee Schedule Rules shall also be used in conjunction with Rules for Medical Payments, Chapter 0800-02-17, and the In-patient Hospital Fee Schedule Rules, Chapter 0800-02-19. The definitions set out in those rules, as well as the other general provisions, including but not limited to those regarding electronic billing and prompt payment of provider's bills, are adopted by reference as if set forth fully herein.
- (3) These Medical Fee Schedule Rules become effective following promulgation and upon adoption by the Bureau and remain in effect until modified or replaced by the Bureau. These Rules apply to all services provided on or after the effective date.

- (4) The reimbursement rates shall be set forth in rate tables as an appendix to the Medical Fee Schedule. They shall be effective following promulgation and upon adoption by the Bureau of the Medical Fee Schedule Rules and annually on April 1 thereafter.

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

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

(1) Format

- (a) These Rules address and consist of the following sections: General Guidelines, General Medicine (including Evaluation and Management), General Surgery, Neuro- and Orthopedic Surgery, Radiology, Pathology, Anesthesiology, Injections, Durable Medical Equipment, Implants and Orthotics, Pharmacy, Physical and Occupational Therapy, Ambulatory Surgical Centers and Outpatient Hospital Care, Chiropractic, Ambulance Services and Clinical Psychological Services. Providers should consult and use the section(s) containing the procedure(s) they perform, or the service(s) they render, together with the appropriate sections of the Rules for Medical Payments, and the In-patient Hospital Fee Schedule Rules, if applicable, and the National Council for Prescription Drug Programs, Property & Casualty/Workers' Compensation, Universal Claim Form ("NCPDP WC/PC UCF") for pharmacies.

(2) Reimbursement

- (a) Unless otherwise indicated herein, the most recent, effective Medicare procedures and guidelines are hereby adopted and incorporated as part of these Rules as if fully set out herein and effective upon adoption and implementation by the CMS. Whenever there is no specific fee or methodology for reimbursement set forth in these Rules or rate tables for a service, diagnostic procedure, equipment, etc., then the maximum amount of reimbursement shall be 100% of the Medicare allowable amount, in effect on the date of service. The Medicare guidelines and procedures, in effect at the date of service, shall be followed in arriving at the correct amount. For purposes of these Rules, the base Medicare amount may be adjusted at the discretion of the Administrator based upon the Medicare Economic Index ("MEI") adjustment. Whenever there is no applicable Medicare code or method of reimbursement, the service, equipment, diagnostic procedure, etc. shall be reimbursed at the usual and customary amount as defined in the Rules for Medical Payments.

- (b) Reimbursement to all providers shall be the lesser of the following:

1. The provider's usual charge or;
2. The fee listed in the rate tables, after applying any applicable modifiers, methodologies, or exceptions set forth in these Rules; or 100% of the Medicare rate if the code is not listed in the rate tables, or the methodology is not set forth in these Rules; or
3. The MCO/PPO or any other contracted price;
4. These comparisons shall be determined based on the entire bill or an amount due for a service, rather than on a line-by-line basis.

(3) Fee Schedule Calculations

- (a) The Medical Fee Schedule maximum reimbursement amount for professional services is listed in the accompanying rate tables by CPT® category (i.e., evaluation and management, anesthesia, surgery). If the fee for a current service or procedure is not listed in the rate tables or included in the Rules, the maximum allowable reimbursement amount is 100% of the Tennessee-specific Medicare allowable amount calculated in accordance with Medicare guidelines and methodology effective on the date of service, except where a waiver has been granted by the Bureau.

- (b) Dental Reimbursement shall be set at the 60th percentile of FAIR Health's FH® Charge

Benchmarks at the Tennessee state level and shall be included in the rate tables.

- (c) Medical Reimbursement shall be based on the following percentages of CMS for Tennessee. Codes that are not valued by CMS are gap-filled using FAIR Health data. Board certified physicians in certain specialties may be eligible for additional reimbursement. See 0800-02-18-.02(4), State Specific Modifiers.

275% Surgery - Board Certified Orthopaedic and Neurosurgeons (with "ON" modifier, see 0800-02-18-.02(4))

200% Surgery – all other providers

200% Radiology

200% Pathology

180% Laboratory

130% Physical, occupational, and speech therapy

130% Chiropractic

160% Evaluation and Management*

160% General Medicine*

200% Emergency Care (CPT 99281-99292)

100% Home Health Services

*See 0800-02-18-.02(4) for adjustments for certain board-certified physicians.

(4) State-Specific Modifiers

- (a) Modifier "ON" – Board certified or board eligible Orthopedists and Neurosurgeons may use the modifier "ON" on the appropriate billing form for reimbursement up to 137.5% of the fees listed in the rate tables (275% of CMS) on surgical codes only. (CPT 10004-69999)
- (b) Modifier "OP" – Physicians board certified or board eligible in the following specialties and by the following organizations may use the modifier "OP" on the appropriate billing form for reimbursement up to 112.5% of the fees listed in the rate tables (180% of CMS) on Evaluation & Management and General Medicine codes only:
1. Physicians board certified in Occupational Medicine by the American Board of Preventive Medicine, Specialty of Occupational Medicine (ABPM);
 2. Physicians board certified in Physical Medicine and Rehabilitation by the American Board of Physical Medicine and Rehabilitation (ABPMR);
 3. Pulmonologists board certified in pulmonary disease by the American Board of Internal Medicine (ABIM);
 4. Psychiatrists board certified by the American Board of Psychiatry and Neurology (ABPN);
 5. Neurologists board certified by the American Board of Psychiatry and Neurology (ABPN); and
 6. Cardiologists board certified in cardiovascular disease by the American Board of Internal Medicine (ABIM).
- (c) Modifier "NP" – the following Non-Physician Practitioners properly licensed or certified to perform services shall be reimbursed at 85% of the fees listed in the rate tables.
1. Licensed psychologists and other practitioners providing psychological services
See 0800-02-18-.14, Clinical Psychological Service Guidelines.
 2. Physician Assistant (PA) or Advanced Practice Nurse (APN)
 - (i) "Incident to" rules do not apply.

- (ii) 85% reimbursement applies to all services except when providing assistance at surgery.
 - (iii) See 0800-02-18-.04(2)(b) for surgical assistant billing.
- 3. The payor may verify a provider's eligibility by consulting the Tennessee Department of Health's database or by requesting documentation from the provider.
- (5) Modifiers 22 and 25 - When Modifier 22 or 25 is used, a report explaining the medical necessity of the situation shall be submitted to the employer. It is not appropriate to use Modifier 22 or 25 for routine billing. The maximum allowable additional amount under these Rules for Modifier 22 is 50%, not to exceed billed charges of the primary procedure.
- (6) Certified Physician Program in Workers' Compensation (CPP) - Physicians certified through the Certified Physician Program shall receive an additional reimbursement for the following services:
 - (a) Initial Assessment (billed as an additional code Z0815) \$80.00;
 - (b) Subsequent visit (billed as an additional code Z0816) \$40.00;
 - (c) Assessment of Permanent Impairment and timely completion of the Final Medical Report (C30-A) (billed as an additional code Z0817) \$100.00.
- (7) Forms - The following forms (or their official replacements) should be used for provider billing: the effective current version of the CMS-1500 and UB-04 (CMS-1450) or the electronic equivalents.
- (8) Bills for reimbursement shall be sent directly to the employer responsible for reimbursement. In most instances, this is the Insurance Carrier or the Self-Insured Employer. Insurance Carriers and/or Employers shall furnish this billing information to the Providers, and such information shall be accurate and updated, within thirty (30) calendar days of any change to the billing address of the responsible party, either mail, e-mail or electronic submission.

Authority: T.C.A. §§ 50-6-102, 50-6-204, 50-6-205, 50-6-226, and 50-6-233 (Repl. 2005) and Public Chapters 282 & 289 (2013).

0800-02-18-.03 General Guidelines.

- (1) Guidelines define items that are necessary to appropriately interpret and report the procedures and services contained in a particular section and provide explanations regarding terms that apply only to a particular section.
- (2) The Guidelines found in the editions of Current Procedural Terminology (CPT®) and the Medicare RBRVS: The Physicians' Guide in effect on the date of service applies to the following: General Medicine (includes Evaluation and Management), General Surgery, Neurosurgery, Orthopedic Surgery, Chiropractic, Physical and Occupational Therapy, Home Health Care, Home Infusion, Ambulatory Surgical Centers and Outpatient Hospital Services, Radiology, Clinical Psychological, and Pathology. Codes of dental terminology prescribed by the American Dental Association, including the terminology updates and revisions issued in the future by the American Dental Association shall be used for all Dentistry services.
- (3) In addition to the Guidelines found in the CPT® book and the Medicare RBRVS: The Physicians' Guide, the following Medical Fee Schedule Rule Guidelines also apply. For a Tennessee claim, whenever a conflict exists between these Medical Fee Schedule Rules and any other state fee schedule, rule or regulation, these Rules shall govern.
- (4) Urine drug screens (UDS) shall be reimbursed using CPT codes 80305-80307 for presumptive testing and HCPCS codes G0480-G0483 or G0659 for definitive testing. UDS using CPT codes 80320-80377 are not reimbursable under the fee schedule. The physician note shall specify exactly which drugs are to be tested and why. The frequency of urine drug screens should be in accord with the most recent version of the Department of Health Tennessee Chronic Pain Guidelines, Clinical Practice Guidelines for the Outpatient Management of Chronic Non-Malignant Pain.

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

0800-02-18-.04 Surgery Guidelines.

- (1) Multiple Procedures: Maximum reimbursement shall be based on 100% of the appropriate Medical Fee Schedule amount for the major procedure plus each additional appropriately coded secondary and/or multiple procedures according to Medicare guidelines (including endoscopy and other applicable “families”) and NCCI edits.
- (2) Services Rendered by More Than One Physician:
 - (a) Concurrent Care: One attending physician shall be in charge of the care of the injured employee. However, if the nature of the injury requires the concurrent services of two or more specialists for treatment, then each physician shall be entitled to the listed fee for services rendered.
 - (b) Surgical Assistant: A physician who assists at surgery may be reimbursed as a surgical assistant. To identify surgical assistant services provided by physicians, Modifier 80, 81, or 82 shall be added to the surgical procedure code which is billed. A physician serving as a surgical assistant shall submit a copy of the operative report to substantiate the services rendered. Reimbursement is limited to the lesser of the surgical assistant’s usual charge or 20% of the maximum allowable Medical Fee Schedule amount. Procedures billed with the assistant-at-surgery modifiers are subject to Medicare guidelines for this service.
 1. Appropriately licensed Physician Assistants and Advance Practice Nurses (Nurse Practitioners) may serve as surgical assistants as deemed appropriate by the physician, and if so, that assistants’ reimbursement shall not exceed 85% of the maximum allowable reimbursement listed on the rate table for an assistant surgeon billed with modifier 80. These services shall be billed using the -AS modifier and are subject to the applicable Medicare assistant-at-surgery guidelines.
 2. Two Surgeons: For reporting see the most current edition of the CPT book. Each surgeon shall submit an operative report documenting the specific surgical procedure(s) provided. Each surgeon shall submit an individual bill for the services rendered. Reimbursement shall not be made to either surgeon until the employer has received each surgeon’s individual operative report and bill. Reimbursement to each surgeon shall be the lesser of billed charges or 62.5% of the maximum allowable reimbursement listed in the rate tables.
 3. The need for a surgical assistant, assisting surgeon, co-surgeon, second surgeon or team surgery will follow Medicare status indicators. The payment amount will be adjusted for selected specialties as designated in 0800-02-18-.02(4) and (5) and 0800-02-18-.04(2).
- (3) When a surgical fee is chargeable, no office visit charge shall be allowed for the day on which this surgical fee is earned, except if surgery is performed on the same day as the physician’s first examination, in accord with Medicare guidelines in effect for the date of service. All exceptions require use of the appropriate modifiers.
- (4) Certain of the listed procedures in the Medical Fee Schedule are commonly carried out as an integral part of a total service and, as such, do not warrant a separate charge, commonly known as a global fee. Lacerations ordinarily require no aftercare except removal of sutures. The removal is considered a routine part of an office or hospital visit and shall not be billed separately unless such sutures are removed by a provider different from the provider administering the sutures.

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

0800-02-18-.05 Anesthesia Guidelines.

- (1) General Information and Instructions
 - (a) When anesthesia is personally administered by an Anesthesiologist or Certified Registered Nurse Anesthetist (“CRNA”) who remains in constant attendance during the procedure, for the sole purpose of rendering such anesthesia service, reimbursement shall be 100% of the maximum allowable fee based on Time Values and the Base Units included in the fee schedule rate tables.
 - (b) When anesthesia is administered by a CRNA not under the medical direction of an anesthesiologist, maximum reimbursement shall be 90% of the maximum allowable fee for anesthesiologists under these Medical Fee Schedule Rules. No additional payment will be made to any physician supervising the CRNA.
 - (c) Whenever anesthesia services are provided by an anesthesiologist or other physician and a CRNA, reimbursement shall never exceed 100% of the maximum amount an anesthesiologist or physician would have been allowed under these Medical Fee Schedule Rules had the anesthesiologist or physician alone performed these services.
- (2) Anesthesia Values: Each anesthesia service contains two components which make up the charge and determine reimbursement: a Base Unit and a Time Value. Physical status modifiers and qualifying circumstance codes may be appropriately added according to Medicare guidelines in effect for the date of service.
 - (a) Base Unit: This relates to the complexity of the service and includes the value of all usual anesthesia services except the time actually spent in anesthesia care and any modifiers. The Base Unit includes usual preoperative and postoperative visits, the anesthesia care during the procedure, the administration of fluids and/or blood products incidental to the anesthesia or surgery and interpretation of non-invasive monitoring (ECG, temperature, blood pressure, oximetry, capnography, and mass spectrometry). When multiple surgical procedures are performed during an operative session, the Base Unit for anesthesia is the Base Unit for the procedure with the highest unit value. The Base Units for each anesthesia procedure code are listed in the rate tables.
 - (b) Time Value: Anesthesia time starts when the anesthesiologist or CRNA begins to prepare the patient for induction of anesthesia and ends when the personal attendance of the anesthesiologist or CRNA is no longer required and the patient can be safely placed under customary, postoperative supervision. Anesthesia time shall be reported on the claim form as the total number of minutes of anesthesia. For example, one hour and eleven minutes equals 71 minutes of anesthesia. The Time Value is converted into units for reimbursement as follows:
 1. Each 15 minutes equals one (1) time unit.
 2. An additional time unit shall be billed when an additional 1 – 15 minutes of anesthesia time has elapsed.
 3. No additional time units are allowed for recovery room observation monitoring after the patient can be safely placed under customary post-operative supervision.
- (3) Total Anesthesia Value
 - (a) The total anesthesia value (“TAV”) for an anesthesia service is the sum of the Base Unit (units) plus the Time Value which has been converted into units, and physical status modifiers and qualifying circumstance codes that may be appropriately added according to Medicare guidelines in effect for the date of service. The TAV is calculated for the purpose of determining reimbursement.
- (4) Billing
 - (a) Anesthesia services shall be reported by entering the appropriate anesthesia procedure code and descriptor into Element 24 D of the CMS-1500 Form or the electronic equivalent. The

provider's usual total charge for the anesthesia service shall be entered in Element 24 F on the CMS-1500 Form, or its presently accepted equivalent. The total time in minutes shall be entered in Element 24 G of the CMS-1500 Form. Include the appropriate modifiers.

- (5) Reimbursement
 - (a) Reimbursement for anesthesia services shall not exceed the maximum allowable Medical Fee Schedule amount of \$75.00 per unit.
- (6) Medical Direction Provided by Anesthesiologists
 - (a) When an anesthesiologist is not personally administering the anesthesia but is providing medical direction for the services of a nurse anesthetist who is not employed by the anesthesiologist, the anesthesiologist may bill for the medical direction. Medical direction includes the pre- and post-operative evaluation of the patient. The anesthesiologist shall remain within the operating suite, including the pre-anesthesia and post-anesthesia recovery areas, except in an appropriately documented emergency situation. Total reimbursement for the nurse anesthetist and the anesthesiologist shall not exceed the maximum amount allowable under the Medical Fee Schedule Rules had the anesthesiologist alone performed the services.
- (7) Anesthesia by Surgeon
 - (a) Local Anesthesia: When infiltration, digital block or topical anesthesia is administered by the operating surgeon or surgeon's assistant, reimbursement for the procedure and anesthesia are included in the global reimbursement for the procedure.
 - (b) Regional or General Anesthesia: When regional or general anesthesia is provided by the operating surgeon or surgeon's assistant, payment is included in the surgical procedure reimbursement, according to Medicare guidelines.
- (8) Unlisted Service, Procedure or Base Unit: When an unlisted service or procedure is provided or a Base Unit is not listed in the rate tables, the value per unit used shall be substantiated by report.
- (9) Actual time of beginning and duration of anesthesia time may require documentation, such as a copy of the anesthesia record in the hospital file.
- (10) Special Supplies: Supplies and materials provided by the physician over and above those usually included with the office visit or other services rendered may be listed separately. Drugs, materials provided, and tray supplies shall be listed separately. Supplies and materials provided in a hospital or other facility shall not be billed separately by the physician or CRNA.
- (11) Separate or Multiple Procedures: It is appropriate to designate multiple procedures that are rendered on the same date by separate entries.

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

0800-02-18-.06 Injections Guidelines.

Reimbursement for injection(s) shall include CPT® code 96372 and the appropriate codes listed in the HCPCS section of the rate tables. Other surgery procedure codes defined as injections include the administration portion of payment for the medications billed. Follow the Medicare guidelines in effect for the date of service for both single and multiple use vials of injectable medications for both medications and procedures. Immunization codes (vaccines and toxoid) should be reimbursed for both the medication and the procedure, reported separately with number of units administered.

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

0800-02-18-.07 Ambulatory Surgical Centers and Outpatient Hospital Care (Including Emergency Room Facility Charges).

- (1) Medically appropriate surgical procedures may be performed on an outpatient basis.
- (a) For the purpose of the Medical Fee Schedule Rules, “ambulatory surgical center” means an establishment with an organized medical staff of physicians; with permanent facilities that are equipped and operated primarily for the purpose of performing surgical procedures, with continuous physicians and registered nurses on site or on call; which provides services and accommodations for patients to recover for a period not to exceed twenty-three (23) hours after surgery. An ambulatory surgical center may be a free-standing facility or may be attached to a hospital facility. For purposes of workers’ compensation reimbursement to ASCs, the facility shall be a Medicare approved ASC.
 - (b) CMS has implemented the Outpatient Prospective Payment System (“OPPS”) under Medicare for reimbursement for hospital outpatient services. All outpatient facility services paid under the OPPS are classified into Ambulatory Payment Classifications (“APC”) groups. Services in each APC are similar clinically and in terms of the resources they require. CMS has established a payment rate for each APC. The payment rate for each APC group is the basis for determining the maximum total payment to which an ASC or hospital outpatient center will be entitled, including add-ons, hospital outpatient procedures, multiple procedure discounts and status indicators, according to current CMS guidelines. APC groups and maximum allowable reimbursement amounts for facility services performed in an outpatient hospital or ASC setting are included in the rate tables on the same line as the professional fees.
 - (c) Depending on the services provided, ASCs and hospitals may be paid for more than one APC for an encounter. When multiple surgical procedures are performed during the same surgical session, Medicare OPPS guidelines shall be used in determining separate and distinct surgical procedures and the order of payment. Medicare status indicators which govern payment of facility bills are included in the rate tables.
 - (d) If a claim contains services that result in an APC payment but also contains packaged services, separate payment of the packaged services is not made since the payment is included in the APC. However, charges related to the packaged services are used in setting outlier calculations.
 - (e) The maximum allowable reimbursement rates for outpatient hospitals and ASCs included in the rate tables apply to Acute Care and Critical Access Hospitals (“CAH”).
 - (f) Services for which no outpatient rates are included in the rate tables may be covered when preauthorized by the payer. The maximum allowable facility reimbursement is the usual & customary amount, which is 80% of the billed charges, as defined in the Bureau’s Rules for Medical Payments.
 - (g) All of the following services are to be reimbursed in accordance with the Medicare status indicators effective on the date of service. Maximum allowable reimbursement amounts are included in the fee schedule:
 - 1. Radiology services (technical components may only be separately reimbursed when not included in APC);
 - 2. Diagnostic procedures not related to the surgical procedure;
 - 3. Prosthetic devices;
 - 4. Orthotics;
 - 5. Implantables;
 - 6. DME for use in the patient’s home;
 - 7. Take home medications; and

8. Take home supplies.
- (h) 1. For cases involving implantation of medical devices (implantables), regardless of the current Medicare status indicators, payment shall be made only to the facility.
2. For DME, orthotics and prosthetics used in the patient's home that is supplied by the facility, payment shall be made only to the facility (at the rates specified in 0800-02-18-.10 and 0800-02-18-.11), and not to any other separate entity for these services. No extra payment shall be made for these services if according to CMS regulations and status indicators when those particular services are included in the APC payment.
- (i) Pre-admission lab and x-ray may be billed separately from the Ambulatory Surgery bill when performed 24 hours or more prior to admission and will be reimbursed the lesser of billed charges or the fee listed in the rate tables, Pre-admission lab and radiology are not included in the facility fee.
- (j) There may be emergency cases or other occasions in which the patient was scheduled for outpatient surgery and it becomes necessary to admit the patient. All hospitals with ambulatory patients who stay longer than 23 hours past ambulatory surgery or other diagnostic procedures and are formally admitted to the hospital as an inpatient will be paid in accordance with the In-patient Hospital Fee Schedule Rules, 0800-02-19. Medicare hospital criteria shall apply to these cases.

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

0800-02-18-.08 Chiropractic Services Guidelines.

- (1) Maximum allowable reimbursement for chiropractic services is the lesser of billed charges or the fees listed in the rate tables. The number of approved visits shall be limited pursuant to any restrictions in Tenn. Code Ann. § 50-6-204. The same procedures for utilization review applicable to physical therapy and occupational therapy services under Rule 0800-02-18-.09 below apply to chiropractic services.
- (2) For chiropractic services, an office visit (E/M code) may only be billed on the same day as a manipulation when it is the patient's initial visit with that provider. During the course of treatment, the chiropractor may bill a second E/M code if the patient does not adequately respond to the initial treatment regimen, and a documented significant change is made in the treatment recommendations.
- (3) There shall be no fee allowable for any modalities performed in excess of four (4) modalities per day per employee. The Medicare definition of modality is applicable.
- (4) There shall be no reimbursement for either hot packs or cold packs provided to an employee who has suffered a compensable work-related injury under the Workers' Compensation Law.
- (5) If the Bureau's adopted treatment guidelines allow for exceptions such as but not limited to the number of modalities or visits, then the guidelines may be used.

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

0800-02-18-.09 Outpatient Physical, Speech, and Occupational Therapy Guidelines.

- (1) Reimbursement for all physical, speech, and occupational therapy services shall not exceed the lesser of billed charges or the fees listed in the rate tables, no matter where the services are performed, except home health services.
- (2) There shall be no reimbursement for either hot packs or cold packs provided to an employee who has suffered a compensable work-related injury under the Workers' Compensation Law.
- (3) For physical therapy, occupational therapy, or speech therapy, there shall be no fee allowable for

any modalities or therapeutic procedures performed in excess of four (4) units of modalities, therapeutic procedures, or combination thereof per type of therapy per day per employee. The definitions of modality and therapeutic procedures from the most recent American Medical Association's *Current Procedural Terminology* (CPT®) edition are applicable. When determining the correct number of units for billing or reimbursement for time-based therapy codes, minutes of service specified in the code description shall be rounded to the nearest unit. For example, codes with 15 minutes of time in the description, a unit shall be billed after 8 minutes of therapy. If the sum of two services is 8 minutes or more, the service provided for the greater amount of time is to be reimbursed as follows:

- (a) 1 unit is greater than or equal to 8 minutes and less than or equal to 22 minutes.
 - (b) 2 units is greater than or equal to 23 minutes and less than or equal to 37 minutes.
 - (c) 3 units is greater than or equal to 38 minutes and less than or equal to 52 minutes.
 - (d) 4 units is greater than or equal to 53 minutes and less than or equal to 67 minutes.
- (4) For Functional Capacity Evaluations, the four-unit (time measurement) maximum may not apply if the documentation supports the extra units. Use CPT code 97750, physical performance test or measurement, with written report, each 15 minutes, to bill for Functional Capacity Evaluations.
 - (5) Work Hardening/Conditioning Programs using the CPT® code 97545, work hardening/conditioning; initial 2 hours and CPT® code 97546, work hardening/conditioning; each additional hour, shall be billed for a maximum of 6 hours per day or 60 hour maximum and are subject to utilization review prior approval.
 - (6) Whenever physical therapy, occupational therapy, or speech therapy services exceed twelve visits, such treatment may be reviewed pursuant to the employer's utilization review program in accordance with the procedures set forth in Chapter 0800-02-06 of the Bureau's Utilization Review rules before further physical therapy and/or occupational therapy services may be certified for payment by the employer. Such certification shall be completed within the timeframes set forth in Chapter 0800-02-06 to assure no interruption occurs in the delivery of necessary services. Failure by a provider to properly certify such services as prescribed herein may result in the forfeiture of any payment for uncertified services.

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

0800-02-18-.10 Durable Medical Equipment and Implantables.

- (1) Reimbursement for durable medical equipment (DME) and medical supplies, including home DMEs, infusion and oxygen services, other than implantables, shall be reimbursed at the lesser of the provider's billed charges or the amount listed in the rate tables.
 - (a) If no amount is listed in the rate tables and the billed charge is \$100.00 or less, reimbursement shall be 80% of billed charges.
 - (b) If no amount is listed in the rate tables, and the billed charge is greater than \$100.00, reimbursement shall be the original supplier's or manufacturer's invoice amount, plus the lesser of 15% of invoice or \$1,000.00, and coded using the HCPCS codes. These calculations are per item and are not cumulative.
 - (c) Durable medical equipment and implantables shall be billed separately from facility and professional service fees only if these charges are not included in facility OPSS or the In-Patient hospital DRG methodology. See rule 0800-02-18-.07 and 0800-02-19-.03.
- (2) Quality. The reimbursement for supplies/equipment in this fee guideline is based on a presumption that the injured worker is being provided the highest quality of supplies/equipment. All billing shall contain the brand name, model number, and catalog number.

- (3) Rental/Purchase. Rental fees are applicable in instances of short-term utilization (30-60 days). The maximum allowable rental fee for DME is 100% of the Tennessee Medicare allowable amount. If it is more cost effective to purchase an item rather than rent it, this shall be stressed and brought to the attention of the insurance carrier. The first month's rent should apply to the purchase price. However, if the decision to purchase an item is delayed by the insurance carrier, subsequent rental fees cannot be applied to the purchase price. When billing for rental, identify with modifier "RR".
- (4) Transcutaneous electrical neurostimulators (TENs) Units. All bills submitted to the carrier for TENs, H-wave, Cranial Electrical Stimulator (CES) units and other external stimulator devices should be accompanied by a copy of the invoice, if available.
 - (a) Rentals
 1. Include the following supplies:
 - (i) Lead wires;
 - (ii) Two (2) rechargeable batteries, as indicated;
 - (iii) Battery charger;
 - (iv) Electrodes; and
 - (v) Instruction manual and/or audio tape.
 2. Supplies submitted for reimbursement shall be itemized. In unusual circumstances where additional supplies are necessary and the supplies are not listed in the HCPCS rate tables, use modifier 22 and "BR."
 3. Limited to 30-day trial period.
 - (b) Purchase:
 1. Prior to the completion of the 30-day trial period, the prescribing doctor shall submit a report documenting the medical justification for the continued use of the unit. The report should identify the following:
 - (i) Describe the condition and diagnosis that necessitates the use of a TENs unit or other external stimulator units.
 - (ii) Does the patient have any other implants which would affect the performance of the TENs unit or the implanted unit?
 - (iii) Was the TENs unit effective for pain control during the trial period?
 - (iv) Was the patient instructed on the proper use of the TENs unit during the trial period?
 - (v) How often does the patient use the TENs unit?
 2. The purchase price should include the items below if not already included with the rental:
 - (i) Lead wires;
 - (ii) Two (2) rechargeable batteries; and
 - (iii) Battery charger.
 - (iv) Only the first month's rental price shall be credited to purchase price.

- (v) The provider shall indicate TENs manufacturer, model name, and serial number.
- (5) Continuous Passive Motion and Other External Exercise/Treatment Devices (see Medicare Code)
 - (a) Use of this unit in excess of the days recommended by the Bureau's adopted treatment guidelines requires documentation of medical necessity by the doctor. Only one (1) set of soft goods will be allowed for purchase.
 - (b) The use of cold compression therapy units and other external exercise/treatment devices in excess of seven (7) days (or the length of use recommended by the Bureau's adopted treatment guidelines) requires documentation of the device's use and medical necessity and may be subject to utilization review.

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

0800-02-18-.11 Orthotics and Prosthetics Guidelines.

- (1) Orthotics and prosthetics, not supplied under 0800-02-18-.07, should be coded according to the Healthcare Common Procedures Coding System (HCPCS). Maximum reimbursement is the lesser of the billed charge or the amount listed in the rate tables. If the orthotic or prosthetic is not included in the rate tables or if the original manufacturer's invoice cost exceeds the amount listed in the rate tables at the time of delivery, the payment for orthotics and prosthetics shall be the higher of the original manufacturer's invoice costs or 115% of the amount listed in the fee schedule. Charges for these items are in addition to, and shall be billed separately from, all other facility and professional service fees. Supplies and equipment should be billed using CPT® code 99070 if appropriate codes are not available in the HCPCS and the maximum reimbursement shall be the usual and customary amount. Charges should be submitted on the CMS-1500 form or its approved successor form.
- (2) Fitting and customizing may be reimbursed separately using CPT® code 97760, orthotics management and training initial encounter each 15 minutes, CPT® code 97761, prosthetics training initial encounter each 15 minutes, and CPT® code 97763, orthotics/prosthetics management and training, subsequent encounter, each 15 minutes, as appropriate.
- (3) For the purpose of reimbursements, hearing aids are considered under this section.

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

0800-02-18-.12 Pharmaceutical Schedule Guidelines.

- (1) The Pharmacy Fee Guideline maximum allowable amount for prescribed drugs (medicines by pharmacists and dispensing practitioners) under the Tennessee workers' compensation laws is the lesser of:
 - (a) The provider's usual charge;
 - (b) A negotiated contract or lower amount; or
 - (c) The fees established by the formula for brand-name and generic pharmaceuticals as described in the following subsections.
 - (d) Prescribed Medication Services
 - 1. "Drug" has the meaning set out in Tenn. Code Ann. § 63-10-204.
 - 2. Medicine or drugs may only be dispensed by a currently licensed pharmacist or a dispensing practitioner.
 - 3. Carriers may contract with pharmacy benefit managers to process and administer claims for reimbursement of pharmacy services and review the relatedness and appropriateness of prescribed services. Carriers and pharmacists may also negotiate alternative reimbursement schedules and amounts, so long as the reimbursement

amount does not exceed the fee schedule amount set out in these Rules.

4. For the purposes of these Medical Fee Schedule Rules, medicines are defined as drugs prescribed by an authorized health care provider and include only generic drugs or single-source patented drugs for which there is no generic equivalent, unless the authorized health care provider writes that the brand name is medically necessary and includes on the prescription “dispense as written.”

(e) Reimbursement

1. The pharmaceutical reimbursement formula for prescribed drugs (medicines by pharmacists) is the lesser of:
 - (i) Average Wholesale Price* (“AWP”) + \$5.10 filling fee; (only the original manufacturer’s NDC number should be used in determining AWP); or
 - (ii) A negotiated contractual amount, that is less than or equal to the above reimbursements.
2. If the original manufacturer’s NDC number is not provided on the bill, then the reimbursement shall be based on the AWP of the lowest priced therapeutically equivalent drug, calculated on a per unit basis.
3. Reimbursement to pharmacists or any third-party billing agency or other contracted agent of a pharmacy shall never exceed the maximum amount calculated by the pharmaceutical reimbursement formula for prescribed drugs. The usual and customary charge of the pharmacy for the medication shall be included on each bill. A generic drug shall be substituted for any brand name drug unless there is no pharmaceutical and bioequivalent drug available, or the prescribing physician indicates that substitutions are prohibited by including the words “Dispense as Written”, or “No Substitution Allowed”, along with a statement that the brand name drug is medically necessary. A prescribing physician may also prohibit substitution of generic drugs by oral or electronic communication to the pharmacist so long as the same content is conveyed that is required in a written prescription.
 - (i) A bill or receipt for a prescription drug shall include all of the following:
 - (I) When a brand name drug with a generic equivalent is dispensed, the brand name and the generic name shall be included unless the prescriber indicates “do not label.”
 - (II) If the drug has no brand name, the generic name, and the manufacturer’s name or the supplier’s name, shall be included, unless the prescriber indicates “do not label.”
 - (III) The strength, unless the prescriber indicates “do not label.”
 - (IV) The quantity dispensed.
 - (V) The dosage.
 - (VI) The name, address, and federal tax ID# of the pharmacy.
 - (VII) The prescription number, if available.
 - (VIII) The date dispensed.
 - (IX) The name of the prescriber.
 - (X) The name of the patient.

- (XI) The price for which the drug was sold to the purchaser.
 - (XII) The original manufacturer's National Drug Code Number ("NDC Number"), if one is available.
- (ii) The AWP shall be determined from the appropriate monthly publication. The monthly publication that shall be used for calculation shall be the same as the date of service. When an AWP is changed during the month, the provider shall still use the AWP from the monthly publication. The publications to be used are:
 - (I) Primary reference: Price Alert from Medi-Span, available online at the following web site:
<https://www.wolterskluwer.com/en/solutions/medi-span/price-rx>
 - (II) Secondary reference: (for drugs NOT found in Price Alert) the Red Book, available online at <https://www.ibm.com/products/micromedex-red-book>
 - (iii) Dietary supplements such as minerals and vitamins shall not be reimbursable unless a specific compensable dietary deficiency has been clinically established in the injured employee as a result of the work-related injury.
 - (iv) A compounding fee not to exceed twenty-five Dollars (\$25.00) per compound prescription may be charged if two (2) or more prescriptive drugs require compound preparation when sold by a hospital or pharmacy.
 - (v) If a workers' compensation claimant chooses a brand-name medicine when a generic medicine is available and allowed by the prescriber, the claimant shall pay the difference in price between the brand-name and generic medicine and shall not be eligible to subsequently recover this difference in cost from the employer or carrier.
- (f) "Patent" or "Proprietary Preparations"
- 1. "Patent" or "Proprietary preparations," frequently called "over-the-counter drugs," are sometimes prescribed for a work-related injury or illness instead of a legend drug.
 - 2. Generic substitution as discussed in (e)2. above applies also to "over-the-counter" preparations.
 - 3. Pharmacists shall bill and be reimbursed their usual retail price for the "over-the-counter" drug(s).
 - 4. The reimbursement formula does not apply to the "over-the-counter" drugs and no filling fee may be reimbursed.
- (g) Dispensing Practitioner
- 1. Dispensing practitioners shall be reimbursed the same as pharmacists for prescribed drugs (medicines), except such practitioners shall not receive a filling fee.
 - 2. "Patent" or "proprietary preparations" frequently called "over-the-counter drugs," dispensed by a physician(s) from their office(s) to a patient during an office visit should be billed as follows:
 - (i) CPT Code 99070 shall be used to bill for the "proprietary preparation" and the name of the preparation, dosage and package size shall be listed as the descriptor.
 - (ii) An invoice indicating the cost to the dispensing physician of the "proprietary preparation" shall be submitted to the carrier with the CMS-1500 Form or its successor form.

- (iii) Reimbursement is limited to the lesser of the provider's billed charge or 20 percent above the actual cost to the dispensing physician of the item.

(h) Repackaged or Compounded Products

All pharmaceutical bills submitted for repackaged or compounded products shall include the NDC Number of the original manufacturer registered with the U.S. Food & Drug Administration or its authorized distributor's stock package used in the repackaging or compounding process. The reimbursement allowed shall be based on the current published manufacturer's AWP of the product or ingredient, calculated on a per unit basis, as of the date of dispensing. A repackaged or compounded NDC Number shall not be used and shall not be considered the original manufacturer's NDC Number. If the original manufacturer's NDC Number is not provided on the bill, then the reimbursement shall be based on the AWP of the lowest priced therapeutically equivalent drug, calculated on a per unit basis. The filling fees otherwise provided in these Rules shall be payable when applicable.

Authority: T.C.A. §§ 50-6-102, 50-6-204, 50-6-205, 50-6-226, and 50-6-233 (Repl. 2005) and Public Chapters 282 & 289 (2013).

0800-02-18-.13 Ambulance Services Guidelines.

- (1) All non-emergency ground and air ambulance service provided to workers' compensation claimants shall be pre-certified. Emergency ground and air ambulance services may be retrospectively reviewed within three (3) business days.
- (2) All ground and air ambulance services shall be medically necessary and appropriate. Documentation and trip sheets shall be submitted with the bill that states the condition and that indicates the necessity of the ground and air ambulance service provided. It should readily indicate the need for transport via this mode rather than another less expensive form of transportation. The service billed shall be supported by the documentation submitted for review.
- (3) Billing shall be submitted to the employer or carrier on a properly completed CMS-1500 form (or its successor form) by HCPCS code. Hospital based or owned providers shall submit charges on a CMS-1500 form (or its successor form) by HCPCS code.
- (4) Reimbursement shall be based upon the lesser of the submitted charge or the amount listed in the rate tables. To the extent permitted by federal law, the rates determined in the preceding sentence shall also apply to air ambulance services.

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

0800-02-18-.14 Clinical Psychological Service Guidelines.

- (1) Reimbursement for psychological treatment services by any clinician other than a licensed psychiatrist shall be based on reasonableness and necessity and shall be reimbursed at 85% of the fees listed in the rate tables. Treatment by a licensed psychiatrist shall be reimbursed based on the fees listed in the rate tables.
- (2) Whenever such psychological treatment services exceed twelve (12) sessions/visits, then such treatment may be reviewed pursuant to the carrier's utilization review program in accordance with the procedures set forth in 0800-02-06 of the Bureau's Utilization Review rules before further psychological treatment services may be certified for payment by the carrier. 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 psychological treatment services after the first twelve (12) sessions/visits shall, if necessary and appropriate, certify an appropriate number of sessions/visits. If necessary, further subsequent utilization review shall be conducted to certify additional psychological treatment services as is appropriate.

Authority: T.C.A. §§ 50-6-118, 50-6-125, 50-6-128, 50-6-204, 50-6-205, and 50-6-233 (Repl. 2005).

0800-02-18-.15 Penalties for Violations of Fee Schedules.

- (1) Except when a waiver is granted by the Bureau, providers shall not accept and employers shall not pay any amount for health care services provided for the treatment of a covered injury or illness or for any other services encompassed within the Rules for Medical Payments, Medical Fee Schedule Rules or the In-patient Hospital Fee Schedule Rules, when that amount exceeds the maximum allowable payment established by these Rules, unless otherwise provided by T.C.A. § 50-6-204. Any provider accepting and any employer or carrier paying an amount in excess of the Rules for Medical Payments, Medical Fee Schedule Rules or the In-patient Hospital Fee Schedule Rules, unless otherwise provided by T.C.A. § 50-6-204, shall be in violation of these Rules and may, at the Administrator's discretion, be subject to civil penalties whenever a pattern or practice of such activity is found, in accordance with the Uniform Rules of Procedure for Penalty Assessments and Hearing Contested Cases before the Bureau of Workers' Compensation. Any provider reimbursed or employer paying an amount which is in excess of these Rules shall have a period of one hundred eighty (180) calendar days from the time of receipt/payment of such excessive payment in which to refund/recover the overpayment amount. Overpayments refunded/recovered within this time period shall not constitute a violation under these Rules. At the discretion of the Administrator, the Administrator's Designee, or an agency member appointed by the Administrator, such provider may also be reported to the appropriate certifying board, and may be subject to exclusion from participating in providing care under the Law. Any other violations of the Rules for Medical Payments, Medical Fee Schedule Rules, or the In-patient Hospital Fee Schedule Rules except as allowed by law shall subject the violator(s) to civil penalties in accordance with the Uniform Rules of Procedure for Penalty Assessments and Hearing Contested Cases before the Bureau of Workers' Compensation, at the discretion of the Administrator, Administrator's Designee, or an agency member appointed by the Administrator.
- (2) A provider, employer or carrier found in violation of these Rules may request a contested case hearing by requesting such hearing in writing within fifteen (15) calendar days of issuance of a Notice of Violation and, if applicable, notice of assessment of civil penalties. All rights, duties, obligations, and procedures applicable under the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-101 et seq., are applicable under these Rules, including, but not limited to, the right to judicial review of any final departmental decision.
- (3) The request for a hearing shall be made to the Bureau in writing by an employer, carrier or provider which has been notified of its violation of these Rules, and if applicable, assessed a civil penalty.
- (4) Any request for a hearing shall be filed with the Bureau within fifteen (15) calendar days of the date of issuance of the Notice of Violation and, if applicable, of civil penalty by the Administrator. Failure to file a request for a hearing within fifteen (15) calendar days of the date of issuance of a Notice of Violation shall result in the decision of the Administrator, Administrator's Designee, or an agency member appointed by the Administrator being deemed a final order and not subject to further review.
- (5) The Administrator, Administrator's Designee, or an agency member appointed by the Administrator shall have the authority to hear any matter as a contested case and determine if any civil penalty assessed should have been assessed. All procedural aspects set forth in the Bureau's Penalty Program Rules, Chapter 0800-02-13, shall apply and be followed in any such contested case hearing.
- (6) Upon receipt of a timely filed request for a hearing, the Administrator shall issue a Notice of Hearing to all interested parties.

Authority: T.C.A. §§ 50-6-102, 50-6-118, 50-6-125, 50-6-128, 50-6-204, 50-6-205, 50-6-226, and 50-6-233 (Repl. 2005) and Public Chapters 282 & 289 (2013).

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: August 31, 2022

Signature: 

Name of Officer: Abbie Hudgens

Title of Officer: Administrator

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Filed with the Department of State on: 9/12/2022



Tre Hargett
Secretary of State

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