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File Date: 9/8/2021

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:	Troy Haley
Address:	220 French Landing Dr. 1-B, Nashville, TN 37243
Phone:	615-532-0179
Email:	troy.haley@tn.gov

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:	Troy Haley
Address:	220 French Landing Dr. 1-B, Nashville, TN 37243
Phone:	615-532-0179
Email:	troy.haley@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 9, 2021		
Hearing Time:	10:00 am	<input checked="" type="checkbox"/> X CST/CDT	<input type="checkbox"/> EST/EDT

Additional Hearing Information:

Please note that this is an in-person hearing. Please bring identification so that you may be checked into the building.

Written comments will be accepted until close of business on November 23, 2021 and can be sent to troy.haley@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
0800-02-30	Uninsured Employers Fund Benefits
Rule Number	Rule Title
0800-02-30-.01	Purpose and Scope of Rules
0800-02-30-.02	Definitions
0800-02-30-.03	General Requirements
0800-02-30-.04	Available Benefits
0800-02-30-.05	Requirements for Payment of Benefits
0800-02-30-.06	Investigation
0800-02-30-.07	Mediation
0800-02-30-.08	Court of Workers' Compensation Claims Processes
0800-02-30-.09	Payments from the Fund
0800-02-30-.10	Recovery from Employer
0800-02-30-.11	Appeals

Amended Rules
Chapter 0800-02-30
Uninsured Employers Fund Benefits

The present Rule 0800-02-30 Uninsured Employers Fund Benefits is being amended by deleting the prior rule and replacing it with the following:

0800-02-30-.01 Purpose and Scope of Rules.

- (1) The purpose of these rules is to establish the processes and procedures for administering the Uninsured Employers Fund in T.C.A. §§ 50-6-801 et seq and to pay appropriate benefits from the Fund while fulfilling the obligation of the Bureau to protect the integrity of the Fund.
- (2) These procedures apply to all claims by eligible employees submitted to the Bureau of Workers' Compensation in accordance with T.C.A. §§ 50-6-801 et seq. The provisions of this chapter apply to all employers, adjusters and providers of services related to claims in the State of Tennessee subject to the Workers' Compensation Law.

Authority: T.C.A. §§ 50-6-801, 50-6-802, and 50-6-803. Administrative History: Original rules filed January 2, 2019; effective April 2, 2019.

0800-02-30.02 Definitions.

- (1) "Act": Tennessee Code Annotated, Title 50, Chapter 6.
- (2) "Administrator": The chief administrative officer of the Bureau of Workers' Compensation or the Administrator's designee.
- (3) "Bureau": The Tennessee Bureau of Workers' Compensation as defined in T.C.A. § 50-6- 102, an autonomous unit attached to the Department of Labor and Workforce Development for administrative matters only under T.C.A. §4-3-1409.
- (4) "Claim": A demand for something as due; or an assertion of a right or an alleged right.
- (5) "Claimant": An individual who is claiming benefits under the Tennessee workers' compensation law.
- (6) "Claims Administrator": A neutral third party retained by the Bureau to comply with the requirements set forth in T.C.A. 50-6-801 et seq and with orders of the Court of Workers' Compensation Claims.

- (7) "Court": The Court of Workers' Compensation Claims.
- (8) "Denial": Final notification from the Bureau, following a compensation hearing with the Court of Workers' Compensation Claims, that benefits from the Fund will not be paid to an employee.
- (9) "Employee": The same definition as in T.C.A. §50-6-102.
- (10) "Employer": The same definition as in T.C.A. §50-6-102.
- (11) "Fund" and "UEF": The Uninsured Employers Fund established in T.C.A. §50-6-801.
- (12) "Mediator": A Bureau of Workers' Compensation employee who has received training in alternative dispute resolution, as described in T.C.A. §50-6-236.
- (13) "Ombudsman": A Bureau of Workers' Compensation employee who assists injured workers in resolving disputes and obtaining information available under the Tennessee workers' compensation law, as described in T.C.A. §50-6-216.
- (14) "Third Party Administrator (TPA)": An organization that has contracted with the Bureau to handle administrative claims for benefits under the Uninsured Employers Fund benefit program.
- (15) "UEF Benefit Coordinator": A Bureau of Workers' Compensation employee who serves as a liaison between the Bureau, the Third-Party Administrator, the injured employee, and the legal community regarding matters related to the Uninsured Employers Fund benefit program.
- (16) "Uninsured": An employer who fails to secure payment of compensation.

Authority: T.C.A. §§ 4-3-1409, 50-6-102, 50-6-216, 50-6-236, 50-6-801, 50-6-802, and 50-6-803.
 Administrative History: Original rules filed January 2, 2019; effective April 2, 2019.

0800-02-30-.03 General Requirements.

An employee may be eligible for benefits from the Fund, subject to approval by the Bureau of Workers' Compensation Administrator, within the meaning provided by this section if:

- (1) The employee was employed by an uninsured employer;
- (2) The employee suffered an injury on or after July 1, 2015, arising primarily out of and in the course and scope of employment at a time when the employer was uninsured;
- (3) The employee was a Tennessee resident on the date of injury;
- (4) The employee notified the bureau of the injury and the employer's lack of insurance coverage no more than one hundred eighty (180) days after the date of the injury; and
- (5) Except as provided in § 50-6-802(d) and (e), the employee secured a judgment for workers' compensation benefits against the employer for the injury.

Authority: T.C.A. §§ 50-6-801, 50-6-802, and 50-6-803. Administrative History: Original rules filed January 2, 2019; effective April 2, 2019.

0800-02-30-.04 Available Benefits.

- (1) The following benefits may be provided to an eligible employee: temporary disability benefits up to \$20,000.00; and medical benefits up to \$20,000.00, to include a medical causation evaluation, mileage reimbursement, and attorney's fees, if applicable.
- (2) The maximum benefit is \$40,000.00. The maximum benefit for an eligible employee is \$40,000 for all benefits which includes:

- (a) temporary disability benefits (includes attorney fees which are only paid on temporary disability benefits) and
- (b) medical benefits (includes medical care expenses, causation evaluations and mileage reimbursement).

If less than \$20,000 is paid for either temporary disability benefits or medical benefits, the remaining amount may be applied to the other category of benefits. This will require a written request from the employee to the administrator who will make decision on the request and will provide a written response to the employee.

- (3) The cost of a medical causation evaluation may be paid by the Fund at the discretion of the Administrator. If the Court should order any benefits to be paid by the employer, the order does not apply to benefits payable from the Fund, unless the claim is approved by the administrator.
- (4) Reasonable mileage reimbursement may be paid to an eligible employee subject to applicable state employee maximums; however, any amount paid shall be within the aggregate \$40,000 statutory limit as provided in T.C.A. § 50-6-802(c).
- (5) All medical costs must be paid under the Medical Fee Schedule pursuant to Rules 0800-02- 17, 0800-02-18 and 0800-02-19. The bureau shall have the authority to waive this requirement when necessary to provide treatment for an injured employee, as provided in T.C.A. § 50-6-204.

Authority: T.C.A. §§ 50-6-204, 50-6-205, 50-6-801, 50-6-802, and 50-6-803. Administrative History: Original rules filed January 2, 2019; effective April 2, 2019.

0800-02-30-.05 Requirements for Payment of Benefits.

- (1) An Expedited Request for Investigation form may be admissible in the Court of Workers' Compensation Claims under the Court's rules as evidence regarding potential eligibility for benefits from the Uninsured Employers Fund.
- (2) The Notice to the Uninsured Employer must be included on the cover letters to the dispute certification notices or within a settlement agreement. The notice language informs the employer that benefits may be paid by the bureau and that the bureau will seek to collect the amount expended by the state from the employer under T.C.A. § 50-6-803.
- (3) A third-party administrator will be contracted to provide adjusting services, access to medical networks, and to monitor billing compliance with Tennessee's medical fee schedule.
- (4) The referral of the injured worker to obtain a medical causation opinion will take place in consultation with the mediator, third-party administrator, and Uninsured Employers Fund Benefits claims coordinator.
- (5) The payment of benefits is at the Administrator's discretion and is subject to the availability of sufficient funds in the Uninsured Employers Fund, including the amount available from the Employee Misclassification Education and Enforcement Fund (EMEEF) allowed by statute (up to 25% of the balance of funds remaining after the costs and expenditures provided by T.C.A. § 50-6-913(b) have been satisfied).

Authority: T.C.A. §§ 50-6-801, 50-6-802, and 50-6-803. Administrative History: Original rules filed January 2, 2019; effective April 2, 2019.

0800-02-30.06 Investigation.

- (1) If the bureau receives information about a work injury involving an uninsured employer, an Expedited Request for Investigation is required.
- (2) The bureau employee notified about the work injury and lack of insurance coverage will submit a completed Expedited Request for Investigation to uef.compliance@tn.gov and, if applicable, refer the injured worker to an ombudsman.

- (3) The assigned Uninsured Employer's Fund compliance investigator will gather facts relating to coverage within ten (10) business days of assignment.

Authority: T.C.A. §§ 50-6-801, 50-6-802, and 50-6-803. Administrative History: Original rules filed January 2, 2019; effective April 2, 2019.

0800-02-30-.07 Mediation.

- (1) Upon the filing of a petition for benefit determination (PBD, or Form LB 1095) for an Uninsured Employers Fund claim, the matter shall be mediated under T.C.A. § 50-6-236.
- (2) The mediator shall notify the Uninsured Employers Fund benefit coordinator of the PBD filing, who will consult with the Third-Party Administrator to open a file, make an initial investigation, and determine if the circumstances warrant a medical causation opinion.
- (3) Upon settlement, the mediator shall complete the settlement agreement and arrange for court approval of the agreement and the issuance of an order approving the settlement by the Court of Workers' Compensation Claims. This settlement shall not be considered approval of the claim against the UEF Benefit program.
- (4) In the event of an impasse, the dispute certification notice shall include information about the employee's eligibility for Uninsured Employers Fund benefits in addition to identifying all disputed issues. The cover letter to the first and second dispute certification notices shall include the following language:

If you fail to provide workers' compensation insurance coverage for your employee, you might be responsible for workers' compensation benefits. If the Uninsured Employers Fund pays any portion of these benefits to or on behalf of your injured employee, the Uninsured Employers Fund may take action to collect the amount of payments made as set forth in T.C.A. § 50-6-803, or as otherwise allowed or permitted by law.

- (5) The mediator shall send the dispute certification notice or settlement agreement to the Uninsured Employers Fund benefit coordinator.

Authority: T.C.A. §§ 50-6-216, 50-6-236, 50-6-801, 50-6-802, and 50-6-803. Administrative History: Original rules filed January 2, 2019; effective April 2, 2019.

0800-02-30-.08 Court of Workers' Compensation Claims Processes.

- (1) The Court of Workers' Compensation Claims will follow statutory guidelines, existing hearing procedures and protocol for expedited hearings and compensation hearings.
- (2) The Court of Workers' Compensation Claims may consider the investigator's report and if applicable the medical causation report regarding whether the employer had coverage on the date of the employee's injury. Under Rule 0800-02-21-.26, an Expedited Request for Investigation Report signed and dated by a compliance specialist is a self-authenticating document/government record that is admissible in all court hearings.
- (3) The Court of Workers' Compensation Claims will make findings consistent with T.C.A. § 50-6-801(d) and include specific language in the order as to whether these statutory requirements have been met. The Court will also make specific findings in the order regarding the amount of attorney fees to be paid by the Fund, and that amount shall not exceed 20% of the available \$20,000.00 in temporary disability benefits paid by the Fund.
- (4) If settled through mediation, the Court will conduct an approval hearing for the proposed settlement of temporary disability and medical benefit issues. The Court may approve or deny the proposed settlement agreement.
- (5) If the claim is not settled through mediation, upon receipt of the court's order the UEF benefit

coordinator will transmit the file to the third-party administrator for investigation and servicing. The third-party administrator will prepare and submit a report regarding the payment of benefits to the UEF benefit coordinator. The UEF benefit coordinator will submit the report to the Bureau administrator for review and consideration for possible payment of benefits.

Authority: T.C.A. §§ 50-6-239, 50-6-801, 50-6-802, and 50-6-803. Administrative History: Original rules filed January 2, 2019; effective April 2, 2019.

0800-02-30-.09 Payments from the Fund.

- (1) Annually the bureau shall contract with a third-party claim administrator to administer UEF claims. The third-party claim administrator shall request, receive, and review medical records and medical bills and shall submit recommendations to pay temporary disability benefits and medical benefits from the Fund, including attorney fees, via a voucher to the claim administrator. The payment of benefits is contingent upon the review and approval by the Bureau administrator of the third-party administrator's recommendations.
- (2) Payments for temporary disability benefits and medical benefits shall not be issued unless the bureau has on file: IRS form W-9 "Request for Taxpayer Identification Number and Certification" for the employee and attorney, if applicable; an expedited or compensation hearing order; and a report from the claim administrator recommending payment to medical providers, payment of temporary disability benefits to injured workers, or payment of attorney's fees, and child support liens.
- (3) The bureau shall establish that the injured worker, their attorney, if applicable, and each medical provider is a vendor in the state system for payments.
- (4) The UEF benefit coordinator shall maintain in the bureau's computer system financial records to document payments for contract services, total medical payments made per each injured worker, total disability benefits, monthly benefit payments and payments per fiscal year.
- (5) Any costs associated with a third-party administrator, along with any other administrative costs, shall be paid from the Fund.
- (6) All medical bills for services rendered must be submitted within one year of the date of service to the Bureau of Workers' Compensation, Suite 1-B, 220 French Landing Drive, Nashville, Tennessee 37243.

Authority: T.C.A. §§ 50-6-801, 50-6-802, and 50-6-803. Administrative History: Original rules filed January 2, 2019; effective April 2, 2019.

0800-02-30-.10 Recovery from the Employer.

- (1) The bureau administrator may pay from the Fund reasonable expenses of collection and enforcement, including filing fees and collection expenses incurred by the bureau. The administrator may recover these fees and expenses from employer.
- (2) The bureau shall assume the rights of a creditor against an employer for money paid by the bureau administrator pursuant to statute or rule, and may place a lien on the assets of the employer by filing a notice of claim with the register of deeds of any county where the employer has assets. Upon filing the notice of claim with the appropriate official, the bureau shall be a secured creditor.

Authority: T.C.A. §§ 50-6-801, 50-6-802, and 50-6-803. Administrative History: Original rules filed January 2, 2019; effective April 2, 2019.

0800-02-30-.11 Appeals.

- (1) Upon written request by an employee, on a form prescribed by the Administrator, who receives a notification of denial of benefits from the Fund, the Administrator or an Administrator's designee may hold an informal conference with the employee for the purpose of discussing any issues

involving an employee who is denied benefits from the Fund. If the employee requests the conference, an affected employer or their representative will be afforded an opportunity to participate. Any party at such conference may be represented by its own counsel. The request for an informal conference must be received by the Bureau within thirty (30) days from the date the of notice of the denial of benefits from the Fund was sent to the employee.

- (2) An employee who receives a notification of denial of benefits from the Fund may appeal such denial by requesting a contested case hearing in writing within fifteen (15) calendar days of the notice of the denial of benefits from the Fund. The Administrator or an Administrator's designee shall hear the appeal in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5, and in accordance with Tenn. R. and Regs. 0800-02-13. At such a contested case hearing, the requesting party shall have the burden of proving by a preponderance of the evidence that the Administrator abused his/her discretion in the denial of benefits.

Authority: T.C.A. §§ 50-6-801, 50-6-802, 50-6-803, 4-5-202.

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 19, 2021

Signature: 

Name of Officer: Abbie Hudgens

Title of Officer: Administrator

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Filed with the Department of State on: 9/8/2021



Tre Hargett
Secretary of State

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