

**THE TENNESSEE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT - 0800  
DIVISION OF WORKERS' COMPENSATION**

**CHAPTER 0800-2-18  
MEDICAL FEE SCHEDULE**

Statement of Necessity for Readopting Emergency Rules

Pursuant to Tenn. Code Ann. §§ 4-5-208(a) (2005 Repl.), and 50-6-204(i)(5), the Commissioner submits these Medical Fee Schedule Rule Amendments ("Rule Amendments") for readoption as emergency rule amendments as part of the comprehensive medical fee schedule and related system applicable to all medical treatment under the Workers' Compensation Law as administered by the Workers' Compensation Division of the Tennessee Department of Labor and Workforce Development. Readoption of these as emergency rule amendments is necessary for the reasons set forth below and because Tenn. Code Ann. § 50-6-204(i) requires the comprehensive medical fee schedule and related system be in place and effective on and after July 1, 2005. Tenn. Code Ann. § 50-6-204(i)(5).

These Rule Amendments were initially adopted as emergency rules and filed with the secretary of state's office on April 27, 2006, when proposed rules were also filed. Those emergency rule amendments will expire on October 9, 2006. Unless these Rule Amendments are readopted as emergency rule amendments now, there will be a period of time when no effective Rules will be in place. In response to a petition on the proposed rule amendments, a rulemaking public hearing will be held on these Rule Amendments on September 19, 2006. The Department is expecting a large attendance of interested parties as it has received many inquiries concerning these Rule Amendments and about this public rulemaking hearing. After the hearing is held, the Department will have to analyze all of the numerous oral and written comments received during the rulemaking public hearing and must respond to each in writing as required pursuant to Tenn. Code Ann. § 4-5-222 (2005 Repl.) Given that the rulemaking hearing rules may not become effective until at least 75 days after filing with the secretary of state's office, it would be impossible to avoid a lapse in these Rule Amendments without the readoption of them as emergency rule amendments. The Department could not have reasonably foreseen during the initial one hundred sixty-five day period that the original need for the emergency rule amendments would continue or recur during the next nine (9) months following the initial adoption of these emergency Rule Amendments, as they were adopted in response from medical providers in order to alleviate substantial loss of these medical providers from the workers' compensation system.

Medical providers, employees, employers and insurers are statutorily mandated to comply with the medical fee schedule rules, of which these Rule Amendments are an integral part, on and after July 1, 2005, in providing all workers' compensation medical benefits. These Rule Amendments are necessary to comply with the mandate enacted by the General Assembly in Public Chapter 962 (Tenn. Code Ann. § 50-6-204, (2005 Supp.)) to provide the required medical fee schedule with guidelines and procedures to medical providers, employees, employers and insurers. Thus, these emergency rule amendments are being readopted to protect the public welfare. Due to the length of time necessary to complete the rulemaking process under the Uniform Administrative Procedures Act, these emergency Rule Amendments should be readopted immediately to provide applicable medical fees, guidelines and procedures so as not to jeopardize injured employees' ability to receive prompt and adequate medical care. Further, Tenn. Code Ann. § 50-6-204(i)(5) specifically authorizes adoption of these Rule Amendments as emergency rule amendments.

James Neeley, Commissioner  
Tennessee Department of Labor &  
Workforce Development

For copies of these emergency rule amendments, contact: Rhonda Hutt, Administrative Secretary, Tennessee Department of Labor and Workforce Development, Division of Workers' Compensation, Andrew Johnson Tower, Second Floor, 710 James Robertson Parkway, Nashville, TN 37243-0661, (615) 532-1471.

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0800-2-18-.07 Ambulatory Surgical Centers and Outpatient Hospital Care (Including Emergency Room Facility Charges)

The text of the emergency amendments is as follows:

### AMENDMENTS

Subparagraph (b) of paragraph (1) of rule 0800-2-18-.07 Ambulatory Surgical Centers and Outpatient Hospital Care (Including Emergency Room Facility Charges) is amended by deleting the following current language in the last sentence, "(subject to wage-price index adjustment)," so that as amended the subparagraph shall read:

- (b) The CMS has implemented the Outpatient Prospective Payment System ("OPPS") under Medicare for reimbursement for hospital outpatient services at most hospitals. All services paid under the new OPPS are classified into groups called Ambulatory Payment Classifications ("APC"). Services in each APC are similar clinically and in terms of the resources they require. The CMS has established a payment rate for each APC. Current APC Medicare allowable payment amounts and guidelines are available online at: <http://www.cms.hhs.gov/HospitalOutpatientPPS>. The payment rate for each APC group is the basis for determining the maximum total payment to which an ASC or hospital will be entitled.

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

Subparagraph (e) of paragraph (1) of rule 0800-2-18-.07 **Ambulatory Surgical Centers and Outpatient Hospital Care (Including Emergency Room Facility Charges)** is amended by deleting the current language in its entirety and replacing it so that as amended the subparagraph shall read:

- (e) Reimbursement for all outpatient services is based on the Medicare Ambulatory Payment Classification ("APC") national unadjusted base rates, which can be obtained from the Centers for Medicare and Medicaid Services. There are no adjustments for wage-price indices and these are not hospital-specific APC rate calculations. Reimbursements for Critical Access Hospitals ("CAH") are not based on CAH methodology but on the national unadjusted APC base rates as described in the preceding sentence.

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

The emergency rule amendments set out herein were properly filed in the Department of State on the 10th day of October, 2006, and will be effective from the day of filing for a period of 165 days. These emergency rule amendments will remain in effect through the 24th day of March, 2007. (10-06-06)