

Proposed Rule Amendments  
Of  
The Tennessee Department of Labor and Workforce Development  
Division of Workers' Compensation

Chapter 0800-02-05  
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, 220 French Landing Dr., Nashville, TN 37243 and in the Department of State, Eighth Floor, Tennessee Tower, William Snodgrass Building, 312 8<sup>th</sup> 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, 220 French Landing Dr., Nashville, TN 37243, telephone (615) 253-8937.

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0800-02-05-.01 Definitions  
0800-02-05-.06 Discovery  
0800-02-05-.09 Exhaustion of the Benefit Review Conference Process

The text of the amendments follows:

Amendments

Paragraph (11) of Rule 0800-02-05-.01 Definitions is amended by deleting the paragraph in its entirety and replacing it so that as amended the new paragraph shall read:

- (11) "Exhaustion of the Benefit Review Process" means completion of the statutorily-mandated Benefit Review Process as provided in Rule 0800-02-05-.09.

Authority: T.C.A. §§ 4-5-202, 50-6-101 through 50-6-103, 50-6-203, 50-6-206, 50-6-225, 50-6-233, and 50-6-236.

Subparagraph (d) of paragraph (3) of Rule 0800-02-05-.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 0800-02-05-.09 Exhaustion of the Benefit Review Conference Process is amended by deleting current subparagraphs (a), (c) and (d) in their entirety and replacing them, and adding subparagraph (e), so that as amended the new paragraph (1) shall read:

- (1) The Benefit Review Conference Process shall be deemed exhausted only upon occurrence of any of the following:
  - (a) Issuance of a Benefit Review Report which indicates an Order Denying Benefits based upon non-compensability of the claim has been issued by a Workers' Compensation Specialist, provided that:
    1. if Administrative Review of the Specialist's Order Denying Benefits based upon a finding of non-compensability is not requested, the Benefit Review Report referenced in (1)(a) above will be issued fifteen (15) days after the issuance of the Order Denying Benefits;
    2. if Administrative Review of the Specialist's Order Denying Benefits based upon a finding of non-compensability is requested, the Benefit Review Report referenced in (1)(a) above will be issued fifteen (15) days after issuance of an Order by the Administrator's Designee that upholds the Order Denying Benefits;
    3. A Specialist's Order Denying Benefits on grounds other than compensability does not exhaust the Benefit Review Conference process.
  - (b) Reaching a mediated settlement, as evidenced by a signed document executed by the proper parties and the Workers' Compensation Specialist;
  - (c) Issuance of an impasse report signed and dated by a Workers' Compensation Specialist.
  - (d) Conducting and completing mediation by 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);
  - (e) Issuance of a written waiver signed by the Director of the Benefit Review Program or the Director's designee;

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.

Paragraph (2) of Rule 0800-02-05-.09 Exhaustion of the Benefit Review Conference Process is amended by deleting current in its entirety, and replacing it so that as amended the new paragraph (2) shall read:

- (2) When a Benefit Review Report is issued, such Report shall specify whether the Benefit Review Process is exhausted. The date and time noted on the Report issued by a Workers' Compensation Specialist shall determine when the Benefit Review Process is exhausted.

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.

The proposed rule amendments set out herein were properly filed in the Department of State on the 12th day of December, 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, will become effective on the 29th day of April, 2008. (FS 12-14-07; DBID 2792)

### STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

1. Name of Board, Committee or Council: Department of Labor and Workforce Development, Division of Workers' Compensation
2. Rulemaking hearing date: None because these are proposed rules.
3. Types of small businesses that will be directly affected by the proposed rules: All employers throughout the state of Tennessee operating small businesses required to carry workers' compensation insurance. Also, small insurers, law firms, and injured employees will be affected as well.
4. Types of small businesses that will bear the cost of the proposed rules: There are no anticipated additional costs associated with these rule amendments.
5. Types of small businesses that will directly benefit from the proposed rules: All employers throughout the state of Tennessee operating small businesses required to carry workers' compensation insurance. Also small insurers may benefit as well.
6. Description of how small business will be adversely impacted by the proposed rules: They will not be adversely affected.
7. Alternatives to the proposed rule that will accomplish the same objectives but are less burdensome, and why they are not being proposed: None
8. Comparison of the proposed rule with federal or state counterparts: No other similar rules exist in this state or on the federal level.