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 312 Rosa L. Parks, 8th Floor Snodgrass/TN Tower  
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# 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.

<b>Agency/Board/Commission:</b>	Department of Labor and Workforce Development
<b>Division:</b>	Bureau of Workers' Compensation
<b>Contact Person:</b>	Troy Haley
<b>Address:</b>	220 French Landing Dr. 1-B
<b>Phone:</b>	615-532-0179
<b>Email:</b>	<a href="mailto:troy.haley@tn.gov">troy.haley@tn.gov</a>

Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

<b>ADA Contact:</b>	Troy Haley
<b>Address:</b>	220 French Landing Dr. 1-B, Nashville, TN 37243
<b>Phone:</b>	615-532-0179
<b>Email:</b>	<a href="mailto:troy.haley@tn.gov">troy.haley@tn.gov</a>

**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:	02/19/2021		
Hearing Time:	10:00 a.m.	<input checked="" type="checkbox"/> X CST/CDT	<input type="checkbox"/> EST/EDT

**Additional Hearing Information:**

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**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
0800-02-31	Telehealth for Workers' Compensation
Rule Number	Rule Title
0800-02-31-.01	Purpose and Scope of Rules
0800-02-31-.02	Definitions

0800-02-31-.03	General Requirements
0800-02-31-.04	Consent and Agreement of Injured Worker
0800-02-31-.05	Billing for Telehealth Services Provided

**Additional Hearing Information:**

If attending in-person, please bring identification so that you may be checked into the building.

COVID Building Entry Protocols:

As part of the Tennessee Pledge, the Bureau of Workers' Compensation observes and is compliant with the following building entry protocols:

- At this time, all persons working or meeting in the 220 French Landing building are required to wear a face mask.
- Additional personal protection equipment (PPE) such as a face shield are permitted but are not a replacement for a face mask.
- Upon entry, persons are required to complete a health screening by answering the following questions:

1. Have you been in close contact with a confirmed case of COVID-19 in the past 14 days? (Note: This does not apply to medical personnel, first responders, or other individuals who encounter COVID-19 as part of their professional or caregiving duties while wearing appropriate PPE.)

2. Are you experiencing a cough, shortness of breath or sore throat?

3. Have you had a fever in the last 48 hours?

4. Have you had new loss of taste or smell?

5. Have you had vomiting or diarrhea in the last 24 hours?

• Persons working or meeting in the 220 French Landing building are also required to submit to a temperature screening; persons with temperatures 100.4 degrees or higher will not be permitted to enter the building. However, an opportunity will be provided to submit comments in writing instead of in-person.

**\*\*\*NOTICE\*\*\***

Currently, Governor Lee's Emergency Order pertaining to COVID-19 that allows State Boards to hold their meetings electronically is set to expire December 27, 2020. If it does expire on that date, then this hearing will be an in-person hearing at the location and time denoted just above. If the Emergency Order is extended beyond the scheduled date of this hearing, then this hearing will be held electronically via WebEx.

In the event of an electronic hearing, members of the public may join the WebEx at the following link:

<https://tngov.webex.com/tngov/j.php?MTID=m4c5efc885e8e4d9182d287a51cdab761>

Meeting Number (Access Code): 178 103 0732

Meeting password: workerscomp

It is recommended that interested persons join the Webex several minutes early to ensure adequate time to install any mandatory plugins in order to attend the electronic rulemaking hearing.

Written comments will be accepted until March 5, 2021 and can be sent to [troy.haley@tn.gov](mailto:troy.haley@tn.gov).

## New Rules

### 0800-02-31-.01 Purpose and Scope of Rules

- (1) Purpose: The general purpose of these rules is to provide an option for employees sustaining an injury arising out of and in the course and scope of employment to utilize telehealth.
- (2) Scope: This chapter and the rules within apply to all who are subject to the provisions of the Tennessee workers' compensation law who choose to provide or to participate in telehealth.
- (3) These rules clarify and set forth guidelines for the provision of telehealth services to injured workers by employers, including insurance carriers and third-party administrators, pursuant to the workers' compensation law.
- (4) It is intended that these rules shall be construed as much as possible consistent with other Tennessee state statutes and rules, including but not limited to statutes and rules which have been enacted or promulgated by the Tennessee department of health and by the Tennessee department of commerce and insurance.
- (5) In the event that these rules may conflict with one (1) or more rules promulgated by another state agency, these rules 0800-02-31 are intended to be controlling in workers' compensation cases since they are more specifically related to the process and procedures of the workers' compensation law, set forth in T.C.A., Title 50, Chapter 6. If there is an executive order in effect that affects telehealth for workers' compensation in any way, the executive order shall preempt these rules.
- (6) In the event that these rules 0800-02-31, or any part thereof, are declared unenforceable for any reason by a court of proper jurisdiction, these rules are intended to be severable so that such rules which are enforceable may remain in full force and effect, to the extent allowed by state or federal law.

Authority: T.C.A. §§ 50-6-233, 50-6-102 and 50-6-204

### 0800-02-31-.02 Definitions

- (1) "Administrator" shall have the same definition of "Administrator" as in T.C.A §50-6-102.
- (2) "Bureau" means the Tennessee bureau of workers' compensation as defined in T.C.A. § 50-6-102, an autonomous unit attached to the Tennessee department of labor and workforce development for administrative matters only, pursuant to T.C.A. § 4-3-1409.
- (3) "Clinical health care" means the observation, interaction and treatment of individual patients.
- (4) "CMS" means the U.S. Centers for Medicare & Medicaid Services (formerly Health Care Financing Administration). The rules promulgated by CMS used in this chapter are referred to as "Medicare".
- (5) "Employer" shall have the same definition of "Employer" as in T.C.A. §50-6-102.
- (6) "Healthcare services" has the same meaning as defined in T.C.A. §56-61-102.
- (7) "Healthcare services provider" means an individual acting within the scope of a valid license issued pursuant to title 63 or any state-contracted crisis service provider employed by a facility licensed under title 33.
- (8) "Injury" shall have the same definition of "Injury" as in T.C.A. §50-6-102.
- (9) "Recording" or "recordings" means originals or copies of video and audio recordings, photographs, still pictures, and other visual images of patients. "Recording" may also mean taking video and audio recordings, photographs, still pictures, and other visual images of patients.

- (10)“Telehealth” means the distribution of health-related services and information via electronic information and telecommunication technologies.
- (11) “Telehealth for workers’ compensation” means services provided to an injured worker by a licensed telehealth provider, which may include telemedicine, in accordance with the workers’ compensation law.
- (12)“Telehealth provider” means a healthcare services provider engaged in the delivery of healthcare services through telehealth under the Tennessee workers’ compensation law and division 0800-02 of these rules.
- (13) “Telemedicine” means the use of telehealth by a telehealth provider in order to provide clinical health care.
- (14)“Workers’ compensation law” means T.C.A., Title 50 Chapter 6.

Authority: T.C.A. §§ 50-6-233, 50-6-204 and 50-6-102

#### 0800-02-31-.03 General Requirements

- (1) Medically appropriate healthcare services do not include treatment where an in-person physical examination is necessary, such as the following conditions or services:
  - (a) Anaphylactic or severe allergic reactions;
  - (b) Respiratory distress or shortness of breath;
  - (c) Difficulty speaking, altered mental status, confusion, or weakness in arms or legs of recent or acute onset;
  - (d) Chest pain or pressure;
  - (e) Post seizure or epilepsy episode;
  - (f) Any bleeding that has not already stopped by direct pressure;
  - (g) Significant burns (with or without blistering);
  - (h) Human or animal bites;
  - (i) Serious penetrating wounds or embedded foreign bodies;
  - (j) Complicated eye injuries;
  - (k) Deformity of extremity or suspicion for a fracture, unless an X-ray is available;
  - (l) Significant physical trauma;
  - (m) Severe headaches;
  - (n) Dizziness;
  - (o) Loss of consciousness for any reason;
  - (p) Physical therapy initial assessment; or
  - (q) Other types of manual therapy.

(2) The list of health conditions in paragraph (1) above is not exhaustive or proscriptive. There may be extra-

ordinary or extenuating circumstances where some of the above conditions might be appropriate for telehealth, such as situations or settings where in-person immediate care cannot be given in a timely manner.

- (3) Health benefits provided through a telehealth encounter under the workers' compensation law shall comply with all state requirements.
- (4) Telehealth providers shall be held to the same standard of care as healthcare services providers providing the same healthcare services through in-person encounters.
- (5) Telehealth providers rendering healthcare treatment and/or healthcare services to an injured worker claiming benefits under the Tennessee workers' compensation law at the time of the telehealth consult shall be licensed according to the Tennessee statutes, rules, or executive orders in effect at the time of service by the provider's appropriate licensing board and shall comply with the workers' compensation law and the rules and regulations of both the bureau and the Tennessee department of health.
- (6) An employer shall provide coverage for workers' compensation medical services provided during a telehealth encounter in a manner that is consistent with what the workers' compensation law requires for in-person encounters for the same healthcare service(s). Payment shall be in accordance with the Tennessee workers' compensation medical fee schedule in effect on the date of service.
- (7) Records/recording requirements for telehealth services shall be the same as if the visit with the provider were in person and face-to-face. A telehealth provider shall be compliant with all federal and state of Tennessee laws for records/recording. A recording shall not substitute for a written record.
- (8) Telehealth services are subject to any and all appropriate utilization review protocols or other protocols for healthcare treatment adopted by the bureau, shall be based on evidence-based guidelines, and shall be in accordance with the Tennessee standards of medical practice.
- (9) All services shall be delivered to the eligible employee at no cost to the employee in accordance with the provisions of T.C.A. §50-6-204.
- (10) The provision of medical services via telehealth does not change or in any way affect the requirements for causation, date of maximum medical improvement, or permanent impairment ratings required of an authorized treating physician pursuant to the workers' compensation law. In all workers' compensation claims, statements of causation, date of maximum medical improvement, permanent restrictions, and permanent impairment rating(s) must be provided by a medical doctor, doctor of osteopathy, or doctor of chiropractic, in accordance with the workers' compensation law.

Authority: T.C.A. §§ 50-6-233 and 50-6-204

#### 0800-02-31-.04 Consent and Agreement of Injured Worker

- (1) Telehealth services providers must obtain electronic or written informed consent of an injured worker to accept telehealth services for any or all parts of the medical benefits to which the injured worker may be entitled under the workers' compensation law. For authorized telephone visits, verbal consent given by the patient before the service shall be documented by the provider. This service shall be in accordance with applicable CMS guidelines at the time of service.
- (2) Pursuant to T.C.A. section 50-6-204, in all reported workers' compensation claims in which the injured worker expresses a need for medical care, the employer must provide the injured worker with a panel of three (3) or more independent reputable physicians, surgeons, chiropractors or specialty practice groups, in accordance with bureau rules and pursuant to the workers' compensation law. Provided that an injured worker is given a choice by the employer of three (3) or more medical providers who are qualified, willing and able to timely treat the injured worker's injury in person, medical providers listed on a panel may, with the injured worker's consent, provide their services via telehealth, in accordance with the provisions of the Tennessee workers' compensation law and all applicable rules and regulations of the state of Tennessee. Telehealth provider(s) may be considered as an additional option(s) to the three (3) provider panel.

- (3) Before receiving medical benefits in the form of telehealth, an injured worker must be given an opportunity to request and receive in-person medical assessment and treatment.
- (4) An injured worker may refuse a telehealth encounter at the time of the panel choice, without affecting future care or treatment to which the injured worker is entitled. If at the time of the panel choice, the injured worker refuses a telehealth choice, the panel offered shall include three (3) or more independent reputable physicians, surgeons, chiropractors or specialty practice groups who are qualified, willing and able to timely see and treat the injured worker in person.
- (5) The injured worker has the option to refuse telehealth during the initial visit or follow up visits and to request that visits occur in person. If this occurs, and if the authorized treating physician agrees, the initial or remaining office visits with the authorized treating physician shall be in person. If the authorized treating physician declines to see the worker in person, the worker shall select a new authorized treating physician choice from the names remaining on the original panel offered to the worker at the time the injury was reported. This subsequent choice becomes the new authorized treating physician.
- (6) An injured worker shall have access to healthcare information resulting from a telehealth encounter as provided by any state of Tennessee and federal laws. Whenever an injured worker selects telehealth as an option, the telehealth provider shall retain all medical records and documentation of the telehealth encounter, in accordance with any state of Tennessee and federal laws.
- (7) Before an injured worker agrees to accept telehealth as part or all of his/her workers' compensation medical benefits, a telehealth provider shall identify himself/herself by name and location and provide photo identification, a full spelling of their name, degree, specialty, and a state professional license number, preferably a Tennessee professional license. The telehealth provider shall also identify the names and job titles of any other health care professionals or persons present in the room with the telehealth provider before and during the telehealth encounter.
- (8) Before an injured worker receives telehealth treatment or care, the injured worker shall identify himself/herself by name and location and by showing to the provider a valid state or federally issued form of identification containing the injured worker's name and photograph. Upon notice to the medical provider, an injured worker may allow other person(s) who shall be identified to the provider to be present on the injured worker's behalf during the telehealth encounter.
- (9) Before electronically recording a telehealth encounter, the telehealth provider shall provide notice of such recording to an injured worker. An injured worker may object to the recording of a telehealth encounter. If such an objection is raised, the telehealth encounter shall not be recorded. If the injured worker consents to telehealth, but not to recording the telehealth encounter, the telehealth provider shall still make a traditional medical note of the telehealth encounter.
- (10) In addition to telehealth treatment consent before the telehealth encounter, the injured worker and the telehealth provider shall both acknowledge at the end of the session that they agreed that telehealth was appropriate for the injured workers' medical condition, that the injured worker had agreed to receive medical care through telehealth, and that the technology used for the telehealth encounter was functioning correctly.
- (11) Any additional individual in attendance at any part or all of a telehealth visit, such as a case manager, shall identify himself/herself by name, affiliation, a photo identification, title, degree, and location.

Authority: T.C.A. §§ 50-6-233 and 50-6-204

#### 0800-02-31-.05 Billing and Reimbursement for Telehealth Services

- (1) Except when a medical fee waiver in accordance with Tenn. Comp. R. and Regs. 0800-02-17-.18 is obtained from the bureau, nothing in this chapter 0800-02-31 shall require an employer to pay a total reimbursement for a telehealth for workers' compensation encounter, including the use of telehealth

equipment, in an amount that exceeds the amount that would be paid for the same service provided by a healthcare services provider in an in-person encounter under the medical fee schedule set forth in chapters 0800-02-17, 18, and 19 of Tenn. Comp. R. and Regs. The Tennessee medical fee schedule, including but not limited to Tennessee specific conversion percentages, shall apply to the providers of telehealth services rendered pursuant to the workers' compensation law.

- (2) Billing for telehealth services shall be by standard HCFA-1500 using the modifier 95, and their appropriate place of service code, or their successors as used by CMS. The provider shall append modifier -95 to the procedure code with place of service code -02 to indicate services were provided via telemedicine. All other modifiers should also be added to the procedure code as applicable.
- (3) When a procedure is provided using telemedicine, reimbursement shall be as follows:  
The procedure code is reimbursed at the non-facility Medicare maximum allowable payment, or the billed charge, whichever is less, regardless of the practitioner's physical location at the time of service.
- (4) Coding and billing regulations shall follow the Medicare guidelines in effect for the date of service with no geographic qualifier.

Authority: T.C.A. §§ 50-6-233 and 50-6-204

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: 12/1/2020

Signature: \_\_\_\_\_



Name of Officer: Abbie Hudgens

Title of Officer: Administrator

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Filed with the Department of State on: 12/21/2020



Tre Hargett  
Secretary of State

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