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Sequence Number: 12-26-13
Notice ID(s): 2109-211
File Date: 12/18/23

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:	Tennessee Department of Labor and Workforce Development
Division:	Workers' Compensation
Contact Person:	Josh Baker
Address:	220 French Landing Drive, Nashville, Tennessee 37243
Phone:	(615) 253-6909
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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:

ADA Contact:	Evelyn Gaines-Guzman 220 French Landing Drive Floor 4-A
Address:	Nashville, Tennessee 37243
Phone:	(615) 253-1331
Email:	evelyn.gaines.guzman@tn.gov

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

Address 1:	The Tennessee Room		
Address 2:	220 French Landing Drive		
City:	Nashville, Tennessee		
Zip:	37243		
Hearing Date :	February 14, 2014		
Hearing Time:	10:00 am	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Additional Hearing Information:

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
0800-02-01	General Rules of the Workers' Compensation Program
Rule Number	Rule Title
0800-02-01-.25	Medical Panels

Chapter Number	Chapter Title
0800-02-20	Medical Impairment Rating Registry Program
Rule Number	Rule Title
0800-02-20-.01	Definitions

Chapter Number	Chapter Title
0800-02-23	Enforcement Procedures for the Court of Workers' Compensation Claims
Rule Number	Rule Title
0800-02-23-.01	Scope
0800-02-23-.02	Securing Compliance with Orders
0800-02-23-.03	Referrals for Penalty Assessment
0800-02-23-.04	Investigation of Referrals for Penalty Assessment
0800-02-23-.05	Assessment of Civil Penalty
0800-02-23-.06	Appeals of Civil Penalty Assessment
0800-02-23-.07	Payment

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

New Rules

Chapter 0800-02-01 General Rules of the Workers' Compensation Program

Chapter 0800-02-01 is amended by adding the following as a new rule:

Rule 0800-02-01-.25 Medical Panels

- (1) Time requirement for provision of panel of physicians. Upon notice of any workplace injury, other than a minor injury for which no person could reasonably believe requires treatment from a physician, the employer shall immediately provide the injured employee a panel of physicians that meets the statutory requirements for treatment of the injury. In any case where the employer fails to provide a panel of physicians to the employee within a reasonable amount of time, but in no instance longer than three (3) business days from the date the employer has notice of an injury that would qualify for medical benefits, or provides a panel of physicians to the injured employee that does not meet statutory requirements on more than one (1) occasion for the subject injury, the employer shall be assessed a civil penalty, not to exceed five thousand dollars (\$5,000).
- (2) Provision of three (3) physician list upon referral by original treating physician. In cases where the authorized treating physician, selected by the employee from the original three (3) physician panel provided by the employer, refers the employee for specialized care, the employer will have accepted the referral and must provide treatment to the employee through the referred physician unless the employer provides a panel of three (3) specialists within three (3) business days of receiving the referral issued by the authorized treating physician. If a panel of three (3) specialists is provided, the employee shall select a provider from the panel and that provider shall become the employee's authorized treating physician. For purposes of this section, receipt of the referral by the employer shall be accomplished whenever a copy of the referral is received at the employer or carrier's place of business by facsimile, email, post, hand delivery or commercial delivery service. The original treating physician shall submit notice of the referral to the employer on a form provided by the Division.

Authority: T.C.A. § 4-3-1409; Public Chapter 289 (2013); Sections 37, 73

Chapter 0800-02-01 is amended by adding the following as a new rule:

Rule 0800-02-01-.26 Second Injury Fund Reimbursements

- (1) Any party seeking reimbursement from the second injury fund pursuant to T.C.A. § 50-6-238(b) (2013) SS-7037 (October 2011)

shall submit proof of the amount of money paid pursuant to the order of the specialist concurrently with the party's submission of a certified copy of an appropriate order to the Division via certified mail.

- (2) A copy of a signed SD-1 form for the claim shall constitute proof of payment. If an SD-1 is not available, any of the following may be submitted as proof of payment:
 - a. Copies of EOB's from the provider showing the provision of medical services for the claim;
 - b. Copies of checks demonstrating payment for temporary disability or medical benefits provided to provided for the claim; or
 - c. Any other proof of payment deemed acceptable by the Division.
- (3) A reimbursement request that does not include documentation satisfying the requirements of this rule shall not be considered as having been received by the Division and interest, as provided by T.C.A. § 50-6-238(b) (2013), shall not begin to accrue until documentation has been received by the Division.

Authority: T.C.A. § 4-3-1409, 50-6-238 (2013); Public Chapter 289 (2013); Sections 37, 73

Chapter 0800-02-23
Enforcement Procedures for the Court of Workers' Compensation Claims

Rule 0800-02-23.01 Purpose and Scope

These rules are intended to ensure the effective and expedient resolution of workers' compensation claims within the adjudication process provided through the court of workers' compensation claims and the attendant mediation process. These rules govern only the procedures for the assessment of civil penalties that arise from actions related to the adjudication of claims with a date of injury that is on or after July 1, 2014, in the court of workers' compensation claims and the attendant mediation process. In addition to these penalties, the Division may also assess civil penalties, where appropriate, pursuant to Division rules.

Authority: T.C.A. § 50-6-118 as amended by Public Chapter 289 (2013), Section 17

Rule 0800-02-23-.02 Securing Compliance with Orders

- (1) Whenever a judge has issued an interlocutory or final order in a workers' compensation claim and a party has failed to comply with that order, the party seeking enforcement of the order may file a motion with the court requesting that the court enforce the terms of the order.
- (2) Before filing the motion, the moving party must contact the clerk's office to obtain a date that the judge is available to hear the motion. The moving party shall include a notice of hearing in the motion setting forth the date and time of the hearing before filing the motion with the clerk. The moving party shall serve a copy of the motion and notice upon all other parties to the claim in the manner provided by rule 0800-02-21-.09.
- (3) All parties may file a response to the motion. Any response must be filed with the clerk and served upon all other parties to the claim in the manner provided by rule 0800-02-21-.09. All responses must be filed and served not later than five (5) calendar days before the scheduled hearing.
- (4) If at the hearing, the judge determines that a party may have failed to comply with the order at issue, the judge, in addition to ordering compliance with the order, may refer the noncompliant party to the Division's penalty program for the assessment of a civil penalty.

Authority: T.C.A. § 50-6-118 as amended by Public Chapter 289 (2013), Sections 17, 82

Rule 0800-02-23-.03 Referrals for Penalty Assessment

In addition to referrals made by a workers' compensation judge, any Division employee may refer any person or entity to the penalty program for the assessment of a civil penalty whenever the referring employee believes that there may have been a violation of the Division's rules or the Tennessee Workers' Compensation Act. Pursuant to this chapter, the penalty program shall be responsible for investigating all

referrals for civil penalties, making determinations of whether assessment of a civil penalty is appropriate under the circumstances, assessing civil penalties, collecting civil penalties, and appearing at contested case hearings whenever a party that has been assessed a civil penalty chooses to challenge the assessment.

Authority: T.C.A. § 50-6-118 as amended by Public Chapter 289 (2013), Sections 17, 82

Rule 0800-02-23-.04 Investigation of Referrals for Penalty Assessment

- (1) Upon receipt of a referral, the referral shall be assigned to an employee of the penalty program who shall attempt to collect all information necessary to determine whether a civil penalty should be assessed.
- (2) In investigating a referral, the investigating employee may contact any person or entity involved in the claim.
- (3) Any person or entity contacted by a penalty program employee for the purpose of investigating a potential penalty shall be required to cooperate with the investigating employee. Further, any person or entity contacted shall be required to provide all documents or information requested by the investigating employee. Failure to provide documents or information to the penalty program employee pursuant to this paragraph may result in the assessment of additional civil penalties. However, counsel for a party to a claim shall not be required to provide any information that is protected by the attorney client privilege unless the privilege has been waived.

Authority: T.C.A. § 50-6-118 as amended by Public Chapter 289 (2013), Sections 17, 82

Rule 0800-02-23-.05 Assessment of Civil Penalty

- (1) Upon completing the investigation, the investigating employee may assess a civil penalty for each action of not less than fifty dollars (\$50) but no more than ten thousand dollars (\$5,000) against the person or entity that is the subject of the referral only if the investigating employee determines, based upon the totality of the circumstances, that the person or entity did not act in good faith in performing the actions that are the subject of the penalty referral or did not pay an assessed penalty in a timely manner. For purposes of this section, a person has not acted in good faith when the person or entity has performed any of the following acts without justifiable reason in the opinion of the investigating employee:
 - a. Failed to attend a scheduled alternative dispute resolution proceeding;
 - b. Arrived more than thirty minutes late to any scheduled alternative dispute resolution proceeding without previously notifying the mediator of their tardiness;
 - c. Denied or stopped providing benefits for a claim of temporary disability or medical benefits without first performing a reasonable investigation of the claim;
 - d. Provided medical providers on a Form C-42 that the party knows, or has good reason to believe, will not provide treatment for the injured employee
 - e. Provided medical providers on a Form C-42 in an untimely manner;
 - f. Failed to provided within a reasonable amount of time with any appropriate request or directive of an ombudsman;
 - g. Failed to timely provide documents as required by the Tennessee workers' compensation act or the Division's rules; or
 - h. Failed to provide a representative with authority to settle a case to attend an alternative dispute resolution proceeding.
- (2) In addition to the assessment authority provided in paragraph (1), the investigating shall assess a civil penalty of not less than fifty dollars (\$50) but no more than ten thousand dollars (\$5,000) against the person or entity that has failed to comply with any order of a workers' compensation judge in a timely manner or has performed any of the actions enumerated in § 29-9-102 in relation to any proceedings in the court of workers' compensation claims. In assessing this penalty, the investigating employee shall not be required to determine that the person or entity acted in bad faith.
- (3) The investigating employee shall send written notice of the assessment to the assessed party in the manner provided by rule 0800-02-21-.09.
- (4) The person or entity against whom the penalty has been assessed shall have fifteen (15) calendar days

from the date the penalty is assessed to challenge the assessment by requesting a contested case hearing. If a contested case hearing is not timely requested, the penalty shall become due and payable and shall not be subject to further review.

- (5) Failure to pay the penalty within five (5) business days after it has become due and payable may result in the assessment of additional civil penalties.
- (6) In addition to these penalties, the investigating employee shall assess a civil penalty of up to five thousand dollars (\$5,000) for a violation of rule 0800-02-01-.25(1).

Authority: T.C.A. § 50-6-118 as amended by Public Chapter 289 (2013), Section 17

Rule 0800-02-23-.06 Appeals of Civil Penalty Assessment

- (1) All requests for a contested case hearing must be made in writing, addressed to the investigating employee, and must include a copy of the penalty assessment.
- (2) A request for a contested case hearing shall not be timely unless the request is received by the Division before the close of business on the fifteenth (15th) calendar day after the date the penalty was assessed.
- (3) If the referral for a civil penalty was made by a workers' compensation judge, the judge who made the referral shall not be required to provide testimony, via deposition or in person, at the contested case hearing.
- (4) After the request has been filed, the contested case hearing shall be conducted in the manner provided by Tenn. Comp. R. & Regs. Chapter 0800-02-13-.17.

Authority: T.C.A. § 50-6-118 as amended by Public Chapter 289 (2013), Section 17

Rule 0800-02-23-.07 Payment

- (1) Unless otherwise provided by law, penalties shall be made payable to the Division of Workers' Compensation. Payment may be made by check or credit card and, if made by check, must be mailed to the Division at the address provided on the penalty assessment notice.
- (2) All money collected by the Division for assessment of penalties under this Chapter shall be deposited in the Division's general account to be used to offset the cost of administering the Tennessee Workers' Compensation Reform Act of 2013 and any subsequent revisions to the Act.

Authority: T.C.A. § 50-6-118 as amended by Public Chapter 289 (2013), Section 17

Rule Amendments

Chapter 0800-02-20 Medical Impairment Rating Registry Program

Rule 0800-02-20-.01 Definitions is amended by deleting the current language of paragraph (6) in its entirety and substituting, instead, the following:

"Dispute of degree of medical impairment" means the authorized treating physician has issued a permanent medical impairment rating in compliance with the Act and either party disagrees as to the permanent medical impairment rating, but does not include a disagreement or dispute concerning the compensability of the employee's workers' compensation injury.

Authority: T.C.A. § 50-6-204

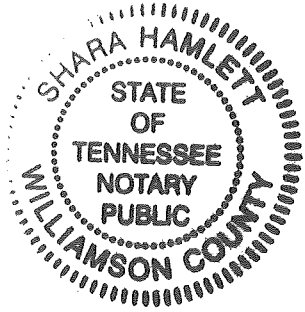
I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: December 18, 2014

Signature: *Abbie Hudgens*

Name of Officer: Abbie Hudgens

Title of Officer: Administrator, Division of Workers' Compensation



Subscribed and sworn to before me on: December 18, 2013

Notary Public Signature: *Shara Hamlett*

My commission expires on: January 24, 2016

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Filed with the Department of State on: 12/18/13

Tre Hargett

Tre Hargett
Secretary of State

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