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Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Department of Labor and Workforce Development
Division:	Bureau of Workers' Compensation
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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 and Reimbursement for Telehealth Services

New Rules
0800-02-31
Telehealth for Workers' Compensation

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 and 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).
- (5) "Employer" shall have the same definition of "Employer" as in T.C.A. § 50-6-102.
- (6) "Healthcare services" shall have 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) "Medicare" means the rules promulgated by CMS used in this chapter.
- (10) "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.

- (11) "Telehealth" means the distribution of health-related services and information via electronic information and telecommunication technologies.
- (12) "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.
- (13) "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.
- (14) "Telemedicine" means the use of telehealth by a telehealth provider to provide clinical health care.
- (15) "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) Telehealth for workers' compensation is an available option for medically appropriate healthcare services to be provided with the voluntary consent and agreement of the injured worker and the willingness of the healthcare services provider as provided in these rules.
- (2) 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; or
 - (p) Manual therapy.
- (3) The list of health conditions in paragraph (2) 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.

- (4) Health benefits provided through a telehealth encounter under the workers' compensation law shall comply with all state requirements.
- (5) Telehealth providers shall be held to the same standard of care as healthcare services providers providing the same healthcare services through in-person encounters.
- (6) 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.
- (7) 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 Rule 0800-02-18 and corresponding rules for medical payments in Rule 0800-02-17 in effect on the date of service.
- (8) Records/recordings 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/recordings. A recording shall not substitute for a written record.
- (9) 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.
- (10) 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.
- (11) 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. § 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 on a Form C-42 Choice of Physicians form 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 both the injured worker's consent and the willingness of the panel-listed medical provider, 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)

listed on the Form C-42 Choice of Physicians form may be considered as an additional option(s) to those providers who are willing to treat the injured worker in person.

- (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 the telehealth choice is refused, the Form C-42 Choice of Physicians form 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 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) Whenever an injured worker consents to a telehealth encounter, the injured worker shall have access to healthcare information as provided by any state of Tennessee and federal laws. 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 his/her name, degree, specialty, and a Tennessee state professional license number. 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, and the telehealth provider shall 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, 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 Rule 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 encounter for workers' compensation, including the use of telehealth equipment, in an amount exceeding the amount that would be paid for the same service provided by a healthcare services provider during an in-person encounter under the medical fee schedule set forth in chapters 0800-02-17, 18, and 19. The

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 modifier -95 and the appropriate place of service code as specified by CMS for the date of service or their successors as used by CMS. The provider shall append modifier -95 to the CPT® code with the place of service code -02 (telehealth) or -11 (office) as specified by CMS for the date of service. All other modifiers should also be added to the CPT® 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.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Bureau of Workers' Compensation (board/commission/other authority) on 04/01/2021 (mm/dd/yyyy), and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 12/21/2020

Rulemaking Hearing(s) Conducted on: 2/19/2021

Date: 04/01/2021

Signature: 


Name of Officer: Abbie Hudgens

Title of Officer: Administrator

Agency/Board/Commission: Bureau of Workers' Compensation

Rule Chapter Number(s): 0800-02-31

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.


Herbert H. Slatery III
Attorney General and Reporter
7/19/2021
Date

Department of State Use Only


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Tre Hargett
Secretary of State

Public Hearing Comments

1. Comment from Lisa Anne Bickford, Director of Government Relations for Coventry:

The initial assessment of physical or manual therapy should be able to be provided via telehealth or telerehab, especially during the pandemic. It has been an essential service for a number of the injured workers that Coventry has referred out. Coventry's preference would be to continue to allow injured workers to make use of physical therapy provided through telehealth or via tele-rehabilitation, assuming that the provider who's providing it is able and willing to do so and has experience with that type of manual therapy delivered over an electronic interface.

Bureau Response: We agree and have deleted prior subparagraph (1)(p) in Tenn. Comp. R. and Regs 0800-02-31-.03 as to physical therapy initial assessment.

2. Comment from Alan Meade, Chapter President of the American Physical Therapy Association-Tennessee, and also the Director of Rehab Services for Holston Medical Group in the upper east Tennessee Tri-Cities area:

The prohibition against an initial assessment for physical therapy should be removed so that Physical Therapists should be able to do initial assessments and be reimbursed for that. Without such a change, it may put a barrier for Physical Therapists to not even want to do workers' compensation.

Bureau Response: We agree and have deleted the prior subparagraph (1)(p) in Tenn. Comp. R. and Regs 0800-02-31-.03.

3. Comment from Giovanni Gallara, Chief Clinical Services Officer for Concentra Urgent Care:

The prohibition against an initial assessment for physical therapy should be removed so that Physical Therapists should be able to do initial assessments.

Bureau Response: We agree and have deleted the prior subparagraph (1)(p) in Tenn. Comp. R. and Regs 0800-02-31-.03.

4. Comment from Keith W. Harned, Director of Safety for the Lee Company:

The prohibition against an initial assessment for physical therapy should be removed so that Physical Therapists should be able to do initial assessments.

Bureau Response: We agree and have deleted the prior subparagraph (1)(p) in Tenn. Comp. R. and Regs 0800-02-31-.03.

5. Comment from Lisa Anne Bickford, Director of Government Relations for Coventry:

Coventry appreciates the exception in Tenn. Comp. R. and Regs. 0800-02-31-.03(2) with respect to extraordinary circumstances. Coventry also appreciates the inclusion of that which might be at least one mechanism for an injured worker to still be able to keep up with their therapy regimens, and still stay safe from exposure during the pandemic.

Bureau Response: We agree.

6. Comment from Lisa Anne Bickford, Director of Government Relations for Coventry:

Tenn. Comp. R. and Regs. 0800-02-31-.04(3) states that, 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. Should that be a scripted question that's asked at triage? Perhaps some clarification would be helpful. Also, Tenn. Comp. R. and Regs. 0800-02-31-.04(10) states that, in addition to telehealth treatment consent before the telehealth encounter, the injured worker and telehealth provider shall both acknowledge at the end of the session that they agreed that telehealth was appropriate for the injured worker's medical condition, that the injured worker had agreed to receive medical care through telehealth, and that the technology used for the telehealth was properly functioning. So again, is there a particular script that the bureau is looking for? Are there particulars that should be included? Is there a particular manner in which the bureau is looking for feedback from the injured worker in that regard?

Bureau Response: Telehealth treatment consent before the telehealth encounter and the acknowledgement at the end of the session should both be documented the same way informed consent is currently documented by medical providers.

7. Comment from Lisa Anne Bickford, Director of Government Relations for Coventry:

What if there's a "no" by any party to treatment via telehealth? Where does that leave us? In whose opinion? Coventry does, of course, appreciate the fact that it is very important to have consent, and make sure everybody's on the same page. So Coventry appreciates where the bureau is coming from, with respect to that, but just for those of us who provide those services, we would like to try to make sure that we're compliant and making sure we're implementing the rules correctly.

Bureau Response: The provision of medical care and treatment via telehealth is voluntary upon agreement by all parties. If any one (1) party does not wish for the medical care and treatment to be provided via telehealth, the workers' compensation medical care and treatment for the injury must be provided in person.

8. Comment from Greg Gilbert, Chief Reimbursement and Government Relations Officer for Concentra:
The telehealth rules require following Bureau and Medicare Rules. Medicare Rules on telemedicine limit telemedicine to only a rural/urban setting, allowing no urban to urban provision of telemedicine.

Bureau Response: The draft Tenn. Comp. R. and Regs. 0800-02-31-.05(4) "Billing and Reimbursement for Telehealth Services" states, in part, as follows: "Coding and billing regulations shall follow the Medicare guidelines in effect for the date of service with no geographic qualifier." For this reason, urban to urban provision of telemedicine would be allowed by the draft rules.

9. Bureau Comment: For clarity, we have deleted the language "other types of" from the prior subparagraph (1)(q) as noted in the notice of rulemaking hearing form, so that the new subparagraph (1)(p) reads "Manual therapy". With the deletion of subparagraph (p) in the notice of rulemaking hearing, "Manual therapy" is moved up to subparagraph (1)(p).

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

1. The type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule: The amended rules should not affect small employers that fall under the Tennessee Workers' Compensation Laws, which would be employers with at least five employees, or for those in the construction industry at least one employee. There should be no additional costs associated with these rule changes.
2. The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record: There is no additional record keeping requirement or administrative cost associated with these rule changes.
3. A statement of the probable effect on impacted small businesses and consumers: These rules should not have a negative impact on consumers or small businesses.
4. A description of any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business: There are no less burdensome methods to achieve the purposes and objectives of these rules.
5. Comparison of the proposed rule with any federal or state counterparts: None.
6. Analysis of the effect of the possible exemption of small businesses from all or any part of the requirements contained in the proposed rule: Exempting small businesses could frustrate the small business owners' access to the services provided by the Bureau of Workers' Compensation and timely medical treatment for injured workers, which would be counter-productive.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly.)

These proposed rules will have little, if any, impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

These rules are new rules for telehealth in workers' compensation.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A. § 50-6-233: The bureau's administrator may promulgate rules and regulations implementing the workers' compensation law. Also, PC 929 (2018) requires certain policies to be promulgated as rules.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Workers' compensation insurance carriers and employers, including self-insured employers, along with injured workers, will be affected by the adoption or rejection of these rules.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

None.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

The overall effect will have minimal fiscal impact upon state or local government.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Troy Haley, Legal Services Director, Bureau of Workers' Compensation

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Troy Haley, Legal Services Director, Bureau of Workers' Compensation

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

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- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None.