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Sequence
 Number: 09-18-18
 Notice ID(s): 2883
 File Date: 8/21/18

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:	Department of Labor and Workforce Development
Division:	Bureau of Workers' Compensation
Contact Person:	Troy Haley
Address:	220 French Landing Dr. 1-B, Nashville, TN 37243
Phone:	615-532-0179
Email:	troy.haley@tn.gov

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

ADA Contact:	Troy Haley
Address:	220 French Landing Dr. 1-B, Nashville, TN 37243
Phone:	615-532-0179
Email:	troy.haley@tn.gov

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 :	10/16/18		
Hearing Time:	10:00 a.m.	<input checked="" type="checkbox"/> 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
0800-02-30	Uninsured Employers Fund Benefits
Rule Number	Rule Title
0800-02-30-.01	Purpose and Scope of Rules
0800-02-30-.02	Definitions
0800-02-30-.03	General Requirements
0800-02-30-.04	Available Benefits
0800-02-30-.05	Requirements for Payment of Benefits
0800-02-30-.06	Investigation
0800-02-30-.07	Mediation
0800-02-30-.08	Court of Workers' Compensation Claims Processes
0800-02-30-.09	Payments from the Fund
0800-02-30-.10	Recovery from Employer

Chapter 0800-02-30
Uninsured Employers Fund Benefits
New Rules

0800-2-30-.01 Purpose and Scope of Rules

- (1) The purpose of these rules is to establish the processes and procedures for administering the Uninsured Employers Fund in T.C.A. § 50-6-801 et seq.
- (2) These procedures apply to all claims by eligible employees submitted to the Bureau of Workers' Compensation in accordance with T.C.A. § 50-6-801 et seq. The provisions of this chapter apply to all employers, adjusters and providers of services related to claims in the State of Tennessee subject to the Workers' Compensation Law.

Authority: T.C.A. §§ 50-6-801, 802, and 803.

0800-2-30.02 Definitions

- (1) "Act": Tennessee Code Annotated, Title 50, Chapter 6.
- (2) "Administrator": The same definition as in T.C.A § 50-6-102.
- (3) "Bureau": The Tennessee Bureau of Workers' Compensation as defined in T.C.A. § 50-6-102, an autonomous unit attached to the Department of Labor and Workforce Development for administrative matters only under T.C.A. § 4-3-1409.
- (4) "Claim": A demand for something as due; or an assertion of a right or an alleged right.
- (5) "Claimant": An individual who is claiming benefits under the Tennessee workers' compensation law.
- (6) "Court": The Court of Workers' Compensation Claims.
- (7) "Employee": The same definition as in T.C.A. § 50-6-102.
- (8) "Employer": The same definition as in T.C.A. § 50-6-102.
- (9) "Fund" and "UEF": The Uninsured Employers Fund established in T.C.A. § 50-6-801.

- (10) "Mediator": A Bureau of Workers' Compensation employee who has received training in alternative dispute resolution, as described in T.C.A. § 50-6-236.
- (11) "Ombudsman": A Bureau of Workers' Compensation employee who assists injured workers in resolving disputes and obtaining information available under the Tennessee workers' compensation law, as described in T.C.A. § 50-6-216.
- (12) "Third Party Administrator": An organization that has contracted with the Bureau to handle administrative claims for benefits under the Uninsured Employers Fund benefit program.

Authority: T.C.A. §§ 4-3-1409, 50-6-102, 216, 236, 801, 802, 803.

0800-2-30-.03 General Requirements

An employee is eligible, subject to approval by the Bureau of Workers' Compensation Administrator, within the meaning provided by this section if: (1) The employee was employed by an uninsured employer; (2) The employee suffered an injury on or after July 1, 2015, arising primarily out of and in the course and scope of employment at a time when the employer was uninsured; (3) The employee was a Tennessee resident on the date of injury; (4) The employee notified the bureau of the injury and the employer's lack of insurance coverage no more than sixty (60) days after the date of the injury; and (5) except as provided in § 50-6-802(d) and (e), the employee secured a judgment for workers' compensation benefits against the employer.

Authority: T.C.A. §§ 50-6-801, 802, 803.

0800-2-30-.04 Available Benefits

- (1) The following benefits are available to an eligible employee: temporary disability benefits up to \$20,000.00; and medical benefits up to \$20,000.00, to include a medical causation evaluation and mileage reimbursement if ordered by the Court of Workers' Compensation Claims.
- (2) The maximum benefit is \$40,000.00, including applicable mileage reimbursement and any medical causation evaluation.
- (3) The cost of a medical causation evaluation may be paid by the Fund without an order from the Court of Workers' Compensation Claims.
- (4) Reasonable mileage reimbursement may be paid to an eligible employee subject to applicable state employee maximums.
- (5) All medical costs must be paid under the Medical Fee Schedule pursuant to Rules 0800-2-17, 0800-2-18 and 0800-2-19. The bureau shall have the authority to waive this requirement when necessary to provide treatment for an injured employee, as provided in T.C.A. § 50-6-204.

Authority: T.C.A. §§ 50-6-204, 205, 50-6-801, 802, 803.

0800-2-30-.05 Requirements for Payment of Benefits

- (1) An Expedited Request for Investigation may be filed to confirm eligibility for benefits from the Uninsured Employers Fund.
- (2) The Notice to the Uninsured Employer must be included on the petition for benefit determination and the cover letters to the dispute certification notices. The notice language informs the employer that

benefits may be paid by the bureau and that the bureau will seek to collect the amount expended by the state from the employer under T.C.A. § 50-6-803.

- (3) The Uninsured Employers Fund claims manager is the designated bureau employee who will interact between the bureau and the third-party administrator. A third-party administrator will be contracted to provide services and access to medical networks and to monitor billing compliance.
- (4) The referral of the injured worker to obtain a medical causation opinion will take place in consultation with the Uninsured Employers Fund Benefits claims manager.
- (5) Benefits will not be paid without a court order to support a lien against the employer.

Authority: T.C.A. §§ 50-6-801, 802, 803.

0800-2-30.06 Investigation

- (1) If the bureau receives information about a work injury involving an uninsured employer, an Expedited Request for Investigation is required.
- (2) The bureau employee notified about the work injury and lack of insurance coverage will submit a completed Expedited Request for Investigation to uef.compliance@tn.gov and, if applicable, refer the injured worker to an ombudsman.
- (3) The assigned Uninsured Employer's Fund compliance investigator will gather facts relating to eligibility in addition to conducting a standard investigation, and the compliance investigator will conduct and complete a report within ten (10) business days. The report must contain the four (4) major eligibility requirements.
- (4) The investigation will use the same protocol as other investigations to work in conjunction with the mediator.

Authority: T.C.A. §§ 50-6-801, 802, 803.

0800-2-30-.07 Mediation

- (1) Upon assignment of a petition for benefit determination for an Uninsured Employers Fund claim, the bureau mediator will attempt to contact the employer and employee for voluntary mediation and will notify the Uninsured Employers Fund claims manager who will determine if the circumstances suggest a need for a medical causation opinion.
- (2) If an alleged employer is unwilling to mediate or fails to respond to requests to mediate, the mediator must issue a dispute certification notice. The dispute certification notice must indicate the issues, the employee's eligibility for Uninsured Employers Fund benefits, temporary disability benefits and medical benefits. Under T.C.A. § 50-6-236, a dispute certification notice will also note an alleged employer who fails to cooperate with scheduling mediation.
- (3) On agreement, the mediator must complete the Uninsured Employers Fund settlement agreement as prescribed by the Administrator and arrange for court approval of the agreement and the issuance of an agreed order with a judge in the proper jurisdiction.
- (4) In the event of an impasse, the employee's eligibility for Uninsured Employers Fund benefits must be included as an issue on the dispute certification notice. In addition, the cover letter to the first and second dispute certification notices must include the petition for benefit determination notice language.
- (5) The mediator must send the dispute certification notice or settlement agreement to the Uninsured

Employers Fund benefit claim manager.

Authority: T.C.A. §§50-6-216, 236, 801, 802, 803.

0800-2-30-.08 Court of Workers' Compensation Claims Processes

- (1) The Court of Workers' Compensation Claims will follow statutory guidelines, existing hearing procedures and protocol for expedited hearings and compensation hearings.
- (2) The Court of Workers' Compensation Claims will consider the investigator's report and if applicable the medical causation report.
- (3) The Court of Workers' Compensation Claims will make additional findings consistent with T.C.A. § 50-6-801(d) and include specific language in the order.
- (4) If settled through mediation, the Court will conduct an approval hearing for the proposed settlement of interlocutory temporary disability and medical benefit issues. The Court may approve or deny the proposed settlement agreement.
- (5) The UEF claims manager will receive the order and transmit it to the third-party administrator for servicing if approved by the Court of Workers' Compensation Claims.

Authority: T.C.A. §§ 50-6-239; 50-6-801, 802, 803.

0800-02-30-.09 Payments from the Fund

- (1) Annually the bureau will contract with a third-party claim administrator to administer UEF claims. The third-party claim administrator will request, receive, and review medical records and medical bills and will submit recommendations to pay temporary disability benefits and medical benefits via a voucher to the claim administrator.
- (2) Payments for temporary disability benefits and medical benefits will not be issued unless the bureau has on file: IRS form W-9 "Request for Taxpayer Identification Number and Certification;" an expedited hearing order; and a voucher from the claim administrator recommending payment to medical providers or injured workers or payment of attorney's fees, and child support liens.
- (3) The bureau will establish the injured worker and each medical provider as a vendor in the state system for payments.
- (4) The bureau will maintain financial records to document payments for contract services, total medical payments made per each injured worker, total disability benefits, monthly benefit payments and payments per fiscal year.
- (5) Any costs associated with a third party administrator, along with any other administrative costs, shall be paid by the bureau administrator from the Fund.

Authority: T.C.A. §§ 50-6-801, 802, 803.

0800-02-30-.10 Recovery from Employer

- (1) The bureau administrator may pay from the Fund reasonable expenses of collection and enforcement, including filing fees and collection expenses incurred by the bureau. The administrator may recover these fees and expenses from employer.
- (2) The bureau shall assume the rights of a creditor against an employer for money paid by the bureau administrator pursuant to statute or rule, and may place a lien on the assets of the employer by filing a

notice of claim with the register of deeds of any county where the employer has assets. Upon filing the notice of claim with the appropriate official, the bureau shall be a secured creditor.

Authority: T.C.A. §§ 50-6-801, 802, 803.

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: August 21, 2018

Signature: *Abbie Hudgens*

Name of Officer: Abbie Hudgens

Title of Officer: Administrator



Subscribed and sworn to before me on: August 21, 2018

Notary Public Signature: *Shara Hamlett*

My commission expires on: 2/19/20

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Filed with the Department of State on: 8/21/18

Tre Hargett
Tre Hargett
Secretary of State

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