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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. T.C.A. § 4-5-205

Agency/Board/Commission:	Department of Labor and Workforce Development
Division:	Workers' Compensation
Contact Person:	Josh Baker
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Revision Type (check all that apply):

X Amendment
___ New
___ Repeal

Rule(s) Revised (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. 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-.02	Definitions
0800-02-01-.06	First Report of Injury

Chapter Number	**Chapter Title**
0800-02-06	General Rules of the Workers' Compensation Program - Utilization Review
Rule Number	**Rule Title**
0800-02-06-.12	Appeals for Pain Management Services

Chapter Number	**Chapter Title**
0800-02-13	Penalty Program
Rule Number	**Rule Title**
0800-02-13-.15	Review of Initial Order

Chapter Number	**Chapter Title**
0800-02-15	Uninsured Employers Fund
Rule Number	**Rule Title**
0800-02-15-.10	Representation at Show Cause Hearing

Chapter Number	**Chapter Title**
0800-02-20	Medical Impairment Rating Registry Program
Rule Number	**Rule Title**
0800-02-20-.01	Definitions
0800-02-20-.04	Requisite Physician Qualifications for Inclusion on Medical Impairment Rating Registry

0800-02-20-.05	Application Procedures for Physicians to Join the Registry
0800-02-20-.06	Request for a MIR Registry Physician
0800-02-20-.07	Payment/Fees
0800-02-20-.09	Communication with Registry Physicians
0800-02-20-.11	Requirements for the "MIR Report"
0800-02-20-.12	Peer Review
0800-02-20-.13	Removal of a Physician from the Registry
0800-02-20-.14	Penalties

(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)

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

Amendments

Rule 0800-02-01-.02 Definitions is amended by deleting the current language of paragraph (2) and replacing it with the following:

(2) "Director" shall mean the Director of the Workers' Compensation Division of the Tennessee Department of Labor. As of the date of filing these rules, the Director may be contacted as follows:

Director, Division of Workers' Compensation
Tennessee Department of Labor and Workforce Development
220 French Landing Drive
Nashville, Tennessee 37243

Rule 0800-02-01-.02 Definitions is amended by deleting the current language of paragraph (4) and replacing it with the following:

(4) "Filing" shall be effective when received by the Division and shall be done through electronic data interchange whenever possible.

Authority: T.C.A §§50-6-101 et seq. and 50-6-102.

Rule 0800-02-01-.06 First Report of Injury is amended by deleting the current language and replacing it with the following:

0800-02-01-.06 First Report of Injury.

Each employer, self-insured employer, and/or insurer shall file a Form C-20 (Tennessee Employer's First Report of Work Injury or Illness) in accordance with the following:

(1) The Form C-20 shall be filed with the Division in all cases where the injury or illness results in the receipt of medical treatment outside of the employer's premises, absence from work, retention of a permanent impairment, or death. Except as provided in paragraph (2) of this Rule, in no event shall the requirement to file Form C-20 differ based upon the number of days between the injury or illness and the employee's return to employment.

(2) Employers, other than self-insured employers, shall report the injuries or illnesses described in paragraph (1) of this Rule to their insurer within one (1) business day of knowledge of the injury or illness. Insurers, and self-insured employers, shall file the Form C-20 with the Division as soon as possible, but not later than fourteen (14) days after knowledge of an injury or illness of a nature that an employee does not return to his or her employment within seven (7) days after the occurrence of the injury or illness. Reports of injuries or illnesses in which an employee returns to his or her employment within seven (7) days or fewer shall be filed as soon as possible, but not later than the fifteenth (15th) day of the month following the month in which the injury or illness occurred.

(3) The penalty for non-compliance with Rule 0800-02-01-.06 is $25 for each fifteen (15) days past the required date for filing. Where non-compliance is the result of the employee's failure to provide the employer with notice of the injury, the employer shall submit written evidence of the lack of knowledge of the injury upon the Division's request. The Division may adjust and/or eliminate the penalty based on such written evidence.

Authority: T.C.A. §§50-3-701; 50-3-702; 50-6-102; 50-6-118; 50-6-201; and 50-6-233.

Chapter 0800-02-06
General Rules of the Workers' Compensation Program
Utilization Review

Amendments

Rule 0800-02-06-.12 Repealed is amended by renaming the rule "Appeals for Pain Management Services" and adding the following as the new language:

The Division shall charge a fee of no more than $224.00 per utilization review appeal for any utilization review conducted pursuant to T.C.A. § 50-6-204(j). The fee shall be paid by the employer within 30 calendar days of the Division's completion of the appeal. If the fee is not paid within such timeframe, then a 10% interest payment shall accrue for every 30 calendar days that the fee remains unpaid.

Authority: T.C.A. §§ 4-5-202, 4-5-203, 50-6-102, 50-6-124, 50-6-126, 50-6-204, and 50-6-233.

Chapter 0800-02-13
Penalty Program

Amendments

Rule 0800-02-13-.15 Review of Initial Order is amended by deleting the current language of paragraph (5) and replacing it with the following:

(5) If no action is taken by the Commissioner within twenty (20) calendar days of filing of the petition for review, the petition is deemed denied and the Initial Order shall become the Final Order. Otherwise, the Commissioner shall consider the petition for review of the Initial Order and enter a Final Order or remand the matter for further proceedings at the contested hearing level with instruction.

Authority: T.C.A. §§4-5-317, 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).

Chapter 0800-02-15
Uninsured Employers Fund

Amendments

Rule 0800-02-15-.10 Representation at Show Cause Hearing is amended by deleting the current language of paragraph (3) and replacing it with the following:

(3) All notices of appearance shall be delivered to the Commissioner or Commissioner's designee or mailed to:

Tennessee Department of Labor and Workforce Development
Division of Workers' Compensation
Uninsured Employers Fund
220 French Landing Drive
Nashville, TN 37243-1002

Authority: T.C.A. §§50-6-118, 50-6-233, 50-6-412, and 50-6-801.

Chapter 0800-02-20
Medical Impairment Rating Registry Program

Amendments

Chapter 0800-02-20 Medical Impairment Rating Registry Program shall be amended to delete the phrase "MIR Impairment Rating Report" wherever it appears and replace it with "MIR Report."

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.01 Definitions is amended by adding the following as a new paragraph (3) and renumbering the existing paragraphs:

(3) "Business day(s)" means any day upon which the Division is open for business.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.01 Definitions is amended by adding the phrase "or the Medical Director's designee" at the end of the last sentence in current section (11) and by replacing the reference to "Tenn. Code Ann." with "T.C.A." so that as amended the section reads:

(11)"Medical Director" means the Division's Medical Director, appointed by the Commissioner pursuant to T.C.A. § 50-6-126 (Repl. 1999) or the Medical Director's designee.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.04 Requisite Physician Qualifications for Inclusion on Medical Impairment Rating Registry, subparagraph (1)(d) is amended by adding the phrase "amounts enumerated in T.C.A. § 29-20-403; and" so that as amended the section reads:

(d) Furnish satisfactory proof of carrying the minimum medical malpractice insurance coverage amounts enumerated in T.C.A. § 29-20-403; and

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.04 Requisite Physician Qualifications for Inclusion on Medical Impairment Rating Registry, is amended by adding the following as a new subparagraph (1)(e):

(e) Be trained on these program rules, either in-person or by telephone, by the Program Coordinator.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.05 Application Procedures for Physicians to Join the Registry, section (1) is amended by deleting the current language and replacing it with the following:

(1) Appointment to the MIR Registry shall expire upon a physician's decision to withdraw from the Registry or the Division's removal of a physician from the Registry. The Division reserves the right to charge physicians a non-refundable application fee upon appointment or reinstatement to the MIR Registry. For each application, an advisory panel of three (3) current MIR Registry physicians shall be randomly selected by the Program Coordinator to review the application. The Panel shall include one member from each grand division of the state who shall have been on the MIR Registry for at least five (5) years without any disciplinary actions imposed by the Department. Each member of the panel shall vote to either recommend or not recommend the applicant for inclusion on the MIR Registry. The Commissioner, upon the advice of the Medical Director, Program Coordinator, and the advisory panel, shall have the sole and exclusive authority to approve or reject applications for inclusion on the MIR Registry.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.05 Application Procedures for Physicians to Join the Registry is amended by deleting the current language of paragraph (3) and replacing it with the following:

(3) Physicians denied appointment to the MIR Registry by the Commissioner or Commissioner's designee on their initial application may seek reconsideration of their application by submitting a request for

reconsideration stating the grounds for such reconsideration to the Program Coordinator within fifteen (15) calendar days of the issuance of the Notice of Denial of their application. The Commissioner may affirm or reverse the initial determination upon reconsideration of the initial decision. The Commissioner shall issue a Notice of Final Determination which shall be the final decision. If the Commissioner does not act on the request for reconsideration within twenty (20) calendar days, then the request shall be deemed to have been denied, which shall be the final decision.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.06 Requests for a MIR Registry Physician is amended by deleting the reference to "0800-2-20-.01(5)" in paragraph (1) and replacing it with a reference to "0800-02-20-.06" so that as amended the paragraph reads:

(1) When a dispute of the degree of medical impairment, as defined in Rule 0800-02-20-.06 exists, any party may request a listing of physicians from the Commissioner's MIR Registry by completing the "Application for Medical Impairment Rating" (hereinafter "Form"), available upon request from the Department or online at www.state.tn.us/labor-wfd/mainforms.html. The completed Form must then be returned to the Program Coordinator via electronic mail, facsimile or U.S. Mail.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.06 Requests for a MIR Registry Physician is amended by adding a new paragraph (2) and by appropriately renumbering the subsequent paragraphs; the newly added paragraph shall read:

(2) The requesting party shall send a copy of the Form to the opposing party. The Program Coordinator's decision to accept or deny the Form is final for administrative purposes.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.06 Requests for a MIR Registry Physician is amended by adding the sentence "If a panel of physicians has been provided to the employee in accordance with T.C.A. § 50-6-204, then a completed Form C-42 must accompany the request form" at the end of newly renumbered subparagraph (3)(c) so that as amended the subparagraph reads:

(c) The names of all physicians made available to the claimant. If an employer provides the claimant with the name of a group of physicians rather than with individual physician names, the same information shall be included on the request form. If a panel of physicians has been provided to the employee in accordance with T.C.A. § 50-6-204, then a completed Form C-42 must accompany the request form;

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.06 Requests for a MIR Registry Physician is amended by designating the current language in newly renumber paragraph (4) as subparagraph (4)(a), deleting the term "Commissioner" in the first sentence of newly designated subparagraph (4)(a) and replacing it with the term "Program Coordinator," changing the parenthetical language in the subparagraph to read "(which shall mean within an approximate one hundred (100) mile straight-line radius of the employee's home zip code)" , and by adding a new subparagraph (4)(b), so that as amended the paragraph reads:

(4) Selection of MIR Registry physician through party agreement:

(a) Within five (5) business days of receipt of the completed Form from the requesting party, the Program Coordinator shall issue a listing of all qualified physicians in the appropriate geographic area (which shall mean within an approximate one hundred (100) mile straight-line radius of the employee's home zip code), from the MIR Registry to all parties listed on the Form so the parties may negotiate an agreement on the selection of a physician as the MIR Registry physician. If the parties agree, they shall notify the Program Coordinator of the agreement so he or she may schedule the appointment with the selected physician for the MIR examination. Parties agreeing to the selection of the MIR Registry physician under this paragraph must abide by all of the Rules set forth here in Chapter 0800-02-20. A written opinion as to the permanent impairment rating given by the MIR Registry physician selected pursuant to this Rule shall be presumed to be the accurate impairment rating.

(b) If the Program Coordinator determines that there are an inadequate number of qualified physicians within a 100 mile straight-line radius of the employee's home zip code, the Program Coordinator may produce a state-wide listing of all registry physicians qualified to give the rating.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.06 Requests for a MIR Registry Physician is amended by deleting the second and third mention of the term "Commissioner" from the first sentence of newly renumbered paragraph (5) and replacing it the term "Program Coordinator" so that as amended the paragraph reads:

(5) If the parties cannot agree upon selection of a MIR Registry physician from the Commissioner's listing of MIR Registry physicians provided within fifteen (15) calendar days of the Program Coordinator issuing the requested listing, it shall be the responsibility of the employer to provide a written request to the Program Coordinator to provide a three-physician list by submitting such request on the Form. A written opinion as to the permanent impairment rating given by the MIR Registry physician selected pursuant to this Rule shall be presumed to be the accurate impairment rating.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.06 Requests for a MIR Registry Physician is amended by deleting the phrase "and the Workers' Compensation Specialist if currently assigned" from newly renumbered subparagraph (9)(a) so that as amended the subparagraph reads:

(a) Within three (3) business days of providing or receiving notice of the MIR physician selection, the Program Coordinator shall contact the MIR Registry physician to schedule the evaluation and shall immediately notify all parties of the date and time of the evaluation. Only after this notification should the employer or insurance carrier contact the MIR Registry physician and only to arrange for payment and for medical records submission required by these Rules.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.06 Requests for a MIR Registry Physician is amended by deleting the term "Commissioner" in the first sentence of newly renumbered subparagraph (10)(b) and replacing it with the term "Program Coordinator" and by deleting the phrase "in his/her sole discretion" so that as amended the subparagraph reads:

(b) In cases involving untimely medical record submission by a party, the Program Coordinator may elect to reschedule the evaluation to allow the physician adequate time for record review. Otherwise, the physician shall perform the evaluation and shall produce an "MIR Report."

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.06 Requests for a MIR Registry Physician is amended by deleting the current language in newly renumbered subparagraph (10)(d) and replacing it with the following:

(d) Medical bills, adjustor notes, surveillance tapes, denials, vocational rehabilitation reports, case manager records, commentaries, depositions, or any other document deemed by the Commissioner to compromise the impartiality of the review shall not be submitted to the MIR Registry physician.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.07 Payment/Fees is amended by adding the sentence "The following timeframes shall exclude legal holidays" at the beginning of paragraph (1) and by removing the hyphen between the terms "time" and "table" so that as amended the paragraph reads:

(1) The following timeframes shall exclude legal holidays. A physician performing evaluations under these Rules shall be prepaid by the employer a total evaluation fee for each evaluation performed, under a MIR Registry physician estimated timetable as outlined below

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.07 Payment/Fees is amended by deleting the each mention of the phrase "scheduling the appointment" in subparagraphs (1)(a-d) and replacing them with the phrase "completing the examination."

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.07 Payment/Fees is amended by deleting the current language of paragraph (2) and replacing it with the following:

(2) The evaluation fee includes normal record review, the evaluation, and production of a standard "MIR Report." At the Commissioner's sole discretion, the evaluation fee may be increased up to an additional $250.00 if the time required for the record review, evaluation, or production of the MIR Report is extraordinary. All non-routine test(s) for an impairment rating essential under the applicable edition of the AMA Guides to the Evaluation of Permanent Impairment shall have been performed prior to the evaluation. Routine tests necessary for a complete evaluation, such as range of motion or spirometry tests, should be performed by the MIR Registry physician as part of the evaluation at no additional cost. Any additional x-rays that the registry physician deems necessary to render the MIR Report must be approved in writing by the Program Coordinator and are subject to the Medical Fee Schedule.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.07 Payment/Fees is amended by deleting paragraph (3) in its entirety and appropriately renumbering the remaining subsequent paragraphs.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.07 Payment/Fees is amended by deleting the word "penalty" from the first sentence of newly renumbered paragraph (3)(a) and by capitalizing the term "Registry" in the same sentence so that as amended the subparagraph reads:

(a) If the request is not timely, the MIR Registry physician shall be entitled to collect/retain a $300.00 cancellation fee. If the evaluation is rescheduled, the MIR Registry physician is entitled to the entire evaluation fee (for the scheduled evaluation) in addition to this fee.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.09 Communication with Registry Physicians is amended by deleting the word "evaluation" in the first sentence of paragraph (2) and replacing it with the phrase "Program Coordinator's acceptance and distribution of the final MIR Report," and by deleting the term "Commissioner" and replacing it with the term "Program Coordinator," and by adding the term "provided" between the terms "to" and "all" in the second sentence of the paragraph so that as amended the paragraph reads:

(2) If selected as the MIR physician, there shall be no communication with the parties or their representatives prior to the Program Coordinator's acceptance and distribution of the final MIR Report, unless allowed by the Rules or approved by the Program Coordinator. Any approved communication, other than arranging for payment and the submission of medical records and the evaluation itself, shall be in writing with copies provided to all parties and the Program Coordinator. Failure by a Registry physician to disclose such communications will the physician to penalties under the Rules.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.09 Communication with Registry Physicians is amended by adding a new paragraph (4), which shall read:

(4) This Rule 0800-02-20-.09 shall also apply to any MIR physician selected to perform peer review pursuant to Rule 0800-02-20-.12.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.11 Requirements for the "MIR Impairment Rating Report" is amended by deleting the current language of paragraph (4) in its entirety and replacing it with the following:

(4) Services rendered by an MIR Registry physician shall conclude upon the Program Coordinator's acceptance of the final "MIR Report." An MIR report is final and accepted for the purpose of these Rules when it includes the requested determination regarding final medical impairment rating, along with any necessary worksheets, and is signed by the Program Coordinator. Once the report has been accepted, the Program Coordinator will distribute copies of the report to the parties and the Workers' Compensation Specialist, if one is currently assigned. After acceptance of the "MIR Report" the medical records file, including the final "MIR Report," shall be stored and/or disposed of by the MIR registry physician in a manner used for similar health records containing private information and within a time frame consistent with all applicable federal, state and local laws and the Tennessee Board of Medical Examiners' rules.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.11 Requirements for the "MIR Impairment Rating Report" is amended by adding a new paragraph (5), which shall read:

(5) Any addendums or changes to the MIR Report after it has been deemed accepted shall be approved and signed by the Program Coordinator prior to distribution to the parties.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.12 Peer Review is amended by deleting the current language in its entirety and replacing it with the following:

(1) All MIR Reports are subject to peer review for appropriateness and accuracy by either the Medical Director or a physician selected randomly by the Program Coordinator who shall have been on the MIR Registry for at least five (5) years without any disciplinary actions, shall be certified in the applicable edition of the AMA Guides by the American Academy of Disability Evaluating Physicians or the American Board of Independent Medical Examiners, and shall comply with Rule 0800-02-20-.05(2); provided, however, that the peer review shall not include a physical examination of the claimant. If the peer review is performed by a MIR Registry physician, then such physician shall be entitled to a fee of $250.00 to be paid by the employer in advance of the peer review.

(2) The peer review shall be completed within ten (10) business days of referral from the Program Coordinator. The Medical Director or peer review physician may recommend an MIR Report for reconsideration by the examining MIR physician if the Medical Director or peer review physician deems the report to be incomplete, inaccurate, or unclear pursuant to the requirements of Rule 0800-02-20-.11. Reconsideration and any revision shall be completed by the examining MIR physician within ten (10) business days of referral from the Program Coordinator.

(3) The time limits in Rule 0800-02-20-.07(1) shall be tolled while a MIR Report is being reviewed or reconsidered pursuant to this rule; provided, however, that if the examining MIR physician or the peer review physician does not comply with the time requirements in paragraph (2), then the Program Coordinator may reduce their respective fees.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.13 Removal of a Physician from the Registry is amended by adding the sentence "If the Commissioner does not act on the request for reconsideration within twenty (20) calendar days, then the request shall be deemed to have been denied, which shall be the final decision" at the end of subparagraph (2)(d) so that as amended the subparagraph reads:

(d) A MIR Registry physician may seek reconsideration of an adverse decision from the Commissioner by submitting a request for reconsideration stating the grounds for such reconsideration to the Program Coordinator within fifteen (15) calendar days of the issuance of the Notice of Determination. The Commissioner may affirm, modify or reverse the initial determination upon reconsideration of the initial decision. The Commissioner shall issue a Notice of Determination upon Reconsideration which shall be

the final decision. If the Commissioner does not act on the request for reconsideration within twenty (20) calendar days, then the request shall be deemed to have been denied, which shall be the final decision.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.14 Other Penalties, is amended by changing the rule title to "Penalties" and is further amended by deleting the current language and replacing it with the following:

(1) Failure by an employer or insurer to pre-pay the evaluation fee shall allow the physician to charge the employer a $100.00 late fee in addition to the evaluation fee. If the evaluation fee and/or late fee remains unpaid fifteen (15) calendar days following the date of the evaluation, an additional $250.00 penalty is authorized. If any portion of a fee or penalty remains unpaid after an additional thirty (30) calendar day period, an additional $500.00 penalty is authorized, and again for each additional thirty (30) calendar day period, or portion thereof, that it remains unpaid until all fees and/or penalties are fully paid.

(2) If an employer or insurer fails to pay the cancellation fee of $300.00, an additional $250.00 penalty is authorized. If any portion of a fee or penalty remains unpaid after an additional thirty (30) calendar day period, an additional $500.00 penalty is authorized, and again for each additional thirty (30) calendar day period, or portion thereof, that it remains unpaid until all fees and/or penalties are fully paid.

(3) Failure by a MIR Registry physician to timely refund any unearned evaluation fee shall allow the employer or insurer to recover in addition to the unearned fee a $100.00 late fee from that MIR Registry physician. If the unearned fee and/or late fee remains unpaid fifteen (15) calendar days following the date of the evaluation, an additional $250.00 penalty against the MIR Registry physician is authorized. If any portion of the unearned fee or penalty remains unpaid after an additional thirty (30) calendar day period, an additional $500.00 penalty is authorized, and again for each additional thirty (30) calendar day period, or portion thereof, that it remains unpaid until all fees and/or penalties are fully paid.

(4) If any party engages in unauthorized communications with the MIR physician, then the Commissioner or Commissioner's designee is authorized to assess a penalty of up to $500.00 per violation against that party.

(5) Notwithstanding any other provision in these rules to the contrary, and in addition to any other penalty provided for in these Rules and the Act, failure by any party to comply with these Rules in a manner for which no penalty has specifically been set forth herein may subject that party to civil penalties of $100.00 per violation, as determined by the Commissioner.

(6) Any party assessed a monetary penalty by the Division may request a contested case hearing in accordance with the Penalty Program Rules of the Division, 0800-2-13, by submitting a request for such hearing within fifteen (15) days of issuance of the notice of violation and assessment of civil penalties hereunder.

Authority: T.C.A. §§ 4-5-202, 50-6-118, 50-6-204 and 50-6-233 (2005).

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Tennessee Department of Labor and Workforce Development (board/commission/ other authority) on 10/10/12 (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: 06/12/12

Rulemaking Hearing(s) Conducted on: (add more dates). 08/16/12

Date: 12/12/12

Signature: Karla Davis

Name of Officer: Karla Davis

Title of Officer: Commissioner

ROSEMARY S. COLE
STATE OF TENNESSEE NOTARY PUBLIC
RUTHERFORD COUNTY
COMM. EXP. 7-9-2016

Subscribed and sworn to before me on: 12/12/12

Notary Public Signature: Rosemary S. Cole

My commission expires on: 7/9/16

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.

R E Cooper Jr

Robert E. Cooper, Jr.
Attorney General and Reporter

3-20-13
Date

Department of State Use Only

Filed with the Department of State on: 3/25/13

Effective on: 6/23/13

Tre Hargett

Tre Hargett
Secretary of State

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SECRETARY OF STATE

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

No public comments were submitted at the public hearing concerning these rules. The Department allowed a period of thirty days following the hearing for the provision of written comments but received none.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

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: Small businesses that provide workers' compensation insurance to their employees will be assessed a new cost to secure an appeal of a utilization review decision recommending pain management for an injured employee that includes the prescription of schedule II, III, or IV controlled substances. However, the ability to appeal the prescription of these expensive medications will outweigh any increased costs. Small businesses that utilize the MIR Program will be assessed a peer review fee if the decision of the MIR physician is submitted for peer review. Physicians operating a small business in the form of a medical who are members of the MIR Registry could see increased revenue from participation in the peer review program.

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: None.

3. A statement of the probable effect on impacted small businesses and consumers: The effect of the costs to small businesses would be minimal and would be outweighed by the added benefit of achieving review of pain management treatments. These treatments are costly and the reduction in number should result on lower overall costs in the workers' compensation system.

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 businesses: There are no less burdensome, intrusive or costly methods of achieving the purposes and objectives.

5. Comparison of proposed rule with any federal or state counterparts: None.

6. Analysis of the effect of the possible exemption of small businesses from all or part of the requirements contained in the proposed rule: Small businesses would not be required to file appeals of utilization review approval concerning pain management treatments that include the prescription of schedule II, III, or IV controlled substances.

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://state.tn.us/sos/acts/106/pub/pc1070.pdf) of the 2010 Session of the General Assembly)

These amendments will have a minimal impact on local and state governments that file appeals of utilization review decisions involving the prescription of schedule II, III or IV controlled substances. Considering the probable result of the expanded utilization review process, the overall fiscal impact should be positive despite the added costs for administrative review. The fees for peer review of MIR reports should also have minimal fiscal impact. The number of ratings requested through the program is relatively small and not all reports will be subject to peer review.

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 amendments concern several areas of Tennessee Workers' Compensation Law and include minimal changes to these areas. In general, the rules address administrative difficulties experienced by program participants. The rules also establish increased qualifications for physician participation in the MIR program and enhance peer review rules to ensure that the ratings provided by MIR Registry physicians are as accurate as possible. Finally, the rules establish fees to cover administrative costs that the Department will incur through implementation of Tennessee Public Chapter 1100.

(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;

Tennessee Public Chapter 1100 created a procedure for review of certain pain management treatments in workers' compensation cases where the injured employee has been prescribed a schedule II, III or IV narcotic medication. The Chapter provides that the Department may impose a fee to offset administrative costs associated with providing appeals of these utilization review cases.

(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;

These amendments are of general applicability and will directly affect any participant in a workers' compensation claim who chooses to access utilization review or the MIR program. No one has urged 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;

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 impact of these amendments will be minimal.

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

Josh Baker, Administrative Attorney and Legislative Liaison for the Workers' Compensation Division

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

Same

(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

Tennessee Department of Labor and Workforce Development
220 French Landing Drive
Nashville, TN 37243
(615) 253-6909

josh.baker@tn.gov

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

None

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Nashville, TN 37243
Phone: 615-741-2650
Fax: 615-741-5133
Email: register.information@tn.gov

For Department of State Use Only

Sequence Number: _____
Rule ID(s): _____
File Date: _____
Effective Date: _____

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission:	Department of Labor and Workforce Development
Division:	Workers' Compensation
Contact Person:	Josh Baker
Address:	220 French Landing Drive Nashville, TN
Zip:	37243
Phone:	(615) 253-6909
Email:	josh.baker@tn.gov

Revision Type (check all that apply):
X Amendment
___ New
___ Repeal

Rule(s) Revised (**ALL** chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. 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-.02	Definitions
0800-02-01-.06	First Report of Injury

Chapter Number	**Chapter Title**
0800-02-06	General Rules of the Workers' Compensation Program - Utilization Review
Rule Number	**Rule Title**
0800-02-06-.12	~~Repealed~~ Appeals for Pain Management Services

Chapter Number	**Chapter Title**
0800-02-13	Penalty Program
Rule Number	**Rule Title**
0800-02-13-.15	Review of Initial Order

Chapter Number	**Chapter Title**
0800-02-15	Uninsured Employers Fund
Rule Number	**Rule Title**
0800-02-15-.10	Representation at Show Cause Hearing

Chapter Number	**Chapter Title**
0800-02-20	Medical Impairment Rating Registry Program
Rule Number	**Rule Title**
0800-02-20-.01	Definitions
0800-02-20-.04	Requisite Physician Qualifications for Inclusion on Medical Impairment Rating Registry

0800-02-20-.05	Application Procedures for Physicians to Join the Registry
0800-02-20-.06	Request for a MIR Registry Physician
0800-02-20-.07	Payment/Fees
0800-02-20-.09	Communication with Registry Physicians
0800-02-20-.11	Requirements for the ~~"MIR Impairment Rating Report"~~"MIR Report"
0800-02-20-.12	Peer Review
0800-02-20-.13	Removal of a Physician from the Registry
0800-02-20-.14	~~Other~~ Penalties

(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)

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

Amendments

Rule 0800-02-01-.02 Definitions is amended by deleting the current language of paragraph (2) and replacing it with the following:

(2) "Director" shall mean the Director of the Workers' Compensation Division of the Tennessee Department of Labor. As of the date of filing these rules, the Director may be contacted as follows:

~~James W. Farmer~~
Director, Division of Workers' Compensation
Tennessee Department of Labor and Workforce Development
~~710 James Robertson Parkway~~
220 French Landing Drive
Nashville, Tennessee 37243~~-0661~~

Rule 0800-02-01-.02 Definitions is amended by deleting the current language of paragraph (4) and replacing it with the following:

(4) "Filing" ~~is~~ shall be effective upon receipt ~~when received~~ by the ~~Director~~ Division and shall be done through electronic data interchange whenever possible.

Authority: T.C.A §§50-6-101 et seq. and 50-6-102.

Rule 0800-02-01-.06 First Report of Injury is amended by deleting the current language and replacing it with the following:

0800-02-01-.06 First Report of Injury.

~~Each employer, self-insured employer, and/or insurance company shall file with the Director an accident report, Form C-20 (Tennessee Employer's First Report of Work Injury), which records each and every accident resulting in a work-related death or personal injury as defined in TCA §50-6-102.~~ Each employer, self-insured employer, and/or insurer shall file a Form C-20 (Tennessee Employer's First Report of Work Injury or illness) in accordance with the following:

(1) ~~Where the injured person does not return to employment within seven (7) days after the occurrence of such accident, or if there is permanent disability regardless of the number of days of lost work, Form C-20 must be filed. Form C-20 shall be submitted to the Director as soon as possible, but not later than fourteen (14) days after the accident.~~ The Form C-20 shall be filed with the Division in all cases where the injury or illness results in the receipt of medical treatment outside of the employer's premises, absence from work, retention of a permanent impairment, or death. Except as provided in paragraph (2) of this Rule, in no event shall the requirement to file Form C-20 differ based upon the number of days between the injury or illness and the employee's return to employment.

(2) ~~Reports of all accidents causing seven (7) days of disability or less and/or causing no permanent impairment shall be submitted to the Director on or before the fifteenth (15th) day of the month following the month covered by the report. Such reports shall be submitted on Form C-21.~~ Employers, other than self-insured employers, shall report the injuries or illnesses described in paragraph (1) of this Rule to their insurer within one (1) business day of knowledge of the injury or illness. Insurers, and self-insured employers, shall file the Form C-20 with the Division as soon as possible, but not later than fourteen (14) days after knowledge of an injury or illness of a nature that an employee does not return to his or her employment within seven (7) days after the occurrence of the injury or illness. Reports of

injuries or illnesses in which an employee returns to his or her employment within seven (7) days or fewer shall be filed as soon as possible, but not later than the fifteenth (15th) day of the month following the month in which the injury or illness occurred.

(3) ~~All First Reports of Injury shall be submitted in duplicate; one original and one legible copy. All First Reports of Injury must include the Federal Employer Identification number (FEIN). Employers that do not have FEIN numbers must provide the employer's social security number.~~ The penalty for non-compliance with Rule 0800-02-01-.06 is $25 for each fifteen (15) days past the required date for filing. Where non-compliance is the result of the employee's failure to provide the employer with notice of the injury, the employer shall submit written evidence of the lack of knowledge of the injury upon the Division's request. The Division may adjust and/or eliminate the penalty based on such written evidence.

Authority: T.C.A. §§50-3-701; 50-3-702; 50-6-102; 50-6-118; 50-6-201; and 50-6-233.

Chapter 0800-02-06
General Rules of the Workers' Compensation Program
Utilization Review

Amendments

Rule 0800-02-06-.12 Repealed is amended by renaming the rule "Appeals for Pain Management Services" and adding the following as the new language:

The Division shall charge a fee of no more than $224.00 per utilization review appeal for any utilization review conducted pursuant to T.C.A. § 50-6-204(j). The fee shall be paid by the employer within 30 calendar days of the Division's completion of the appeal. If the fee is not paid within such timeframe, then a 10% interest payment shall accrue for every 30 calendar days that the fee remains unpaid.

Authority: T.C.A. §§ 4-5-202, 4-5-203, 50-6-102, 50-6-124, 50-6-126, 50-6-204, and 50-6-233.

Chapter 0800-02-13
Penalty Program

Amendments

Rule 0800-02-13-.15 Review of Initial Order is amended by deleting the current language of paragraph (5) and replacing it with the following:

(5) ~~The Commissioner shall enter a Final Order that decides the petition for review of the Initial Order or remands the matter for further proceedings at the contested hearing level with instruction.~~ If no action is taken by the Commissioner within twenty (20) calendar days of filing of the petition for review, the petition is deemed denied and the Initial Order shall become the Final Order. Otherwise, the Commissioner shall consider the petition for review of the Initial Order and enter a Final Order or remand the matter for further proceedings at the contested hearing level with instruction.

Authority: T.C.A. §§4-5-317, 50-6-118, 50-6-125, 50-6-128, 50-6-205, 50-6-233, 50-6-237, 50-6-244, and Public Chapter 962 (2004).

Chapter 0800-02-15
Uninsured Employers Fund

Amendments

Rule 0800-02-15-.10 Representation at Show Cause Hearing is amended by deleting the current language of paragraph (3) and replacing it with the following:

~~(3) All notices of appearance shall be delivered to the Commissioner or Commissioner's designee or mailed to:~~

~~Tennessee Department of Labor and Workforce Development~~
~~Division of Workers' Compensation~~
~~Uninsured Employers Fund~~
~~Andrew Johnson Tower, Second Floor~~
~~710 James Robertson Parkway~~
~~Nashville, TN 37243-0661~~

(3) All notices of appearance shall be delivered to the Commissioner or Commissioner's designee or mailed to:

Tennessee Department of Labor and Workforce Development
Division of Workers' Compensation
Uninsured Employers Fund
220 French Landing Drive
Nashville, TN 37243-1002

Authority: T.C.A. §§50-6-118, 50-6-233, 50-6-412, and 50-6-801.

Chapter 0800-02-20
Medical Impairment Rating Registry Program

Amendments

Chapter 0800-02-20 Medical Impairment Rating Registry Program shall be amended to delete the phrase "MIR Impairment Rating Report" wherever it appears and replace it with "MIR Report."

0800-02-20-.05 APPLICATION PROCEDURES FOR PHYSICIANS TO JOIN THE REGISTRY.

(1) Appointment to the MIR Registry shall be for a two (2) year term, except as otherwise set forth in these Rules. Physicians may seek renewal appointments by the same process as the initial application described herein. The Division reserves the right to charge physicians a non-refundable application fee upon appointment, renewal, or reinstatement to the MIR Registry. The Commissioner, upon the advice of the Medical Director, shall have the sole and exclusive authority to approve or reject applications for inclusion on the MIR Registry.

(2) Physicians seeking appointment to the MIR Registry shall complete an "Application for Appointment to the MIR Registry," available upon request or on-line at www.state.tn.us/laborwfd/ mainforms.html, certify to and, upon approval of the application, comply with the following conditions:

(a) Conduct all MIR evaluations based on the guidelines in the applicable edition of the AMA Guides and submit the original ~~"MIR Impairment Rating Report"~~"MIR Report" with all attachments to the Program Coordinator. In cases not covered by the applicable AMA Guides, any impairment rating allowed under the Act shall be appropriate;

(b) Decline requests to conduct an evaluation only on the basis of good cause shown. Consideration will be given to a physician's schedule and other previously arranged or emergency obligations;

(c) Comply with the MIR Registry's Rules;

(d) While on the MIR Registry, agree to maintain an active and unrestricted license to practice medicine or osteopathy in Tennessee and to immediately notify the Commissioner of any change in the status of the license, including any restrictions placed upon the license;

(e) While on the MIR Registry, agree to maintain all board certifications listed on the application and to I immediately notify the Commissioner of any change in their status;

(f) Conduct MIR evaluations in an objective and impartial manner, and shall:

1. Conduct these evaluations only in a professional medical office suitable for medical or psychiatric evaluations where the primary use of the site is for medical service.

2. Comply with all local, state and federal laws, regulations, and other requirements with regard to business operations, including specific requirements for the provision of medical services.

3. Not conduct a physical examination on a claimant of the opposite sex without a witness of the same sex as the claimant present.

(g) Not refer any MIR Registry claimant to another specific physician for any treatment or testing nor suggest referral or treatment. However, if new diagnoses are discovered, the physician has a medical obligation to inform the requesting party and the claimant about the condition and recommend further medical assessment;

(h) Not become the treating physician for the claimant regarding the work-related injury;

(i) Not evaluate an MIR Registry claimant if a conflict of interest exists;

(j) Not substitute, or allow to be substituted, anyone else, including any other physician, physician assistant, nurse practitioner, physical therapist or staff member, as the physician to conduct the MIR Registry evaluation;

(k) No later than fifteen (15) calendar days after a request by the Program Coordinator to refund to the paying party part or all of any fee paid by that party for a MIR Registry evaluation, as may be required by these Rules and the Commissioner; and

(l) For each MIR Registry case assigned, address only the issue of permanent impairment rating.

(3) Physicians denied appointment to the MIR Registry on their initial application may seek reconsideration of their application by submitting a request for reconsideration stating the grounds for such reconsideration to the Program Coordinator within fifteen (15) calendar days of the issuance of the Notice of Denial of their application. The Commissioner may affirm or reverse the initial determination upon reconsideration of the initial decision. The Commissioner shall issue a Notice of Final Determination which shall be the final decision.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

0800-02-20-.10 REQUIREMENTS FOR THE EVALUATION.

(1) The MIR Registry physician's responsibilities prior to the evaluation are to:

(a) Review all materials provided by the parties subject to these Rules; and,

(b) Review the purpose of the evaluation and the impairment questions to be answered in the evaluation report.

(2) The MIR Registry physician's responsibilities following the evaluation are to:

(a) Consider all medical evidence obtained in the evaluation and provided by the parties subject to the Rules;

(b) Complete an ~~"MIR Impairment Rating Report"~~"MIR Report";

(c) Notify the Program Coordinator when the report has been completed;

(d) Send that complete report with all required attachments to the Program Coordinator only, via electronic mail or overnight delivery. The Program Coordinator will acknowledge, to the physician, receipt of the report.

(3) No physician-patient relationship is created between the MIR physician and the claimant through the MIR Registry evaluation. The sole purpose of the evaluation is to establish an impairment rating and not to recommend future treatment or to provide a diagnosis or other medical advice. However, if new diagnoses are discovered, the physician has a medical obligation to inform the requesting party and the claimant about the condition and recommend further medical assessment.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

0800-02-20-.11 REQUIREMENTS FOR THE "~~MIR IMPAIRMENT RATING REPORT~~MIR Report."

(1) After conducting the evaluation, the MIR physician shall produce the ~~"MIR Impairment Rating Report"~~"MIR Report". The format, available by using the Program's electronic access, available upon request from the Program Coordinator or available online at www.state.tn.us/laborwfd/ mainforms.html, or a materially substantial equivalent approved by the Program Coordinator shall be used in all cases to detail the evaluation's results. The MIR physician shall first review the determination by the attending physician that the claimant has reached Maximum Medical Improvement (MMI).

(2) If, after reviewing the records, taking a history from the claimant and performing the evaluation, the MIR Registry physician concurs with the attending doctor's determination of MMI, the report shall, at a minimum, contain the following:

(a) A brief description and overview of the claimant's medical history as it relates to the subject injury, including reviewing and recapping all previous treatments.

(b) A statement of concurrence with the attending doctor's determination of MMI;

(c) Pertinent details of the physical or psychiatric evaluation performed (both positive and negative findings);

(d) An impairment rating consistent with the findings and utilizing a standard method as outlined in the applicable AMA Guides, calculated as a total to the whole person if appropriate. In cases not covered by the AMA Guides, an impairment rating by any appropriate method used and accepted by the medical community is allowed, however, a statement that the AMA Guides fails to cover the case as well as a statement of the system on which the rating was based shall be included;

(e) The rationale for the rating based on reasonable medical certainty, supported by specific references to the clinical findings, especially objective findings and supporting documentation including the specific rating system, sections, tables, figures, and AMA Guides page numbers, when appropriate, to clearly show how the rating was derived; and

(f) A true or electronic signature and date by the MIR physician performing the evaluation certifying to the following:

1. "It is my opinion, both within and to a reasonable degree of medical certainty that, based upon all information available to me at the time of the MIR impairment evaluation and by utilizing the relevant AMA Guides or other appropriate method as noted above, the claimant has the permanent impairment so described in this report. I certify that the opinion furnished is my own, that this document accurately reflects my opinion, and that I am aware that my signature attests to its truthfulness. I further certify that my statement of qualifications to serve on the MIR Registry is both current and completely accurate."

(3) If, after reviewing the records, taking a history from the claimant and performing the evaluation, the MIR

physician does not concur with the attending doctor's determination of MMI, a report shall be completed similar to the one outlined above which documents and certifies to, in sufficient detail, the rationale for disagreeing. The physician is still entitled to collect/retain the appropriate MIR fee.

(4) Services rendered by an MIR Registry physician shall conclude upon the Commissioner's acceptance of the final "MIR Impairment Rating Report." An MIR report is final and accepted for the purpose of these Rules when it includes the requested determination regarding final medical impairment rating and any necessary worksheets. Once the report has been accepted, the Program Coordinator will distribute copies of the report to the parties and the Workers' Compensation Specialist, if one is currently assigned. After acceptance of the ~~"MIR Impairment Rating Report"~~"MIR Report" the medical records file, including the final "MIR Impairment Rating Report," shall be stored and/or disposed of by the MIR registry physician in a manner used for similar health records containing private information and within a time frame consistent with all applicable federal, state and local law and the Tennessee Board of Medical Examiners' rules.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

0800-02-20-.12 PEER REVIEW.

(1) All MIR ~~Impairment Rating~~ Reports are subject to review for appropriateness and accuracy by an individual or organization designated by the Commissioner at any time. Failure to properly apply the AMA Guides in determining an impairment rating, as determined by the Medical Director, may result in penalties up to and including removal from the MIR Registry.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.01 Definitions is amended by adding the following as a new paragraph (3) and renumbering the existing paragraphs:

(1) "Act" means the Tennessee Workers' Compensation Act, Tenn. Code Ann. § 50-6-101 et seq., as amended.

(2) "Administrator" means the chief administrative officer of the Workers' Compensation Division of the Tennessee Department of Labor and Workforce Development.

(3) "Business day(s)" means any day upon which the Division is open for business.

(~~3~~4) "Commissioner" means the Commissioner of the Tennessee Department of Labor and Workforce Development or the Commissioner's designee.

(~~4~~5) "Department" means the Tennessee Department of Labor and Workforce Development.

(~~5~~6) "Dispute of degree of medical impairment" means one of two things: either at least two (2) different physicians have issued differing permanent medical impairment ratings in compliance with the Act and the parties disagree as to those permanent impairment ratings; or, a dispute may also exist if a physician has issued an opinion in compliance with the Act that no permanent medical impairment exists, yet that physician has issued permanent physical restrictions to the injured employee.

(~~6~~7) "Division" means the Workers' Compensation Division of the Tennessee Department of Labor and Workforce Development.

(~~7~~8) "Employee" shall have the same meaning as set forth in Tenn. Code Ann. § 50-6-102.

(~~8~~9) "Employer" shall have the same meaning as set forth in Tenn. Code Ann. § 50-6-102.

(~~9~~10) "Form" means the "Application for a Medical Impairment Rating," required to be used to request a MIR Registry physician from the Commissioner. The Form is available upon request from the Department or online at www.state.tn.us/labor-wfd/mainforms.html.

(~~10~~11) "Insurer" or "carrier" means an employer's workers' compensation insurance carrier and additionally shall include any entity claiming, operating, or attempting to operate as a selfinsured employer, self-insured pool, or self-insured trust pursuant to the requirements of

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.01 Definitions is amended by adding the phrase "or the Medical Director's designee" at the end of the last sentence in current section (11) and by replacing the reference to "Tenn. Code Ann." with "T.C.A." so that as amended the section reads:

(11)"Medical Director" means the Division's Medical Director, appointed by the Commissioner pursuant to T~~enn~~.C~~ode~~.A~~nn~~. § 50-6-126 (Repl. 1999) or the Medical Director's designee.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.04 Requisite Physician Qualifications for Inclusion on Medical Impairment Rating Registry, subparagraph (1)(d) is amended by adding the phrase "amounts enumerated in T.C.A. § 29-20-403; and" so that as amended the section reads:

(d) Furnish satisfactory proof of carrying the minimum medical malpractice insurance coverage amounts enumerated in T.C.A. § 29-20-403; and

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.04 Requisite Physician Qualifications for Inclusion on Medical Impairment Rating Registry, is amended by adding the following as a new subparagraph (1)(e):

(e) Be trained on these program rules, either in-person or by telephone, by the Program Coordinator.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.05 Application Procedures for Physicians to Join the Registry, section (1) is amended by deleting the current language and replacing it with the following:

(1) ~~Appointment to the MIR Registry shall be for a two (2) year term, except as otherwise set forth in these Rules. Physicians may seek renewal appointments by the same process as the initial application described herein. The Division reserves the right to charge physicians a non-refundable application fee upon appointment, renewal, or reinstatement to the MIR Registry. The Commissioner, upon the advice of the Medical Director, shall have the sole and exclusive authority to approve or reject applications for inclusion on the MIR Registry.~~ Appointment to the MIR Registry shall expire upon a physician's decision to withdraw from the Registry or the Division's removal of a physician from the Registry. The Division reserves the right to charge physicians a non-refundable application fee upon appointment or reinstatement to the MIR Registry. For each application, an advisory panel of three (3) current MIR Registry physicians shall be randomly selected by the Program Coordinator to review the application. The Panel shall include one member from each grand division of the state who shall have been on the MIR Registry for at least five (5) years without any disciplinary actions imposed by the Department. Each member of the panel shall vote to either recommend or not recommend the applicant for inclusion on the MIR Registry. The Commissioner, upon the advice of the Medical Director, Program Coordinator, and the advisory panel, shall have the sole and exclusive authority to approve or reject applications for inclusion on the MIR Registry.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.05 Application Procedures for Physicians to Join the Registry is amended by deleting the current language of paragraph (3) and replacing it with the following:

(3) ~~Physicians denied appointment to the MIR Registry on their initial application may seek reconsideration of their application by submitting a request for reconsideration stating the grounds for such reconsideration to the Program Coordinator within fifteen (15) calendar days of the issuance of the Notice of Denial of their application. The Commissioner may affirm or reverse the initial determination upon reconsideration of the initial decision. The Commissioner shall issue a Notice of Final Determination which shall be the final decision.~~ Physicians denied appointment to the MIR Registry by the Commissioner or Commissioner's designee on their initial application may seek reconsideration of their application by submitting a request for reconsideration stating the grounds for such reconsideration to the Program Coordinator within fifteen (15) calendar days of the issuance of the Notice of Denial of their application. The Commissioner may affirm or reverse the initial determination upon reconsideration of the initial decision. The Commissioner shall issue a Notice of Final Determination which shall be the final decision. If the Commissioner does not act on the request for reconsideration within twenty (20) calendar days, then the request shall be deemed to have been denied, which shall be the final decision.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.06 Requests for a MIR Registry Physician is amended by deleting the reference to "0800-2-20-.01(5)" in paragraph (1) and replacing it with a reference to "0800-02-20-.06" so that as amended the paragraph reads:

(1) When a dispute of the degree of medical impairment, as defined in Rule ~~0800-02-20-.01(5)~~ 0800-02-20-.06 exists, any party may request a listing of physicians from the Commissioner's MIR Registry by completing the "Application for Medical Impairment Rating" (hereinafter "Form"), available upon request from the Department or online at www.state.tn.us/labor-wfd/mainforms.html. The completed Form must then be returned to the Program Coordinator via electronic mail, facsimile or U.S. Mail.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.06 Requests for a MIR Registry Physician is amended by adding a new paragraph (2) and by appropriately renumbering the subsequent paragraphs; the newly added paragraph shall read:

(2) The requesting party shall send a copy of the Form to the opposing party. The Program Coordinator's decision to accept or deny the Form is final for administrative purposes.

(~~2~~3) The Commissioner requires the request for a MIR Registry physician designate:

(a) All body part(s) or medical condition(s) to be evaluated, including whether mental impairment shall be evaluated;

(b) The names of all physicians that have previously evaluated, treated, or are currently evaluating or treating the claimant for the work-related injury at employer and/or employee expense;

(c) The names of all physicians made available to the claimant. If an employer provides the claimant with the name of a group of physicians rather than with individual physician names, the same information shall be included on the request form;

(d) The state file number assigned to the claims.

(~~3~~4) Selection of MIR Registry physician through party agreement:
Within five (5) business days of receipt of the completed Form from the requesting party, the Commissioner shall issue a listing of all qualified physicians in the appropriate geographic area, (which shall mean within a one hundred (100) mile radius of the employee's residence) from the MIR Registry to all parties listed on the Form so the parties may negotiate an agreement on the selection of a physician as the MIR Registry physician. If the parties agree, they shall notify the Program Coordinator of the agreement so she or he may schedule the appointment with the selected physician for the MIR examination. Parties agreeing to the

selection of the MIR Registry physician under this paragraph must abide by all of the Rules set forth here in Chapter 0800-02-20. A written opinion as to the permanent impairment rating given by the MIR Registry physician selected pursuant to this Rule shall be presumed to be the accurate impairment rating.

(~~4~~5) If the parties cannot agree upon selection of a MIR Registry physician from the Commissioner's listing of MIR Registry physicians provided within fifteen (15) calendar days of the Commissioner issuing the requested listing, it shall be the responsibility of the employer to provide a written request to the Commissioner to provide a three-physician list by submitting such request on the Form. A written opinion as to the permanent impairment rating given by the MIR Registry physician selected pursuant to this Rule shall be presumed to be the accurate impairment rating.

(~~5~~6) The submitting party shall certify that all parties, as well as the Program Coordinator, have been sent the completed Form at the same time. The Form will not be processed until all required information has been provided.

(~~6~~7) The three (3) physician listing.

(a) Within five (5) business days of receipt of the completed "Application for a Medical Impairment Rating," the Division shall produce a list of three qualified physicians drawn from the Commissioner's MIR Registry, from which one physician shall be designated to perform the evaluation. The three-physician listing created will be comprised of physicians qualified, based on the information provided by the physician and on their accreditation to perform evaluations of the body part(s) and/or medical condition(s) designated on the application for an evaluation. Psychiatric or psychological evaluations regarding mental and/or behavioral impairment shall be performed by a psychiatrist. (2) The requesting party shall send a copy of the Form to the opposing party. The Program Coordinator's decision to accept or deny the Form is final for administrative purposes.

(b) All physician selections shall be derived from the pool of qualified physicians.

(~~7~~8) MIR Registry three (3) physician list selection process.

(a) Within three (3) business days of the issuance of the three-physician listing, the employer shall strike one name and inform the Program Coordinator and all parties of the remaining physicians. Within three (3) business days of the date of receipt of that name from the employer, the claimant shall strike one of the two remaining names and inform the Program Coordinator and other parties of the name of the remaining physician, who will perform the evaluation.

(b) If one party fails to timely strike a name from the listing, the other party shall notify the Program Coordinator and at the same time provide to Program Coordinator the name that it wishes to strike. In that situation, the Medical Director may randomly select one physician from the remaining two, and that physician shall perform the evaluation. The Program Coordinator shall inform the parties of the name of the selected physician in writing.

(c) If a selected physician is unable to perform the evaluation, the Medical Director shall provide one replacement name to the original listing using the same criteria and process set forth above, and present that revised listing to the parties and each shall again strike one name according to the above procedures. Additionally, if a physician is removed from the three-physician listing for any reason other than having been struck by one of the parties, the Medical Director will issue one replacement physician name.

(~~8~~9) Appointment date.

(a) Within three (3) business days of providing or receiving notice of the MIR physician selection, the Program Coordinator shall contact the MIR Registry physician to

schedule the evaluation, and shall immediately notify all parties, and the Workers' Compensation Specialist if currently assigned, of the date and time of the evaluation. Only after this notification should the employer or insurance carrier contact the MIR Registry physician and only to arrange for payment and for medical records submission required by these Rules.

(~~9~~10) Submission of Medical Records.

(a) All parties shall concurrently provide to the MIR registry physician and all other parties a complete copy of all pertinent medical records pertaining to the subject injury, postmarked or hand-delivered at least ten (10) calendar days prior to the evaluation. If necessary, the claimant shall promptly sign a "MIR Waiver and Consent" permitting the release of information relevant to the subject injury to the MIR physician.

(b) In cases involving untimely medical record submission by a party, the Commissioner, in his/her sole discretion, may elect to reschedule the evaluation to allow the physician adequate time for record review. Otherwise, the physician shall perform the evaluation and shall produce an "MIR Impairment Rating Report."

(c) The medical records shall include a dated cover sheet listing the claimant's name, MIR Registry physician's name, MIR Registry case number, date and time of the appointment, and the state file number. The medical records shall be in chronological order, by provider, and tabbed by year.

(d) Medical bills, adjustor notes, surveillance tapes, denials, vocational rehabilitation reports, case manager records or commentaries to the MIR Registry physician shall not be submitted.

(~~10~~11) Any forms the MIR physician requests to be completed should be completed by the claimant only. If the claimant needs assistance in completing these forms for any reason, the claimant shall notify the MIR Registry physician prior to the evaluation so that assistance can be provided by the MIR Registry physician's staff. The case manager shall not meet with the MIR Registry physician.

(~~11~~12) The claimant shall notify the Program Coordinator of the necessity for a language interpreter concurrently with his/her notification of the chosen physician's name. The Program Coordinator shall arrange for such services and the employer shall be responsible for paying for such language interpreter. The language interpreter shall be impartial and independent, and have no professional or personal affiliation with any party to the claim or to the MIR Registry physician.

(~~12~~13) When a claimant is required to travel outside a radius of fifteen (15) miles from the claimant's residence or workplace, then such claimant shall be reimbursed by the employer for reasonable travel expenses as allowed in the Act.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.06 Requests for a MIR Registry Physician is amended by adding the sentence "If a panel of physicians has been provided to the employee in accordance with T.C.A. § 50-6-204, then a completed Form C-42 must accompany the request form" at the end of newly renumbered subparagraph (3)(c) so that as amended the subparagraph reads:

(c) The names of all physicians made available to the claimant. If an employer provides the claimant with the name of a group of physicians rather than with individual physician names, the same information shall be included on the request form. If a panel of physicians has been provided to the employee in accordance with T.C.A. § 50-6-204, then a completed Form C-42 must accompany the request form;

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.06 Requests for a MIR Registry Physician is amended by designating the current language in newly renumber paragraph (4) as subparagraph (4)(a), deleting the term "Commissioner" in the first sentence of newly designated subparagraph (4)(a) and replacing it with the term "Program Coordinator," changing the parenthetical language in the subparagraph to read "(which shall mean within an approximate one hundred (100) mile straight-line radius of the employee's home zip code)" , and by adding a new subparagraph (4)(b), so that as amended the paragraph reads:

(4) Selection of MIR Registry physician through party agreement:

(a) Within five (5) business days of receipt of the completed Form from the requesting party, the ~~Commissioner~~ Program Coordinator shall issue a listing of all qualified physicians in the appropriate geographic area (~~which shall mean within a one hundred (100) mile radius of the employee's residence~~which shall mean within an approximate one hundred (100) mile straight-line radius of the employee's home zip code), from the MIR Registry to all parties listed on the Form so the parties may negotiate an agreement on the selection of a physician as the MIR Registry physician. If the parties agree, they shall notify the Program Coordinator of the agreement so he or she may schedule the appointment with the selected physician for the MIR examination. Parties agreeing to the selection of the MIR Registry physician under this paragraph must abide by all of the Rules set forth here in Chapter 0800-02-20. A written opinion as to the permanent impairment rating given by the MIR Registry physician selected pursuant to this Rule shall be presumed to be the accurate impairment rating.

(b) If the Program Coordinator determines that there are an inadequate number of qualified physicians within a 100 mile straight-line radius of the employee's home zip code, the Program Coordinator may produce a state-wide listing of all registry physicians qualified to give the rating.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.06 Requests for a MIR Registry Physician is amended by deleting the second and third mention of the term "Commissioner" from the first sentence of newly renumbered paragraph (5) and replacing it the term "Program Coordinator" so that as amended the paragraph reads:

(5) If the parties cannot agree upon selection of a MIR Registry physician from the Commissioner's listing of MIR Registry physicians provided within fifteen (15) calendar days of the ~~Commissioner~~Program Coordinator issuing the requested listing, it shall be the responsibility of the employer to provide a written request to the ~~Commissioner~~Program Coordinator to provide a three-physician list by submitting such request on the Form. A written opinion as to the permanent impairment rating given by the MIR Registry physician selected pursuant to this Rule shall be presumed to be the accurate impairment rating.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.06 Requests for a MIR Registry Physician is amended by deleting the phrase "and the Workers' Compensation Specialist if currently assigned" from newly renumbered subparagraph (9)(a) so that as amended the subparagraph reads:

(a) Within three (3) business days of providing or receiving notice of the MIR physician selection, the Program Coordinator shall contact the MIR Registry physician to schedule the evaluation and shall immediately notify all parties~~, and the Workers' Compensation Specialist if currently assigned,~~ of the date and time of the evaluation. Only after this notification should the employer or insurance carrier contact the MIR Registry physician and only to arrange for payment and for medical records submission required by these Rules.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.06 Requests for a MIR Registry Physician is amended by deleting the term "Commissioner" in the first sentence of newly renumbered subparagraph (10)(b) and replacing it with the term "Program Coordinator" and by deleting the phrase "in his/her sole discretion" so that as amended the subparagraph reads:

(b) In cases involving untimely medical record submission by a party, the ~~Commissioner~~Program Coordinator ~~in his/her sole discretion~~ may elect to reschedule the evaluation to allow the physician adequate time for record review. Otherwise, the physician shall perform the evaluation and shall produce an "MIR Report."

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.06 Requests for a MIR Registry Physician is amended by deleting the current language in newly renumbered subparagraph (10)(d) and replacing it with the following:

(d) ~~Medical bills, adjustor notes, surveillance tapes, denials, vocational rehabilitation reports, case manager records or commentaries to the MIR Registry physician shall not be submitted.~~ Medical bills, adjustor notes, surveillance tapes, denials, vocational rehabilitation reports, case manager records, commentaries, depositions, or any other document deemed by the Commissioner to compromise the impartiality of the review shall not be submitted to the MIR Registry physician.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.07 Payment/Fees is amended by adding the sentence "The following timeframes shall exclude legal holidays" at the beginning of paragraph (1) and by removing the hyphen between the terms "time" and "table" so that as amended the paragraph reads:

(1) The following timeframes shall exclude legal holidays. A physician performing evaluations under these Rules shall be prepaid by the employer a total evaluation fee for each evaluation performed, under a MIR Registry physician estimated time-table as outlined below

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.07 Payment/Fees is amended by deleting the each mention of the phrase "scheduling the appointment" in subparagraphs (1)(a-d) and replacing them with the phrase "completing the examination."

(1) A physician performing evaluations under these Rules shall be prepaid by the employer a total evaluation fee for each evaluation performed, under a MIR Registry physician estimated time-table as outlined below:

(a) Completed reports received and accepted by the Program Coordinator within thirty (30) calendar days of ~~scheduling the appointment~~completing the examination $1,000.00

(b) Completed reports received and accepted by the Program Coordinator between thirty-one (31) and forty-five (45) calendar days of ~~the scheduling the appointment~~completing the examination ... $850.00

(c) Completed reports received and accepted by the Program Coordinator between forty-six (46) and sixty (60) calendar days of the ~~scheduling of the appointment~~completing the examination $500.00

(d) Completed reports received and accepted by the Program Coordinator later than sixty (60) calendar days of ~~scheduling the appointment~~completing the examination ..... No fee paid

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.07 Payment/Fees is amended by deleting the current language of paragraph (2) and replacing it with the following:

(2) ~~The evaluation fee includes normal record review, the evaluation, and production of a standard "MIR Impairment Rating Report." All non-routine test(s) for an impairment rating essential under the applicable edition of the AMA Guides to the Evaluation of Permanent Impairment shall have been performed prior to the evaluation. Routine tests necessary for a complete evaluation, such as range of motion or spirometry tests, should be performed by the MIR Registry physician as part of the evaluation at no additional cost.~~ The evaluation fee includes normal record review, the evaluation, and production of a standard "MIR Report." At the Commissioner's sole discretion, the evaluation fee may be increased up to an additional $250.00 if the time required for

the record review, evaluation, or production of the MIR Report is extraordinary. All non-routine test(s) for an impairment rating essential under the applicable edition of the AMA Guides to the Evaluation of Permanent Impairment shall have been performed prior to the evaluation. Routine tests necessary for a complete evaluation, such as range of motion or spirometry tests, should be performed by the MIR Registry physician as part of the evaluation at no additional cost. Any additional x-rays that the registry physician deems necessary to render the MIR Report must be approved in writing by the Program Coordinator and are subject to the Medical Fee Schedule.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.07 Payment/Fees is amended by deleting paragraph (3) in its entirety and appropriately renumbering the remaining subsequent paragraphs.

(1) A physician performing evaluations under these Rules shall be prepaid by the employer a total evaluation fee for each evaluation performed, under a MIR Registry physician estimated time-table as outlined below:

(a) Completed reports received and accepted by the Program Coordinator within thirty (30) calendar days of scheduling the appointment $1,000.00

(b) Completed reports received and accepted by the Program Coordinator between thirtyone (31) and forty-five (45) calendar days of the scheduling the appointment ... $850.00

(c) Completed reports received and accepted by the Program Coordinator between fortysix (46) and sixty (60) calendar days of the scheduling of the appointment $500.00

(d) Completed reports received and accepted by the Program Coordinator later than sixty (60) calendar days of scheduling the appointment ..... No fee paid

(2) The evaluation fee includes normal record review, the evaluation, and production of a standard "MIR Impairment Rating Report." All non-routine test(s) for an impairment rating essential under the applicable edition of the AMA Guides to the Evaluation of Permanent Impairment shall have been performed prior to the evaluation. Routine tests necessary for a complete evaluation, such as range of motion or spirometry tests, should be performed by the MIR Registry physician as part of the evaluation at no additional cost.

~~(3) Late fees and penalties. Failure by an employer or insurer to pre-pay the evaluation fee shall allow the physician to charge the employer an additional $100.00 late fee for the evaluation. If the evaluation fee and/or late fee remains unpaid fifteen (15) calendar days following the date of the evaluation, an additional $250.00 penalty is authorized. If any portion of a fee or penalty remains unpaid after an additional thirty (30) calendar day period, an additional $500.00 penalty is authorized, and again for each additional thirty (30) calendar day period, or portion thereof, that it remains unpaid until all fees and/or penalties are fully paid. Failure by a MIR Registry physician to timely refund any unearned evaluation fee shall allow the employer or insurer to recover in addition to the unearned fee a $100.00 late fee from that MIR Registry physician. If the unearned fee and/or late fee remains unpaid fifteen (15) calendar days following the date of the evaluation, an additional $250.00 penalty against the MIR Registry physician is authorized. If any portion of the unearned fee or penalty remains unpaid after an additional thirty (30) calendar day period, an additional $500.00 penalty is authorized, and again for each additional thirty (30) calendar day period, or portion thereof, that it remains unpaid until all fees and/or penalties are fully paid.~~

(43) Cancellations. To be considered timely, notice of a party's desire to cancel an evaluation appointment shall be given to the Program Coordinator at least three (3) business days prior to the date of the evaluation. An evaluation may be canceled or rescheduled only after obtaining the consent of the Commissioner. The Commissioner shall decide whether an evaluation may be rescheduled within ten (10) calendar days of a request to cancel.

(a) If the request to cancel is not timely, the MIR registry physician shall be entitled to collect/retain a $300.00 cancellation penalty fee. If the evaluation is rescheduled, the

MIR Registry physician is entitled to the entire evaluation fee (for the rescheduled evaluation) in addition to this fee.\

1. If the claimant fails to appear for the evaluation with good cause, the Program Coordinator shall reschedule the evaluation.

2. If the claimant fails to appear for the evaluation without good cause as determined by the Commissioner, this may be deemed a refusal to comply with a reasonable request for medical examination and the injured employee's right to compensation may be suspended pursuant to Tenn. Code Ann. § 50-6-204(d)(8) and no compensation shall be due and payable while the injured employee continues such refusal.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.07 Payment/Fees is amended by deleting the word "penalty" from the first sentence of newly renumbered paragraph (3)(a) and by capitalizing the term "Registry" in the same sentence so that as amended the subparagraph reads:

(a) If the request is not timely, the MIR ~~r~~Registry physician shall be entitled to collect/retain a $300.00 ~~penalty~~cancellation fee. If the evaluation is rescheduled, the MIR Registry physician is entitled to the entire evaluation fee (for the scheduled evaluation) in addition to this fee.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.09 Communication with Registry Physicians is amended by deleting the word "evaluation" in the first sentence of paragraph (2) and replacing it with the phrase "Program Coordinator's acceptance and distribution of the final MIR Report," and by deleting the term "Commissioner" and replacing it with the term "Program Coordinator," and by adding the term "provided" between the terms "to" and "all" in the second sentence of the paragraph so that as amended the paragraph reads:

(2) If selected as the MIR physician, there shall be no communication with the parties or their representatives prior to the ~~evaluation~~Program Coordinator's acceptance and distribution of the final MIR Report, unless allowed by the Rules or approved by the ~~Commissioner~~Program Coordinator. Any approved communication, other than arranging for payment and the submission of medical records and the evaluation itself, shall be in writing with copies provided to all parties and the Program Coordinator. Failure by a Registry physician to disclose such communications will the physician to penalties under the Rules.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.09 Communication with Registry Physicians is amended by adding a new paragraph (4), which shall read:

(4) This Rule 0800-02-20-.09 shall also apply to any MIR physician selected to perform peer review pursuant to Rule 0800-02-20-.12.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.11 Requirements for the "MIR Report" is amended by deleting the current language of paragraph (4) in its entirety and replacing it with the following:

(4) ~~Services rendered by an MIR Registry physician shall conclude upon the Commissioner's acceptance of the final "MIR Impairment Rating Report." An MIR report is final and accepted for the purpose of these Rules when it includes the requested determination regarding final medical impairment rating and any necessary worksheets. Once the report has been accepted, the Program Coordinator will distribute copies of the report to the parties and the Workers' Compensation Specialist, if one is currently assigned. After acceptance of the "MIR Impairment Rating Report" the medical records file, including the final "MIR ImpairmentRating Report," shall be stored and/or disposed of by the MIR registry physician in a manner used for similar health~~

~~records containing private information and within a time frame consistent with all applicable federal, state and local law and the Tennessee Board of Medical Examiners' rules.~~Services rendered by an MIR Registry physician shall conclude upon the Program Coordinator's acceptance of the final "MIR Report." An MIR report is final and accepted for the purpose of these Rules when it includes the requested determination regarding final medical impairment rating, along with any necessary worksheets, and is signed by the Program Coordinator. Once the report has been accepted, the Program Coordinator will distribute copies of the report to the parties and the Workers' Compensation Specialist, if one is currently assigned. After acceptance of the "MIR Report" the medical records file, including the final "MIR Report," shall be stored and/or disposed of by the MIR registry physician in a manner used for similar health records containing private information and within a time frame consistent with all applicable federal, state and local laws and the Tennessee Board of Medical Examiners' rules.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.11 Requirements for the "MIR Report" is amended by adding a new paragraph (5), which shall read:

(5) Any addendums or changes to the MIR Report after it has been deemed accepted shall be approved and signed by the Program Coordinator prior to distribution to the parties.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.12 Peer Review is amended by deleting the current language in its entirety and replacing it with the following:

~~(1) All MIR Impairment Rating Reports are subject to review for appropriateness and accuracy by an individual or organization designated by the Commissioner at any time. Failure to properly apply the AMA Guides in determining an impairment rating, as determined by the Medical Director, may result in penalties up to and including removal from the MIR Registry.~~

~~(2)~~(1) All MIR Reports are subject to peer review for appropriateness and accuracy by either the Medical Director or a physician selected randomly by the Program Coordinator who shall have been on the MIR Registry for at least five (5) years without any disciplinary actions, shall be certified in the applicable edition of the AMA Guides by the American Academy of Disability Evaluating Physicians or the American Board of Independent Medical Examiners, and shall comply with Rule 0800-02-20-.05(2); provided, however, that the peer review shall not include a physical examination of the claimant. If the peer review is performed by a MIR Registry physician, then such physician shall be entitled to a fee of $250.00 to be paid by the employer in advance of the peer review.

~~(3)~~(2) The peer review shall be completed within ten (10) business days of referral from the Program Coordinator. The Medical Director or peer review physician may recommend an MIR Report for reconsideration by the examining MIR physician if the Medical Director or peer review physician deems the report to be incomplete, inaccurate, or unclear pursuant to the requirements of Rule 0800-02-20-.11. Reconsideration and any revision shall be completed by the examining MIR physician within ten (10) business days of referral from the Program Coordinator.

(3) The time limits in Rule 0800-02-20-.07(1) shall be tolled while a MIR Report is being reviewed or reconsidered pursuant to this rule; provided, however, that if the examining MIR physician or the peer review physician does not comply with the time requirements in paragraph (2), then the Program Coordinator may reduce their respective fees.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.13 Removal of a Physician from the Registry is amended by adding the sentence "If the Commissioner does not act on the request for reconsideration within twenty (20) calendar days, then the request shall be deemed to have been denied, which shall be the final decision" at the end of subparagraph (2)(d) so that as amended the subparagraph reads:

(d) A MIR Registry physician may seek reconsideration of an adverse decision from the Commissioner by submitting a request for reconsideration stating the grounds for such reconsideration to the Program Coordinator within fifteen (15) calendar days of the issuance of the Notice of Determination. The

Commissioner may affirm, modify or reverse the initial determination upon reconsideration of the initial decision. The Commissioner shall issue a Notice of Determination upon Reconsideration which shall be the final decision. If the Commissioner does not act on the request for reconsideration within twenty (20) calendar days, then the request shall be deemed to have been denied, which shall be the final decision.

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).

Rule 0800-02-20-.14 Other Penalties, is amended by changing the rule title to "Penalties" and is further amended by deleting the current language and replacing it with the following:

~~(1) Notwithstanding any other provision in these rules to the contrary, and in addition to any other penalty provided for in these Rules and the Act, failure by any party to comply with these Rules in a manner for which no penalty has specifically been set forth herein may subject that party to civil penalties of $100.00 per violation, as determined by the Commissioner. Any party so penalized may request a contested case hearing in accordance with the Penalty Program Rules of the Division, 0800-2-13, by submitting a request for such hearing within fifteen (15) days of issuance of the notice of violation and assessment of civil penalties hereunder.~~

~~(2)~~(1) Failure by an employer or insurer to pre-pay the evaluation fee shall allow the physician to charge the employer a $100.00 late fee in addition to the evaluation fee. If the evaluation fee and/or late fee remains unpaid fifteen (15) calendar days following the date of the evaluation, an additional $250.00 penalty is authorized. If any portion of a fee or penalty remains unpaid after an additional thirty (30) calendar day period, an additional $500.00 penalty is authorized, and again for each additional thirty (30) calendar day period, or portion thereof, that it remains unpaid until all fees and/or penalties are fully paid.

~~(3)~~(2) If an employer or insurer fails to pay the cancellation fee of $300.00, an additional $250.00 penalty is authorized. If any portion of a fee or penalty remains unpaid after an additional thirty (30) calendar day period, an additional $500.00 penalty is authorized, and again for each additional thirty (30) calendar day period, or portion thereof, that it remains unpaid until all fees and/or penalties are fully paid.

~~(4)~~(3) Failure by a MIR Registry physician to timely refund any unearned evaluation fee shall allow the employer or insurer to recover in addition to the unearned fee a $100.00 late fee from that MIR Registry physician. If the unearned fee and/or late fee remains unpaid fifteen (15) calendar days following the date of the evaluation, an additional $250.00 penalty against the MIR Registry physician is authorized. If any portion of the unearned fee or penalty remains unpaid after an additional thirty (30) calendar day period, an additional $500.00 penalty is authorized, and again for each additional thirty (30) calendar day period, or portion thereof, that it remains unpaid until all fees and/or penalties are fully paid.

~~(5)~~(4) If any party engages in unauthorized communications with the MIR physician, then the Commissioner or Commissioner's designee is authorized to assess a penalty of up to $500.00 per violation against that party.

~~(6)~~(5) Notwithstanding any other provision in these rules to the contrary, and in addition to any other penalty provided for in these Rules and the Act, failure by any party to comply with these Rules in a manner for which no penalty has specifically been set forth herein may subject that party to civil penalties of $100.00 per violation, as determined by the Commissioner.

(6) Any party assessed a monetary penalty by the Division may request a contested case hearing in accordance with the Penalty Program Rules of the Division, 0800-2-13, by submitting a request for such hearing within fifteen (15) days of issuance of the notice of violation and assessment of civil penalties hereunder.

Authority: T.C.A. §§ 4-5-202, 50-6-118, 50-6-204 and 50-6-233 (2005).

Chapter 0800-02-20 Medical Impairment Rating Registry Program shall be further amended to delete the phrase "MIR Report" wherever it appears and replace it with "MIR Report."

Authority: T.C.A. §§ 4-5-202 and 50-6-204 (2005).