

## **State Releases Medical Fee Schedule for Workers' Compensation Claims**

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The final major component of the 2004 workers' compensation reform has started the journey to become law and cost savings from it are estimated well above \$65 million when it becomes effective July 1. The medical fee schedule, developed by the Tennessee Department of Labor and Workforce Development through its Medical Care and Cost Containment Committee, has been sent to the Attorney General's office for final review before adoption. The medical fee schedule is to apply to all manners of treatment of a work-related injury to deliver quality medical care while controlling prices and system costs.

Both the National Council on Compensation Insurance, Inc. (NCCI) and the Workers' Compensation Research Institute (WCRI) have reviewed the proposed schedule using their individual methodologies. NCCI estimated a total system cost savings of \$65 million to \$82 million annually, a savings of 5.9 to 7.3 percent annually. WCRI's evaluation, which was of physician fees only, estimated an annual savings of \$72 million. The proposed medical fee schedule and complimentary rules address hospital and physician fees, drug costs, chiropractic fees, physical/occupational therapy, outpatient/ambulatory surgery, medical equipment, home health and other related medical expenses. The medical fee schedule is, in general, a Medicare-based system with multiple conversion factors that is applied uniformly across the state.

The need for a medical fee schedule, supported by the Tennessee Chamber as part of the 2004 workers' compensation package, resulted from research by WCRI that showed 12 states nationally accounted for more than 50 percent of all workers' compensation costs nationally. Among those top 12 states—including Tennessee—the average charge was \$6,736 per case. Tennessee's average cost per case was a full 25 percent higher than the top 12, ringing in at a whopping \$8,406. The research further showed that 61.4 percent of Tennessee's workers' compensation costs were for medical care.

To employers, it was obvious that to successfully reduce the costs of workers' compensation in Tennessee, reducing the costs of medical care had to be a part of the equation. At the same time, it was critical to the state's employers that their employees retain immediate access to quality health care. It was a balancing act that the proposed schedule achieves. All fees in the proposed schedule are a cap, and there are no restrictions on the ability of an employer or carrier to negotiate even more competitive fees.

The complete proposed medical fee schedule can be found at [www.state.tn.us/labor-wfd/wc\\_rules.html](http://www.state.tn.us/labor-wfd/wc_rules.html). Here are a few examples of how it will work:

- The hospital inpatient fee schedule is based on a per diem payment. Non-surgical admissions will be paid \$1,500 per day for the first seven days, dropping to \$1,250 per day for subsequent days. Surgical admissions will be \$1,800 per day for the first seven days and \$1,500 per day for subsequent days. Admission at a Level 1 Trauma Center will pay \$3,000 per day. Stop loss factors are built in to provide some financial protections for hospitals.

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## Waging War on Meth Abuse

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Methamphetamine. It's a mouthful to say and a death sentence for those it captures. Fortunately, Tennessee has taken a first step toward winning the war against meth and those who profit from it.

The Governor's legislation—endorsed unanimously and supported strongly by the Tennessee Chamber—is now law. Fast tracked through both the House of Representatives and Senate, the bill was unanimously approved. It will not win the war on “meth,” but it will make it harder to get ingredients used in making the drug and adds tougher penalties for dealers.

The new law will move certain pseudoephedrine-based cold and sinus medicine products behind pharmacy counters. Identification will be required to purchase them, and there will be limits on the amount that can be purchased. There are also new reporting requirements that will help law enforcement identify and bust meth labs, registries to identify convicted meth cooks and contaminated properties, and no more personal-use loophole to avoid criminal prosecution.

Its passage is a reason to cheer but not a reason to celebrate. While the new law will make it a little more difficult to get the needed raw ingredients to cook meth and while it will make it a little easier to go after the meth “cooks,” it will not stop the flow of meth into Tennessee, it won't end the horrific addiction that strangles so many of our citizens, and it won't rescue the kids, families and neighbors who are innocent bystanders and victims.

There were a few who wondered aloud why the state's primary business organization would become involved in what they dubbed a “social or criminal” issue. The answer is simple.

First, look at the facts. Meth is a powerfully addictive stimulant that affects the central nervous system. Chronic use can result in psychotic behavior and brain damage. Meth is produced in clandestine laboratories across the state, and the U.S. Drug Enforcement Administration estimates that Tennessee now accounts for 75 percent of meth lab seizures in the Southeast. The number of seizures grew nearly 400 percent last year.

The drug is particularly harmful to children. The Tennessee Department of Children's Services reports that more than 700 children are being taken into state custody each year as a result of meth lab seizures and incidents. Particularly at risk are infants and toddlers living in homes in which toxic lab emissions and residue settle on floors and furniture. Meth, when manufactured in makeshift labs, produces emissions and hazardous wastes that often lead to explosions and fires. Homes and property often are severely contaminated by meth production and are not usable.

There is more—ranging from the organized crime now selling it throughout the Southeast to broken families and children scarred and damaged for life. Employers, particularly those located in rural areas, are seeing direct and indirect impacts on their workplaces as meth use invades families and communities. They are seeing their communities put at risk by crime and drug abuse. They are seeing a treasured quality of life destroyed. The fight is only beginning.

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## Sweeping ADA Changes Considered

National Association of Manufacturers

Title I of the Americans with Disabilities Act (ADA) became effective for employers with 25 or more employees on July 26, 1992. It prohibits employment discrimination against qualified individuals with disabilities. The Title I threshold was lowered to employers with 15 or more employees as of July 26, 1994. Title I's prohibition against discrimination includes the affirmative obligation to provide "reasonable accommodation" for a qualified individual with a disability unless doing so presents an undue hardship.

"Reasonable accommodation" can include modifying the work area and employee common areas to provide accessibility. Where structural changes to the workplace may be necessary to accommodate an employee with a disability, accessibility standards under Title III provide guidance in making such changes.

Title III of the ADA prohibits discrimination on the basis of disability in public accommodations and requires places of public accommodation and commercial facilities (i.e., any facility whose operations affect commerce) to be designed and constructed in compliance with the accessibility standards established. Alterations or renovations to such facilities also must comply with the Standards. Title III applies to all companies regardless of size.

Accessibility standards are established by the U.S. Department of Justice (DOJ), but the ADA mandates

that these Standards be consistent with minimum accessibility guidelines issued by the U.S. Architectural and Transportation Barriers Compliance Board ("Access Board"). On July 23, 2004, the Access Board issued extensive revisions to the ADA Accessibility Guidelines (ADAAG). These revised guidelines were then forwarded to DOJ for the next step in the rulemaking process.

On September 30, 2004, the DOJ published an Advance Notice of Proposed Rulemaking (28 CFR Parts 35 and 36). DOJ is seeking comments on several issues raised by the revisions, including their applicability to existing facilities and the costs of compliance with the revised guidelines. Comments are due May 31, 2005. *Note: Once DOJ adopts them, DOJ's final regulations must be "consistent with" (i.e., at least as strict as) ADAAG.*

The recent revisions to ADAAG would significantly expand Title III's accessibility requirement to space not previously covered by Title III. Perhaps most importantly, as currently proposed, the new guidelines would impose new standards on facilities that are already compliant with current ADA regulation.

For example, with regard to employee work areas, the current standards only require that an individual with a disability be able to approach, enter and exit the area. The recent revisions to ADAAG, when adopted by DOJ, will require that circulation paths within the work area be accessible. While this particular

proposed regulation may or may not be applied to existing facilities, its application to the design and construction of new facilities will be problematic. (Employers are already required under Title I to make accommodations for any current employees with disabilities in any facilities).

This proposed revision to ADAAG and expanded requirements for work areas will impact all work areas and office space—including the factory and warehouse floor. It appears that the impact of the proposed regulations, if adopted in full, will:

- Require barrier free access (e.g., wheelchairs, walkers, crutches) for general circulation route in all work areas in addition to public areas—even areas that are closed to the general public. Under the proposed rules it makes no difference whether you currently have an employee that requires the accommodation.
- Make generally used paths through the entire workplace (including office space, break areas, cafeteria, restrooms and the factory floor) accessible to individuals with mobility, hearing and sight impairments, including: eliminating steps, reducing grades of floor shops, widening paths of access between machines, widening doors and adding ramps where appropriate.
- Alter the current requirements in currently covered public spaces, such as showrooms and sales areas. Included in the ADA rules under

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## EPA Rules to Reduce Air Pollution

On March 15, 2005, the United States became the first country in the world to regulate mercury emissions from utilities when the Environmental Protection Agency (EPA) issued the Clean Air Mercury Rule (Mercury Rule) to permanently cap mercury emissions from coal-fired power plants. When fully implemented, the Mercury Rule, together with the Clean Air Interstate Rule (CAIR Rule), will reduce power plant emissions of mercury from 48 tons a year to 15 tons a year, a reduction of nearly 70 percent from 1999 levels. EPA's modeling demonstrates that the Mercury Rule will supplement reductions achieved under the CAIR Rule by making additional reductions in mercury emissions that are transported regionally and deposited domestically, as well as reducing emissions that contribute to global atmospheric mercury.

In the U.S., coal-fired power plants are the largest remaining source of human-generated mercury emissions. By establishing "standards of performance," the Mercury Rule limits mercury emissions from new (construction starting on or after January 30, 2004) and existing plants. Additionally, the Mercury Rule creates a market-based cap-and-trade program that will permanently cap and reduce emissions in two phases:

- *The first phase cap is 38 tons beginning in 2010—emissions are reduced through utilization of "co-benefit" reductions (i.e., mercury reductions achieved by reducing sulfur dioxide and nitrogen oxides emissions under the CAIR Rule).*
- *The second phase cap is 15 tons beginning in 2018—emissions are reduced through the use of control technology or by purchasing credits under the cap-and-trade program.*

In addition, the U.S. is also leading an effort within the United Nations Environment Programme (UNEP) to establish partnerships that will help developing countries reduce mercury emissions. The program is meant to supplement and accelerate the work of the existing UNEP Mercury program.

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The EPA signed the final Clean Air Interstate Rule (CAIR) March 10, 2005, which will dramatically reduce nitrogen oxides (NOx) and sulfur dioxide (SO<sub>2</sub>) emissions by 2015. CAIR mandates the largest reduction in air emissions since the reductions required under the Acid Rain Program of the Clean Air Act Amendments of 1990. EPA reports the rule will result in more than \$100 billion in health and visibility benefits each year by 2015.

EPA determined that SO<sub>2</sub> and NOx emissions from 23 states and the District of Columbia contribute to the levels of fine particles in downwind states. Additionally, EPA determined NOx emissions in 25 states contribute to levels of 8-hour ozone in other downwind states. In order to address this apparent transport of air pollution, CAIR covers a total of 28 eastern states and requires reductions of NOx and SO<sub>2</sub>. Each of the 28 states will receive a state emission budget. The states must achieve the emission reductions by:

- *Meeting the emission budget by requiring plants to participate in an EPA-administered interstate cap-and-trade program that caps emissions in two phases; or, meeting the budget by enacting measures of its own choosing.*

In Tennessee, EPA projects CAIR will help Tennessee sources reduce SO<sub>2</sub> emissions by 178,000 tons (53%) by 2015. Additionally, sources in Tennessee will reduce NOx emissions by 107,000 tons (80%) by 2015 under CAIR. EPA reports these local and regional emission reductions will result in more than \$100 billion in annual health benefits by annually preventing 17,000 premature deaths, millions of lost work and school days, and tens of thousands of non-fatal heart attacks and hospital admissions.

Tennessee must now choose which compliance method it will use to comply with CAIR. When proposed in 2004, the rule's preliminary cost estimate reached \$5 billion dollars annually at full implementation. Although EPA believes states will target power plants for reductions, it remains to be seen how and to whom Tennessee will allocate the responsibility and cost of the emission reductions. Tennessee must submit its State Implementation Plan, demonstrating how the state will achieve CAIR's emission reduction requirements, by September 2006.

*For more information, contact Waller Lansden Dortch & Davis at 615-244-6380.*





## Scholars Initiative Prepares Students

Ruth Woodall

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The statistics have just arrived and an overwhelming number of Tennessee students lost their Hope Scholarships (Tennessee Education Lottery Scholarship Program) and dropped out after their first semester in college. These students were not academically prepared for the rigor that faced them in higher education. All 8th graders in Tennessee are required to make a 6-year plan that will guide them through the preparation period for college, the workforce or the military after graduation. Now is the time to reach the children across Tennessee with the message that a rigorous and challenging high school course of study is what it will take to prepare them for the future.

The employers in Tennessee must continually train new employees with the skills necessary in today's job market to meet the basic standards as well as to keep up with technological changes. Companies are leaving Tennessee or outsourcing work because we are not producing a skilled workforce. We can help elevate this problem by encouraging the future workforce, our children, to graduate with the skills and knowledge to attract business and fill the workforce demand of a changing economy.

The Chamber's Tennessee Scholars Initiative has grown to over 30 school districts across Tennessee and is being implemented in more communities each month. Businesses, schools, parents and community leaders are partnering to reward and recognize children who complete this more rigorous and challenging course of study in high school. *For information about how to implement this program in your area, contact Ruth Woodall at [ruth.woodall@tnchamber.org](mailto:ruth.woodall@tnchamber.org) or at 615-256-5141.*

## U.S. Chamber Honors Pro-Business Legislators

The U.S. Chamber of Commerce recently announced the names of 303 lawmakers who voted for a pro-growth agenda in the second session of the 108th Congress. "As America's economy strengthens, we are clearly seeing the benefits of supporting pro-growth policies in Congress," said Chamber President and CEO Thomas Donohue. "On key issues like cutting taxes, trade and health care reform, this award recognizes the lawmakers who are paving the way for our continued economic expansion."

The Chamber awards the "Spirit of Enterprise" based on rankings it gives members of Congress for key business votes explained in its annual publication, *How They Voted*. Among the key votes counted by the Chamber in 2004 were votes on medical liability reform, the U.S.-Australia free trade agreement, pension reform and tax relief.

Chamber-designated "key votes" are recorded floor votes on issues established as priorities by the Chamber's board of directors and on which the Chamber communicates its position prior to the vote. Members of Congress who support the Chamber's position on at least 70 percent of key votes receive the "Spirit of Enterprise" award. For the second session of the 108th Congress, the Chamber scored 17 Senate votes and 21 House votes as key votes.

These members of Tennessee's Congressional delegation received the Chamber's "Spirit of Enterprise" award:

Sen. Bill Frist – 100%

Sen. Lamar Alexander – 94%

Rep. Bill Jenkins (District 1) – 95%

Rep. John Duncan (District 2) – 90%

Rep. Zach Wamp (District 3) – 100%

Rep. Lincoln Davis (District 4) – 86%

Rep. Bart Gordon (District 6) – 75%

Rep. Marsha Blackburn (District 7) – 100%

*How They Voted, scorecards and photos are available at [www.uschamber.com/goto/soe2005](http://www.uschamber.com/goto/soe2005).*





## ***New Posting Requirements for Employers***

The Veterans Benefits Improvement Act of 2004 was signed into law by President George W. Bush December 10, 2004. The Act is designed to improve and enhance education, housing, employment, and medical and other benefits for veterans. One item of significance for the employer community, however, is the Act's provision requiring that employees be provided with notice of their rights, benefits, and obligations under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA).

Specifically, the law requires that the Department of Labor (DOL) make available to employers the text of a notice to be posted in all workplaces within 90 days of the date of enactment. The notice must be posted where employers customarily place such notices for employees. Visit the DOL's website at [www.dol.gov/vets](http://www.dol.gov/vets) for the veterans' benefits poster.

The new law also increases the maximum period that employees who are absent by reason of service in the uniformed services have the right to continue to participate in the employer's health care plan. The maximum period for continuation coverage is now 24 months (up from 18 months). This provision became effective with the passage of the law. *For more information, contact Ogletree Deakins at 615-254-1900.*

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## Fee Schedule Released

- Physicians' fees are based on a Resource Based Relative Value system that is identical to Medicare with relevant conversions applied. For example, radiology fees and surgery fees are at 200 percent of Medicare while office visits and evaluation/management is at 160 percent of Medicare. Other areas, such as pathology and anesthesia, are at the usual and customary fees.
- Physical and occupational therapy visits are also on a Medicare-based fee schedule, but differ for referrals by a physician to a facility in which there is a personal economic interest as opposed to a facility that is independent. It is an effort to manage positively physician referrals for self gain.
- Pharmaceutical costs are managed by simply requiring, where there is a bioequivalent alternative, the use of generic drugs. The pharmacy fee will be based on the Actual Wholesale Price plus a \$5.10 filling fee.

Opposition to the rules has already emerged from several of the provider groups and is expected to become stronger as they see allowable fees cut—and their profits cut. The Tennessee Chamber urges you to review the schedule and the proposed rules and look at the cost savings it can mean for your organization.

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## Meth War Now Beginning

Legislation is a first step, and the Governor is to be congratulated for taking it. The battle now belongs to law enforcement and each of us.

Another step will be a massive public awareness/public education campaign to make our citizens aware of the dangers of meth use, to make them aware of signs of meth activity and to make them take control of their neighborhoods and communities.

While the scope and implementation of the campaign will be defined during the next few months, we already know for it to succeed both financially and effectively, we will all have to become engaged—as employers, community leaders and citizens. In these tight budget times, we can't expect it to be a totally state-financed effort. Instead, I suspect state dollars will be used to leverage local resources and commitments to ensure that we all take responsibility for winning this war and re-claiming our communities. Each of us will be asked to help and we can't afford not to.

Be prepared...meth is death and we have a long war ahead of us to free our state of this horrific plague.

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## ADA Changes Possible

consideration are changes to the number of wheelchair accessible public entrances, the number of van accessible parking spaces, the heights at which items can be placed on the showroom floor and the size and shape of display counters.

- Alter requirements for “common use” areas, such as employee restrooms, lounges or cafeterias, and locker rooms.
- Alter requirements for employee “reasonable accommodation” issues where they relate to technical dimensions provided in ADAAG (e.g., placement of light switches, height of grab bars, and door way measurements).

For more information, contact the National Association of Manufacturers at 202-637-3000 or at [manufacturing@nam.org](mailto:manufacturing@nam.org).



# Calendar

## Final Month to Participate in Wage Survey

Employers across Tennessee are now submitting data for the *Compensation Data Kentucky/Tennessee 2005* wage and benefits survey. If you have not submitted data for your company, please do so today. Participation facts:

- *Participation eligibility ends this month;*
- *Participants receive substantial discounts for survey results (\$299 for Tennessee Chamber member participants);*
- *Survey will report on 450-500 jobs and over 50 pay and benefit practices;*
- *Participants provide information on jobs they want to include in the survey in a user-friendly format; and,*
- *Results will be available in June in either printed or electronic versions.*

Contact Compdata Surveys at 1-800-300-9570 to participate or visit [www.compdatasurveys.com](http://www.compdatasurveys.com), or contact Bob Gaskill at the Tennessee Chamber at 615-256-5141.

### 2005 Dates to Remember

April 13-14	10-Hour OSHA	Morristown, Holiday Inn
April 19	Noise/Health	Jackson, Holiday Inn
April 21	Forklift Training	Kingsport, Weyerhaeuser
April 27-28	10-Hour OSHA	Nashville, Embassy Suites
May 4	Safety Programs	Jackson, Holiday Inn
May 6	Forklift Training	Cleveland, Eaton Electrical
May 17	TOSHA 101	Nashville, Associated Builders & Contractors
May 19	Safety Programs	Knoxville, University Conference Center
May 24	TOSHA 101	Jackson, Holiday Inn
May 26	TOSHA 101	Morristown, Holiday Inn
June 7-10	30-Hour OSHA	Crossville, Fairfield Glade



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