

All About Claims

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All About Claims is a newsletter published by the Colorado Division of Workers' Compensation designed to provide information to claims handlers. Please send comments or suggestions for future topics to JoAnne Ibarra at 303.318.8790 or by e-mail to JoAnne.Ibarra@state.co.us.

From the Director's Desk...

Rule 8, Authorized Treating Physician

On January 1, 2008, Rule 8 will take effect implementing House Bill 07-1176. The legislation affords most injured workers the opportunity to select a treating physician from a designated provider list prepared by the employer. The same provisions afford an injured worker a one-time change of physician within that designated provider list, if the change is made within a specific time frame. In the following article, Director Bob Summers responds to questions on implementation of House Bill 07-1176 with the adoption of Rule 8, Authorized Treating Physician. The entire text of the rule has been included in this newsletter for your convenience. You can also access the rule on the Division website at:

<http://www.coworkforce.com/dwc/Notices/Proposed%20Rules/Proposed%20Rules.asp>

Q: Why are employers required to give the injured worker a *written* designated provider list?

A: The statute states that the employer or insurer "shall provide a list." The Division believes a reasonable interpretation of the statute is to require a written list. In addition, a written designated list is essential for the statute to operate effectively. The medical provider to whom the injured worker may change, and the people who must be notified of the requested change, are determined by the list given to the injured worker. A written list protects the rights of all parties to a claim by clearly documenting the list of providers to ensure that there is no confusion on the alternate designated provider. It also indicates who needs to know when a change of provider is requested so the change can be implemented smoothly.

Q: What happens if the employer fails to provide a designated provider list or if the designated provider list does not meet the requirements of the rule?

A: Under these circumstances, the injured worker may select an authorized treating physician of their choosing. (8-2(D)). There may also be an argument that the respondents are subject to penalties for violating a statutory requirement, but the remedy set forth in the rule for the failure to provide a designated provider list or the provision of a defective designated provider list, is that the right of selection passes to the injured worker.

Q: Who is supposed to provide the designated provider's list of ownership interests?

A: The statute states that a designated provider on the list of providers must furnish the information within five days of a request from an interested party. The Division believes that the ability to receive the information is key, not who furnishes it. The most efficient way to handle a request for the designated providers' ownership interest is for the respondents to have these forms filled out by the providers prior to the notice of injury. (A provider has 30 days to update the information if there is a change.) Once the respondents receive a notice of injury, the list of ownership
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What You Need to Know

Compliance Audits and Rule 4

The Colorado Division of Workers' Compensation and its Director are charged with administering and enforcing the Workers' Compensation Act. One aspect of this responsibility is determining whether an insurer's claims handling practices are in compliance with the Act and with the Workers' Compensation Rules of Procedure (WCRP). To fulfill this responsibility, auditors from the Division's Carrier Practices Unit review and audit claim files and evaluate claim handling performance. The audits are conducted in accordance with [Rule 4](#) of the WCRP. The Division audits Third Party Administrators as well as insurance companies and self-insured employers, but it is the insurer that is ultimately responsible for proper claims handling procedures.

Recent rule amendments to facilitate the implementation of the statute went into effect on September 1, 2007. Under these amendments, a compliance rate of 90% is required for "satisfactory performance." The amendments also establish the categories to be reviewed and the fines for compliance rates below 90% on a second or consecutive audit.

You are urged to review and become familiar with Rule 4, as it outlines the audit process, the mechanism for disagreeing with preliminary audit findings, and time limits for the process. The categories that will be evaluated and the fine schedules for unsatisfactory compliance are also set out in the rule.

The Division will soon publish a Claims Compliance Audit Guide that will be available on request and on the Division's website (<http://www.coworkforce.com/dwc/>). The Guide contains valuable information about audit criteria, an explanation of compliance categories, an explanation of the audit process and a section addressing the fines imposed for repeated failure to meet satisfactory compliance levels. All insurers are also encouraged to read and become familiar with the Guide. For more information, contact the Carrier Practices Unit at (303) 318-8617.

A word from the IME Unit

To help your DIMEs go smoothly . . .

- ✓ Observe time frames set forth in Rule 11. Submit your medical records and fees timely so as to avoid late fees.
- ✓ Please ensure that the medical records are submitted in the form specified in Rule 11-3(J). It is not unusual for the Division IME unit to see comments in physicians' DIME reports referring to the need by the doctor to spend time reorganizing the records.
- ✓ If the parties agree upon a physician to perform a DIME (as occurs in about 25% of cases), please remember to notify the Division IME unit of the appointment date.
- ✓ When completing the IME Application form, please provide complete addresses of the treating doctors in the case including, to the extent possible, the name of the medical office or practice.
- ✓ When completing the IME Application form, keep in mind that the intent of Section 9 is to specify evaluation of those body parts or conditions related to the work injury.
- ✓ If a DIME physician requests additional money to perform the DIME, compensation for the additional time is governed by the fee schedule. As the fee schedule rate has increased, the amount of any such request may also increase.



Medically Speaking

Medical Fee Schedule Change, Effective January 1, 2008

Amendments to Rule 18 (the workers' compensation medical fee schedule) will go into effect January 1, 2008. In particular, the fee schedule has been updated from the 2006 edition of the Relative Values for Physicians (RVP) to the 2007 edition of the RVP. The Anesthesia, Evaluation & Management (E&M) and the Physical Medicine and Rehabilitation (PM&R) conversion factors will see a slight increase and facility fee schedules were adjusted and/or modified from the previous year. The dental billing codes were updated and the fees increased by 5%. However, the most significant change to Rule 18 was generated by SB07-258. This bill applied the Colorado workers' compensation medical fee schedule to "non-treating" health care practitioners for various types of workers' compensation services. In response to this new legislation changes were made to Rule 18-6 (D)(1)-(4) Deposition and Testimony fees, and Rule 18-6 (G) "Special Reports." In addition to SB07-258, HB07-1176 necessitated the Division making some changes to Rule 16.

Please check the DOWC web page under the "What's New?" heading at www.coworkforce.com/dwc for recent amendments to Rules 18 and 16. Also, sign up to attend the Medical Fee Schedule Workshops offered by the Division in February of next year!

2007 Cervical and Low Back Pain Medical Treatment Guidelines

On April 26th, 2007, Director Bob Summers adopted revisions to the Cervical and Low Back Pain Medical Treatment Guidelines as well as excerpts of several other Division Medical Treatment Guidelines. They became effective on July 1, 2007. All 10 of the Division's Medical Treatment Guidelines, along with related bibliographies and desk reference tools, are located on the Division Website: www.coworkforce.com/dwc/.

Rule 8, Authorized Treating Physician

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and employment interests can be provided at the same time the injured worker is given the designated provider list, or could be provided at the initial visit with the medical provider. If not proactively furnished, the list must be provided upon request of the injured worker.

Q: Who must the injured worker notify if they want to exercise their option of a one-time change of physician?

A: Rule 8-6(B) clarifies the statutory notification requirements for a one-time change of physician. The rule requires that the injured worker complete and sign the division form and transmit the form in some verifiable manner to the current authorized treating physician, the physician the injured worker has selected to become the new authorized treating physician, and to the respondents' representative(s) listed on the designated provider list.

Failure to notify all of the parties should not prevent the injured worker from obtaining a one-time change of physician. The request for a one-time change of physician should be processed if the injured worker substantially complies with the requirements of the form and in attempting to provide notification.

Q: What happens if the claim is denied and the designated authorized treating physician or the alternative designated authorized treating physician refuses to treat the injured worker?

A: Nothing in the amendments to the statute or Rule 8 changes the current case law on this issue. The respondents are required in the first instance to provide a list of designated providers from which the claimant may select a physician to treat the industrial injury. Designating providers is separate from the issue of compensability. *Yeck v. Industrial Claim Appeals Office*, 996 P.2d 228 (Colo. App. 1999). However, if either of the medical providers on the designated provider list refuse to treat the claimant for non-medical reasons (such as the respondents refusal to pay for treatment because the claim is denied), and the respondents fail to appoint a new treating physician, the right of selection passes to the claimant, and the physician selected by the claimant is authorized.

Therefore, even in a denied claim, the claimant is limited to the providers on the designated providers list so long as the respondents properly designate and continue to pay for the treatment.

Q: Can the injured worker change providers more than once?

A: Yes. Just as now, an injured worker may see a different provider depending on who is available at a clinic, or can verbally request, and if respondents agree, be allowed to see a different provider. The current procedure whereby an injured worker can request a change of provider in writing also continues to apply. The difference in the law is that an injured worker now must be allowed to make a one-time change if the request complies with statutory requirements. There is no prohibition against allowing multiple changes.

Q: Are there other changes implemented by the Division that an employer or insurer should be aware of?

A: There are two new forms—Notice of One-Time Change of Physician & Authorization for Release of Medical Information, WC 003, and the Designated Health Care Provider Disclosure Form, WC 30, (in Word and fillable formats on the Division website). We also anticipate redoing the Workers' Compensation Act Poster, WC 49, so as to reduce confusion. The poster will not contain designated provider listings but merely provide basic workers' compensation information and an area to insert the employer's insurance information. Employers/insurers will be able to customize the poster to fit their individual circumstances.

New Interpretive Bulletin Issued



On November 21, 2007, Director Bob Summers issued Interpretive Bulletin #14 - *Exercising Independent Medical Judgment in the Workers' Compensation System*. The primary message of the Interpretive Bulletin is that a doctor who exercises objective, independent medical judgment in a claim should not be subjected to the threat of sanctions because another doctor disagrees, even if an Administrative Law Judge finds the other doctor to be more persuasive. For more information, go to the following link on the Division website:

<http://www.coworkforce.com/dwc/InterpretiveBulletins/InterpretivBlltns.asp>

COLORADO STATE WEBSITE

<http://www.colorado.gov/>

WORKERS' COMPENSATION WEBSITE

www.coworkforce.com/DWC/

Did You Know...

The Colorado Department of Labor and Employment is a great resource for job search assistance?

Colorado Workforce Centers, located throughout the state, provide a variety of training, placement and job search services at no cost to individuals seeking employment. Employers may also tap into a host of services at little or no cost. Resources are available on-line, though customers are welcome and encouraged to contact the centers directly for assistance.

Workforce Center information on the web is available at <http://www.coworkforce.com/emp/WFCs.asp> At the top of the site is a description of the basic services in all workforce centers. Job seekers and employers can then select a convenient office from the list, click on the link and learn about specific services available through the local website. Each region of the state has the ability to customize its package of services, although all regions offer the same basic services.

Each full-service workforce center (in the bigger cities and towns) has assistive technology for the disabled to access services, and a person called a Disability Navigator to help the disabled access many additional services within the community. This can be particularly valuable for job seekers who have sustained work-related injuries and have residual work restrictions.

The website also affords job seekers and employers the ability to register for services on-line, list job openings, and do job matching. This site works well for those who do not require staff-assisted services, and lists all jobs available through our centers at: <http://www.connectingcolorado.com/>

Take some time to check it out. It's a resource well worth your time.



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RULE 8 AUTHORIZED TREATING PHYSICIAN

8-1 APPLICABILITY

- (A) Employers who meet the criteria in §8-43-404(5)(a)(I)(B) or (II)(A), are exempt from the requirement to provide a list of at least two physicians or two corporate medical providers, or at least one physician and one corporate medical provider, when notified of an on the job injury. This Rule 8 does not apply to those exempt employers, except for the provisions of 8-2(B) and (C). If emergency care is provided an exempt employer may designate an authorized treating physician as allowed by statute when emergency care is no longer required. If an exempt employer refers an injured worker to a physician who can attend the injured worker when the injury occurred while the worker was away from the worker's usual place of employment, such employer may designate an authorized treating physician as allowed by statute within seven (7) business days following the date the employer has notice of the injury. If an exempt employer does not properly designate an authorized treating physician as allowed by statute the injured worker may select a provider of the worker's choosing.

8-2 INITIAL REFERRAL

- (A) When an employer has notice of an on the job injury, the employer or insurer shall provide the injured worker with a written list in compliance with §8-43-404(5)(a)(I)(A), that for purposes of this rule 8 will be referred to as the designated provider list, from which the injured worker may select a physician or corporate medical provider.
- 1) The designated provider list can initially be provided to the injured worker verbally or through an effective pre-injury designation. If provided verbally or through a pre-injury designation, a written designated provider list shall be mailed, hand-delivered or furnished in some other verifiable manner to the injured worker within seven (7) business days following the date the employer has notice of the injury.
 - 2) The designated provider list shall state the insurer responsible for the claim, or that the employer is self-insured. In addition, the designated provider list shall include the name and contact information of the person, or a maximum of two people, that the employer and/or insurer designate as their representative(s). For purposes of this Rule 8, the person or people so designated shall be referred to as the respondents' representative(s).
- (B) In an emergency situation the injured worker shall be taken to any physician or medical facility that is able to provide the necessary care. When emergency care is no longer required the provisions of paragraph (A) of this rule apply.
- (C) If the injured worker is away from the worker's usual place of employment at the time of the injury,, the injured worker may be referred to a physician in the vicinity where the injury occurred who can attend to the injury. Within seven (7) business days following the date the employer has notice of the injury the employer shall comply with the provisions of paragraph (A) of this rule.

- (D) If the employer fails to comply with this Rule 8-2, the injured worker may select an authorized treating physician of the worker's choosing.

8-3 INFORMATION PROVIDED BY DESIGNATED PROVIDERS

- (A) An interested party to a particular claim, as referenced in §8-43-404(5)(a)(I)(A) and for purposes of this Rule 8-3, includes the injured worker, the attorneys of record, the employer, the insurer, and any third party administrator authorized to handle the specific claim.
- (B) In order to provide information to assist in choosing a physician or deciding to change physicians, an interested party is entitled to receive a list of ownership interests and employment relationships involving the provision of medical care, if any, by making a written request for such information from a designated provider. A copy of the written request must be provided by the interested party to the respondents' representative(s). A physician who provides medical services on behalf of a corporate medical provider, but does not act as a primary care physician, is not subject to this provision. A designated provider shall utilize a form established by the Division to provide this information.
- 1) The designated provider's list of ownership interests and employment relationships shall be current to within thirty (30) days of the date of the request.
 - 2) If the form was not previously provided and an interested party requests such information from a designated provider, the form shall be provided within five (5) business days of the request.
 - 3) If the information referenced in this paragraph (B) is provided, no follow-up questions or request for additional information shall be permitted, except for information allowed pursuant to a hearing or discovery process.
- (C) If the list of ownership interests and employment relationships was not previously provided, and an interested party requests the information in compliance with the provisions of Rule 8-3(B) and the information is not provided in a timely manner, the interested party may notify the respondents' representative(s) in writing. To be effective, such notification must be made within seven (7) business days following the date the information should have been provided.
- 1) Within seven (7) business days following timely notification pursuant to this paragraph (C), the injured worker shall be provided with a substitute authorized treating physician. If a substitute authorized treating physician is not timely furnished the injured worker may select an authorized treating physician of the worker's choosing.

8-4 ON-SITE HEALTH CARE FACILITY

- (A) If an employer has a qualified on-site health care facility, the employer may designate that facility as the authorized treating physician.
- (B) To be a qualified on-site health care facility under this Rule 8-4, the on-site facility must be under the supervision and control of a physician, and a physician must be on the premises or reasonably available.
- (C) If the employer designates an on-site health care facility, the employer must, within seven (7) business days following notice of an on the job injury, provide the injured worker with a designated provider list consistent with the provisions of Rule 8-2(A)(2). While the on-site health care facility shall be the initial authorized treating physician, the injured worker may thereafter change to a physician or corporate medical provider on the designated provider list if the injured worker complies with all statutory and rule requirements for the one time change of physicians.

8-5 ONE-TIME CHANGE OF AUTHORIZED TREATING PHYSICIAN

- (A) Within ninety (90) days following the date of injury, but before reaching maximum medical improvement, an injured worker may request a one-time change of authorized treating physician. The new physician must be a physician on the designated provider list or provide medical services for a designated corporate medical provider on the list. The medical provider(s) to whom the injured worker may change is determined by the designated provider list given to the injured worker pursuant to Rule 8-2 or 8-4(C).
- (B) To make a change pursuant to this Rule 8-5 the injured worker must complete and sign the form established by the division for this purpose. The injured worker is to mail, hand-deliver or otherwise transmit in a verifiable manner the completed form to the current authorized treating physician, the physician the injured worker has selected to become the new authorized treating physician, and to the respondents' representative(s) listed on the designated provider list given to the injured worker pursuant to Rule 8-2 or 8-4(C).
- (C) An injured worker may obtain a one time change of physician by providing notice that meets the requirements set out in statute. If the insurer or employer believes the notice does not meet statutory requirements and does not want to recognize the change of physicians, it must provide written objection to the injured worker within seven (7) business days following receipt of the form referenced in paragraph (B). The written objection shall set out the reason(s) for the belief that the notice does not meet statutory requirements.

- 1) If the employer or insurer does not provide timely objection as set out in this paragraph (C), the injured worker's request to change physicians must be processed and the new physician considered an authorized treating physician as of the time of the injured worker's initial visit with the new physician.

- 2) If written objection is provided and the dispute continues, any party may file a motion or, if there is a factual dispute requiring a hearing, any party may request that the hearing be set on an expedited basis.

8-6 TRANSFER OF MEDICAL CARE

- (A) When there is a change of authorized treating physicians, the physician who had been the authorized treating physician remains authorized and is expected to provide necessary care until the injured worker's initial visit with the new authorized physician.
- (B) The insurer or employer may facilitate the transfer of medical records to the new authorized physician. Otherwise, the new authorized physician should request medical records from the previous physician as soon as practicable. Upon receipt of a request for medical records, the physician receiving the request shall provide the medical records to the new physician within seven (7) calendar days following the physician's receipt of the request. If any copying is necessary the insurer shall pay for the copies consistent with the medical fee schedule.
- (C) The insurer, employer or injured worker may schedule an appointment for the injured worker with the new authorized physician. If the new authorized physician is unwilling or unable to schedule an appointment to treat the injured worker, the injured worker shall notify the respondents' representative(s) in writing. Upon receiving such a notification, the respondents' representative(s) shall attempt to facilitate the scheduling of an appointment, which shall be scheduled to take place within thirty (30) days following the date of receipt of the notification. If a timely appointment cannot be scheduled and the injured worker does not agree to a later appointment, the injured worker shall be provided with a substitute authorized treating physician. If, within seven (7) business days following the date the respondents' representative(s) received written notice that the appointment could not be scheduled, an appointment is not scheduled or a substitute physician provided, the injured worker may select an authorized treating physician of the worker's choosing.

8-7 CHANGE OF MEDICAL PROVIDER

In addition and separately from all the other provisions of this Rule 8, an injured worker may submit a written request to change physicians pursuant to 8-43-404(5)(a)(VI). The provisions of this Rule 8 relating to a one-time change of physician do not apply to a request for change of physician made under §8-43-404(5)(a)(VI).