DEPARTMENT OF LABOR AND EMPLOYMENT

Division of Workers' Compensation
7 CCR 1101-3
WORKERS' COMPENSATION RULES OF PROCEDURE

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.~~

(A) THIS RULE APPLIES TO ALL EMPLOYERS UNLESS SPECIFICALLY EXEMPTED UNDER PARAGRAPH (B) OR (C).

(B) EMPLOYERS THAT ARE HEALTH CARE PROVIDERS OR GOVERNMENTAL ENTITIES THAT CURRENTLY HAVE THEIR OWN OCCUPATIONAL HEALTH CARE PROVIDER SYSTEM PURSUANT TO §8-43-404(5)(a)(II)(A) MAY DESIGNATE HEALTH CARE PROVIDERS FROM THEIR OWN SYSTEM AND ARE OTHERWISE EXEMPT FROM THE REQUIREMENT TO PROVIDE A LIST OF ALTERNATE PHYSICIANS OR CORPORATE MEDICAL PROVIDERS

(1) IF EMERGENCY CARE IS PROVIDED, AN EMPLOYER EXEMPT UNDER 8-1(A) SHALL 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 PURSUANT TO 8-1(A) WITHIN SEVEN (7) BUSINESS DAYS FOLLOWING THE DATE THE EMPLOYER HAS NOTICE OF THE INJURY.

(2) IF AN EXEMPT EMPLOYER DOES NOT PROPERLY DESIGNATE A HEALTH CARE PROVIDER FROM ITS OWN SYSTEM THE INJURED WORKER MAY SELECT A PROVIDER OF THE WORKER'S CHOOSING.

(C) IF AN EMPLOYER HAS A QUALIFIED ON-SITE HEALTH CARE FACILITY, THE EMPLOYER MAY DESIGNATE THAT FACILITY AS THE AUTHORIZED TREATING PHYSICIAN.

(1) TO BE A QUALIFIED ON-SITE HEALTH CARE FACILITY, 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.

`(2) 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. 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.

8-2 DESIGNATED PROVIDER LIST

(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 OF DESIGNATED PROVIDERS FROM WHICH THE INJURED WORKER MAY SELECT A PHYSICIAN OR CORPORATE MEDICAL PROVIDER. FOR PURPOSES OF THIS RULE 8, THE LIST WILL BE REFERRED TO AS THE DESIGNATED PROVIDER LIST.

(1) THE DESIGNATED PROVIDER LIST MAY INITIALLY BE PROVIDED TO THE INJURED WORKER VERBALLY OR THROUGH AN EFFECTIVE PRE-INJURY DESIGNATION. IF PROVIDED VERBALLY OR THROUGH A PRE-INJURY DESIGNATION, THE WRITTEN DESIGNATED PROVIDER LIST MUST 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 MUST INCLUDE CONTACT INFORMATION FOR THE INSURER OF RECORD INCLUDING ADDRESS, PHONE NUMBER AND CLAIMS CONTACT INFORMATION. IF THE EMPLOYER IS SELF-INSURED, THE SAME CONTACT INFORMATION IS REQUIRED INCLUDING THE NAMES AND CONTACT INFORMATION OF PERSONS RESPONSIBLE FOR ADJUSTING THE CLAIM.

(B) THE DESIGNATED PROVIDER LIST MAY INCLUDE ANY COMBINATION OF PHYSICIANS AND/OR CORPORATE MEDICAL PROVIDERS SO LONG AS AT LEAST ONE PHYSICIAN OR CORPORATE MEDICAL PROVIDER IS AT A DISTINCT LOCATION WITHOUT COMMON OWNERSHIP. IF THERE ARE NOT AT LEAST TWO PHYSICIANS OR CORPORATE MEDICAL PROVIDERS AT DISTINCT LOCATIONS WITHOUT COMMON OWNERSHIP WITHIN THIRTY MILES OF THE EMPLOYER'S PLACE OF BUSINESS THE LIST MAY BE COMPRISED OF PROVIDERS AT THE SAME LOCATION OR WITH COMMON OWNERSHIP.

(C) THE NUMBER OF PHYSICIANS OR CORPORATE MEDICAL PROVIDERS REQUIRED ON THE DESIGNATED PROVIDER LIST IS DETERMINED BY THE NUMBER OF PHYSICIANS OR CORPORATE MEDICAL PROVIDERS WILLING TO TREAT AN INJURED EMPLOYEE WITHIN THIRTY MILES OF THE EMPLOYER'S LOCATION:

AVAILABLE PROVIDERS WITHIN 30 MILES:	REQUIRED NUMBER OF DESIGNATED PROVIDERS TO BE LISTED:
THREE OR LESS	ONE
AT LEAST FOUR BUT LESS THAN NINE	TWO
NINE OR MORE	FOUR

(D) A PHYSICIAN OR CORPORATE MEDICAL PROVIDER IS PRESUMED WILLING TO TREAT INJURED WORKERS UNLESS THE EMPLOYER IS SPECIFICALLY INFORMED BY THE PHYSICIAN OR CORPORATE MEDICAL PROVIDER TO THE CONTRARY.

(E) IF THE EMPLOYER FAILS TO SUPPLY THE REQUIRED DESIGNATED PROVIDER LIST IN ACCORDANCE WITH THIS RULE, THE INJURED WORKER MAY SELECT AN AUTHORIZED TREATING PHYSICIAN OR CHIROPRACTOR OF THEIR CHOOSING.

8-2**3** ~~INITIAL REFERRAL~~ **EMERGENCY DESIGNATION**

~~(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~~ **A**) 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)~~ **SECTION 8-2** of this rule apply.

(~~C~~ **B**) 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)~~ **SECTION 8-2** 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~~**4** 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)~~ **RULE 8-4(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 **WITHIN NINETY DAYS**

(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 **PURSUANT TO §8-43-404(5)(a)(III)**. 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**5**(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 shall submit the form to the employer by mailing or hand-delivering the completed form to the person(s) designated by the employer to receive the form. The person(s) so designated is listed on the designated provider list given to the injured worker pursuant to Rule 8-2 or ~~8-4(C)~~ **8-5(C)** as the respondents' representative(s). The injured worker may, but is not required to, provide the form to the impacted physicians. In any event, the respondents' representative(s) shall notify the impacted physicians and the individual adjusting the claim of the change, unless an objection is submitted pursuant to paragraph (C) of this Rule 8-5.

(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 **PROVIDED PURSUANT TO THIS RULE** 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).

8-8 INDEPENDENT MEDICAL EXAMINATIONS

The following rules apply when the employer or insurer causes an independent medical examination to be conducted pursuant to ~~section~~ **§**8-43-404. Prior to each such examination the employer or insurer shall ensure that the examining physician is provided written notice that describes the requirements relating to recording the examination as set out in statute and these rules.

8-10 NOTICE TO CLAIMANT

(A) Prior to commencing the examination the injured worker must review and sign a form issued by the Division that contains information regarding the independent medical examination process. A language interpreter may provide assistance if necessary. This form may be presented by the examining physician or by the employer, insurer or third-party administrator anytime prior to the examination. The injured worker shall sign the form to reflect receipt of the information. The injured worker, examining physician and all parties are entitled to a copy of the signed form. The examination shall not take place unless the injured worker has signed the form. Refusing to sign the form shall constitute refusal to submit to the independent medical examination.

(B) Immediately prior to the examination, the examining physician shall verbally notify the injured worker that the examination will be audio recorded.

8-11 AUDIO RECORDING AND FEES

(A) The examining physician shall not alter the recording.

(B) The required audio recording shall be saved in a digital format. The examining physician shall retain the original recording.

(C) The examining physician shall be compensated for conducting the examination pursuant to the medical fee schedule, Rule 18-6(G)(4)-Special Reports. In addition, the examining physician may add a $30 charge for all recorded examinations. The physician shall be entitled to charge $20.00 for each copy of the recording that is provided.

(D) If a party requests a copy of the audio recording, regardless of which party makes the initial request the first copy of the recording is provided only to the injured worker. If the injured worker makes the initial request for a copy of the recording, he/she shall be responsible for the cost of the copy. If the employer/insurer makes the initial request for a copy of the recording, it shall be responsible for the cost of the copy provided to the injured worker. The physician may require payment prior to releasing a copy of the recording.

8-12 PROCESS

(A) The recording shall not be released to anyone other than a party to the claim or the Division. This rule does not prohibit an employee or vendor of the examining physician or the Division from access to the recording for purposes of copying or transcribing the recording.

(B) The examining physician shall provide to both parties a written medical report prepared as a result of the independent medical examination.

(C) Any party may request a copy of the recorded examination within twenty (20) days of the date the written medical report was issued. All requests for copies shall be made to the examining physician, in writing, with a copy of the request to all other parties. The written request shall include the address to which the copy is to be provided along with payment of $20.

(D) If the injured worker makes the initial request for a copy of the recording, the examining physician shall, within fifteen (15) calendar days of the date of the written request, provide a copy of the recording to only the injured worker.

(E) If the employer/insurer makes the initial request for a copy of the recording, the employer/insurer's written request shall instruct the examining physician to provide a copy of the recording only to the injured worker. The employer/insurer's written request must also provide the address for the injured worker. The examining physician shall provide a copy to the injured worker within fifteen (15) calendar days of the date of the written request.

(F) If the injured worker alleges that the recording contains medical information not relevant to the workers' compensation claim which should remain confidential, he/she must raise that allegation in writing within fifteen (15) calendar days of the date the copy of the recording was provided. The written allegation along with the copy of the recording and a copy of the written medical report received by the injured worker must be provided to the Division's Customer Service Unit. A copy of the written allegation shall also be provided to the examining physician and the employer/insurer. Within ten (10) days of the allegation being provided to the employer/insurer, the employer/insurer may file a response to the injured worker's allegation with the Division's Customer Service Unit. Failure to raise an allegation in a timely manner results in the injured worker having waived the right to raise any allegations of confidentiality in the recording.

(G) Only medical information that is not discussed in the written report generated by the physician as a result of the independent medical examination may be raised pursuant to paragraph (F) above. This limitation does not impact the injured worker's ability to challenge any aspect of the written report.

(H) A written allegation from an injured worker that the recording contains medical information that should remain confidential must provide a sufficient level of detail. A sufficient level of detail exists if the written statement provides general information as to

what medical information was communicated that should remain confidential, and why the information should remain confidential within the context of the workers' compensation claim. Raising medical issues contained in the report, or failing to provide sufficient detail shall result in a summary denial of the allegation by an ALJ.

(I) If no timely allegation regarding confidential information pursuant to paragraph (F) is made, the employer/insurer may then request a copy of the recording by providing a written request to the examining physician, explaining that no allegation was made by the injured worker and a copy of the recording may be released to the employer/insurer. A $20 payment to the examining physician shall be included with this request. The examining physician shall provide a copy of the recording within fifteen (15) calendar days of the date the written request is received.

(J) If the injured worker alleges that the recording contains confidential medical information as set out in paragraph (F) of this rule, the employer/insurer shall not request a copy of the recording until the allegation is resolved.

(K) If the Division receives an allegation pursuant to paragraph (F), the Division will submit the recording, a copy of the written medical report, the injured worker's allegation and any response from the employer/insurer to an Administrative Law Judge either in the Prehearing Unit or the Office of Administrative Courts.

(L) An Administrative Law Judge shall consider the injured workers' allegations and any response, listen to the recording in camera if necessary, and determine if the recording contains confidential medical information not relevant to the claim.

(M) If an Administrative Law Judge determines that the recording does not contain confidential medical information, the Administrative Law Judge will issue an appropriate order and return the recording to the injured worker. The employer/insurer may then request a copy of the recording within twenty (20) days of the date the order was issued by providing a written request, along with $20 payment to the examining physician. The examining physician shall provide a copy of the recording to the employer/insurer within fifteen (15) days calendar days of the date the written request is received.

(N) If an Administrative Law Judge determines that the recording contains confidential medical information, the Administrative Law Judge shall issue an order to the parties and the examining physician. The Administrative Law Judge shall then produce, or cause to be produced, a copy of the recording with the confidential medical information redacted. An order to redact information does not constitute a final decision as to the relevancy of that information in any future proceeding. The Administrative Law Judge will provide the original recording and the redacted recording to the Division's Customer Service Unit. The Division will maintain the copy of the original and redacted recording until the claim is closed. Either party may obtain a copy of the redacted recording by providing a written request, along with payment of $10, to the Division.

(O) If paragraph (N) applies and for any reason the Administrative Law Judge is unable to redact the recording, the Administrative Law Judge will issue an order that copies of the recording may not be released and will provide the copy of the original recording to the Division's Customer Service Unit. If necessary an Administrative Law Judge may thereafter review the recording in camera to assist in resolving factual disputes that may arise.

8-13 MAINTENANCE OF THE RECORDINGS

(A) Absent an order to the contrary, the examining physician may destroy the recording twelve (12) months after the date the examining physician's written report was issued.

(B) Any recording in the possession of the Division may be destroyed once the claim is closed.

8-14 DISPUTES

If a dispute arises, such as, the examination was not recorded, or if the recording is inaudible, the parties may file a motion with an Administrative Law Judge if they cannot agree on a resolution. Each dispute will be considered individually and determined based upon the specific facts in existence so that the Administrative Law Judge may fashion an appropriate remedy. Generally, the striking of the IME report will be the appropriate remedy. If the examining physician was responsible for the faulty or inaudible recording, the examining physician may be required to repeat the examination without additional payment. If another party was responsible for a faulty or inaudible recording that party may be required to pay for a repeat examination.