

Governor Bill Ritter signed HB 1176 into law on May 14, 2007, and it is effective for dates of injury after January 1, 2008. This law is the result of efforts by a new legislature to put additional requirements on the employer/insurer's historical right to control medical care for injured workers in Colorado.

The Rules of Procedure that interpret this law change were published on November 5, 2007. The Colorado Division of Workers' Compensation also provided new forms that apply to the law change.

As an overview, HB 1176 changed the following procedures in Colorado workers' compensation law:

- Employers will now have to provide a choice of two physicians at distinct locations or medical provider systems to treat the injured worker's medical condition. The medical providers or facilities named cannot share a financial interest or common ownership.
- For rural employers: if there are not two Level II accredited physicians within thirty (30) miles of the employer, then the employer may designate two physicians at the same facility, or that have a common financial interest.
- The injured worker is permitted to change from the physician chosen to the other physician or clinic chosen within 90 days of the date of injury provided they are not at maximum medical improvement and the request is made by the process set forth in the Rules.
- The insurer/TPA is required to track how often an employee requests a change of physician and to provide this report to the Division of Workers' Compensation upon request.

**What this law change means to Insurers and Employers:**

- Insurers and employers will still retain medical control in Colorado, which is a very effective method to manage medical and indemnity costs in a workers' compensation claim. However, retaining control of medical treatment now has a number of new stringent stipulations, which when not followed, may result in loss of medical control.
- Each of the provisions requiring providing a list of designated providers, requesting a change of physician, addressing emergency situations, requesting financial data on the providers, etc., has a strict time requirement for a response or action on the part of the insurer or employer. Both insurers and employers need to be cognizant of the time restraints and train their staff to address these requests in a timely manner. Failure to timely respond or act may result in loss of medical control.
- The one-time change of physician in the early stages of the claim could prolong the treatment period and payment of wage loss benefits because the new provider will need to familiarize him/herself with the treatment provided to date. This could result in a request new diagnostic tests, further specialty treatment, etc., all of which can increase medical and indemnity costs.
- This new law will result in the employers becoming more involved with choosing their treatment providers so as to comply with a request to have a designated provider list for each location, if the locations are not within close proximity. Educating the employers and their staff regarding the distribution of the designated provider list will be difficult due to time constraints, the press of business for the employers and geography.
- Insurers and employers will be charged with policing their designated providers' timely responses on financial and employment ties. This becomes a sensitive business issue that should not be the responsibility of the insurer or employer to monitor.

**Summary of HB 1176**

HB 1176 has been codified as C.R.S. § 8-43-404(5)(a), and interpreted through rule making as Rule 8, Colorado Workers' Compensation Rules of Procedure. In order to better understand the new law, we have separated the statute and Rules into the following subject categories: choosing a physician, when an injury is reported, changing medical providers, and information requested on providers.

1. Choosing a Physician:

- a. Employers or insurers shall provide a list (the "designated provider list") of:
  - i. two physicians, or
  - ii. two corporate medical providers, or
  - iii. one physician and one corporate medical provider
- b. The two providers shall be at two distinct locations without common ownership.
- c. If there are fewer than four physician or corporate medical providers within 30 miles of the employer's place of business who are willing to provide treatment to workers' compensation patients, the employer/insurer may designate one physician or one corporate medical provider.
- d. If the employer is a health care provider or government entity that has its own occupational health care provider system, this employer is not required to designate another physician or medical entity as a second provider. The facility must be a qualified facility. To qualify, the facility must be under the supervision and control of a physician, and a physician must be on the premises or reasonably available (Rule 8-4 (B)).
  - i. If the employer other than those listed in d. has its own qualified on-site health care facility, the employer may name this facility as one of the providers on the list, but must name a second facility or provider outside its own system on the designated provider list.
- e. In an emergency situation the injured worker shall be taken to any physician or medical facility that is able to provide care. When the emergency is no longer required, the designated provider list shall be provided to the injured worker within seven (7) business days following the date the employer had notice of the injury.
  - i. In an emergency situation with employers listed in c. or d. above, these employers may designate an authorized medical provider once emergency care is not required.
- f. If the worker is injured while away from the worker's usual place of employment, the employer may refer the injured worker to a physician in the vicinity where the injury occurred. Within seven (7) business days following the date the employer has notice of the injury, the employer still needs to provide the designated provider list to the injured worker.

2. When an Injury is Reported

- a. The designated provider list can be provided orally upon notice of injury. However, it must be mailed, or hand-delivered to the injured worker within seven (7) business days following the date the employer has notice of the injury.

- b. If the list of physicians or corporate medical providers is not tendered at the time of injury, the injured worker has the right to select their medical provider and the employer/insurer has lost medical control.
3. Changing Medical Providers
- a. An injured worker may request a one-time change of physician within 90 days of the date of injury, but before reaching maximum medical improvement. The new physician must be on the designated provider list or part of a corporate medical provider facility. In order to request a physician change, the injured worker must complete and sign a Division form and serve the form per statute.
    - i. If the insurer/employer believes that the request for a change of physician does not meet statutory requirements, they have to provide a written objection within seven (7) business days following receipt of the injured worker's request form.
    - ii. If an objection is not filed within seven (7) business days, the request to change is valid and must be processed accordingly.
  - b. When there is a valid change of physician, the prior authorized medical provider will remain as the provider until the injured workers' initial visit with the new authorized provider.
    - i. The new authorized provider should request medical records from the prior provider. Upon receipt of a request for records, the prior provider has seven (7) calendar days to provide the records.
    - ii. The insurer or employer can facilitate transfer of the records to the new provider.
    - iii. The insurer shall pay for the copies pursuant to the Medical Fee Schedule.
  - c. If the new provider is unwilling or unable to schedule an appointment, the injured worker shall notify the insurer/employer in writing. Upon receipt of said notice, the insurer/employer shall attempt to schedule the appointment within 30 days.
    - i. If an appointment cannot be scheduled within 30 days (or if the injured worker does not agree to a later appointment date), the injured worker must be provided with a substitute authorized medical provider.
    - ii. The insurer/employer has seven (7) business days to provide the substitute provider or to make another attempt to schedule the appointment within 30 days. If neither occurs within seven (7) business days, the injured worker can select their own authorized medical provider and the insurer/employer loses medical control.
  - d. In addition the new one-time change of provider provisions listed above, the injured worker can still request a change of provider in the manner previously available pursuant to § 8-43-404 (5)(a)(VI).
4. Information Requested on Providers
- a. Any party to a claim is permitted to receive a list of ownership interests and employment relationships from a designated provider. The request must be in writing to the designated provider and a copy provided to the non-requesting parties.

- i. 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.
- b. A form is provided by the Division for the designated provider to use for their response (Form WC30).
  - i. The information contained on the form must be current to within thirty (30) days of the date of the request.
  - ii. The form was not previously requested and provided.
  - iii. The form shall be provided within five (5) business days of the request.
- c. If the form is not provided in a timely manner, the requesting party shall notify the other parties. This notification must be provided within seven (7) business days following the date the information should have been provided.
- d. If the information is not provided, and the requesting party complies with c. above, the injured worker shall be provided with a substitute authorized medical provider within seven (7) business days. If a substitute provider is not designated within seven (7) business days, the injured worker may chose a physician and the insurer/employer has lost medical control.

**Suggestions from Travelers to comply with HB 1176:**

- ✓ Travelers recommends that our customers develop a list of providers from our network provider list and provide said list to every employee on or before 1/1/08. A sample designation form has been developed for our customer's use, which includes the information required per Rule 8-2 (A)(2). Have each employee sign that they received the list and keep the original in their personnel file, with a copy provided to them.
- ✓ While the law change indicates that either the insurer or employer can provide the designated provider list to the injured worker, Travelers recommends that the employer provide the list immediately upon notice of the claim so there is no opportunity to miss a deadline. Also, Travelers advises that the employers choose the providers on the list by interviewing the providers and visiting the clinics where they practice to ensure that the providers will provide the level and type of care demanded by the employer. If the provider knows the nature of the employer's business and whether they have a transitional duty program available, for example, the provider is able to offer tailored medical treatment that will benefit both the injured worker and the employer.
- ✓ Upon notice of an injury, the designated provider list must be provided orally to the injured worker and then in paper form within seven (7) business days. The employer is generally the first to receive notice of an injury. Therefore, employers and their representatives must have knowledge of the designated provider list and be able to accurately communicate this information to an injured worker. If no list was provided to the injured worker by the employer, Travelers will provide a default list of providers upon receiving notice of the injury. However, the employer must understand that if the notice is not timely provided to Travelers, both the insurer and employer will lose the opportunity to provide treatment.