

CHAPTER 204

LABOR AND INDUSTRY

HOUSE BILL 07-1176

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AN ACT

CONCERNING THE ABILITY OF AN INJURED EMPLOYEE UNDER THE "WORKERS' COMPENSATION ACT OF COLORADO" TO SELECT A TREATING PHYSICIAN FROM A LIST PREPARED BY AN EMPLOYER UNDER CERTAIN CIRCUMSTANCES.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 8-43-404 (5) (a), Colorado Revised Statutes, is amended to read:

8-43-404. Examination - refusal - personal responsibility - physicians to testify and furnish results - definitions. (5) (a) (I) (A) In all cases of injury, the employer or insurer ~~has the right~~ SHALL PROVIDE A LIST OF AT LEAST TWO PHYSICIANS OR TWO CORPORATE MEDICAL PROVIDERS OR AT LEAST ONE PHYSICIAN AND ONE CORPORATE MEDICAL PROVIDER, WHERE AVAILABLE, in the first instance, ~~to~~ FROM WHICH LIST AN INJURED EMPLOYEE MAY select the physician who attends said injured employee. THE TWO DESIGNATED PROVIDERS SHALL BE AT TWO DISTINCT LOCATIONS WITHOUT COMMON OWNERSHIP. IF THERE ARE NOT TWO PROVIDERS AT TWO DISTINCT LOCATIONS WITHOUT COMMON OWNERSHIP WITHIN THIRTY MILES OF EACH OTHER, THEN AN EMPLOYER MAY DESIGNATE TWO PROVIDERS AT THE SAME LOCATION OR WITH SHARED OWNERSHIP INTERESTS. UPON REQUEST BY AN INTERESTED PARTY TO THE WORKERS' COMPENSATION CLAIM, A DESIGNATED PROVIDER ON THE EMPLOYER'S LIST SHALL PROVIDE A LIST OF OWNERSHIP INTERESTS AND EMPLOYMENT RELATIONSHIPS, IF ANY, TO THE REQUESTING PARTY WITHIN FIVE DAYS OF THE RECEIPT OF THE REQUEST. If the services of a physician are not tendered at the time of injury, the employee shall have the right to select a physician or chiropractor. FOR PURPOSES OF THIS SECTION, "CORPORATE MEDICAL PROVIDER" MEANS A MEDICAL ORGANIZATION IN BUSINESS AS A SOLE PROPRIETORSHIP, PROFESSIONAL CORPORATION, OR PARTNERSHIP.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(B) IF THERE ARE FEWER THAN FOUR PHYSICIANS OR CORPORATE MEDICAL PROVIDERS WITHIN THIRTY MILES OF THE EMPLOYER'S PLACE OF BUSINESS WHO ARE WILLING TO TREAT AN INJURED EMPLOYEE, THE EMPLOYER OR INSURER MAY INSTEAD DESIGNATE ONE PHYSICIAN OR ONE CORPORATE MEDICAL PROVIDER, AND SUBPARAGRAPHS (III) AND (IV) OF THIS PARAGRAPH (a) SHALL NOT APPLY. A PHYSICIAN IS PRESUMED WILLING TO TREAT INJURED WORKERS UNLESS HE OR SHE INDICATES TO THE EMPLOYER OR INSURER TO THE CONTRARY.

(II) (A) IF THE EMPLOYER IS A HEALTH CARE PROVIDER OR A GOVERNMENTAL ENTITY THAT CURRENTLY HAS ITS OWN OCCUPATIONAL HEALTH CARE PROVIDER SYSTEM, THE EMPLOYER MAY DESIGNATE HEALTH CARE PROVIDERS FROM WITHIN ITS OWN SYSTEM AND IS NOT REQUIRED TO PROVIDE AN ALTERNATIVE PHYSICIAN OR CORPORATE MEDICAL PROVIDER FROM OUTSIDE ITS OWN SYSTEM.

(B) IF THE EMPLOYER HAS ITS OWN ON-SITE HEALTH CARE FACILITY, THE EMPLOYER MAY DESIGNATE SUCH ON-SITE HEALTH CARE FACILITY AS THE AUTHORIZED TREATING PHYSICIAN, BUT THE EMPLOYER SHALL COMPLY WITH SUBPARAGRAPH (III) OF THIS PARAGRAPH (a). FOR PURPOSES OF THIS SUB-SUBPARAGRAPH (B), "ON-SITE HEALTH CARE FACILITY" MEANS AN ENTITY THAT MEETS ALL APPLICABLE STATE REQUIREMENTS TO PROVIDE HEALTH CARE SERVICES ON THE EMPLOYER'S PREMISES.

(III) AN EMPLOYEE MAY OBTAIN A ONE-TIME CHANGE IN THE DESIGNATED AUTHORIZED TREATING PHYSICIAN UNDER THIS SECTION BY PROVIDING NOTICE THAT MEETS THE FOLLOWING REQUIREMENTS:

(A) THE NOTICE IS PROVIDED WITHIN NINETY DAYS AFTER THE DATE OF THE INJURY, BUT BEFORE THE INJURED WORKER REACHES MAXIMUM MEDICAL IMPROVEMENT.

(B) THE NOTICE IS IN WRITING AND SUBMITTED ON A FORM DESIGNATED BY THE DIRECTOR. THE NOTICE PROVIDED IN THIS SUBPARAGRAPH (III) SHALL ALSO SIMULTANEOUSLY SERVE AS A REQUEST AND AUTHORIZATION TO THE INITIALLY AUTHORIZED TREATING PHYSICIAN TO RELEASE ALL RELEVANT MEDICAL RECORDS TO THE NEWLY AUTHORIZED TREATING PHYSICIAN.

(C) THE NOTICE IS DIRECTED TO THE INSURANCE CARRIER OR TO THE EMPLOYER'S AUTHORIZED REPRESENTATIVE, IF SELF-INSURED, AND TO THE INITIALLY AUTHORIZED TREATING PHYSICIAN AND IS DEPOSITED IN THE UNITED STATES MAIL OR HAND-DELIVERED TO THE EMPLOYER, WHO SHALL NOTIFY THE INSURANCE CARRIER, IF NECESSARY, AND THE INITIALLY AUTHORIZED TREATING PHYSICIAN.

(D) THE NEW PHYSICIAN IS ON THE EMPLOYER'S DESIGNATED LIST OR PROVIDES MEDICAL SERVICES FOR A DESIGNATED CORPORATE MEDICAL PROVIDER ON THE LIST.

(E) THE TRANSFER OF MEDICAL CARE DOES NOT POSE A THREAT TO THE HEALTH OR SAFETY OF THE INJURED EMPLOYEE.

(F) AN INSURANCE CARRIER, OR AN EMPLOYER'S AUTHORIZED REPRESENTATIVE IF THE EMPLOYER IS SELF-INSURED, SHALL TRACK HOW OFTEN INJURED EMPLOYEES CHANGE THEIR AUTHORIZED TREATING PHYSICIAN PURSUANT TO THIS

SUBPARAGRAPH (III) AND SHALL REPORT SUCH INFORMATION TO THE DIVISION UPON REQUEST.

(IV) (A) WHEN AN INJURED EMPLOYEE CHANGES HIS OR HER DESIGNATED AUTHORIZED TREATING PHYSICIAN, THE NEWLY AUTHORIZED TREATING PHYSICIAN SHALL MAKE A REASONABLE EFFORT TO AVOID ANY UNNECESSARY DUPLICATION OF MEDICAL SERVICES.

(B) THE ORIGINALLY AUTHORIZED TREATING PHYSICIAN SHALL SEND ALL MEDICAL RECORDS IN HIS OR HER POSSESSION PERTAINING TO THE INJURED EMPLOYEE TO THE NEWLY AUTHORIZED TREATING PHYSICIAN WITHIN SEVEN CALENDAR DAYS AFTER RECEIVING A REQUEST FOR MEDICAL RECORDS FROM THE NEWLY AUTHORIZED TREATING PHYSICIAN.

(C) THE ORIGINALLY AUTHORIZED TREATING PHYSICIAN SHALL CONTINUE AS THE AUTHORIZED TREATING PHYSICIAN FOR THE INJURED EMPLOYEE UNTIL THE INJURED EMPLOYEE'S INITIAL VISIT WITH THE NEWLY AUTHORIZED TREATING PHYSICIAN, AT WHICH TIME THE TREATMENT RELATIONSHIP WITH THE INITIALLY AUTHORIZED TREATING PHYSICIAN SHALL TERMINATE.

(D) THE OPINION OF THE ORIGINALLY AUTHORIZED TREATING PHYSICIAN REGARDING WORK RESTRICTIONS AND RETURN TO WORK SHALL CONTROL UNLESS AND UNTIL SUCH OPINION IS EXPRESSLY MODIFIED BY THE NEWLY AUTHORIZED TREATING PHYSICIAN.

(E) THE NEWLY AUTHORIZED TREATING PHYSICIAN SHALL BE PRESUMED TO HAVE CONSENTED TO TREAT THE INJURED EMPLOYEE UNLESS THE NEWLY AUTHORIZED TREATING PHYSICIAN EXPRESSLY REFUSES IN WRITING WITHIN FIVE DAYS AFTER THE DATE OF THE NOTICE TO CHANGE AUTHORIZED TREATING PHYSICIANS. IF THE NEWLY AUTHORIZED TREATING PHYSICIAN REFUSES TO TREAT THE INJURED EMPLOYEE, THE EMPLOYEE MAY RETURN TO THE EMPLOYER TO REQUEST AN ALTERNATIVE AUTHORIZED TREATING PHYSICIAN. IF THE EMPLOYER DOES NOT PROVIDE AN ALTERNATIVE AUTHORIZED TREATING PHYSICIAN WITHIN FIVE DAYS AFTER THE EMPLOYEE'S REQUEST, RULES ESTABLISHED BY THE DIVISION SHALL CONTROL.

(V) IF THE AUTHORIZED TREATING PHYSICIAN MOVES FROM ONE FACILITY TO ANOTHER, OR FROM ONE CORPORATE MEDICAL PROVIDER TO ANOTHER, AN INJURED EMPLOYEE MAY CONTINUE CARE WITH THE AUTHORIZED TREATING PHYSICIAN, AND THE ORIGINAL FACILITY OR CORPORATE MEDICAL PROVIDER SHALL PROVIDE THE INJURED EMPLOYEE'S MEDICAL RECORDS TO THE AUTHORIZED TREATING PHYSICIAN WITHIN SEVEN DAYS AFTER RECEIPT OF A REQUEST FOR MEDICAL RECORDS FROM THE AUTHORIZED TREATING PHYSICIAN.

(VI) IN ADDITION TO THE ONE-TIME CHANGE OF PHYSICIAN ALLOWED IN SUBPARAGRAPH (III) OF THIS PARAGRAPH (a), upon written request to the insurance carrier or TO THE employer's authorized representative if self-insured, ~~the~~ AN INJURED employee may procure written permission to have a personal physician or chiropractor ~~attend said~~ TREAT THE employee. If ~~such~~ permission is neither granted nor refused within twenty days, the employer or insurance carrier shall be deemed to have waived any objection ~~thereto~~ TO THE EMPLOYEE'S REQUEST. Objection shall be in writing and shall be deposited in the United States mail or hand-delivered to

the employee within ~~said~~ twenty days. AN INSURANCE CARRIER, OR AN EMPLOYER'S AUTHORIZED REPRESENTATIVE IF SELF-INSURED, SHALL TRACK HOW OFTEN AN INJURED EMPLOYEE REQUESTS TO CHANGE HIS OR HER PHYSICIAN AND HOW OFTEN SUCH CHANGE IS GRANTED OR DENIED AND SHALL REPORT SUCH INFORMATION TO THE DIVISION UPON REQUEST. Upon the proper showing to the division, the employee may procure ~~IT'S THE DIVISION'S~~ permission at any time to have a physician of the employee's selection ~~attend said~~ TREAT THE employee, and in any nonsurgical case the employee, with such permission, in lieu of medical aid, may procure any nonmedical treatment recognized by the laws of this state as legal. The practitioner administering ~~such~~ THE treatment ~~to~~ SHALL receive ~~such~~ fees ~~therefor~~ under the medical provisions of articles 40 to 47 of this title as ~~may be fixed~~ SPECIFIED by the division.

SECTION 2. Effective date - applicability. This act shall take effect January 1, 2008.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: May 14, 2007