



2015

EMPLOYEE RIGHTS
ON INITIAL MEDICAL
TREATMENT

Compendium of Law

INTRODUCTION

When an employee is injured at work, what are their rights with respect to receiving paid medical treatment and what steps should the employer consider?

This Compendium provides a state-by-state analysis of employers' obligations after a compensable accident has been reported and also explains whether a state utilizes a panel system of physicians or a broader program. The compendium also is meant to provide employers with crucial information for the critical, initial phase of an accident investigation, including:

- where do employees go?
- who selects the provider?
- what does an employer need to do?

USLAW's state-by-state Employee Rights on Initial Medical Treatment Compendium takes advantage of USLAW's knowledge and experience of all 50 states plus Washington, D.C.

We hope you find the material useful.

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ABOUT USLAW NETWORK

2001. The Start of Something Better.

Mega-firms...big, impersonal bastions of legal tradition, encumbered by bureaucracy and often slow to react. The need for an alternative was obvious. A vision of a network of smaller, regionally based, independent firms with the capability to respond quickly, efficiently and economically to client needs from Atlantic City to Pacific Grove was born. In its infancy, it was little more than a possibility, discussed around a small table and dreamed about by a handful of visionaries. But the idea proved too good to leave on the drawing board. Instead, with the support of some of the country's brightest legal minds, USLAW NETWORK became a reality.

Fast-forward to today.

The commitment remains the same as originally envisioned. To provide the highest quality legal representation and seamless cross-jurisdictional service to major corporations, insurance carriers, and to both large and small businesses alike, through a network of professional, innovative law firms dedicated to their client's legal success. Now as a network with more than 6,000 attorneys from nearly 100 independent, full practice firms with roots in civil litigation, spanning the United States, Canada, Latin America, Europe, Asia and Africa, USLAW NETWORK remains a responsive, agile legal alternative to the mega-firms.

Homefield Advantage.

USLAW NETWORK offers what it calls The Homefield Advantage which comes from knowing and understanding the venue in a way that allows a competitive advantage – a truism in both sports and business. Jurisdictional awareness is a key ingredient to successfully operating throughout the United States and abroad.

Knowing the local rules, the judge, and the local business and legal environment provides our firms' clients this advantage. The strength and power of an international presence combined with the understanding of a respected local firm makes for a winning line-up.

A Legal Network for Purchasers of Legal Services.

USLAW NETWORK firms go way beyond providing quality legal services to their clients. Unlike other legal networks, USLAW is organized around client expectations, not around the member law firms. Clients receive ongoing educational opportunities, online resources including webinars, jurisdictional updates, and resource libraries. We also provide a semi-annual USLAW Magazine, USLAW DigiKnow, which features insights into today's trending legal topics, compendiums of law, as well as annual membership and practice group directories. To ensure our goals are the same as the clients our member firms serve, our 45-member Client Leadership Council is directly involved in the development of our programs and services. This communication pipeline is vital to our success and allows us to better monitor and meet client needs and expectations.

USLAW Abroad.

Just as legal issues seldom follow state borders, they often extend beyond U.S. boundaries as well. In 2007, USLAW established a relationship with the Trans-European Law Firms Alliance (TELFA), a network of 25 independent law firms representing more than 700 lawyers through Europe. Subsequently, in 2010, we entered a similar affiliation with the ALN (formerly the Africa Legal Network) to further our service and reach. Additionally, USLAW member firms are located throughout Canada, Latin America, and Asia.

How USLAW NETWORK Membership is Determined.

Firms are admitted to the Network by invitation only and only after they are fully vetted through a rigorous review process. Many firms have been reviewed over the years, but only a small percentage were eventually invited to join. The search for quality member firms is a continuous and ongoing effort. Firms admitted must possess broad commercial legal capabilities and have substantial litigation and trial experience. In addition, USLAW NETWORK members must subscribe to a high level of service standards and are continuously evaluated to ensure these standards of quality and expertise are met.

USLAW in Review.

- All vetted firms with demonstrated, robust practices and specialties
- Efficient use of legal budgets, providing maximum return on legal services investments
- Seamless, cross-jurisdictional service
- Responsive and flexible
- Multitude of educational opportunities and online resources
- Team approach to legal services

The USLAW Success Story.

The reality of our success is simple: we succeed because our member firms' clients succeed. Our member firms provide high-quality legal results through the efficient use of legal budgets. We provide cross-jurisdictional services eliminating the time and expense of securing adequate representation in different regions. We provide trusted and experienced specialists quickly.

When a difficult legal matter emerges – whether it's in a single jurisdiction, nationwide or internationally – USLAW is there. Success.

For more information, please contact Roger M. Yaffe, USLAW CEO, at (800) 231-9110 or roger@uslaw.org

USLAW NETWORK **WORKERS' COMPENSATION** PRACTICE AREA

The USLAW NETWORK Worker's Comp Community offers a global network of attorneys who assist clients with creating, managing, implementing and updating employee guidelines and policies as well as defending any workplace-related complaints. Through information exchanges, idea sharing and policy updating, our attorneys remain current with the latest issues facing the work environment - from both the employee and employer perspective - so they can best assist all clients with questions and case-related issues.

Why Choose USLAW NETWORK Worker's Comp Law Firms?

Our attorneys represent public and private employers of all sizes, whether union or nonunion, insurance carriers, self-insured employers/servicing agents, and uninsured employers in all manner of workers' compensation cases. We offer extensive experience in the defense of all types of employment-related lawsuits and grievances. Whether a client needs drafting, revising, and updating personnel policies, employee handbooks, employment contracts, severance agreements, contractor agreements, non-competition/non-solicitation/ confidentiality agreements, and other employment-related documents reflecting the individual employer's unique needs and preferences, we have a network of attorneys able to provide legal counsel. While workers' compensation laws seek to protect employees, USLAW attorneys help to shield our clients from abuses of the system, ensuring fair and just awards for employers and insurance companies.

Areas of Practice

USLAW Worker's Comp attorneys defend and provide legal counsel on a wide range of worker's compensation cases on issues related to:

- ADA
- ADEA
- Arbitration
- Collective bargaining
- EEOC
- Employment Security
- ERISA
- FMLA
- MSHA
- NLRA
- NLRB
- OSHA
- Union campaigning and elections
- Wage & Hour
- WARN
- And other employment-related state and federal laws

USLAW NETWORK **CONTACT INFORMATION**

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ALABAMA

STATUTE: Code of Ala. § 25-5-77

PANEL / LIST / NA

Employer makes initial physician choice. If the employee wishes to choose a different physician, then the employee must do so from a panel.

EXPLANATION

If the employee is dissatisfied with the initial treating physician selected by the employer and if further treatment is required, the employee may so advise the employer, and the employee shall be entitled to select a second physician from a panel or list of four physicians selected by the employer.

ALASKA

STATUTE: Alaska Stat. Ann. § 23.30.095

PANEL / LIST / NA

Employee makes the initial choice of physician. The employer may establish preferred provider list, but must instruct employees that they may choose any provider without regard to inclusion on employer's list.

EXPLANATION

When medical care is required, the injured employee may designate a licensed physician to provide all medical and related benefits. The employee may not make more than one change in the employee's choice of attending physician without the written consent of the employer. Referral to a specialist by the employee's attending physician is not considered a change in physicians. Upon procuring the services of a physician, the injured employee shall give proper notification of the selection to the employer within a reasonable time after first being treated. Notice of a change in the attending physician shall be given before the change.

ARIZONA

STATUTE: A.R.S. § 23-908

See also; award of the Lee v. Indus. Comm'n of Arizona, 176 Ariz. 265, 860 P.2d 1318 (Ct. App. 1993)

PANEL / LIST / NA

Employee makes the initial choice of treating physician with the following exception: If employer is self-insured, employer may choose physician.

EXPLANATION

The employer may designate in writing a physician chosen by the employer, who shall be permitted by the employee, or any person in charge of the employee, to make one examination of the injured employee in order to ascertain the character and extent of the injury occasioned by the accident.

ARKANSAS

STATUTE: A.C.A. § 11-9-514

PANEL / LIST / NA

Employer makes the initial selection of physician, which may be changed by the state agency. Employee may petition for a one-time change-of-physician.

EXPLANATION

(a)

(1) If the employee selects a physician, the Workers' Compensation Commission shall not authorize a change of physician unless the employee first establishes to the satisfaction of the commission that there is a compelling reason or circumstance justifying a change.

(2)

(A) If the employer selects a physician, the claimant may petition the commission one (1) time only for a change of physician, and if the commission approves the change with or without a hearing, the commission shall determine the second physician and shall not be bound by recommendations of claimant or respondent.

(B) However, if the change desired by the claimant is to a chiropractic physician, optometrist, or podiatrist, the claimant may make the change by giving advance written notification to the employer or carrier.

CALIFORNIA

STATUTE: Cal Lab Code § 4616.3(a-c)

PANEL / LIST / NA

Employer makes the initial selection of physician. After a period of time specified by state law, the employee has free choice. Unless the employer or the employer's insurer has established a "medical provider network," employer has initial selection of physician and employee can change to physician of own choosing after 30 days. An employee who has notified his or her employer in writing prior to injury that they have a personal physician, and whose providers provide nonoccupational health care coverage, has the right to be treated by his or her personal physician after job-related injury. The right to be treated by one's personal physician at the outset of injury also applies if the employer has failed to post notice of workers' compensation rights as required. If an employer or insurer has established a medical provider network, then under most conditions the employer controls the initial selection of physician and all care must be provided within the network for the life of the claim.

EXPLANATION

(a) If the injured employee notifies the employer of the injury or files a claim for workers' compensation with the employer, the employer shall arrange an initial medical evaluation and begin treatment as required by Section 4600.

(b) The employer shall notify the employee of the existence of the medical provider network established pursuant to this article, the employee's right to change treating physicians within the network after the first visit, and the method by which the list of participating providers may be accessed by the employee. The employer's failure to provide notice as required by this subdivision or failure to post the notice as required by Section 3550 shall not be a basis for the employee to treat outside the network unless it is shown that the failure to provide notice

(CALIFORNIA CONTINUED)

resulted in a denial of medical care.

(c) If an injured employee disputes either the diagnosis or the treatment prescribed by the treating physician, the employee may seek the opinion of another physician in the medical provider network. If the injured employee disputes the diagnosis or treatment prescribed by the second physician, the employee may seek the opinion of a third physician in the medical provider network.

COLORADO

STATUTE: C.R.S. 8-43-404

PANEL / LIST / NA

Employer provides list. 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.

EXPLANATION

(5) (a) (I) (A) In all cases of injury, the employer or insurer 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, 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.

(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.

(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:

CONNECTICUT

STATUTE: Conn. Gen. Stat. § 31-279

PANEL / LIST / NA

Employee makes the initial choice of physician, unless the employer has managed care plan established.

EXPLANATION

(c)(1) Any employer or any insurer acting on behalf of an employer, may establish a plan,

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(CONNECTICUT CONTINUED)

subject to the approval of the chairman of the Workers' Compensation Commission under subsection (d) of this section, for the provision of medical care that the employer provides for treatment of any injury or illness under this chapter.

(E) Such other provisions as the employer and the employees may agree to, subject to the approval of the chairman.

(2) The election by an employee covered by a plan established under this subsection to obtain medical care and treatment from a provider of medical services who is not listed in the plan shall suspend the employee's right to compensation, subject to the order of the commissioner.

DELAWARE

STATUTE: Del. Code Ann. tit. 19, § 2323

PANEL / LIST / NA

Employee makes the initial choice of physician.

EXPLANATION

Any employee who alleges an industrial injury shall have the right to employ a physician, surgeon, dentist, optometrist or chiropractor of the employee's own choosing. Notice of the employee's intention to employ medical aid as aforesaid shall be given to the employee's employer or its insurance carrier or to the Board.

FLORIDA

STATUTE: Fla. Stat. Ann. § 440.13

PANEL / LIST / NA

Employee selects a physician from list supplied by carrier or managed care organization when medical care is provided through an authorized managed care arrangement. Employee may petition for a one-time change of physician.

If medical care is provided outside an authorized managed care arrangement, the employer chooses the physician.

If no list, employee chooses

EXPLANATION

(f) Upon the written request of the employee, the carrier shall give the employee the opportunity for one change of physician during the course of treatment for any one accident.

c) If the employer fails to provide initial treatment or care required by this section after request by the injured employee, the employee may obtain such initial treatment at the expense of the employer, if the initial treatment or care is compensable and medically necessary and is in accordance with established practice parameters and protocols of treatment as provided for in this chapter.

GEORGIA

STATUTE: O.C.G.A. § 34-9-201

PANEL / LIST / NA

Employee selects initial physician from a panel maintained by the employer.

If the employer fails to provide any of the procedures for selection of physicians as set forth, an employee may select any physician to render service at the expense of the employer.

EXPLANATION

(b) The employer may satisfy the requirements for furnishing medical care under Code Section 34-9-200 in one of the following manners:

(1) The employer shall maintain a list of at least six physicians or professional associations or corporations of physicians who are reasonably accessible to the employees; provided, however, that the board may grant exceptions to the required size of the panel where it is demonstrated that more than four physicians or groups of physicians are not reasonably accessible. This list shall be known as the “Panel of Physicians.” At least one of the physicians must practice the specialty of orthopedic surgery.

HAWAII

STATUTE: Haw. Rev. Stat. § 386-21

PANEL / LIST / NA

Employee makes the initial choice of physician.

EXPLANATION

(b) Whenever medical care is needed, the injured employee may select any physician or surgeon who is practicing on the island where the injury was incurred to render medical care. If the services of a specialist are indicated, the employee may select any physician or surgeon practicing in the State. The director may authorize the selection of a specialist practicing outside the State where no comparable medical attendance within the State is available.

IDAHO

STATUTE: Idaho Code Ann. § 72-432

PANEL / LIST / NA

Employer makes the initial selection of physician, which may be changed by the state agency.

EXPLANATION

(4)(a) The employee upon reasonable grounds, may petition the commission for a change of physician to be provided by the employer; however, the employee must give written notice to the employer or surety of the employee’s request for a change of physicians to afford the employer the opportunity to fulfill its obligations under this section. If proper notice is not given, the employer shall not be obligated to pay for the services obtained. Nothing in this section shall limit the attending physician from arranging for consultation, referral or specialized care without permission of the employer. Upon receiving such written notice, the employer shall render its written decision on the claimant’s request within fourteen (14) days.

ILLINOIS

STATUTE: 820 ILCS 305/8

PANEL / LIST / NA

Employee makes the initial choice of physician or from panel – see statute.

EXPLANATION

The employee may at any time elect to secure his own physician, surgeon and hospital services at the employers' expense, limited by 2 different physicians for treatment and including any referrals from those choices, or,

Upon agreement between the employer and the employees, or the employees' exclusive representative, and subject to the approval of the Illinois Workers' Compensation Commission, the employer shall maintain a list of physicians, to be known as a Panel of Physicians, who are accessible to the employees. The employer shall post this list in a place or places easily accessible to his employees. The employee shall have the right to make an alternative choice of physician from such Panel if he is not satisfied with the physician first selected. If, due to the nature of the injury or its occurrence away from the employer's place of business, the employee is unable to make a selection from the Panel, the selection process from the Panel shall not apply.

INDIANA

STATUTE: Ind. Code Ann. § 22-3-3-4

PANEL / LIST / NA

Employer selects the physician.

EXPLANATION

(b) During the period of temporary total disability resulting from the injury, the employer shall furnish the physician, services and products, and the worker's compensation board may, on proper application of either party, require that treatment by the physician and services and products be furnished by or on behalf of the employer as the worker's compensation board may deem reasonably necessary.

IOWA

STATUTE: Iowa Code § 85.27

PANEL / LIST / NA

Employer selects the physician.

EXPLANATION

4. For purposes of this section, the employer is obliged to furnish reasonable services and supplies to treat an injured employee, and has the right to choose the care. If the employer chooses the care, the employer shall hold the employee harmless for the cost of care until the employer notifies the employee that the employer is no longer authorizing all or any part of the care and the reason for the change in authorization. The employer shall notify an injured employee of the employee's ability to contest the employer's choice of care pursuant to this subsection.

KANSAS

STATUTE: Kan. Stat. Ann. § 44-510h

PANEL / LIST / NA

Employee selects the physician.

EXPLANATION

(2) Without application or approval, an employee may consult a health care provider of the employee's choice for the purpose of examination, diagnosis or treatment, but the employer shall only be liable for the fees and charges of such health care provider up to a total amount of \$500. The amount allowed for such examination, diagnosis or treatment shall not be used to obtain a functional impairment rating. Any medical opinion obtained in violation of this prohibition shall not be admissible in any claim proceedings under the workers compensation act.

KENTUCKY

STATUTE: KRS § 342.020

PANEL / LIST / NA

Managed Health Care Plan or Employee is allowed to choose if a Managed Health Care Plan is nonexistent

EXPLANATION

(1) In the absence of designation of a managed health care system by the employer, the employee may select medical providers to treat his injury or occupational disease. Even if the employer has designated a managed health care system, the injured employee may elect to continue treating with a physician who provided emergency medical care or treatment to the employee.

(4)(b) (4) All managed health care systems rendering medical services under this chapter shall include the following features in plans for workers' compensation medical care:

(b) The employee shall be allowed choice of provider within the plan;

LOUISIANA

STATUTE: La. R.S. § 23:1121(b)(1)

PANEL / LIST / NA

Employee gets to choose.

EXPLANATION

The employee shall have the right to select one treating physician in any field or specialty. The employee shall have a right to an expedited summary proceeding pursuant to R.S. 23:1201.1

(K)(8), when denied his right to an initial physician of choice.

MAINE

STATUTE: 39-A M.R.S. § 206

PANEL / LIST / NA

Employer makes the initial selection of physician. After 10 days, the employee has free choice.

EXPLANATION

1. EMPLOYER SELECTION. The employer initially has the right to select for the employee a health care provider authorized to practice as such under the laws of the State.
2. EMPLOYEE SELECTION. After 10 days from the inception of health care under subsection 1, the employee may select a different health care provider by giving to the employer the name of the health care provider and a statement of intention to treat with the health care provider. The employer may file a petition objecting to the named health care provider selected by the employee and setting forth reasons for the objection.

MARYLAND

STATUTE: Md. Labor and Employment Code Ann. § 9-104

PANEL / LIST / NA

Employee makes the initial choice of physician from a list and can change once, but employee can continue to receive treatment from the initial or subsequent choice. The employer cannot change the health care provider.

There is an appeal mechanism for a covered employee who wishes to use a health care provider who is not on the agreed list of health care providers.

EXPLANATION

(d) Collective bargaining; alternative dispute resolution. —

(1) Subject to paragraph (5) of this subsection, as part of a collective bargaining agreement, an employer and a recognized or certified exclusive bargaining representative of employees under the purview of the Building and Construction Trade Council may agree to:

- (i) an alternative dispute resolution system that modifies, supplements, or replaces all or part of the dispute prevention and dispute resolution processes contained in this title, and that may include but is not limited to mediation and binding arbitration;
- (ii) the use of an agreed list of health care providers of medical treatment and expertise, which may be the source of all medical and related examinations, treatment, and testimony provided under this title;
- (iii) the use of an agreed list of health care providers to conduct independent medical examinations;

MASSACHUSETTS

STATUTE: ALM GL ch. 152, § 30

PANEL / LIST / NA

Employee makes the initial choice of physician after the employee's first appointment

EXPLANATION

Except for the employee's first scheduled appointment, which, pursuant to the terms of a preferred provider arrangement entered into under this section may be required to be with a health care provider within the plan, the employee may select a treating health care professional other than any provided or agreed to by the insurer and may switch to another such professional once. When referred by the treating health care professional to another provider in a particular specialty, the employee may also change once to a different provider in such specialty. In cases of emergency or where the insurer or administrative judge agrees, the employee may seek treatment from additional providers. Where services are provided to employees under this section, the reasonable and necessary cost of such services shall be paid by the insurer.

MICHIGAN

STATUTE: MCLS 418.315

PANEL / LIST / NA

Employer initially chooses, but after 28 days the employee has free choice.

EXPLANATION

After 28 days from the inception of medical care as provided in this section, the employee may treat with a physician of his or her own choice by giving to the employer the name of the physician and his or her intention to treat with the physician. The employer or the employer's carrier may file a petition objecting to the named physician selected by the employee and setting forth reasons for the objection. If the employer or carrier can show cause why the employee should not continue treatment with the named physician of the employee's choice, after notice to all parties and a prompt hearing by a worker's compensation magistrate, the worker's compensation magistrate may order that the employee discontinue treatment with the named physician or pay for the treatment received from the physician from the date the order is mailed.

MINNESOTA

STATUTE: Minn. Stat. Ann. § 176.1351

PANEL / LIST / NA

Employee makes the initial choice of physician. However, if there is a managed care plan in effect, employee is obligated to see a physician in the plan network, unless a relationship has developed with a physician outside plan.

EXPLANATION

1) a list of the names of all health care providers who will provide services under the managed care plan, together with appropriate evidence of compliance with any licensing or certification requirements for those providers to practice in this state; and(2) a description of the places and manner of providing services under the plan.

(11) provides an employee the right to change health care providers under the plan at least once.

MISSISSIPPI

STATUTE: Miss. Code Ann. § 71-3-15

PANEL / LIST / NA

Employee makes the initial choice of physician.

EXPLANATION

The injured employee shall have the right to accept the services furnished by the employer or, in his discretion, to select one (1) competent physician of his choosing and such other specialists to whom he is referred by his chosen physician to administer medical treatment. Referrals by the chosen physician shall be limited to one (1) physician within a specialty or subspecialty area. Except in an emergency requiring immediate medical attention, any additional selection of physicians by the injured employee or further referrals must be approved by the employer, if self-insured, or the carrier prior to obtaining the services of the physician at the expense of the employer or carrier.

MISSOURI

STATUTE: Missouri Revised Statutes § 287.140.1

PANEL / LIST / NA

Employer chooses provider

EXPLANATION

When an employee is required to submit to medical examinations or necessary medical treatment at a place outside of the local or metropolitan area from the employee's principal place of employment, the employer or its insurer shall advance or reimburse the employee for all necessary and reasonable expenses; except that an injured employee who resides outside the state of Missouri and who is employed by an employer located in Missouri shall have the option of selecting the location of services provided in this section either at a location within one hundred miles of the injured employee's residence, place of injury or place of hire by the employer. The choice of provider within the location selected shall continue to be made by the employer.

MONTANA

STATUTE: 39-71-1101, MCA

PANEL / LIST / NA

Employee initially chooses the physician. Upon referral to a certified managed care plan, the MCO chooses the physician.

EXPLANATION

(1) Prior to the insurer's designation or approval of a treating physician as provided in subsection (2) or a referral to a managed care organization or preferred provider organization as provided in subsection (8), a worker may choose a person who is listed in 39-71-116(41) for initial treatment. Subject to subsection (2), if the person listed under 39-71-116(41) chosen by the worker agrees to comply with the requirements of subsection (2), that person is the treating physician.

NEBRASKA

STATUTE: Neb. Ct. R., Workers' Comp. Ct. Rule 50

PANEL / LIST / NA

Employee makes the initial choice of physician.

EXPLANATION

A. Employee's Choice...

1. If the employer does not give the employee notice, as described in Rule 50,B,2, of the right to choose a family physician as the primary treating physician, the employee is free to choose any physician qualified to treat the injury as the primary treating physician.

B. Employer's Choice...

1. The employer may have the right to choose an injured employee's primary treating physician. If the employer wishes to choose, the employer must first give the employee notice, following an injury, of the right to choose a family physician as the primary treating physician.

NEVADA

STATUTE: Nev. Rev. Stat. Ann. § 616C.090

PANEL / LIST / NA

Employee makes the initial choice of physician, subject to the following limitations: Except in emergency, if the employer's workers' compensation insurer has entered into a managed care contract or health care service provider contract, the injured employee must choose the treating physician or chiropractor or health care service provider according to the terms of the contract. If the insurer has not entered into such a contract, the injured employee may choose his treating physicians and chiropractors.

EXPLANATION

1. The Administrator shall establish a panel of physicians and chiropractors who have demonstrated special competence and interest in industrial health to treat injured employees under chapters 616A to 616D, inclusive, or chapter 617 of NRS. Every employer whose insurer has not entered into a contract with an organization for managed care or with providers of health care services pursuant to NRS 616B.527 shall maintain a list of those physicians and chiropractors on the panel who are reasonably accessible to his or her employees.

2. An injured employee whose employer's insurer has not entered into a contract with an organization for managed care or with providers of health care services pursuant to NRS 616B.527 may choose a treating physician or chiropractor from the panel of physicians and chiropractors.

If the injured employee is not satisfied with the first physician or chiropractor he or she so chooses, the injured employee may make an alternative choice of physician or chiropractor from the panel if the choice is made within 90 days after his or her injury.

NEW HAMPSHIRE

STATUTE: RSA 281-A:23

PANEL / LIST / NA

Employee makes the initial choice of physician.

EXPLANATION

An employer subject to this chapter, or the employer's insurance carrier, shall furnish or cause to be furnished to an injured employee reasonable medical, surgical, and hospital services, remedial care, nursing, medicines, and mechanical and surgical aids for such period as the nature of the injury may require. The injured employee shall have the right to select his or her own physician.

NEW JERSEY

STATUTE: N.J. Stat. Ann. § 34:15-15

See also, Benson v. Coca Cola Co., 115 N.J. Super. 585 (Co. 1971)

PANEL / LIST / NA

Employer selects the physician.

EXPLANATION

The employer shall furnish to the injured worker such medical, surgical and other treatment, and hospital service as shall be necessary to cure and relieve the worker of the effects of the injury and to restore the functions of the injured member or organ where such restoration is possible.

NEW MEXICO

STATUTE: N.M. Stat. Ann. § 52-1-49

PANEL / LIST / NA

Employer makes the initial selection of physician. After 60 days the employee has free choice.

EXPLANATION

B. The employer shall initially either select the health care provider for the injured worker or permit the injured worker to make the selection. Subject to the provisions of this section, that selection shall be in effect during the first sixty days from the date the worker receives treatment from the initially selected health care provider. C. After the expiration of the initial sixty-day period set forth in Subsection B of this section, the party who did not make the initial selection may select a health care provider of his choice. Unless the worker and employer otherwise agree, the party seeking such a change shall file a notice of the name and address of his choice of health care provider with the other party at least ten days before treatment from that health care provider begins.

NEW YORK

STATUTE: NY CLS Work Comp § 13-a

PANEL / LIST / NA

Employee selects initial physician from a list maintained by the state agency.

EXPLANATION

(1) An injured employee may, when care is required, select to treat him or her any physician authorized by the chair to render medical care, as hereafter provided. If for any reason during the period when medical treatment and care is required, the employee wishes to transfer his or her treatment and care to another authorized physician, he or she may do so, in accordance with rules prescribed by the chair.

NORTH CAROLINA

STATUTE: N.C. Gen. Stat. Ann. § 97-25

PANEL / LIST / NA

Employer makes the initial selection of physician, but employee can choose subject to the approval of the Industrial Commission.

EXPLANATION

c) Provided, however, if the employee so desires, an injured employee may select a health care provider of the employee's own choosing to attend, prescribe, and assume the care and charge of the employee's case subject to the approval of the Industrial Commission.

NORTH DAKOTA

STATUTE: N.D. Cent. Code Ann. § 65-05-28

PANEL / LIST / NA

Employee makes the initial choice of physician. All Employers may select a designated medical provider, provide a list to employees, and request the employee to choose from the list if there is one.

EXPLANATION

Every employee who sustains an injury may select a doctor of that employee's choice to render initial treatment. Upon a determination that the employee's injury is compensable, the organization may require the employee to begin treating with another doctor to better direct the medical aspects of the injured employee's claim. The organization shall provide a list of three doctors who specialize in the treatment of the type of injury the employee sustained. At the organization's request, the employee shall select a doctor from the list. An injured employee shall follow the directives of the doctor or health care provider who is treating the employee as chosen by the employee at the request of the organization and comply with all reasonable requests during the time the employee is under medical care. Providing further that:

1. No employee may change from one doctor to another while under treatment or after being released, without the prior written authorization of the organization.

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Any employee requesting a change of doctor shall file a written request with the organization stating all reasons for the change. Upon receipt of the request, the organization will review the employee's case and approve or deny the change of doctor, notifying the employee and the requested doctor.]

Emergency care or treatment or referral by the attending doctor does not constitute a change of doctor and does not require prior approval of the organization.

OHIO

STATUTE: Ohio Admin. Code § 4121-17-11

PANEL / LIST / NA

Employee makes the initial choice of physician from Ohio Bureau of Workers' Compensation certified physicians

EXPLANATION

Ohio Admin. Code authorizes the Ohio Bureau of Workers' Compensation to validate physicians to be chosen from.

There was a rescinded law that explicitly stated that the "employee is free to choose a physician," but not the specific treatment.

OKLAHOMA

STATUTE: 85A Okl. St. § 64

PANEL / LIST / NA

Employer makes initial choice of physician within first three days of actual knowledge of employee injury or per a Certified Workplace Medical Plan (CWMP) (Managed Care).

EXPLANATION

1. Certification of workplace medical plan is a list of the names of all medical providers who shall provide services under the plan, together with appropriate evidence of compliance with any licensing or certification requirements for those providers to practice in this state; and
2. A description of the places and manner of providing services under the plan.

OREGON

STATUTE: ORS § 656.245

PANEL / LIST / NA

Employee makes the initial choice of physician.

EXPLANATION

(2)

(a) The worker may choose an attending doctor, physician or nurse practitioner within the State of Oregon. The worker may choose the initial attending physician or nurse practitioner and may subsequently change attending physician or nurse practitioner two times without approval from the director. If the worker thereafter selects another attending physician or nurse practitioner, the insurer or self-insured employer may require the director's approval of the selection.

PENNSYLVANIA

STATUTE: 77 P.S. § 531

PANEL / LIST / NA

Employee selects initial physician from a list maintained by the employer. If no list is posted by the employer, then the employee can choose any physician.

EXPLANATION

(i) The employer shall provide payment in accordance with this section for reasonable surgical and medical services, services rendered by physicians or other health care providers, including an additional opinion when invasive surgery may be necessary, medicines and supplies, as and when needed. Provided an employer establishes a list of at least six designated health care providers, no more than four of whom may be a coordinated care organization and no fewer than three of whom shall be physicians, the employee shall be required to visit one of the physicians or other health care providers so designated and shall continue to visit the same or another designated physician or health care provider for a period of ninety (90) days from the date of the first visit: Provided, however, That the employer shall not include on the list a physician or other health care provider who is employed, owned or controlled by the employer or the employer's insurer unless employment, ownership or control is disclosed on the list. Should invasive surgery for an employee be prescribed by a physician or other health care provider so designated by the employer, the employee shall be permitted to receive an additional opinion from any health care provider of the employee's own choice. If the additional opinion differs from the opinion provided by the physician or health care provider so designated by the employer, the employee shall determine which course of treatment to follow: Provided, That the second opinion provides a specific and detailed course of treatment. If the employee chooses to follow the procedures designated in the second opinion, such procedures shall be performed by one of the physicians or other health care providers so designated by the employer for a period of ninety (90) days from the date of the visit to the physician or other health care provider of the employee's own choice.

RHODE ISLAND

STATUTE: R.I. Gen. Laws § 28-33-8(a)(1)

PANEL / LIST / NA

Employee makes the initial choice of physician. Any changes must be into Preferred Provider Network if applicable.

EXPLANATION

An injured employee shall have freedom of choice to obtain health care, diagnosis, and treatment from any qualified health care provider initially. The initial health care provider of record may, without prior approval, refer the injured employee to any qualified specialist for independent consultation or assessment, or specified treatment. If the insurer or self-insured employer has a preferred-provider network approved and kept on record by the medical advisory board, any change by the employee from the initial health care provider of record shall only be to a health care provider listed in the approved preferred provider network; provided, however, that any contract proffered or maintained that restricts or limits the health care provider's ability to make referrals pursuant to the provisions of this section; restricts the injured employee's first choice of health care provider; substitutes or overrules the treatment protocols maintained by the medical advisory board; or attempts to evade or limit the jurisdiction of the workers' compensation court shall be void as against public policy. If the employee seeks to change to a health care provider not in the approved preferred-provider network, the employee must obtain the approval of the insurer or self-insured employer. Nothing contained in this section shall prevent the treatment, care, or rehabilitation of an employee by more than one physician, dentist, or hospital. The employee's first visit to any facility providing emergency care or to a physician or medical facility under contract with or agreement with the employer or insurer to provide priority care, shall not constitute the employee's initial choice to obtain health care, diagnosis, or treatment.

SOUTH CAROLINA

STATUTE: S.C. Code Ann. Regs. 67-509

PANEL / LIST / NA

Employer selects the physician

EXPLANATION

A. The employer's representative chooses an authorized health care provider and pays for authorized treatment.

FROM CASE:

Generally, a workers' compensation claimant may obtain compensation only by accepting services from the employer's choice of providers; however, a claimant is not required to sacrifice much-needed treatment merely to comply with an employer's choice of physicians. *Hall v. United Rentals, Inc.* 371 S.C. 69 (S.C.App. 2006)

SOUTH DAKOTA

STATUTE: S.D. Codified Laws § 62-4-43

PANEL / LIST / NA

Employee makes the initial choice of physician.

EXPLANATION

The employee may make the initial selection of the employee's medical practitioner or surgeon from among all licensed medical practitioners or surgeons in the state. The employee shall, prior to treatment, notify the employer of the choice of medical practitioner or surgeon or as soon as reasonably possible after treatment has been provided. The medical practitioner or surgeon selected may arrange for any consultation, referral, or extraordinary or other specialized medical services as the nature of the injury shall require.

TENNESSEE

**STATUTE: Tenn. Code Ann. § 50-6-204 and
Tenn. Code Ann. § 50-6-118**

PANEL / LIST / NA

Employee selects initial physician from a panel maintained by the employer.

Failure of an employer to timely provide a panel of physicians that meets the statutory requirements of § 50-6-118 will result in penalties.

If the employer does not have a panel of physicians, it should call its insurer and develop one. *(accord TN Dept of Labor and Workforce Development)*

EXPLANATION

(D)

(i) The employer shall provide the applicable panel of physicians or chiropractors to the employee in writing on a form prescribed by the division, and the employee shall select a physician or chiropractor from the panel, sign and date the completed form, and return the form to the employer. The employer shall provide a copy of the completed form to the employee and shall maintain a copy of the completed form in the records of the employer and shall produce a copy of the completed form upon request by the division.

(ii) In any case when the employee has been presented the physician selection form but has failed to sign the completed form and return it to the employer, the employee's receipt of treatment from any physician provided in the panel after the date the panel was provided shall constitute acceptance of the panel and selection of the physician from whom the employee received treatment as the treating physician, specialist physician, chiropractor or surgeon.

TEXAS

**STATUTE: Tex. Lab. Code § 408.022 and
Tex. Ins. Code § 1305.103**

PANEL / LIST / NA

Employee to receive medical treatment from a doctor chosen from a list of doctors approved by the commissioner

There are different rules if the employer is part of a health care Network.

Non-network: Employee chooses a physician from the division's approved doctor list (ADL) and is allowed one change of doctor with division approval.

In Network: Employee chooses physician from list of network doctors and is allowed one change without approval. Subsequent changes must be approved by network.

EXPLANATION

(a) Except in an emergency, the division shall require an employee to receive medical treatment from a doctor chosen from a list of doctors approved by the commissioner. A doctor may perform only those procedures that are within the scope of the practice for which the doctor is licensed. The employee is entitled to the employee's initial choice of a doctor from the division's list.

(b) If an employee is dissatisfied with the initial choice of a doctor from the division's list, the employee may notify the division and request authority to select an alternate doctor. The notification must be in writing stating the reasons for the change, except notification may be by telephone when a medical necessity exists for immediate change.

AND

(a) A network shall determine the specialty or specialties of doctors who may serve as treating doctors.

(b) For each injury, an injured employee shall select a treating doctor from the list of all treating doctors under contract with the network in that service area.

UTAH

STATUTE: Utah Code Ann. § 34A-2-111

PANEL / LIST / NA

Employer makes the initial selection of physician if there is a preferred provider program. If a preferred provider program is not developed, an employee may have free choice of health care providers

EXPLANATION

(ii)(A) Subject to the requirements of this section, if a preferred provider program is developed by an insurance carrier or self-insured employer, an employee is required to use:(I) preferred provider physicians; and(II) preferred health care facilities. (B) If a preferred provider program is not developed, an employee may have free choice of health care providers.(iii) The failure to

(UTAH CONTINUED)

do the following may, if the employee has been notified of the preferred provider program, result in the employee being obligated for any charges in excess of the preferred provider allowances:(A) use a preferred health care facility; or (B) initially receive treatment from a preferred provider physician.

VERMONT

STATUTE: Vt. Stat. Ann. tit. 21, § 640

PANEL / LIST / NA

Employer makes the initial selection of physician. After a period of time specified by state law, the employee has free choice of treating physician.

EXPLANATION

(b) An employer may designate the treating health care provider to initially treat an injured employee immediately following a compensable injury. Thereafter, the employee may select another health care provider upon giving the employer written notice of the employee's reasons for dissatisfaction with the health care provider designated by the employer and the name and address of the health care provider selected by the employee. The commissioner may permit an employer to refuse to reimburse a health care provider selected by the employee if notice required in this subsection is not provided to the employer unless the failure to provide notice is due to excusable neglect or inadvertence.

VIRGINIA

STATUTE: Va. Code Ann. § 65.2-603 (a)(1)

PANEL / LIST / NA

Employee selects initial physician from a panel maintained by the employer. If there is not a panel, the employer will be responsible for the employee's choice of physician.

EXPLANATION

1. As long as necessary after an accident, the employer shall furnish or cause to be furnished, free of charge to the injured employee, a physician chosen by the injured employee from a panel of at least three physicians selected by the employer and such other necessary medical attention.

If in an emergency or on account of the employer's failure to provide the medical care during the period herein specified, or for other good reasons, a physician other than provided by the employer is called to treat the injured employee, during such period, the reasonable cost of such service shall be paid by the employer if ordered so to do by the Commission.

WASHINGTON

STATUTE: Chapter 296-17 WAC

PANEL / LIST / NA

Employee makes the initial choice of physician from a list of state approved physicians

EXPLANATION

Chapter 296-17 WAC, contains rules applicable to workers' compensation insurance coverage (industrial insurance) that employers in the state of Washington must provide for their workers.

This is an administrative code, not a Washington State statute

WEST VIRGINIA

STATUTE: W. Va. Code § 23-4-3

PANEL / LIST / NA

Employee makes the initial choice of physician from a managed health care provider if the employer has one.

If the employer does not provide a managed health care plan or program, the claimant may select his or her initial health care provider for treatment

EXPLANATION

(2) The provisions of this subsection shall not prohibit an employer, the successor to the commission, other private carrier or self-insured employer from participating in a managed health care plan, including, but not limited to, a preferred provider organization or program or a health maintenance organization or managed care organization or other medical cost containment relationship with the providers of medical, hospital or other health care.

An employer, successor to the commission, other private carrier or self-insured employer that provides a managed health care plan approved by the commission or, upon termination of the commission, the Insurance Commissioner, for its employees or the employees of its insured may require an injured employee to use health care providers authorized by the managed health care plan for care and treatment of his or her compensable injuries.

If the employer does not provide a managed health care plan or program, the claimant may select his or her initial health care provider for treatment of a compensable injury or disease, except as provided under subdivision (3) of this subsection. If a claimant wishes to change his or her health care provider and if his or her employer has established and maintains a managed health care plan, the claimant shall select a new health care provider through the managed health care plan. A claimant who has used the providers under the employer's managed health care plan may select a health care provider outside the employer's plan for treatment of the compensable injury or disease if the employee receives written approval from the commission to do so and the approval is given pursuant to criteria established by rule of the commission.

W.Va. Code § 23-4-3(b)(1) prohibits employers from contracting with hospitals to render

(WEST VIRGINIA CONTINUED)

medical, dental or hospital service to its employees to treat compensable injuries. This might be outside the scope of the compendium but thought I would mention it.

If the employer has a managed health care plan, W.Va. CSR § 85-21-4.1 sets forth Minimum Plan Standards, and W.Va. CSR § 85-21-4.1(b) provides that the injured worker shall be allowed a reasonable choice of providers within the plan.

Managed health care plans must be approved by the Insurance Commissioner (per the already-cited statute, W.Va. Code 23-4-3, as well as W.Va. CSR § 85-21-4.1) as the Workers' Compensation Commission was terminated when West Virginia switched to a privatized workers' compensation system.

WISCONSIN

STATUTE: Wis. Stat. Ann. § 102.42

PANEL / LIST / NA

Employee makes the initial choice of physician.

EXPLANATION

(2) Choice of practitioner.

(a) When the employer has notice of an injury and its relationship to the employment, the employer shall offer to the injured employee his or her choice of any physician, chiropractor, psychologist, dentist, physician assistant, advanced practice nurse prescriber, or podiatrist licensed to practice and practicing in this state for treatment of the injury. By mutual agreement, the employee may have the choice of any qualified practitioner not licensed in this state. In case of emergency, the employer may arrange for treatment without tendering a choice. After the emergency has passed the employee shall be given his or her choice of attending practitioner at the earliest opportunity.

The employee has the right to a 2nd choice of attending practitioner on notice to the employer or its insurance carrier. Any further choice shall be by mutual agreement. Partners and clinics are considered to be one practitioner. Treatment by a practitioner on referral from another practitioner is considered to be treatment by one practitioner.

WYOMING

STATUTE: Wyo. Stat. Ann. § 27-14-401

PANEL / LIST / NA

Employee makes the initial choice of physician unless employer has designated health care providers.

EXPLANATION

f) Subject to subsection (h) of this section, an employer or the division may designate health care providers to provide nonemergency medical attention to his employees or to claimants under this act. Except as provided in subsection (h) of this section, the employee may for any reason, select any other health care provider. If the employee selects a health care provider other than the one (1) selected by the employer or the division, the employer or division may require a second opinion from a health care provider of their choice. The second opinion may include an independent medical evaluation, a functional capacity exam or a review of the diagnosis, prognosis, treatment and fees of the employee's health care provider.

D.C.

STATUTE: D.C. Code § 32-1507

PANEL / LIST / NA

Employee makes the initial choice of physician.

EXPLANATION

(3) The employee shall have the right to choose an attending physician to provide medical care under this chapter. If, due to the nature of the injury, the employee is unable to select a physician and the nature of the injury requires immediate treatment and care, the employer shall select a physician for him. Where medically necessary or advisable, or at the request of the employee, the attending physician shall consult with the employee's personal physician.