

Workers' Comp News Alert

Understanding the Truth Behind the "90-Day Rule"

By Shelley W. Elovitz, Esquire

There is a lot of misconception about the "90-Day Rule" – a belief that injured workers must treat with a "company doctor" for 90 days. Even some attorneys representing injured workers mistakenly take this as a true and unbending guideline. I felt it was time to clear up these misconceptions and make sure that the facts are known. Let's begin by examining the Section 306(f.1)(1)(i) of the Workers' Compensation Act, which states:

*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 the employee not comply with the foregoing, the employer will be relieved from liability for the payment for the services rendered during such applicable period. **It shall be the duty of the employer to provide a clearly written notification of the employee's rights and duties under this section to the employee. The employer shall further ensure that the employee has been informed and that he understands these rights and duties. This duty shall be evidenced only by the employee's written acknowledgment of having been informed and having understood his rights and duties. Any failure of the employer to provide and evidence such notification shall relieve the employee from any notification duty owed, notwithstanding any provision of this act to the contrary, and the employer shall remain liable for all rendered treatment. Subsequent treatment may be provided by any health care provider of the employee's own choice.** (Emphasis supplied)*

Based on this, let us examine the myths that have developed and the truths that you **need** to know.

Myth #1: The employer can simply order an injured worker to treat with the company doctor. The truth is that: (1) employers must provide clearly written notification of the employee's rights and duties and (2) employers must get back a *written acknowledgement from the employee*

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that he or she has been notified of his/her rights and duties.

Myth #2: Employers can mandate that an injured worker treat with only one provider or pre-deny payment for care. The truth is the Workers' Compensation Act stipulates that an employer must provide at least six (6) health care providers, and of these, no more than four (4) may be a coordinated care organizations, such as a workers' compensation clinic. In addition, at least three (3) must be physicians. In fact, 34 Pa. Code 127.751(c) states, "The employer may not require treatment with any one specific provider on the list, nor may the employer restrict the employee from switching from one designated provider to another designated provider." So an employee can start with one physician or health care provider on the list and switch to another from the list if he or she is unhappy with the care he or she is receiving.

Myth #3: The 90-day period begins with the injury. The truth is that the 90 days begins with the first meeting with the doctor or health care provider. Only when an employer complies with all of the regulations must an employee treat with one or more of the six designated "company doctors" for the first 90 days after the first visit to the doctor.

In addition to busting these three myths, there are other issues to be aware of:

- The list absolutely cannot include a physician or health care provider who is employed, owned or controlled by the employer or the employer's insurer.
- The list of providers must be posted in a prominent and accessible place, such as employee bulletin boards or where first aid is administered.
- The employer must include the names, addresses, telephone numbers and areas of medical specialties.
- Only providers who are geographically accessible and whose specialties are appropriate (based on anticipated work-related injuries) may be included on the list.
- If the employer lists a CCO (Coordinated Care Organization), the employer cannot individually list providers participating under that CCO, under circumstances when those individually listed providers are bound by the terms of the CCO for treatment rendered to injured workers.
- While the employer may change the list of providers, those changes cannot affect an injured worker who has already begun the 90-day treatment cycle.

If an employer fails to comply with any of these regulations, the injured worker has the right to seek treatment from *any* provider from the time of the initial injury. The law is written so that employers may choose health care providers that they know and trust to care for their injured workers. However, they do not have carte blanche to limit an injured worker's choice. Employers and their insurers must comply with the Workers' Compensation Act and the regulations in the Pennsylvania Code. If they do not, the injured worker is under no obligation to use their provider list.

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