

# Medical Control and Settlement Opportunities in Workers' Compensation

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# Medical Control and Settlement Opportunities in Workers' Compensation

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A state by state overview designed to allow the risk professional to easily target opportunities in two of the most significant drivers of workers' compensation costs.

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Claims/Legal Management • Medical Cost Containment

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## No Legal Advice Intended:

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# About Aptus Risk Solutions

Aptus Risk Solutions assists its clients in mitigating workers' compensation claim costs by developing and providing specialized consulting services in the areas of medical cost containment and claims/legal management. Aptus employs high level experts from all segments of the workers' compensation industry who have experienced the industry from numerous vantage points, including: adjuster/third party administrators, self-insured employers, law firms, brokerage consultants, and medical management services. By combining vast experience with unique customized approaches, Aptus Risk Solutions helps employers manage and reduce workers' compensation claims costs, while driving a better outcome for the injured worker.

## Medical Cost Containment

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For many years, rising medical costs have been a leading driver of workers' compensation claim severity. Aptus helps clients reign in medical costs by using case reviews and supporting analytics to pinpoint breakdowns in care at any phase along the continuum from initial consultation and diagnosis through treatment.

- From detecting patterns of unnecessary patient referrals for diagnostic services to inaccurate diagnoses and treatment therapies that deviate from evidence-based protocols, Aptus identifies breakdowns in care that result in suboptimal patient outcomes and elevated costs.
- With an understanding of client specific issues, our professionals work to develop and implement appropriate remedies.
- Drawing on the expertise of a panel of prominent physicians across numerous medical specialties and subspecialties, Aptus delivers solutions that improve care quality, reduce costs, and comply with state-specific workers' compensation medical protocols.

## Medical Cost Containment Services

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For the following services, Aptus utilizes only actively practicing fellowship trained sub specialized physicians and radiologists:

- Pre-diagnostic necessity review
- Diagnostic scheduling
- Post diagnostic review assessing pathology and determining treatment course
- Highly specialized independent medical reviews
- Independent medical record reviews and physical examinations for Defense Based Act, Longshore Act and Jones Act claims

## Claims/Legal Management

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Litigated claims represent a small percentage of all claims reported, but drive a large percentage of the total program costs. Litigation is also highly prominent in legacy claims. While many in the industry approach litigation management through litigation expense control, Aptus is focused on finding and mitigating the root drivers of litigation duration. Aptus has found that a major driver of increased litigation duration involves communication and philosophical gaps found between claims and legal. With Aptus' diverse expertise, we are able to recognize and reduce the gaps in the claims/legal process.

- From helping with the design and implementation of an overall claims and litigation strategy to providing direction on high-severity legacy and complex claims, Aptus works with clients to reduce costs and produce bottom-line results.
- Aptus helps clients define objectives, establish performance metrics and build processes nationwide or in specific geographic regions. These processes and solutions are structured to deliver measurable results and generate continuous improvement.
- A key value proposition of Aptus is our ability to work with and manage law firms. We obtain measurable results from the firms at the same time improving the overall litigation program. Both our clients and the law firms we have worked with will attest to the success of our approach.

## Claims/Legal Management Services

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- Legacy claim closure initiatives
- Claim program assessment
- Litigation management program design
- Legal panel assessment and design



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## Foreword

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This guide was created by Aptus to assist individuals charged with the oversight and direction of a multi-state workers' compensation program. Resources allocated to claims management are limited in these challenging economic times. Resources must be directed with pinpoint accuracy to address cost drivers that can be mitigated. Two of the most significant cost drivers are medical treatment and legacy claims. The information presented in this guide is designed to help readers assess the national terrain and be better equipped to strategically allocate claim resources to areas where they will have the most significant impact on costs.

Steven C. Testan  
*Chief Executive Officer*  
*Aptus Risk Solutions*

# QUICK REFERENCE GUIDE

## Color Legend

### Medical Control:

**Green** – Employer choice

**Red** – Injured worker choice

**Blue** – Injured worker choice within employer network

### Global Settlement Options:

**Green** – Can settle full & final

**Red** – Cannot settle full & final

**Blue** – Can settle full & final if there is a dispute

State	Medical Control	Medical Control Clarification and/or Exceptions	Does the State Allow Global Settlement	Global Settlement Option
Alabama	Employer	The employer is entitled to select the treating physician. The injured worker has a right to make a one time change, however, must select from a list of four physicians provided by the employer.	Yes	Full and final settlement is allowed in Alabama, but may be vacated within six months of the date of the settlement.
Alaska	Injured Worker	The injured worker is allowed to choose their own treating physician and is entitled to a one-time change of physician without needing authorization.	Yes	Full and final settlement is allowed in Alaska, but only after 30 days has passed since the date of injury. The agreement must have Board approval to be binding.
Arizona	Injured Worker	The employer is entitled to designate in writing the initial treating physician. After the initial visit the injured worker is free to choose their own treating physician. If the employer is a private self-insured who has contracted for directed care, the injured worker is required to obtain medical treatment from the contracted physician designated by the employer.	Only on a disputed claim	Full and final settlement is allowed in Arizona on disputed claims. It is also allowed on accepted claims where a credit has been taken for the medical costs but those may be reopened. The agreement must be approved by the Commission to be binding.
Arkansas	Employer	The employer controls the medical care unless the employer fails to provide reasonable and necessary treatment in a reasonable time frame.	Yes	Full and final settlement is allowed in Arkansas, but to be valid it must be determined adequate by a judge who issues an order approving the settlement.

State	Medical Control	Medical Control Clarification and/or Exceptions	Does the State Allow Global Settlement	Global Settlement Option
California	Injured Worker	If the employer has a Preferred Provider Network, the injured worker is required to select a physician from the network. If there is no network, the employer controls the choice of physician for 30 days and then control reverts to the employee. An injured worker may circumvent an employer's right to medical control altogether by properly predesignating a physician.	Yes	Full and final settlement is allowed in California. The agreement must be reviewed and approved by the Workers' Compensation Appeals Board.
Colorado	Employer	The employer must provide a listing of four providers within seven days of the injury being reported or the injured worker can choose the treating physician.	Yes	Full and final settlement is allowed in Colorado, but it is not enforced until the agreement has been approved by a judge in the Office of Administrative Courts.
Connecticut	Injured Worker	The employer is entitled to choose the initial physician for the first exam but then the injured worker is allowed to choose their own treating physician from the employers managed care organization. If there is no managed care network, the employee must choose from a list provided by the Commissioner.	Yes	Full and final settlement is allowed in Connecticut, but must be approved by the Workers' Compensation Commissioner to be binding.
Delaware	Injured Worker	The injured worker has the right to select the treating physician but must notify the employer of the selected physician within 30 days of receiving treatment, or risk non-payment of medical bills. The employer may request an independent exam from a physician of the employer's choosing.	Yes	Full and final settlement is allowed in Delaware and is called a global commutation on accepted claims and a dismissal with prejudice on disputed claims.
Florida	Injured Worker	If the employer has a preferred network, the injured worker is required to choose a physician from that network.	Yes	Full and final settlement is allowed in Florida. Approval of the agreement by a judge is only needed when the injured worker is not represented by counsel.

State	Medical Control	Medical Control Clarification and/or Exceptions	Does the State Allow Global Settlement	Global Settlement Option
Georgia	Employer	The employer has either a panel of six providers the injured worker must choose from or, if they have a preferred network and not a panel, the injured worker chooses from within the network.	Yes	Full and final settlement is allowed in Georgia, but must be approved by the Board.
Hawaii	Injured Worker	Once the injured worker has selected their physician, they are not allowed to change without consent of the employer.	Yes	Full and final settlement is allowed in Hawaii, but must be reviewed and approved by the Director of the Department of Labor and Industrial Relations to be binding.
Idaho	Injured Worker	The injured worker can choose the physician they wish even if there is a preferred medical provider network. The employer may not force the injured worker to treat within the network.	Yes	Full and final settlement is allowed in Idaho, but the agreement has to be approved by the Idaho Industrial Commission.
Illinois	Injured Worker	The injured worker is allowed to choose the treating physician and is entitled to one change of treating physician. If the injured worker requests any change in physician after that, the employer designates the treating physician.	Yes	Full and final settlement is allowed in Illinois. The agreement must be approved by the Illinois Workers' Compensation Commission to be binding.
Indiana	Employer	The employer has the right to select a physician of its choosing. If the employer fails to provide required care, the injured worker may seek care with a non-approved provider.	Yes	Full and final settlement is allowed in Indiana, but no sooner than seven days from the date of accident, and must be approved by the Workers' Compensation Board of Indiana.
Iowa	Employer	The injured worker must treat with a physician designated by the employer. They may object to the physician but the new physician still has to be approved by either the employer or the Commissioner.	Yes	Full and final settlement is allowed in Iowa. The agreement must be approved by the Iowa Division of Workers' Compensation.

State	Medical Control	Medical Control Clarification and/or Exceptions	Does the State Allow Global Settlement	Global Settlement Option
Kansas	Employer	The employer designates the treating physician. The injured worker may object, but the employer then provides a list of two additional physicians from which the injured worker may choose.	Yes	Full and final settlement is allowed in Kansas. The agreement must be approved by an Administrative Law Judge as being in the best interest of the injured worker to be binding.
Kentucky	Injured Worker	The injured worker has the right to choose their treating physician. If the employer provides treatment through a managed health care system, the injured worker must select the treating physician from that network. The injured worker is entitled to one physician change without employer approval and again, if there is a managed health care system, the new physician must also be within that network.	Yes	Full and final settlement is allowed in Kentucky. The settlement must be approved by a judge. This does not necessarily preclude the reopening of the claim based on new evidence or any change of condition. However, the burden of proof necessary to overturn an approved settlement is very high and does not occur often.
Louisiana	Injured Worker	The injured worker is entitled to choose a treating provider but must obtain authorization from the employer if changing physicians within the same specialty.	Yes	Full and final settlement is allowed in Louisiana, but cannot be agreed to until six months after the termination of temporary total disability payments. It must also be approved by a judge.
Maine	Injured Worker	The employer has the right to initially select a physician, but after 10 days from the first treatment, the injured worker can choose their own treating physician. The injured worker must get authorization to change physicians after their initial choice.	Yes	Full and final settlement is allowed in Maine, but cannot be agreed to until six months after the date of injury. The agreement must be approved at a hearing.
Maryland	Injured Worker	The injured worker may choose to treat with any physician. The employer may disagree and file for a hearing. Ultimately, the Commission decides the outcome.	Yes	Full and final settlement is allowed in Maryland. The agreement must be approved by the Maryland Workers' Compensation Commission to be binding.

State	Medical Control	Medical Control Clarification and/or Exceptions	Does the State Allow Global Settlement	Global Settlement Option
Massachusetts	Injured Worker	The injured worker must initially see a physician chosen by the employer, but is able to then choose their own physician to handle ongoing care. If there is a Preferred Provider Network, the injured worker must choose from within that network. The injured worker is allowed one change in physician without employer's approval; subsequent changes require approval.	Only on a disputed claim	Full and final settlement is not allowed in Massachusetts on an accepted claim. Full and final settlement is allowed on disputed claims, but the injured worker would have one year after execution of agreement to file for deteriorating condition.
Michigan	Injured Worker	The employer has control for the first 28 days after the inception of medical care. The employer may file an objection to the injured worker's chosen physician, but must show good cause.	Yes	Full and final settlement allowed in Michigan no sooner than six months from the date of the accident and must be approved by a Worker's Compensation Magistrate. It becomes final 15 days after the order.
Minnesota	Injured Worker	The injured worker is entitled to choose their own treating physician. If the employer has a Managed Care Organization, the provider must be selected from that organization.	Yes	Full and final settlement is allowed in Minnesota, but the agreement must be reviewed and approved by a judge.
Mississippi	Injured Worker	The injured worker is entitled to choose their own physician. Any subsequent change in treating physicians requires employer approval.	Yes	Full and final settlement is allowed in Mississippi. The agreement must be reviewed and approved by the Commission to be binding.
Missouri	Employer	The injured worker must treat with a physician of the employer's choice. If the injured worker chooses a different physician, the employer is not required to pay expenses for treatment received from that physician.	Yes	Full and final settlement is allowed in Missouri, but cannot be agreed to until seven days after the date of injury has passed. The agreement must be approved by an Administrative Law Judge or the Commission.

State	Medical Control	Medical Control Clarification and/or Exceptions	Does the State Allow Global Settlement	Global Settlement Option
Montana	Insurer	The injured worker may initially choose the treating physician. Once the claim is accepted, the insurer may choose the treating physician. If there is a Managed Care Organization/Preferred Physicians Network, the injured worker is required to treat within that network.	Yes	Full and final settlement is allowed in Montana, but the settlement must be approved by the department or the Workers' Compensation Judge to be binding.
Nebraska	Injured Worker	If the claim is denied, the injured worker can choose their treating physician. If the claim is accepted, the injured worker may only choose a physician who has a previously documented history of treatment to the injured worker or an immediate family member of the injured worker.	Yes	Full and final settlement is allowed in Nebraska. The agreement must be approved by the Compensation Court as being in the best interest of the injured worker.
Nevada	Employer	The injured worker must choose a provider from the administrator approved panel designated by the employer, unless the employer has a Managed Care Organization in place. Then the injured worker must choose from the physicians in that network.	No	Full and final settlement is not allowed in Nevada.
New Hampshire	Injured Worker	The injured worker chooses the treating physician. If the employer has a Preferred Provider Network, the injured worker must choose the physician from within that network.	No	Full and final settlement is not allowed in New Hampshire.
New Jersey	Employer	The employer selects the treating physician. The injured worker is only allowed selection if the employer neglects or refuses to provide the necessary treatment.	Only on a disputed claim	Full and final settlement is allowed in New Jersey, but only on claims where a dispute has been raised in the claim. The agreement must be approved by a judge to be binding.

State	Medical Control	Medical Control Clarification and/or Exceptions	Does the State Allow Global Settlement	Global Settlement Option
New Mexico	Employer	The employer makes the choice on who chooses the treating physician and has to communicate this to the injured worker. The party who did not initially choose the physician may file to change the physician after the first 60 days of treatment has expired.	Yes	Full and final settlement is allowed in New Mexico, but must be approved by a Workers' Compensation Judge who reviews this at a hearing with the injured worker present to confirm complete understanding of settlement.
New York	Injured Worker	Initial 30 days post injury, the injured worker must treat within employer's network of physicians. Once that 30 days has expired, the injured worker may then choose to change to their physician of choice, whether that physician is in the employer's network or not.	Yes	Full and final settlement is allowed in New York, but must be approved by the court to be binding and then there is a 10 day "cooling off" period where the injured worker may change their mind.
North Carolina	Employer	If there is no Managed Care Organization, the employer can choose the treating physician. If the employer has a Managed Care Organization the injured worker can choose their physician from within the network.	Yes	Full and final settlement is allowed in North Carolina, but must be approved by the Industrial Commission to be binding.
North Dakota	Employer	The injured worker can choose the physician providing the initial care but once the injury is deemed compensable, the employer has the right to require the injured worker to change physicians by providing the injured worker with a list of three physicians to choose from. If the employer has a Preferred Provider Network, the injured worker is generally required to obtain all treatment from within the network for the first 30 days.	Only on a disputed claim	Full and final settlement is allowed in North Dakota on a disputed claim. This must be deemed as in the best interest of the injured worker to be binding.

State	Medical Control	Medical Control Clarification and/or Exceptions	Does the State Allow Global Settlement	Global Settlement Option
Ohio	Injured Worker	The injured worker is allowed to choose their own treating physician as long as it is within the employer's preferred network, if there is one, or is certified by the Bureau of Workers' Compensation.	Yes	Full and final settlement is allowed in Ohio and is binding following a 30 day cooling off period once the agreement is executed.
Oklahoma	Employer	The employer chooses the treating physician, but must do so within seven days of the report of the accident. If the employer fails to choose, the injured worker is allowed to choose their own treating physician. The injured worker may file for a change in treating physician two times in the life of the claim, but that change must be agreed to by the employer and if disputed, approved by the court.	Yes	Full and final settlement is allowed in Oklahoma. The agreement must be approved by the Oklahoma Workers' Compensation Court of Existing Claims (in older cases), or the Commission, in cases with a date of loss post 2/1/2014.
Oregon	Injured Worker	The injured worker may choose their own treating physician and change up to two times without approval. If the employer is enrolled in a Managed Care Organization, the injured worker must choose from this network.	Only on a disputed claim	Full and final settlement cannot be obtained on an accepted workers' compensation claim in Oregon, but is allowed for a disputed claim.
Pennsylvania	Employer	The injured worker must treat with a physician from a list designated by the employer for the first 90 days following the initial treatment. After the 90 days has expired, the injured worker can give notice of a change in physician and may choose their own treating physician.	Yes	Full and final settlement is allowed in Pennsylvania. The agreement is not valid until approved by a judge after a hearing to determine the injured worker fully understands the agreement.

State	Medical Control	Medical Control Clarification and/or Exceptions	Does the State Allow Global Settlement	Global Settlement Option
Rhode Island	Injured Worker	The injured worker may choose their initial treating physician. If the employer has a Preferred Provider Network and the injured worker chooses to change from the initial treating physician, the injured worker is required to select a physician from the network.	Yes	Full and final settlement is allowed in Rhode Island. The agreement cannot be made until after the injured worker has been paid benefits for at least six months and must be heard and approved by a judge who determines that it is in the best interest of all parties.
South Carolina	Employer	The employer has the right to control the injured worker's medical care by selecting the treating physician. If the injured worker fails to comply with the medical treatment, they may lose further benefits.	Yes	Full and final settlement is allowed in South Carolina. Approval is not needed by the Commission unless the injured worker is not represented.
South Dakota	Injured Worker	The injured worker has the right to select their initial treating physician. Once the injured worker has selected their physician, they are not allowed to change without consent of the employer.	No	Full and final settlement can not technically be reached in South Dakota. The injured worker may file to reopen the settled claim under a change in condition. The right to reopen for a change in condition cannot be taken away even with settlement of the issues.
Tennessee	Employer	The injured worker chooses a treating physician from a panel of three physicians listed by the employer.	Yes	Full and final settlement is allowed in Tennessee, but must be approved by the Tennessee Bureau of Workers' Compensation to be valid. Any full and final settlement prior to 7/1/2014 approved outside of the Bureau may be set aside.
Texas	Injured Worker	The injured worker is entitled to choose their own treating physician, but the physician must be on the Commissioner's list of approved physicians.	No	Full and final settlement is not allowed in Texas.

State	Medical Control	Medical Control Clarification and/or Exceptions	Does the State Allow Global Settlement	Global Settlement Option
Utah	Injured Worker	The injured worker chooses the treating physician. If the employer has a Preferred Provider Network, the injured worker must choose the physician from within that network.	Yes	Full and final settlement is allowed in Utah. There are two ways in which a settlement can be reached. One where there is a dispute, and the other in which there has to be a commutation of medical benefits. The agreements are not binding unless in writing and approved by an Administrative Law Judge.
Vermont	Employer	The employer has the right to designate a physician. The injured worker is entitled to a one time change to the physician of their choice only if proper notice is given to the employer.	Not final for 6 years	Full and final settlement is allowed in Vermont, but must be approved by the Commissioner as in the best interest of the injured worker and can be changed for up to six years following the approval based on a change of condition.
Virginia	Employer	The employer provides the injured worker with a panel of three physicians from which to choose.	Yes	Full and final settlement is allowed in Virginia, but is not binding until 30 days following the approval by the Commission.
Washington	Injured Worker	The injured worker must choose a provider from within the state's network.	No	Full and final settlements are not allowed in Washington.
West Virginia	Injured Worker	The injured worker chooses the treating physician. If the employer has a Preferred Provider Network, the injured worker must choose the physician from within that network.	Yes	Full and final settlement is allowed in West Virginia for claims in the administrative or appellate process. The settlement may be revoked by the injured worker following execution and approval, but after five days the agreement is binding.
Wisconsin	Injured Worker	The employer is only able to direct care in an emergency situation, otherwise, the injured worker is allowed to choose their own physician.	Only on a disputed claim	Full and final settlement is allowed on disputed claims in Wisconsin, but not on accepted claims. The agreement must be submitted to and approved by the department to be binding. It may be reviewed for up to a year and set aside. The agreement must contain the word "compromise" or it can be reopened.
Wyoming	Injured Worker	The injured worker is only required to give prior notice if they want to change their primary treating doctor.	No	Full and final settlements are not allowed in Wyoming due to restrictions on lump sum payments.



# STATE BY STATE OVERVIEW

# ALABAMA

## Full & Final Settlement

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The Alabama workers' compensation system is one that allows the parties involved in a workers' compensation claim to enter into a full and final settlement agreement resolving all aspects of a workers' compensation claim. *Code of Ala. § 25-5-56*. However, all settlements, including a full and final settlement, may be vacated on the grounds of fraud, undue influence or coercion at any time within six months after the date of settlement. *Id.*

## The Issue of Medical Control

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An injured worker who suffers a compensable injury is entitled to receive, at the expense of the employer, all reasonably necessary medical and surgical treatment of any type which arises out of an on the job injury or occupational disease. *Code of Ala. § 25-5-77*. The employer is entitled to select the physician(s) of their choosing to serve as the injured worker's authorized treating physician(s) and provide said treatment. *Id.*

The injured worker has the right to make a one-time change of physician per specialty and may exercise that right by selecting a physician from a panel or list of four physicians provided by the employer. *Id.* The physician selected by the employer will serve as the injured worker's authorized treating physician moving forward.

Additionally, the injured worker, if requested by the employer, is required to undergo a medical examination with a physician of the employer's choosing. *Code of Ala. § 25-5-77(b)*. If a dispute arises with respect to the work related injury or to the extent of disability, the court may appoint a neutral physician to examine the injured worker. *Id.* If a medical examination conducted by a court appointed neutral physician is needed to resolve a dispute, the costs associated with the examination are to be split by the parties. *Id.*

## Full & Final Settlement

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The Alaska workers' compensation system is one that allows the parties involved in a workers compensation claim to enter into a full and final settlement agreement any time after thirty days from the date of injury. The agreement can resolve all aspects of a workers' compensation claim and discharges the employer's liability. *Alaska Stat. § 23.30.012*. The agreement must be reviewed by the board for approval if the claimant is not represented by counsel or if the claimant is waiving future medical benefits. Board approval requires a finding that the settlement is in the best interest of the employee. *8 AAC 45.160*. If the claimant is represented by counsel and does not waive future medical benefits, the agreement is effective on filing without approval of the board.

## The Issue of Medical Control

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Pursuant to *AS § 23.30.095(a)*, an employer shall provide the injured worker with medical treatment for the period of time needed to recover from the work related injury. While the statute indicates that treatment is not to exceed two years, there is a presumption of compensability that medical treatment is reasonable, necessary and related to the process of recovery. *AS § 23.30.010*, *AS § 23.30.120(a)(1)*. In order to rebut this presumption and controvert medical treatment, the employer must present medical evidence that the injury is not the substantial cause of the need for treatment. *AS § 23.30.010*. This normally requires the employer to obtain an independent medical examination. The employee is entitled to a board review regarding continued medical treatment following a controversy.

Additionally, the injured worker is entitled to select a physician of his or her choosing to serve as their primary treating physician and provide said treatment at the expense of the employer. *AS § 23.30.095(a)*. The injured worker also has the right to make a one-time change of physician without obtaining authorization from the employer. *Id.* Subsequent changes in physician require approval from the employer. A referral to a specialist by the treating physician is not considered a change in physicians.

If the injured worker does not select a treating physician, either because they are unable to or simply choose not to, the employer has the right to select a physician of their choosing to serve as the injured worker's primary treating physician. *AS § 23.30.095(b)*. However, the employer's selection of a treating physician does not preclude the injured worker from subsequently designating a physician to provide ongoing medical care. *Id.* The employer may not interfere with the employee's selection of a treating physician or otherwise direct the employee's care or treatment. *AS § 23.30.095(i)*. The employer may provide a list of preferred physicians to the employee, but the list must clearly state that the list is voluntary and the employee's choice is not restricted to the list. *AS § 23.30.097(b)*.

If requested by the employer, the injured worker is required to undergo a medical examination with a physician chosen by the employer. *AS § 23.30.095(e)*. However, if a medical dispute results based on inconsistent findings of the injured worker's primary treating physician and the employer's selected physician, the parties may request, or the board may require, a second independent medical evaluation be conducted with a physician of the board's choosing. *AS § 23.30.095(k)*.

## Full & Final Settlement

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The Arizona workers' compensation system is one that allows the parties involved in a disputed workers' compensation claim to enter into a full and final settlement agreement which, once approved by the commission, resolves all aspects of a workers' compensation claim and discharges the employer's liability. *A.R.S. § 23-941.01*. The settlement for disputed claims is commonly called a non-Compensable Compromise and Settlement Agreement, while admitted claims settlement agreements are commonly called Compromise and Settlement Agreements. Compromise and Settlement Agreements can be made and take into account closure of the medical by taking a credit on the ongoing medical sought by the injured worker. If the claimant spends more than the credit for medical, there is a path that can be taken to open the medical back up. That path is not easy but can be undertaken.

## The Issue of Medical Control

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Pursuant to *A.R.S. § 23-1062*, an employer shall promptly provide the injured worker with medical treatment reasonably required at the time of injury, and thereafter during the period of disability, to cure and relieve the injured worker of the effects of the injury.

When an employee suffers a work related injury, the employer has the right to designate in writing a physician of their choosing to perform a one-time examination of the injured worker in an effort to determine the nature and extent of the injury. *A.R.S. § 23-908(F)*. The injured worker's failure to submit to an initial examination by the employer-designated physician may preclude the injured worker from receiving benefits in connection with the work related injury. *Id.*

The injured worker's obligation to attend the one-time examination with an employer-selected physician does not prevent the injured worker from subsequently selecting a physician of his or her own choosing to serve as their treating physician. *A.R.S. § 23-908(E)*. However, if the injured worker returns to the employer-selected physician for additional treatment, the employer-selected physician will serve as the employee's treating physician.

Once a treating physician has been selected, the injured worker may not change physicians without written authorization from the insurance carrier, the commission and the attending physician. *A.R.S. § 23-1071(B)*.

In limited situations where the employer is a private self-insured employer who has contracted for directed care, the injured worker is required to obtain medical treatment from the contracted physicians designated by the employer. *A.R.S. § 23-1071(A)*. However, as discussed above, absent such circumstances the injured worker may select a physician of their choosing to provide medical treatment in connection with the work related injury suffered.

# ARKANSAS

## Full & Final Settlement

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The Arkansas workers' compensation system is one that allows the parties involved in a workers' compensation claim to enter into a full and final settlement agreement resolving all aspects of a workers' compensation claim. *Ark. Code Ann. § 11-9-805*. However, no final settlement agreement is valid until an adequacy hearing has been conducted and a judge, after determining the final settlement agreement is in the best interest of the injured worker, has issued an order approving the final settlement. *Id.* A settlement can be presented by the pleadings, including joint petition interrogatories, if the injured worker has moved or for some reason, acceptable to the Commission, is unable to appear in person for a hearing. Not only does an order approving a final settlement agreement constitute a final resolution of the rights of all parties to the agreement, but the order approving actually relinquishes the Arkansas Workers' Compensation Commission's jurisdiction over any claim for the same injury or any results arising from it. *A.C.A. § 11-9-805(b)(2)*. The only exception is that the Commission maintains jurisdiction to enforce the terms of the settlement should a question or an issue arise.

## The Issue of Medical Control

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Pursuant to *A.C.A. § 11-9-508*, an employer shall promptly provide an injured worker with all reasonably necessary medical treatment in connection with the industrial injury suffered. An employer's failure to provide said treatment within a reasonable time after receiving knowledge of the injury may result in the employer's loss of their right to control the applicant's medical care and entitle the injured worker to receive medical treatment from a physician of their choosing at the expense of the employer. *A.C.A. § 11-9-508(b)*.

An injured employee claiming entitlement to compensation shall submit to physical examination and treatment through an independent medical examination by a qualified physician designated by the Commission as may be required if reasonable and necessary. The place of the examination and treatment shall be reasonably convenient for the employee. Where the Commission directs the examination or treatment and the employee refuses to attend, proceedings and benefits payable shall be suspended for any period the employee refuses to comply. *A.C.A. § 11-9-511*.

With the exception of hernia cases, if an injured employee unreasonably refuses to submit to a surgery recommended by at least two qualified physicians and the operation does not involve unreasonable risk of life or serious impairment, the Commission may take into consideration the refusal when determining disability. *A.C.A. § 11-9-512*.

If the employer does not relinquish medical control by failing to timely provide medical treatment, the employer shall have the right to select the initial primary treating physician of their choice from those associated with a managed care organization ("MCO") certified by the commission. *A.C.A. § 11-9-514(a)(3)(A)(1)*.

Where the employer has contracted with a MCO certified by the Commission, an injured worker "shall" be allowed to change physicians by petitioning the Commission, one time, to a physician who is either a part of the employer's MCO or is a regular

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treating physician of the employee who maintains the employee's medical records and which exists a bona-fide doctor-patient relationship. The Commission, through the Medical Cost Containment Division, will enter an order memorializing the change of physician and schedule an appointment. If the employer has not contracted with a Managed Care Organization, the employee is generally free to select any treating physician of their choice, so long as the physician chosen is associated with a managed care entity certified by the Commission or agrees to comply with all the rules, terms, and conditions regarding services performed by an managed care entity certified. A.C.A. § 11-9-514(a)(3)(A)(1)-(2). While the injured employee and employer are encouraged to cooperate, if they mutually agree to a change of physician without a petition to the Commission and subsequent order being entered, the mutually agreed upon change is not considered exercise of the employee's one time change entitling the employee to petition the Commission for a subsequent change. See, *Magic Mart, Inc. v. Little*, 12 Ark. App. 325, 676 S.W.2d 756 (1984). An injured employee may petition the Commission for an additional change but must show a compelling reason for the change, i.e. the death of the one-time change of physician. See, *O'Guinn v. Little River Mem. Hosp.*, 2013 Ark. App. 593, 430 S.W.3d 150, 2013 Ark. App. LEXIS 610.

Any treatment or services furnished or prescribed by any physician while not going through the process above will be the responsibility of the injured employee with the exception of emergency treatment. A.C.A. § 11-9-514 (b). Likewise, with the exception of an injury that renders the employee physically or mentally unable to do so, or is made known to the employer immediately after it occurs, the employee shall report the injury to the employer. Any medical treatment incurred prior to the employee's report of injury and/or the employer's knowledge of the injury will not result in the employer's responsibility for payment of the medical treatment unless the Commission excuses the failure for some satisfactory reason. A.C.A. § 11-9-701.

However, the above mentioned rules regarding the one time change of physician are not applicable until the employer, after being put on notice of an injury, provides the injured worker with the proper documentation informing the injured worker of their rights and responsibilities with respect to a change of physician. A.C.A. § 11-9-514(c). The employer must show that they delivered the Commission Form N to the injured employee in person or by certified or registered mail, return receipt requested. The employer is not liable for any unauthorized treatment obtained after an injured worker has been provided with said notice. *Id.*

# CALIFORNIA

## Full & Final Settlement

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The California workers' compensation system is one that allows the parties involved in a workers' compensation claim to enter into a full and final settlement agreement known as a Compromise and Release, resolving all aspects of a workers' compensation claim, except for vocational rehabilitation benefits/supplemental job displacement benefits. *Cal. Lab. Code § 5000, 4658.5(d)*. However, pursuant to *California Labor Code § 5001*, no Compromise and Release agreement is valid until reviewed and approved by the Workers' Compensation Appeals Board.

## The Issue of Medical Control

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Pursuant to *Cal. Lab. Code § 4600*, an employer is to provide the injured worker with medical treatment that is reasonably required to cure or relieve the injured worker from the effects of his or her injury. An employer's failure to provide said treatment may constitute neglect or refusal to furnish medical care resulting in the employer's loss of their right to control the applicant's medical care.

Upon receipt of a claim form filed by an employee, the employer must authorize treatment for the alleged injury pursuant to *Cal. Lab. Code § 5402(c)* and must continue to do so until the date liability for the claim is determined. If the claim is ultimately denied, the employer relinquishes their right to control the applicant's medical care at the time of the denial.

If a claim has been accepted and the employer has a properly established medical provider network, the employee is generally required to seek medical treatment within said network. If a claim has been accepted and the employer does not have an established medical provider network, the employer generally has the right to control the employee's medical care for the first 30 days after the alleged injury was reported. *Cal. Lab. Code § 4600(c)*. However, when the employer does not have an established medical provider network the employee regains the right to control their medical care after 30 days from the date the injury was reported. *Cal. Lab. Code § 4600(c)*.

Additionally, an employee may circumvent an employer's right to medical control altogether by properly predesignating a physician in accordance with *Cal. Lab. Code § 4600(d)(1) or 4601*.

# COLORADO

## Full & Final Settlement

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In Colorado, the parties are free to enter into a full and final settlement which completely extinguishes a claimant's rights to obtain additional workers' compensation benefits (including medical benefits). The settlement cannot be enforced until it is put into writing, fully executed by both parties and approved by a judge at the Office of Administrative Courts. Full and final settlements generally cannot be reopened or contested unless there is fraud involved or a mutual mistake of fact. In other words, the settlement generally results in a permanent denial of all workers' compensation benefits.

## The Issue of Medical Control

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In Colorado, respondents generally have the obligation to provide medical care which is necessary to cure and relieve the injured worker from the effects of the injury.

An employer has the right in the first instance to offer the providers who will provide such medical treatment. Specifically, the employer should post or verbally provide the names of four different clinics or physicians that may provide the medical care. One of the four providers or clinics has to have separate ownership (three of the clinics can have the same ownership). The employer subsequently must provide a written letter to the claimant within seven business days of the injury being reported which provides the names of all four medical providers. The claimant must select one of the four providers offered in the letter. The medical provider selected will subsequently provide the medical care on the case. If an employer does not follow this procedure (including sending the letter within seven business days), a claimant can select his own physician to provide medical care.

After selecting a treating physician, the injured worker is entitled to make a one-time change of physician by providing written notice to the employer within 90 days after the date of injury, so long as claimant has not reached MMI and the new treating physician is selected from the employer's original designated list of physicians.

An employer that is a medical facility and has its own internal occupational medicine physicians can offer its own providers to handle the necessary medical care. Such a facility is not subject to the rules about four providers and claimant must treat with the selected doctor.

An employer's failure to provide ongoing treatment during the course of the case may constitute neglect or refusal to furnish medical care resulting in the employer's loss of their right to control the claimant's medical care. In other words, the claimant will be able to select their own physician if respondents refuse to provide medical care.

# CONNECTICUT

## Full & Final Settlement

The Connecticut workers' compensation system is one that allows the parties involved in a workers' compensation claim to enter into a full and final settlement agreement that, once approved by the Commissioner upon determining the settlement to be fair and just, resolves all claims for compensation. *Conn. Gen. Stat. § 31-302*. Once approved by the Workers' Compensation Commissioner, the full and final settlement becomes binding and discharges the employer of further liability. *Johnson v. Johnson, 2005 Conn. Super. LEXIS 1630, \*23 (Conn. Super. Ct. June 21, 2005)*.

## The Issue of Medical Control

Pursuant to *Conn. Gen. Stat. § 31-294d*, an employer shall provide the injured worker with a competent physician to render medical treatment in connection with the work related injury. If the employer has a full time staff physician or an available physician on call, the initial medical examination may be conducted with the employer selected physician. *Conn. Gen. Stat. § 31-294d(b)*. However, after the initial examination with the employer selected physician is conducted, the injured worker has the right to select physician of his or her choosing. *Id.*

If the employer does not provide medical treatment through a managed care organization, the injured worker must select a treating physician from a list of physicians prepared and approved by the Chairman of the Workers' Compensation Commission. *Conn. Gen. Stat. § 31-294d(b)*. After the injured worker has selected a treating physician, any subsequent change of physician must be approved by the Commissioner upon a showing of good cause for the change. *Conn. Gen. Stat. § 31-294d(c)*.

If the employer does provide medical treatment through a managed care plan, the injured worker must obtain medical treatment from a physician within the employer's medical care plan or risk suspension of their benefits. *Conn. Gen. Stat. § 31-279(c)(2)*. However, the employer's failure to promptly provide the required medical treatment or notify the injured worker of their rights and obligations in connection with the managed care plan will entitle the injured worker to obtain the required medical treatment from a physician of their choosing at the expense of the employer. *Id.*

Additionally, upon reasonable request of the employer or at the direction of the commissioner, the injured worker is required to attend a medical examination with an employer selected physician for the purpose of determining the nature of the injury and the impairment resulting from said injury. *Conn. Gen. Stat. § 31-294f (a)*. The employer must select a physician from a list of physicians prepared and approved by the chairman of the Workers' Compensation Commission to conduct the examination. *Id.*

The injured worker has the option to refuse medical treatment provided by the employer so long as they obtain the reasonable medical care required at their own expense. *Conn. Gen. Stat. § 31-294e(a)*. However, if the injured worker both refuses medical treatment provided by the employer and does not obtain the reasonable medical care required to treat the work related injury, the injured worker's right to workers' compensation benefits will be suspended until the reasonable medical treatment is obtained. *Conn. Gen. Stat. § 31-294e(b)*.

# DELAWARE

## Full & Final Settlement

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The Delaware workers' compensation system is one that will allow the parties involved in a workers' compensation claim to enter into a full and final settlement agreement (referred to as a "global commutation") resolving all aspects of a workers' compensation claim and discharging the employer's liability, see *19 Del. Code Section 2358*. Otherwise if not globally settled, the parties retain the right to reopen a claim in pursuit of additional benefits or to attempt to terminate existing ongoing benefit entitlement (total disability or partial disability) pursuant to *19 Del. C. § 2347*. On application by any party in interest may, at any time but not more often than once every six months, seek to reopen a claim based on a change in the injured worker's medical condition. *Id.* Commutation settlements which include medical treatment expense entitlement must comply with any applicable MSA or CMS guidelines.

## The Issue of Medical Control

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Pursuant to *19 Del. C. § 2322*, an employer shall provide the injured worker with reasonable medical treatment as and when needed during the period of disability. After receiving an application to provide said treatment, an employer's refusal to do so results in the employer's liability for reimbursement for all reasonable medical treatment obtained by the injured worker. *19 Del. C. § 2322(b)*.

The injured worker has the right to select a physician of his or her choosing to serve as their treating physician and provide the required care in connection with the work related injury. *19 Del. C. § 2323*. The injured worker must provide notice of the physician selected to the employer within thirty days of initially receiving medical treatment from the physician selected. *Id.* The employer retains the right to require an injured worker to obtain prescription medications, however, from its preferred pharmacy or vendor pursuant to the Delaware Supreme Court ruling in *Boone v. Syab* which recognizes a distinction between medical services and medication.

A failure to properly notify the employer of the physician selected will eliminate the employer's responsibility to pay for the treatment provided. However, if the injury is found to be compensable and proper notice within thirty days of the initial examination was provided, the employer shall be liable for all reasonable medical treatment provided by the treating physician. *Id.*

Additionally, although the injured worker has the right to select the treating physician of his or her choosing, the injured worker, if requested by the employer or ordered by the board, shall submit to medical examination by an employer selected physician at reasonable times and places and as often reasonably requested. *19 Del. C. § 2343(a)*. The employer has the right to challenge medical treatment for compliance with the prevailing Health Care Practice Guidelines which exist pursuant to *19 Del. C. § 2322C* through the Utilization Review process. *19 Del. C. § 2322F(j)*. Treatment non-certified as a result of a Utilization Review decision may be denied for payment by the employer unless the Utilization Review is appealed to the Industrial Accident Board within 45 days, in which case the issue of the propriety of the medical treatment will be considered de novo and at which time the standard of payment liability shifts from compliance with the Health Care Practice Guidelines to whether the treatment is consistent with the more nebulous concept of "reasonable and necessary".

# FLORIDA

## Full & Final Settlement

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The Florida workers' compensation system is one that allows the parties involved in a workers' compensation claim to enter into a full and final settlement resolving all aspects of a claim, whereby the injured worker waives all rights to further benefits, therefore releasing the employer of future liability, in exchange for a lump sum settlement payment. *Fla. Stat. § 440.20(11)*.

Additionally, if the injured worker is represented by counsel, the parties can enter into a full and final settlement agreement at any time and can do so without obtaining a judge's approval as to the adequacy of the terms of agreement. *Fla. Stat. § 440.20(11)(c)*. However, when the parties enter into a full and final settlement agreement and the injured worker is represented by counsel, it is necessary to obtain a judge's approval as to the amount of attorney's fees payable to the applicant's attorney by the applicant. Upon receipt of a judge's order approving the attorney fees, a defendant has 14 days to issue payment to the applicant of the lump sum settlement amount pursuant to the agreement. *Id.*

Injured workers not represented by counsel can also enter into a full and final settlement agreement. However, in an effort to protect the interests of an unrepresented injured worker, additional safeguards are in place, one of which requires a judge's approval of a full and final settlement agreement. *Fla. Stat. § 440.20(11)(a)*.

## The Issue of Medical Control

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Pursuant to *Fla. Stat. § 440.13(2)(a)*, an employer shall furnish to the employee all medically necessary remedial treatment and care for as long as required based on the nature and extent of the industrial injury involved. If the employer fails within a reasonable time to provide the injured worker with initial medical treatment or necessary treatment requested by the injured worker, the injured worker may obtain the necessary medical treatment at the expense of the employer. *Fla. Stat. § 440.13(2)(c)*. Pursuant to *Fla. Stat. § 440.13(2)(f)*, the injured worker is entitled to a one time change of physician during the course of treatment for an industrial accident and may exercise said right upon written request to the employer.

When an employer maintains a managed care arrangement or provider network, the injured worker is entitled to select a primary care physician from the providers within the employer's managed care arrangement or provider network, as well as make a one-time change of physician to another provider within the provider network. *Fla. Stat. § 440.134*.

## Full & Final Settlement

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The Georgia workers' compensation system is one that allows the parties involved in a workers' compensation claim to enter into a full and final settlement agreement that, once approved by the State Board of Workers' Compensation, constitutes a complete and final disposition of all claims related to the incident, injury or injuries referred to in the agreement. Following final approval, the Board will have no authority to enter any subsequent awards amending, modifying or changing in any manner the settlement. *O.C.G.A. § 34-9-15*. Settlement may include closure of all medical.

## The Issue of Medical Control

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Pursuant to *O.C.G.A. § 34-9-200*, if any employee sustains an injury that arises out of and occurs in the course and scope of his or her employment with the employer, the employer is required to provide the injured worker with medical treatment that is reasonably required and appears likely to effect a cure, provide relief, and/or restore the employee to suitable employment. For all injuries that occurred prior to July 1, 2013, the employer is required to provide this medical treatment for the employee's lifetime. However, for injuries that occurred after July 1, 2013, the employer is required to provide the medical treatment for 400 weeks from the date of the employee's injury unless the injury is "catastrophic" (permanent total). Under *Board Rule 203(e)*, medical expenses shall include, but are not limited to, the reasonable cost of travel between the employee's home and the place of examination or treatment (40 cents per mile for private vehicle reimbursement in 2015).

An employer's requirement to provide medical treatment may be satisfied in two ways. First, the employer may maintain a list, known as a panel of physicians, of at least six physicians who are reasonably accessible to injured workers. The panel must include at least one orthopedic surgeon and one minority. Additionally, the panel shall include no more than two (2) industrial clinics. *O.C.G.A. § 34-9-201, Board Rule 201*. An employer who maintains a panel of physicians is entitled to initially select a physician from said panel to serve as the injured workers' primary treating physician. *O.C.G.A. § 34-9-200.1(b)*. The panel must be posted conspicuously and employees must be educated as to their right to select any of the panel listed doctors, and to change one time to a different panel doctor should they desire in a compensable claim.

Alternatively, the employer may establish a Managed Care Organization. *Id.* If the employer has contracted with a Managed Care Organization, the injured worker generally is required to receive all medical treatment from a provider within the employer's managed care organization. *O.C.G.A. § 34-9-200.1(b)(2)*. If the employer utilizes a managed care organization, a medical case manager must be assigned to monitor, evaluate, and coordinate medical treatment under *Board Rule 208(h)*. The Managed Care Organization must also implement a system for peer review to improve patient care and cost effectiveness of treatment.

In limited circumstances, such as an emergency situation, an injured worker may obtain the temporary medical care necessary at the expense of the employer regardless of whether the physician is within the employer's managed care organization or on the

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panel of physicians. *O.C.G.A. § 34-9-200(d)*. Additionally, regardless of the type of panel utilized by the employer, the injured worker is entitled to make a one-time change of physician and select another physician from the panel (or the MCO network). *Id.*

Regardless of the type of panel maintained, an employer is required to post the panel of physicians or the managed care organization procedures at their place of business and take all reasonable measures to ensure that employees understand the function and procedures for selecting a physician. *O.C.G.A. § 34-9-200(c)*. An employer's failure to do so will entitle an injured worker to select any physician of their choosing to provide medical treatment at the expense of the employer. *O.C.G.A. § 34-9-200(e)*.

If an employee's compensable injury is deemed catastrophic as defined under *O.C.G.A. § 34-9-200.1(g)*, in addition to the treatment required in *O.C.G.A. § 34-9-200.1*, the employee would also be entitled to rehabilitation benefits as provided under *O.C.G.A. § 34-9-200.1*. The employer shall appoint a registered rehabilitation supplier or give reasons why rehabilitation is not necessary within 48 hours of the employer's acceptance of the injury as compensable or notification of a final determination of compensability, whichever occurs later. If it is determined that rehabilitation is required, the employee shall have a period of 20 days from the date of notification of that determination within which to select a rehabilitation supplier. *O.C.G.A. § 34-9-200.1(a)*. If the employer fails to select a rehabilitation supplier within the necessary time period, a rehabilitation supplier will be appointed by the board to provide the injured worker with medical treatment at the expense of the employer. *Id.* Any party may request the board for a change in rehabilitation supplier. However, a change in rehabilitation suppliers shall not be done without approval from the Board. *O.C.G.A. § 34-9-200.1(b)*.

## Full & Final Settlement

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The Hawaii workers' compensation system is one that allows the parties involved in a workers' compensation claim to enter into a full and final settlement agreement known as a Stipulated Compromise and Release Agreement (SCRA), resolving all aspects of a workers' compensation claim. *HRS § 386-78*. However, the terms may not include resignation from employment, no re-hire and release of all claims provisions, which must be resolved by a separate general release agreement. No SCRA is valid until reviewed and approved by the Director of the Department of Labor and Industrial Relations and/or the Labor and Industrial Relations Appeals Board.

## The Issue of Medical Control

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Pursuant to *HRS § 386-21*, an employer shall provide an injured worker with all medical care, services, and supplies as the nature of the injury may require. Whenever medical treatment is required, the injured worker is entitled to select the physician of their choosing to serve as the primary attending physician. *HRS § 386-21(b)*. Only in limited situations, such as emergency situations or an injured worker's refusal to select a treating physician, may an employer select a physician to provide treatment to the injured worker. *Id.* In the event the employee elects to change attending physician, the employee shall notify the employer prior to initiating the change. Changes in attending physician by the employee subsequent to the first change require prior approval by the Director or employer. *HAR § 12-15-38*.

If medical treatment from a specialist is required, the employee is entitled to select any physician practicing medicine in the state to provide said treatment. *HRS § 386-21(b)*. Additionally, an injured worker may seek medical treatment from a specialist practicing outside the state when there is no comparable medical treatment available within the state and the Director provided authorization to receive said treatment. *Id.*

Upon receipt of a treatment plan by an employee's attending physician, the employer has just seven calendar days to approve, deny, or request correction of any deficiencies. Failure to timely respond results in approval of the treatment plan. *HAR § 12-15-32, et seq.*

The fees for medical services provided to the employee are governed by the medical fee schedule published and amended annually by the Department of Labor, Disability Compensation Division. Physicians include doctors of medicine, dentists, chiropractors, osteopaths, naturopaths, optometrists, psychologists, and podiatrists. *HRS § 386-1*.

## Full & Final Settlement

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The Idaho workers' compensation system is one that allows the parties involved in a workers' compensation claim to enter into a full and final settlement that, once approved by the Idaho Industrial Commission, resolves all aspects of a workers' compensation claim by discharging an employer's liability by payment to the injured worker of a lump sum settlement amount agreed upon by the parties. *Idaho Code* § 72-404. In the alternative, the parties may resolve all non-medical aspects of a workers' compensation claim (e.g., total temporary disability, impairment, disability), and once approved by the Idaho Industrial Commission, employer retains liability for reasonable medical treatment relating to the industrial injury for the worker's lifetime or until settlement of future medical benefits.

## The Issue of Medical Control

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Pursuant to *I. C. § 72-432(1)*, an employer shall provide an injured worker with all reasonable medical treatment needed after an industrial injury occurs. An employer's failure to do so entitles the injured worker to receive reasonable medical treatment from a physician of their choosing at the expense of the employer. *Id.*

Although *I. C. § 72-432* appears to give the employer the power to direct medical care, in practice and pursuant to Idaho case law, the employer cannot force the injured worker to go to a specific treating physician. Although the employer may establish a preferred medical provider network, the employee is not required, and the employer cannot force the injured worker, to seek care within the network. Treatment cannot be denied if the injured worker chooses to treat with a non-network or non-preferred provider.

The first physician to provide care becomes the treating physician and will serve as the treating physician for the life of the claim. The treating physician directs care and may make any referral deemed reasonable and necessary. The referral physician also becomes a treating physician for the life of the claim, as do any physicians in the chain of referral. "Physician" per *I. C. § 72-102(25)* includes medical physicians and surgeons, chiropractors, acupuncturists, and any other "healing profession licensed or authorized by the statutes" of the state to practice such profession within the scope of their practice. Naturopaths are not considered physicians under this statute.

The treating physician and any medical provider to whom the injured employee has been referred will serve as a treating physician for the life of the claim unless the injured worker petitions the Commission for a change of physician. *I. C. § 72-432(4)*; See also, Judicial Rules of Practice and Procedure under the Idaho Workers' Compensation Law (JRP) Rule 20. Upon receipt of the injured workers' petition to change physicians, the employer has 14 days to file a response with the Idaho Industrial Commission authorizing or denying the request. If the employer authorizes the request to change physicians, the injured worker may receive medical treatment from the physician authorized by the employer at the expense of the employer. If the employer fails to respond to the injured worker's request to change physicians within 14 days of receipt of the request, the injured worker is entitled to change physicians and receive medical

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treatment from the physician listed on the request to change physicians provided to the employer.

If the employer timely denies the injured worker's request to change treating physicians, the issue may be addressed by way of an expedited telephonic or in-person hearing before the Idaho Industrial Commission. Procedures, including the response and any evidence to be submitted, are outlined in the JRP. The injured worker may appear pro se or with counsel. The employer/surety must be represented by an attorney. *JRP Rule 20(D)*. If the Commission, after finding reasonable grounds to change physicians are present, grants the injured worker's request, the injured worker may receive medical treatment from the physician authorized by the Commissioner at the expense of the employer. The physician then becomes a treating physician for the life of the claim. In the alternative to a hearing on the petition, the injured employee may pursue a change of physician through an application for hearing process outlined in *I. C. § 72-706*.

If the employer or surety wish to challenge the findings or treatment recommendations by a treating physician, the employer may refer the injured worker for an independent medical examination or physical rehabilitation. *I. C. § 72-433(1)*. If the injured employee unreasonably fails to submit to or otherwise obstructs an examination, the employee's right to proceed with his/her claim may be suspended by the Idaho Industrial Commission, with no benefits paid, until such failure or obstruction ceases. *I. C. § 72-434*.

## Full & Final Settlement

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The Illinois workers' compensation system is one that allows the parties involved in a workers' compensation claim to enter into a full and final settlement agreement known as a Lump Sum Settlement Contract, resolving all aspects of a workers' compensation claim and precluding an injured worker from re-opening their claim in an effort to obtain additional benefits. *820 ILCS 305/9*. Lump Sum Settlement Contracts are generally only binding if reviewed and approved by the Illinois Workers' Compensation Commission (IWCC). *Id.* Furthermore, in cases involving complete disability, the IWCC will not review or approve a Lump Sum Settlement Contract until after six months from the date of injury. *Id.* Additionally, a Lump Sum Settlement Contract can preclude all future claims for death benefits if payment of the lump sum settlement amount, pursuant to an IWCC approved Lump Sum Settlement Contract which resolves a disputed issue other than the extent of liability, is made to the applicant during their lifetime. *Id.*

## The Issue of Medical Control

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Pursuant to *820 ILCS 305/8(a)*, an employer shall provide and pay for all first aid, medical, and surgical services which are reasonably required to cure or relieve the injured worker from the effects of his or her injury.

If an injured worker's claim has been denied, the employer relinquishes their right to control the applicant's medical care. As a result, the injured worker has the right to control his or her medical care and seek medical treatment from the physician of his or her choosing.

When an injured worker's claim has been accepted, the injured worker is entitled to select a treating physician of their choosing on two separate occasions (i.e. obtain a second opinion or transfer care), in accordance with the limitations discussed below, before the employer regains medical control. The limitations placed on the applicant with respect to selecting a treating physician of their choice vary depending on whether the employer has properly established a preferred provider program in accordance with *820 ILCS 305/8.1a*.

If the claim has been accepted and the employer does not have an established preferred provider program, the employer is required to provide medical treatment from a physician initially chosen by the injured worker, as well as medical treatment within the chain of referrals from the initial provider chosen by the applicant. *820 ILCS 305/8(a)(2)*. Additionally, the employee is permitted to obtain a second opinion from a physician of his or her choosing. *820 ILCS 305/8(a)(3)*. However, after the injured employee has selected two physicians of his or her choosing, the employer then gains control of the injured worker's medical care and has the right to select a physician for subsequent transfers of care. *820 ILCS 305/8(a)(4)*.

If the claim has been accepted and the employer does have a properly established preferred provider program at the time of injury, the injured employee is still entitled to select a treating physician on two separate occasions but generally must select a physician who is within the employer's preferred provider program. When an employer has an established preferred provider program, the injured employee may seek

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treatment from a physician not within the employer's preferred provider program in limited circumstances, such as emergency situations or when the care being rendered by a physician within the preferred provider program is found to be inadequate. 820 ILCS 305/8.

Additionally, an injured worker is also entitled to seek medical treatment from a physician not within the employer's preferred provider program by declining or opting out of the preferred provider program, which can be done at any time by providing written notice to the employer. 820 ILCS 305/8(4)(B).

If the injured worker opts out of the employer's preferred provider program by providing written notice to the employer, the injured worker is entitled to select a treating physician of their choosing on two separate occasions. After the injured employee has declined the employer's preferred provider program and has exhausted their two choices of medical providers, the employer then gains control of the injured worker's medical care and has the right to select a physician if any subsequent transfers of care are required. *Id.*

# INDIANA

## Full & Final Settlement

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The Indiana workers' compensation system is one that allows the parties involved in a workers' compensation claim to enter into a full and final settlement agreement no sooner than seven days from the date of injury that, once approved by the Workers' Compensation Board of Indiana, resolves all aspects of an injured worker's claim. *Ind. Code § 22-3-2-15.*

## The Issue of Medical Control

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Pursuant to *Ind. Code § 22-3-3-4*, an employer shall provide the injured worker with medical treatment that is reasonably necessary to cure or relieve the injured worker from the effects of his or her injury. Furthermore, the employer has the right to select a physician of its choosing to serve as the injured worker's treating physician and provide said treatment. *Id.*

Absent an emergency situation, the injured worker generally must receive medical treatment from the employer selected treating physician, *Ind. Code § 22-3-3-4(d)*. However, if the employer fails to provide the required medical treatment, or upon a showing of good cause, the injured worker is entitled to receive medical treatment from a non-employer selected physician. *Id.*

Additionally, the Indiana Act permits an agreement between an employer and its employees that has the approval of the Board that binds the parties to: 1) medical care furnished by medical service providers selected by agreement before or after the injury; or 2) the findings of a medical service provider who was chosen by agreement. *Ind. Code § 22-3-3-4(h)(1) and (2).*

## Full & Final Settlement

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The Iowa workers' compensation system is one that allows the parties involved in a workers' compensation claim to enter into a full and final settlement agreement known as a Compromise Settlement that, once approved by the Iowa Division of Workers' Compensation, constitutes a full and final disposition of a claim. *Iowa Code § 85.35*. A Compromise Settlement shall be approved when the parties show that the injured worker made a voluntary waiver of their rights when entering into the Compromise Settlement agreement, which by its terms is reasonable and supported by evidence. *Iowa Code § 85.35(8)(a)*.

## The Issue of Medical Control

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When an injured worker suffers a compensable injury, the employer is required to promptly provide the injured worker with all medical treatment reasonably required to treat the industrial injury suffered and may select the physician to provide said treatment to the injured worker. *Iowa Code §§ 85.27(1), (4)*. When the treating physician is selected by the employer, the injured worker is entitled to receive all medical treatment from the physician selected at the expense of the employer until, if ever, the employer notifies the injured worker that authorization for further medical treatment has been revoked and provides a reason as to why authorization has been revoked. *Id.*

The injured worker is entitled to contest the employer's choice of physician and may do so by communicating to the employer their dissatisfaction with the physician selected or the care being provided. *Id.* If the employer allows the injured worker to change physicians and the parties can agree upon a newly designated treating physician, the injured worker may change physicians and receive all medical care from the newly designated physician at the expense of the employer. *Id.*

If the parties cannot come to an agreement, the issue may be addressed by way of an expedited hearing. If the Commissioner, after determining reasonable grounds supporting a change of physician are present, approves the injured worker's request to change physicians, the injured worker is entitled to receive medical treatment from the physician authorized by the Commissioner at the expense of the employer. *Id.*

However, without authorization from either the employer or the Commissioner and absent an emergency situation, the injured worker is to receive all medical treatment from the physician initially selected by the employer. *Id.*

## Full & Final Settlement

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The Kansas workers' compensation system is one that allows the parties involved in a workers' compensation claim to enter into a full and final settlement agreement, often referred to as a Redemption Agreement, by which an employer can redeem all liability under the workers' compensation act by payment of a lump sum settlement to the injured worker. *K.S.A. §44-531(a)*. A full and final settlement agreement, or Redemption Agreement, is not valid until approved by an Administrative Law Judge who, after a hearing regarding the adequacy of the settlement was conducted, determined the settlement agreement was either in the best interest of the injured employee (or dependents of a deceased employee) or would avoid undue expense, litigation or hardship to any party. *Id.* Once a full and final settlement agreement is approved, the employer is released from all liability under the workers' compensation act. *Id.*

## The Issue of Medical Control

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Pursuant to *K.S.A. § 44-510h(a)*, an employer has a duty to provide the injured worker with medical treatment that is reasonably necessary to cure or relieve the injured worker from the effects of industrial injury suffered. Furthermore, the employer has the right to select the physician to provide said treatment to the injured worker. *Id.* However, unless the injured worker can prove, by a preponderance of the evidence, additional medical treatment is necessary, the employer's obligation to provide said treatment terminates once the injured worker has reached maximum medical improvement. *K.S.A. § 44-510h(e)*.

If the employer fails to provide the injured worker with medical treatment in accordance with *K.S.A. § 44-510h(a)* and the injured worker files an application with the court alleging the same, the Director may authorize a change of physician. *K.S.A. § 44-510h(b)(1)*. If the Director has authorized a change of physician, the employer must provide the injured worker with a list of two physicians, from which the injured worker is authorized to select and receive medical treatment from the physician of their choice. *Id.* If the injured worker is unable to obtain satisfactory medical treatment from either of the two physicians recommended by the employer, the Director may, upon request of either party, select a treating physician to provide medical treatment to the injured worker. *Id.*

Regardless of whether the treating physician was selected by the employer or appointed by the director or whether authorization has been provided, the injured worker has the right to receive medical treatment, up to \$500, from a physician of their choosing at the expense of the employer. *K.S.A. § 44-510h(b)(2)*.

# KENTUCKY

## Full & Final Settlement

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The Kentucky workers' compensation system is one that allows the parties involved in a workers' compensation claim to enter into a settlement agreement known as a Form 110 (Agreement as to Compensation and Order Approving Settlement), resolving all issues in a workers' compensation claim. *KRS § 342.265*. Pursuant to *KRS § 342.265(1)*, a settlement agreement does not constitute a final agreement unless a memorandum of agreement is filed with the Kentucky Department of Workers' Claims (DWC) and the settlement agreement is approved by a judge. However, DWC approval of a compromise agreement does not preclude a claim from being reopened on the grounds of fraud, mistake, newly discovered evidence which could not have been discovered with the exercise of due diligence and a change in the injured worker's disability. *KRS § 342.125*.

## The Issue of Medical Control

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Pursuant to *KRS § 342.020*, an employer is to provide an injured worker with medical treatment that is reasonably required to cure or relieve the injured worker from the effects of his or her injury for so long as the employee is disabled regardless of the duration of the payment of income benefits. Unless the employer provides medical treatment through an approved managed care system, the injured worker has the right to initially select a physician of his or her choosing to serve as the primary treating physician. *KRS § 342.020(1)*. The injured worker is also entitled to make a one-time change of physician without employer approval. *KRS § 342.020(5)*. After that one change, the employee cannot change the designated physician without the agreement of the employer or insurer. *803 KAR 25:096*. Only the designated physician can make a referral to another medical provider.

However, if the employer does provide medical treatment through a managed health care system, both the physician initially selected by the injured worker and the physician resulting from the one-time change of physician must be part of the employer's managed health care system. *KRS § 342.020(4)(b)*. The injured worker is only entitled to receive medical treatment from a physician not within the employer's managed health care system in limited situations, such as emergency situations requiring immediate medical care or when the treatment required is unavailable through the managed care system. *KRS §§ 342.020(4)(e), (i)*.

If the employer is dissatisfied with the medical treatment being provided to the injured worker, the employer may file a motion with the court requesting the injured worker be required to change treating physicians. *KRS § 342.020(7)*. If the employer's motion is granted, the judge may allow the employer to select a physician to serve as the injured worker's new treating physician moving forward. *Id.*

# LOUISIANA

## Full & Final Settlement

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The Louisiana workers' compensation system is one that allows the parties involved in a workers' compensation claim to enter into a full and final settlement on a lump sum or compromise basis. However, the Louisiana Workers' Compensation Act specifically states a preference that the employee receives periodic payments rather than a lump sum or compromise settlement. The lump sum or compromise settlement will allow for a full and final discharge of the employer's and carrier's liability in exchange for payment to the injured worker of a lump sum or compromise settlement amount agreed upon by the parties. *La. R.S. § 23:1271*. Pursuant to *La. R.S. § 23:1271 (A)*, a settlement is proper and will be approved by the workers' compensation judge only upon a showing that 1) the parties agree to the terms of said agreement, 2) the parties can demonstrate that a lump payment is clearly in the best interest of the parties, and 3) there has been a passage of six months since termination of temporary total disability or there is a waiver of the six month waiting period.

A full and final settlement of a Louisiana workers' compensation claim requires that the parties of a settlement file a petition with the Office of Workers' Compensation Administration that is verified by the employee. If the injured worker is represented by an attorney, upon submission of a joint petition, the judge shall issue an order approving the settlement. If an injured worker is not represented by an attorney, the judge will conduct an in-person settlement hearing to ensure that the statutory requirements relating to settlements are met before providing approval of the settlement. An employer and/or carrier can be penalized for failure to obtain approval of a workers' compensation settlement, and can also be penalized for taking a greater than eight percent discount on a lump sum settlement.

## The Issue of Medical Control

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Pursuant to *La. R.S. § 23:1203(A)*, an employer shall provide the injured worker with the medical care necessary to treat the effects of his or her injury, and there is no limitation on the amount these services may ultimately cost, although employer's obligation to furnish medical care is limited to the reimbursement determined to be the mean of the usual and customary charges for such care as determined by a reimbursement schedule.

An injured employee is required to submit himself or herself to an examination by a duly qualified medical practitioner provided and paid for by the employer, as soon after the accident as demanded by employer. *La. R.S. 23:1121(A)*. In addition, an employee shall have the right to select one treating physician in any field or specialty, and the employer is obligated to authorize treatment with the injured worker's selected provider. *La. R.S. 23:1121(B)*. The injured worker is entitled to an expedited hearing when he or she has been denied his or her choice of physician, and the Workers' Compensation Judge shall order the employer to authorize the choice of physician, unless the employer can show good cause for refusal to authorize the choice of physician.

After the injured worker has selected a physician of their choice to serve as the primary treating physician in a given field or specialty, the injured worker may not subsequently change physicians in that same field or specialty without first obtaining

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authorization from the employer to do so. *Id.* However, the injured worker may change to a treating physician in another field or specialty without first obtaining authorization from the employer. *Id.*

Notwithstanding the foregoing, an injured worker does not have a right to multiple treating physicians, as the injured worker's right to treat with various providers must still comport with the requirements of *La. R.S. 23:1203* that the treatment be reasonable and necessary.

The Louisiana Workers' Compensation Act incorporates and utilizes Medical Treatment Guidelines to assist in establishing reasonable and necessary medical care. If treatment is contained within the medical treatment schedule then the treatment is presumptively reasonable and necessary. If the treatment varies from the schedule, it is not considered reasonable medical care under the workers' compensation statute. *La. R.S. 1203.1, et. seq.* If there is a dispute regarding recommended treatment that is outside the schedule, then the parties can request a decision from the Office of Workers' Compensation Medical Director regarding the treatment. After the Medical Director has rendered his opinion, the aggrieved party can bring the claim before the Workers' Compensation Judge, but the burden to prove that the Medical Director's decision was in error must be done with "clear and convincing" evidence.

## Full & Final Settlement

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The Maine workers' compensation system allows the parties involved in a workers' compensation claim to enter into a full and final settlement agreement that, once approved by an Administrative Law Judge who finds the settlement to be in the best interest of the injured employee, resolves all aspects of a workers' compensation claim and releases an employer's liability. *39-A M.R.S. § 352*. A case may be settled "in whole or in part," meaning that it is possible to settle the indemnity portion of a claim while leaving medical expenses open. *39-A M.R.S. § 352*. A full and final settlement agreement may not be entered into or approved until at least six months after the date of injury involved in a given claim. *39-A M.R.S. § 352(1)(B)*. Also, employers are, by law, provided advanced notice of lump sum settlements. At the final hearing it must be noted whether the employer has knowledge and consents to the settlement. They must agree to the settlement because the Act calls for a settlement not to be approved unless it is in the best interest of all parties, including the employer. Although an employer may object to a settlement, it still may be approved by the Board. *39-A M.R.S. § 352(5)*.

## The Issue of Medical Control

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Pursuant to *39-A M.R.S. § 206*, an injured worker who sustained a compensable injury is entitled to receive reasonable and proper medical treatment, as needed, at the expense of the employer. This includes reasonable and proper medical, surgical, and hospital services, nursing, medicines, and mechanical, surgical aids, as needed, paid for by the employer.

The employer has the right to initially select a physician of their choice to provide the injured worker with said treatment. *39-A M.R.S. § 206(1)*.

However, ten days after the injured worker first receives medical treatment from the physician selected by the employer, the injured worker may select a physician of his or her choosing to serve as their primary treating physician moving forward. *39-A M.R.S. § 206(2)*. Once the injured worker has received medical treatment from the primary treating physician they selected, the injured worker may not change physicians more than once without obtaining approval from either the employer or the Board. *39-A M.R.S. § 206(3)*.

# MARYLAND

## Full & Final Settlement

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The Maryland workers' compensation system is one that allows the parties involved in a workers' compensation claim to enter into a full and final settlement agreement known as a Compromise and Settlement agreement that, once approved by the Maryland Workers' Compensation Commission, can constitute a final compromise and settlement of any current or future benefits the injured worker may be entitled to. *Md. Labor and Employment Code Ann. § 9-722.*

## Full & Final Settlement

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Pursuant to *Md. Labor and Employment Code Ann. § 9-660*, an employer shall promptly provide the injured worker with medical treatment as the Commission may require, for as long as necessary based on the nature of a given injury. The employer and insurer may terminate the injured worker's ongoing medical treatment by sending a written notice to the injured worker and the injured worker's medical provider. *Md. Labor and Employment Code Ann. § 9-734(b)(1)(ii)*. This notice must identify the date of termination and include: a) the reason for termination; b) the injured worker's right to request a hearing; c) the procedure for requesting a hearing and d) a copy of any supporting medical documentation. *Md. Labor and Employment Code Ann. § 9-734(c)*.

In order to obtain supporting medical documentation for a termination of treatment or monetary benefits, the employer and insurer are authorized to request and require an injured worker to submit to an evaluation with a physician that they have chosen. *C.O.M.A.R. 14.09.03.08(B)*. The Commission may also require the claimant to submit to an evaluation by a physician chosen by the Commission. *Md. Labor and Employment Code Ann. § 9-720(a)*. Failure to attend the evaluation required by the Commission may lead to a suspension of the injured worker's entitlement to monetary benefits for the period of the suspension. *Md. Labor and Employment Code Ann. § 9-720(b)*.

Please also note that the payment of medical expenses is subject to the Commission's Medical Fee Guide, which is established pursuant to *Md. Labor and Employment Code Ann. § 9-663 regulated in accordance with C.O.M.A.R. 14.09.08.01, et seq.*

# MASSACHUSETTS

## Full & Final Settlement

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The Massachusetts workers' compensation system is one that allows the parties involved in a denied workers' compensation claim to enter into a full and final settlement agreement which, once approved by an Administrative Law Judge who determined the settlement is in the best interest of the injured worker, resolves all aspects of the denied claim and discharges the employer's liability in exchange for payment of a lump sum settlement amount. *ALM GL ch. 152, § 48(1)*. However, once a claim has been accepted or liability of the employer has been established, the parties are prohibited from discharging the employer's obligation to provide future medical benefits by way of a settlement agreement. *ALM GL ch. 152, § 48(2)*.

However, even a lump sum settlement agreement executed prior to the employer's liability being established will not preclude the injured worker from subsequently filing a claim for medical benefits if the injured worker's medical condition has substantially deteriorated due to a condition that was not reasonably foreseeable at the time the settlement agreement was executed, and the deterioration of the injured worker's medical condition would be the responsibility of the employer if no prior lump sum settlement was executed. *Id.* In such circumstances, the injured worker must file a claim within one year of the date they first became aware the substantial deterioration was caused by their employment. *Id.*

Additionally, the Massachusetts workers' compensation system not only prohibits lump sum settlements from containing a general or specific release of liability barring the injured worker's right to work for any employer, receive benefits due to him or her, bring subsequent workers' compensation claims or bring a claim of wrongful discharge or breach of contract, but any employer who attempts to obtain a settlement containing said conditions will be fined \$10,000. *ALM GL ch. 152, § 48(3)*.

## The Issue of Medical Control

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Pursuant to *ALM GL ch. 152, § 30*, an employer shall provide the injured worker with adequate and reasonable medical treatment as needed based on the nature of the injury suffered. If the employer is enrolled in a preferred provider arrangement, the employer has the right to initially select a physician to provide said treatment. *Id.* However, after one examination with the employer selected physician occurs, the injured worker is entitled to select a physician of his or her choosing to serve as their treating physician moving forward. *Id.*

If the injured worker is not satisfied with the treatment being provided by the physician they selected, they have the right to make a one-time change of physician to a physician of their choosing without approval from the employer. *Id.* All subsequent changes of physician require approval from the employer/insurer or administrative judge. Additionally, when the treating physician has referred the injured worker to a specialist for further treatment, the injured worker will have the right to make a onetime change of physician and select a physician of their choosing within the appropriate specialty. *Id.* In cases of emergency, or where the administrative judge agrees, the employee may seek treatment from additional providers. *Id.*

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(Practice note: the Massachusetts administrative judges will usually agree to an employee's request to be seen by a new doctor so long as the requested treatment is reasonable necessary and causally related to the industrial accident.)

If the employer provides medical treatment through a preferred provider arrangement, the injured worker will have the same rights discussed above but the physicians selected by the injured worker must be within the employer's preferred provider plan. *Id.* All medical treatment obtained in accordance with the above discussed rules will be at the expense of the employer. *Id.* The injured worker may obtain medical treatment not in accordance with the above discussed rules at the expense of the employer in emergency situations requiring immediate medical care or when authorized by an administrative judge to do so. *Id.*

# MICHIGAN

## Full & Final Settlement

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The Michigan workers' compensation system is one that allows the parties involved in a workers' compensation claim to enter into a full and final settlement agreement known as a Redemption Agreement, resolving all aspects of a workers' compensation claim. *MCLS § 418.835.*

Pursuant to *MCLS § 418.835*, after six months has elapsed from the date of injury, the parties may enter into a settlement agreement known as a Redemption Agreement, resolving all liability in a given claim by payment of a lump sum settlement amount agreed upon by the parties. Although not referenced in the statute, redemption settlements may also be accomplished using annuities. If an employer is insured (not self-insured), the carrier must give the employer written notice ten business days before the proposed redemption hearing date *MCLS § 418.835(2)* or, alternatively, present to the Magistrate a Consent to the Redemption signed by an employer representative *MCLS § 418.835(3)*. However, no Redemption Agreement is valid until reviewed and approved by a worker's compensation magistrate. *MCLS § 418.837(1)*. A Redemption Order does not become final until 15 days elapses following execution of the Order *MCLS § 418.837(3)*, during which time any party may request review of the Order by filing an appeal with the Director of the Agency *MCLS § 418.837(2)*.

## The Issue of Medical Control

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Pursuant to *MCLS § 418.315(1)*, an injured worker who sustains a compensable injury is entitled to receive reasonable medical treatment, as needed, at the expense of the employer. The employer initially has the right to control the injured worker's medical treatment and is entitled to select a physician to provide treatment to the injured worker. *Id.* The employer maintains this right for the first 28 days following the inception of medical care. *Id.*

After 28 days from the inception of medical care or, if the employer fails to provide reasonable and necessary treatment during the first 28 days, the injured worker is entitled to seek medical treatment from a physician of his or her own choice at the expense of the employer and may do so after providing the employer with notice of their intention to change physicians. *Id.* The injured worker will be entitled to receive medical treatment from the physician he or she designates unless the employer files a petition objecting to the choice of physician and, after a prompt hearing, a magistrate determines that the employer presented good cause why treatment with the physician selected by the injured worker should be discontinued. *Id.*

# MINNESOTA

## Full & Final Settlement

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The Minnesota workers' compensation system is one that allows the parties involved in a workers' compensation claim to enter into a full and final settlement agreement which closes out future medical or rehabilitation benefits. The agreement must be reviewed and approved by a judge once it is determined the settlement is reasonable and fair and in conformity with Chapter 176. *Minn. Stat. § 176.521*. All other settlements where both parties are represented by an attorney are presumed to be reasonable, fair and in conformity and must be approved by the Commissioner or a Compensation Judge.

In practice it can be difficult and expensive to close future medical claims for admitted injuries. Many claimants' attorneys in Minnesota will not agree to it and a number of judges will not approve a close out of future medical benefits for an admitted injury. To have a good chance of success, the settlement document and attached medical records should demonstrate that the amount being paid for the medical close out reasonably reflects the anticipated cost for treatment of the admitted injury with reductions for payment up front and potential defenses to future medical claims.

## The Issue of Medical Control

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Pursuant to *Minn. Stat. § 176.135*, an employer shall provide the injured worker with medical treatment that is reasonably required at the time of the injury and anytime thereafter to cure and relieve the injured worker from the effects of his or her injury. However, the rights of the parties with respect to medical benefits vary depending on whether the employer provides medical treatment through a managed care organization or collective bargaining agreement, as outlined in *Minn. Stat. § 176.1812*.

If the employer does not provide medical treatment through a Managed Care Organization or collective bargaining agreement, the injured worker is entitled to select a physician of his or her choosing to serve as their primary treating physician to provide the required treatment. *Minn. Stat. § 176.135*. However, if the employee changes physicians without either authorization from the employer or a court order, the employer may not be liable for the treatment provided by the newly selected physician.

If the employer does provide medical treatment through a Managed Care Organization, the injured worker is still entitled to select a physician to serve as their primary treating physician, if the physician initially selected complies with the rules, terms and conditions of the managed care plan. *Minn. Stat. § 176.1351*. Additionally, the injured worker is provided the right to change health care providers under the plan at least once. *Id.*

However, the injured worker is entitled to receive medical treatment, at the expense of the employer, from a physician not within the employer's medical care organization if the injured worker can show a documented history of treatment with said physician and the physician agrees to comply with all rules, terms, and conditions of the Managed Care Organization. *Minn. Stat. § 176.1351*.

# MISSISSIPPI

## Full & Final Settlement

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The Mississippi workers' compensation system is one that allows the parties involved in a workers' compensation claim to enter into a full and final settlement agreement known as a "9(i) settlement," when the Commission determines such settlements to be in the best interest of the injured worker. *Miss. Code Ann. § 71-3-29*. Generally, the Commission will approve fair and reasonable settlements when there is a doubt or dispute about the extent of disability or whether the disability arose out of and in the course of the employment.

The parties must petition the Commission for approval of a compromise settlement. Although there is no form for the application, the Commission does provide a settlement checklist on its website, [www.mwcc.state.ms.us](http://www.mwcc.state.ms.us). Of particular note, the application must include medical documentation regarding maximum medical improvement, among other necessities.

The Commission or Administrative Judge will review the settlement papers and medical reports to determine if the amount of the proposed settlement appears to be fair and reasonable, also conducting an interview of the claimant if the claimant is unrepresented. Until the Commission approves a compromise settlement, a claimant cannot release his or her right to compensation. *Miss. Code Ann. § 71-3-41; Miss. Code Ann. § 71-3-43*.

## The Issue of Medical Control

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Pursuant to *Miss. Code Ann. § 71-3-15(1)*, an employer shall provide the injured worker with medical treatment for as long as the nature of work related injury may require. The injured employee may accept the services furnished by the employer or choose his own physician and such other specialists to whom he is referred by his chosen physician. *Id.* Referrals are limited to one physician within a specialty or subspecialty area. *Id.* Any additional selection of physicians by the injured employee must be approved by the employer/carrier prior to obtaining the services of the physician at the expense of the employer or carrier. *Id.* If denied, the injured employee may apply to the commission for approval of the additional selection or referral, and if the Commission determines that such request is reasonable, the employee may be authorized to obtain such treatment at the expense of the employer/carrier. *Id.*

Simply receiving medical treatment from a physician chosen by the employer generally is insufficient to constitute an injured worker's selection of physician. If the injured worker chooses to accept the physician initially designated by the employer as his or her own treating physician moving forward, the injured worker must provide written notice of their acceptance to the employer. *Id.* However, if the injured worker, in connection with his or her work related injury, receives medical treatment from a physician for six months or longer or undergoes surgery, the physician providing said treatment or performing said surgery shall be deemed the physician selected by the employee to serve as their primary treating physician. *Id.*

Of note, Mississippi uses an Official Mississippi Workers' Compensation Medical Fee Schedule. The fee schedule is broader than its name implies and addresses practically every issue involving medical benefits, including requiring that certain medical treatment or testing be preauthorized.

# MISSOURI

## Full & Final Settlement

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The Missouri workers' compensation system is one that allows the parties involved in a workers' compensation claim to enter into a full and final settlement agreement known as a Compromise Settlement, resolving all aspects of a workers' compensation claim so long as the settlement agreement is entered into at least seven days after the date of injury or death in a given case and approved by an Administrative Law Judge or the Commission. § 287.390 R.S.Mo. Pursuant to § 287.390(1) R.S.Mo., an Administrative Law Judge or the Commission shall approve a Compromise Settlement, which was not the product of undue influence or fraud, so long as the agreement was voluntarily entered into by an injured worker who fully understood their rights and benefits when the agreement was executed.

Furthermore, payment issued in accordance with a fully executed and approved Compromise Settlement will relieve the employer of all further obligations in connection with a given claim. § 287.390(4) R.S.Mo. Additionally, a Compromise Settlement that is fully executed and approved during the life of the injured worker will bar all subsequent claims for compensation for the employee's death so long as the Compromise Settlement resolved any issue other than the extent of disability or rate of compensation. § 287.390(2) R.S.Mo.

## The Issue of Medical Control

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Pursuant to § 287.140(1) R.S.Mo., an employer is required to provide the injured worker with medical treatment that is reasonably required to cure or relieve the injured worker from the effects of his or her injury. The injured worker is entitled to receive said treatment from a physician of the employer's choosing at the expense of the employer. *Id.*

However, the employer has complete control over the injured workers' medical care and maintains the right to select a licensed physician to serve as the injured employee's treating physician. § 287.14(10) R.S.Mo. If the physician selected by the employer is providing medical treatment in a manner that establishes reasonable grounds to believe the injured worker's life, health or recovery are in danger, the division or the commission may order a change in physician. § 287.14(2) R.S.Mo. However, absent an order to change physicians or approval from the employer, the injured worker is only authorized to receive medical treatment from the physician selected by the employer.

Although the employer has complete control over the injured worker's medical care, the injured worker nonetheless has the right to receive unauthorized medical treatment from a physician of his or her own choosing at his or her own expense. § 287.140(1) R.S.Mo.

# MONTANA

## Full & Final Settlement

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The Montana workers' compensation system is one that allows the parties involved in a workers' compensation claim to enter into a full and final settlement agreement known as a Compromise and Release, resolving all aspects of a workers' compensation claim. 39-71-741, MCA.

However, no Compromise and Release agreement is valid until reviewed and approved by the Workers' Compensation Department or the Workers' Compensation Judge. 39-71-741, MCA(1). Once approved, the Compromise and Release constitutes a final settlement, precluding the department from reopening the claim. 39-71-741, MCA(2). A settlement may be reopened by the Workers' Compensation Court based upon a mutual mistake or fraud/duress/undue influence. *Keller v. Liberty Northwest, Inc.* 2010 MT 279; *Frazer v. Montana State Fund* 2005 MTWCC 41.

## The Issue of Medical Control

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When an injured worker suffers a compensable injury, the insurer must provide the injured worker with reasonable primary medical services for conditions that are a direct or indirect result of the compensable injury. 39-71-704, MCA(1)(a).

When a compensable injury is suffered and medical treatment is required, the injured worker may initially select a physician of their choosing to serve as their primary treating physician. 39-71-1101, MCA(1). However, once liability for a claim has been accepted, the insurer may designate a physician of their choosing to serve as the injured worker's primary treating physician. 39-71-1101, MCA(2).

If the insurer maintains a Managed Care Organization or Preferred Provider Organization, the injured worker's medical treatment may be transferred accordingly. 39-71-1101, MCA(9). Once an injured worker's medical care has been transferred into the insurer's Managed Care Organization or Preferred Provider Organization and after the injured worker has received written notice of the transfer of care, the injured worker is required to receive medical treatment from within the organization designated by the insurer. 39-71-1101, MCA(10).

The injured worker may receive medical treatment from a physician who is not a member of the employer's Managed Care Organization or Preferred Provider Organization only when authorized by the insurer or in an emergency situation requiring immediate medical attention. *Id.* After an injured worker is provided written notice of a Preferred Provider Organization and absent authorization from the insurer or an emergency situation, the insurer is not liable for treatment obtained from non-preferred providers. 39-71-1102, MCA.

# NEBRASKA

## Full & Final Settlement

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The Nebraska workers' compensation system is one that allows the parties involved in a workers' compensation claim to enter into a full and final settlement agreement which, once approved by the Compensation Court who determined the settlement was in the best interest of the injured worker, resolves all aspects of a workers' compensation claim and discharges the employer from further liability. *R.R.S. Neb. § 48-139*. Every lump sum settlement agreement approved by an order issued by the Compensation Court shall be final and conclusive unless procured by fraud. *R.R.S. Neb. § 48-139(2)(c)*.

## The Issue of Medical Control

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Pursuant to *R.R.S. Neb. § 48-120*, an employer is liable for all medical treatment reasonably necessary, based on the nature of the injury suffered, to relieve pain or promote and hasten the injured worker's restoration to health and employment. The injured worker has the right to initially select a treating physician to provide said treatment. However, this right may be very limited depending on whether the claim is accepted or denied.

If the claim is denied, the injured worker is free to select a treating physician of their choice. *Id.* However, if the claim is accepted, the injured worker may only select a physician who has a documented history of providing medical treatment to the injured worker, or an immediate family member of the injured worker, prior to the work related injury. *R.R.S. Neb. § 48-120(2)(a)*.

The injured worker will be entitled to select any physician of their choosing, however, if the employer fails to properly notify the injured worker of their right of selection. If the injured worker is properly notified of their right of selection yet fails to timely exercise said right in the appropriate manner, the employer gains medical control and has the right to select a physician of their choosing to serve as the injured worker's treating physician moving forward. *Id.*

Regardless of whether the employer of the injured worker initially selects a treating physician, the physician selected may not be changed unless the parties agree to the change or the change of physician is ordered by the compensation court when deemed necessary. *R.R.S. Neb. §§ 48-120(6)*.

If the employer provides medical treatment through a Managed Care Plan, the injured worker's medical treatment may be transferred to a physician within said plan once the employer has accepted the claim. *R.R.S. Neb. §§ 48-120(9)*. However, the injured worker will be entitled to seek medical treatment from a physician not within the employer's plan if the claim is denied, an emergency situation requires immediate medical care or if the injured worker selected the treating physician and said physician agrees to comply with the rules of the employer's medical care plan. *Id.*

The employer will not be liable for any medical treatment provided in violation of the above discussed rules. *R.R.S. Neb. §§ 48-120(2)(f)*.

# NEVADA

## Full & Final Settlement

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The Nevada workers' compensation system is one that does not allow the parties involved in a workers' compensation claim to enter into a full and final settlement agreement resolving all aspects of a workers' compensation claim and discharging the employer's liability since the parties involved in a lump sum agreement resolving permanent partial disability retain the right to reopen a claim in pursuit of additional benefits. *Nev. Rev. Stat. Ann. § 616C.390(5)*. Therefore, because the injured worker has the ability to reopen a claim in an effort to obtain additional benefits resulting from a change in the injured worker's condition, a full and final settlement discharging the employer of all further liability cannot be obtained.

## The Issue of Medical Control

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An employer is required to provide the injured worker with medical treatment that is reasonably required to cure or relieve the injured worker from the effects of his or her work related injury. However, the parties' rights and obligations with respect to medical treatment vary depending on whether the employer provides medical care through an organization of managed care.

If the employer does not provide medical treatment through an organization of managed care they must maintain a panel of administrator approved physicians who are reasonably accessible to their employees. *Nev. Rev. Stat. Ann. § 616C.090(1)*. In such circumstances, the injured worker may select a treating physician of their choosing from the panel of administrator approved physicians provided by the employer. *Nev. Rev. Stat. Ann. § 616C.090(2)*. Furthermore, if the treating physician refers the injured worker to a specialist for additional treatment, the injured worker is entitled to select a specialist of their choosing from a panel of administrator approved physicians provided by the treating physician at the time the referral was made. *Id.*

Furthermore, the injured worker has the right to make a one-time change of physician, without approval from the employer, within 90 days from the date of injury so long as the new physician is selected from the panel of administrator approved physicians provided by the employer. *Id.* All subsequent change of physicians requires approval from the employer. *Id.* The employer may expressly approve the injured worker's written request to change physicians or approval may be granted by default if the employer fails to respond within 10 days of receiving the injured worker's written request to change physicians. *Id.*

If the employer does provide medical treatment through an organization of managed care, the injured worker still has the right to select a treating physician of their choosing and subsequently make a one-time change of physician, without employer approval, within 90 days of the date of injury. However, the physician or physicians selected must be within the employer's organization of managed care network and must be selected pursuant to the terms the employer's contract with said network. *Nev. Rev. Stat. Ann. § 616C.090(3)*. Additionally, the injured is still entitled to subsequently change physicians with approval from the employer. *Id.*

All reasonable medical treatment obtained in accordance with the above discussed rules will be at the expense of the employer. However, except when emergency medical treatment is required, the employer will not be liable for any medical obtained in violation of the above discussed rules. *Nev. Rev. Stat. Ann. § 616C.090(5)*.

# NEW HAMPSHIRE

## Full & Final Settlement

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The New Hampshire workers' compensation system is one that does not allow the parties involved in a workers' compensation claim to enter into a full and final settlement agreement resolving all aspects of a given claim. Although certain aspects of a claim, such as disability benefits, may be settled by way of a lump sum agreement between the parties, the New Hampshire workers' compensation system prohibits the parties from settling out an injured worker's medical benefits by way of a lump sum agreement and places limitations on the parties' ability to settle an injured workers' right to vocational rehabilitation services by way of a lump sum agreement. *RSA 281-A:37(II)*.

## The Issue of Medical Control

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Pursuant to *RSA 281-A:23*, an employer is to provide the injured worker with reasonable medical treatment for as long as the nature of a given industrial injury may require. Additionally, an injured worker has the right to select his or her own treating physician. *Id.* An employer may satisfy its obligation to provide health care by use of a properly established medical care program. Once established, the employee is generally required to seek medical treatment from a physician who is within the employer's managed care program unless the necessary services cannot be provided within the employer's managed care program or in other limited circumstances, such as emergency situations. *RSA 281-A:23-a(1)(b)*.

Although the injured worker has the right to seek medical treatment from a physician of his or her choosing, the employer nonetheless may, upon request, require an injured worker to submit to an independent medical examination performed by a qualified health care provider of the employer's choosing. *RSA 281-A:38(I)*. However, absent a showing of necessity for additional medical examinations and approval from the commissioner, an employer may not exercise this right more than two times per year. *RSA 281-A:38(II)*.

An injured worker who is within an employer's managed care program has a similar right and may obtain an independent examination from a qualified health care provider of the employee's choosing. However, similar to the employer's right to require an injured worker to submit to an independent medical examination performed by a provider of the employer's choosing, the injured worker's right to obtain an independent examination from a provider of their choosing is limited to one examination per injury, absent a showing of an exceptional circumstance which cast reasonable doubt on the accuracy of the first independent examination performed at the employee's request. *RSA 281-A:38-a*.

# NEW JERSEY

## Full & Final Settlement

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The New Jersey workers' compensation system allows the parties involved in a workers' compensation claim to enter into a full and final settlement agreement, often referred to as a Section 20 Settlement or an Order Approving Settlement with Dismissal. This settlement resolves all aspects of a workers' compensation claim and precludes the parties from re-opening the claim in pursuit of additional benefits when 1) the case involves a genuine dispute as to jurisdiction, liability, causation, and/or dependency; 2) the petitioner is represented by counsel; 3) a judge finds the settlement to be fair and just after considering the testimony of the petitioner and other witnesses together with all other relevant facts and circumstances of a given case. *N.J. Stat. § 34:15-20*.

Pursuant to *N.J.A.C. 12:235-3.13(d)*, a Section 20 Settlement can also encompass a waiver of future dependency claims/benefits if the applicant's dependents illustrate their understanding of the rights being surrendered and provide a knowing, intelligent and voluntary waiver of said rights either by testifying at the settlement proceeding or by submission of an affidavit in limited situations.

Once approved by a judge, a Section 20 Settlement or an Order Approving Settlement with Dismissal has the same effect as a dismissal of the applicant's claim, constituting a complete surrender of the applicant's right to any additional compensation or benefits. *N.J. Stat. § 34:15-20*.

## The Issue of Medical Control

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Pursuant to *N.J. Stat. § 34:15-15*, an employer is required to provide an injured worker with medical treatment necessary to cure and relieve an injured worker of the effects of the industrial injury involved in a given claim. In the New Jersey workers' compensation system, the employer maintains the right to control the injured worker's medical treatment and has the right to select the injured worker's treating physician. An injured worker may secure necessary treatment from a physician of their choosing only when the employer has refused or neglected to provide the necessary treatment being sought by the injured worker. *Id.*

## Full & Final Settlement

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The New Mexico workers' compensation system is one that allows a claim to be resolved by way of a full and final settlement agreement in exchange for an employer's full release of further liability. However the system expressly favors the periodic payment of benefits to an injured worker rather than a one-time lump sum payment, pursuant to *N.M. Stat. Ann. § 52-5-12(D)*. However, no lump sum settlement agreement is final and binding until approved by a Workers' Compensation Judge who conducted a hearing on the record and determined the injured worker was fully informed of and understood their rights when entering into the mutually agreed upon settlement that produces a fair, equitable outcome and provides substantial justice to all parties involved. *Id.*

Furthermore, once a hearing has been held and a Workers' Compensation Judge has issued an order approving a lump sum settlement agreement resolving all aspects of a given claim, the parties are precluded from having the claim reopened, set aside or reconsidered. *N.M. Stat. Ann. § 52-5-12(E)*.

## The Issue of Medical Control

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Pursuant to *N.M. Stat. Ann. § 52-1-49*, an employer is required to timely provide to the injured worker all medical treatment that is reasonable and necessary to relieve the injured worker from the effects of his or her injury.

After a work related injury requiring medical treatment is reported to the employer, the employer is given the opportunity to either select a treating physician for the injured worker or to allow the injured worker to select a treating physician of his or her own choosing. The employer is required to communicate its initial decision with respect to which party will choose the initial Health Care Provider in writing to the worker. *11.4.4.11(C)(2)(a) NMAC*. Regardless of whether the employer or the injured worker selects the treating physician, the initial selection of said physician is in effect for 60 days from the date the injured worker first receives treatment from the physician selected. *N.M. Stat. Ann. § 52-1-49(B)*.

After the 60 day time frame has expired, the party who did not make the initial selection is entitled to select a treating physician of their own choosing by filing a change of physician notice with the opposing party. *N.M. Stat. Ann. § 52-1-49(C)*. The physician selected after the 60 day time frame has expired will serve as the treating physician for the remainder of the claim unless the parties subsequently agree to a change of physician or a change of physician is approved by a judge.

At any time throughout the life of a claim, including the initial sixty day period, an injured worker or an employer may submit to a workers' compensation judge a one-time request for a change of physician. A hearing will then be conducted and a judge will approve the request if they determine the current medical treatment being provided is unreasonable. *N.M. Stat. Ann. § 52-1-49(F)*. If an injured worker fails to seek medical treatment in compliance with a judge's ruling regarding the change of physician, the employer is not required to pay for the medical treatment provided by the non-approved treating physician. *N.M. Stat. Ann. § 52-1-49(G)*.

# NEW YORK

## Full & Final Settlement

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The New York workers' compensation system is one that allows the parties involved in a workers' compensation claim to enter into a full and final settlement agreement known as a Section 32 Settlement or a Section 32 Waiver Agreement, resolving all aspects of a workers' compensation claim and precluding the parties from re-opening the claim. *NY CLS Work Comp § 32*. Specifically, a Section 32 Settlement allows the claimant to waive all of their rights to medical and indemnity benefits in exchange for a lump sum settlement.

A Section 32 Settlement agreement is not binding on the parties until approved by the New York State Workers' Compensation Board (WCB). Pursuant to *NY CLS Work Comp § 32(b)*, a Section 32 Settlement shall be approved unless the agreement is found to be 1) unfair, unconscionable or improper; 2) the result of an intentional misrepresentation of a material fact; or 3) within ten days of submitting the Section 32 Settlement agreement for approval, one of the interested parties requests the WCB disapprove the agreement. Number three above essentially constitutes a ten day "cooling off period" allowing a party to a Section 32 Settlement agreement to change their mind within ten days of submitting the proposed agreement to the WCB for approval.

## The Issue of Medical Control

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Pursuant to *N.Y. Workers' Comp. Law §13(a)*, an employer must promptly provide an injured employee with medical treatment necessary to relieve the effects of an industrial injury and must continue to provide said treatment for as long as the recovery process may require. An employer's failure to promptly provide said treatment may entitle the injured worker to obtain the necessary treatment requested from a physician of their choosing and at the expense of the employer. *N.Y. Workers' Comp. Law §13(b)*.

If an injured worker's claim has not been denied and the employer has properly established a preferred provider organization, the injured worker is initially required to receive medical treatment from a physician within the employer's Preferred Provider Organization for at least 30 days. After 30 days from the initial medical visit with a physician within the employer's Preferred Provider Organization, the injured worker is entitled to select a physician of their choosing, either within or outside the employer's preferred provider network, to serve as their treating physician moving forward. *NY CLS Work Comp § 354(2)*.

If an employer does not have a Preferred Provider Organization, the injured worker is immediately entitled to designate a physician of their choosing to serve as the primary treating physician so long as the physician is authorized in accordance with *N.Y. Workers' Comp. Law §13-b*. *N.Y. Workers' Comp. Law §13-a*.

# NORTH CAROLINA

## Full & Final Settlement

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The North Carolina Workers' Compensation Act allows the parties involved in a workers' compensation claim to enter into a full and final settlement agreement that, once filed and approved by the Industrial Commission, resolves all aspects of a workers' compensation claim. *N.C. Gen. Stat. § 97-17(a)*. In order to obtain approval from the Industrial Commission, a settlement agreement must be fair and just, take into consideration the interests of all parties, and provide reasonable compensation for payment of medical expenses. *N.C. Gen. Stat. § 97-17(b)*. Once a settlement agreement has been approved by the Industrial Commission, the decision is final, not subject to collateral attack, and may only be set aside upon a showing of an error due to fraud, misrepresentation, undue influence, or mutual mistake. *N.C. Gen. Stat. § 97-17(a)*.

## The Issue of Medical Control

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Pursuant to *N.C. Gen. Stat. § 97-25(a)*, medical compensation shall be provided by the employer. The employer's duty to provide medical compensation may be satisfied by providing medical treatment through a Managed Care Organization. *N.C. Gen. Stat. § 97-25.2*.

If the employer has contracted with a Managed Care Organization, the injured worker is entitled to select a treating physician of his or her choosing, so long as the physician selected is within the employer's managed care organization's panel. *N.C. Gen. Stat. § 97-25.2*. Furthermore, the injured worker is entitled to a one-time change of his or her primary treating physician, without approval from the employer or insurer, to a different physician within the employer's managed care organization's panel. *Id.*

In the absence of contracting with a Managed Care Organization, the employer has more control over the injured worker's medical care. In an accepted claim, the employer has the right to select a physician to serve as the injured worker's authorized treating physician. Absent authorization from either the employer or the Industrial Commission, the injured worker is generally required, in an accepted claim, to continue receiving medical treatment from the physician initially selected by the employer. *N.C. Gen. Stat. §§ 97-25(b) and (c)*.

If the employer does not provide medical treatment through a Managed Care Organization, authorization from the Industrial Commission is required before an injured worker may change treating physicians and receive medical treatment from a physician of his or her choosing. *N.C. Gen. Stat. § 97-25(c)*. To obtain authorization from the Industrial Commission to change physicians, the injured worker must show, by a preponderance of the evidence, the change is reasonably necessary to effect a cure, provide relief, or lessen the injured workers' period of disability. *Id.*

If there is a disagreement with the treatment provided by the authorized treating physician selected by the employer, the injured worker may provide the employer with written notice requesting authorization to undergo a second opinion examination with a duly qualified licensed physician. *N.C. Gen. Stat. § 97-25(b)*. If, within 14 days of the request, the employer denies the injured worker's request or the parties are unable to come to an agreement as to which physician should conduct the second opinion examination, the Industrial Commission, upon request from the injured worker, may order a second opinion examination to be conducted at the expense of the employer. *Id.*

# NORTH DAKOTA

## Full & Final Settlement

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The North Dakota workers' compensation system is one that allows the parties involved in a disputed workers' compensation claim or a claim in which the injured worker is permanently totally disabled, to enter into a full and final settlement agreement resolving all aspects of a the disputed claim. *N.D. Cent. Code, § 65-05-25*. However, the organization may not pay a lump sum settlement to the injured worker unless the settlement agreement is in the best interest of the injured worker. Furthermore, when the parties enter into a full and final settlement to resolve a dispute as to the extent of disability, the parties will be precluded from subsequently reopening on the grounds of a change in the injured workers' medical condition. *N.D. Cent. Code, § 65-05-25(2)*.

## The Issue of Medical Control

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Pursuant to *N.D. Cent. Code, § 65-05-07*, the employer is required to provide an injured worker who suffered a compensable injury with all reasonable and appropriate medical treatment necessary to treat the compensable injury. The injured worker is entitled to select a physician of his or her choosing to provide the initial medical treatment. *N.D. Cent. Code, § 65-05-28*. However, once it has been determined the injured worker suffered a compensable injury, the employer gains the right to control the injured worker's medical care. *Id.* The level of control however, depends on whether the employer has selected a preferred provider.

Upon a determination of compensability and in the absence of a Preferred Provider Network selected by the employer, the employer has the right to require the injured worker to change physicians and begin receiving medical care from a physician other than the physician initially selected by the injured worker. *Id.* To exercise this right, the employer must provide the injured worker with a list of three physicians who specialize in the type of treatment required to address the compensable injury suffered by the injured worker. *Id.* Upon receipt of the list, the injured worker shall select one physician who will serve as the injured worker's primary treating physician moving forward. *Id.*

After a primary treating physician has been selected, absent prior written authorization from the employer or an emergency situation, the injured worker is generally required to receive all medical care from the primary treating physician they selected. Furthermore, not only is the injured worker liable for all medical treatment obtained without first obtaining prior written authorization from the employer, but the reports issued by the unauthorized providers may not be used for the purpose of certifying the injured worker's temporary disability status. *N.D. Cent. Code, § 65-05-28(1)*.

If the employer has selected a preferred provider network and the injured worker has not pre-designated a treating physician in accordance with *N.D. Cent. Code, § 65-05-28.2(2)*, the injured worker is generally required to obtain all medical treatment from within the employer's network for the first 30 days after the injury. *N.D. Cent. Code, § 65-05-28.2(1)*. All medical treatment obtained outside of the employer's preferred provider network during the first 30 days will be at the expense of the injured

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worker and all reports issued in connection with said treatment may not be used to certify disability or render an opinion about any matter pertaining to the injury. *Id.*

After the first 30 days, the injured worker may provide the employer with a written request to change their primary treating physician which, if approved, entitles the injured worker to receive medical treatment from the newly designated physician. *N.D. Cent. Code, § 65-05-28.2(3).*

Regardless of whether the employer has selected a preferred provider network, the employer may require the injured worker to undergo a medical evaluation with an independent medical examiner. *N.D. Cent. Code, § 65-05-28(3).*

## Full & Final Settlement

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The Ohio workers' compensation system is one that allows the parties involved in a workers' compensation claim to enter into a full and final settlement agreement, resolving all past, present and future medical compensation issues and liabilities in a given claim. *O.R.C. 4123.65*. Partial settlements are also permissible. *O.R.C. 4123.65(E)*. A fully executed final settlement agreement is not binding, however, until 30 days after being reviewed by the Industrial Commission finding there is no gross miscarriage of justice. *O.R.C. 4123.65(C)*. During the 30 day "cooling off period" the parties to a settlement agreement may revoke their consent to settle and withdraw from the settlement agreement. *Id.* However, once the 30 day cooling off period has expired, the agreement is binding. *O.R.C. 4123.65(F)*.

## The Issue of Medical Control

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Pursuant to *O.A.C. 4123-6-02.2*, the injured worker is entitled to receive medical treatment for a work-related injury from a medical provider certified by the Bureau of Workers' Compensation (BWC). Except for an emergency situation requiring immediate medical attention, all treatment provided by a non-BWC certified provider shall be at the expense of the injured worker. *Id.*

If the employer provides medical treatment through a qualified health plan, the injured worker is generally required to receive medical treatment from a physician within the employer's plan and in the manner provided in the plan. *Id.* The injured worker has the right to choose his physician so long as the newly selected physician is also within the employer's plan or is a BWC certified medical provider. *O.A.C. 4123-6-02.2(B)(1)*.

In emergency situations requiring immediate medical attention, the injured worker may receive treatment at the expense of the employer from a physician not within the employer's plan. *O.R.C. 4121.442(A)(10)*. Additionally, if the injured worker is dissatisfied with the medical treatment being provided within the employer's plan, they are entitled, upon request to the administrator, to opt out of said plan and receive medical treatment from a BWC certified physician. *O.R.C. 4121.442(A)(4)*.

If the employer is self-insured and does not provide medical care through a qualified health plan, the injured worker has free choice to select any licensed BWC certified physician to provide medical treatment in connection with the work-related injury. *O.A.C. 4123-6-02.2(C)(1)*. Treatment received in an emergency situation will not constitute the injured worker's choice of physician. *O.A.C. 4123-6-02.2(C)(2)*. Once the injured worker has selected a treating physician, the self-insured employer or administrator must be notified of any change of physicians thereafter. *O.A.C. 4123-6-02.2(C)(3)*.

# OKLAHOMA

The Oklahoma Workers' Compensation Court of Existing Claims has jurisdiction of cases with injury dates up to January 31, 2014 and will be fully operational through 2017. The Oklahoma Workers' Compensation Commission has jurisdiction over injuries occurring February 1, 2014 and thereafter.

## Full & Final Settlement

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### **Court of Existing Claims:**

The Oklahoma workers' compensation system is one that allows the parties involved in a workers' compensation claim to enter into a full and final settlement agreement known as a Compromise Settlement, resolving all claims for past, present, and future compensation of temporary disability benefits, permanent disability benefits, medical treatment, physical and vocational rehabilitation benefits, loss of wage earning capacity, and death benefits. 85. Okl. St. Chap. 4, Appx., Rule 56. However, a Compromise Settlement is not binding on the parties until approved by the Oklahoma Workers' Compensation Court of Existing Claims. 85. Okl. St. Chap. 4, Appx., Rule 56(C).

### **Workers' Compensation Commission:**

A joint petition settles all issues but allows for certain issues to be excluded at the discretion of the parties by using a Joint Petition Settlement Appendix listing those issues. A case settled in this fashion cannot be reopened.

All settlements either before the Court or Commission must be signed by a Judge. A Certificate of Joint Petition or a Certificate of Settlement listing the care providers requires claimant to aver that if he or she returns for post-settlement care, the doctor will be advised the case is closed and claimant is responsible for payment. Respondent is required to send letters to all care providers to that effect as well.

## The Issue of Medical Control

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### **The Court of Existing Claims:**

*Title 85, Section 326A.* Within seven days of actual knowledge of an injury, the employer shall provide the employee reasonable and necessary medical care with a physician of the employer's choice. The providing of medical care shall not be construed as an admission of compensability of an injury or illness. The physician selected by the employer shall become the treating physician.

*Title 85, Section 326B.* If the employer fails or neglects to provide medical treatment within seven days after actual knowledge is received of an injury, the injured employee may select a physician to provide medical treatment at the expense of the employer; provided, however, that the injured employee, or another in the employee's behalf, may obtain emergency treatment at the expense of the employer where such emergency treatment is not provided by the employer.

*Title 85, Section 326C.* If a self-insured employer, group self-insurance association plan, an employer's workers' compensation insurance carrier or an insured has previously contracted with a certified workplace medical plan, the employer shall select for the injured employee a treating physician from the physicians listed within the network of the certified workplace medical plan. The claimant may apply for a change of physician by utilizing the dispute resolution process set out in the certified workplace medical plan

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on file with the State Department of Health. If the dispute resolution process has been exhausted, the Workers' Compensation Court may appoint an independent medical examiner to determine the nature of medical treatment needed by the injured worker.

*Title 85, Section 326 E* allows for one change of physician by the injured worker within 180 days of the last treatment. Only two physician changes are allowed during the life of a claim regardless of the number of body parts involved. To apply for a change of physicians, the claimant files a Form A, an application for change of Physician and lists three proposed physicians who are qualified to treat the body part affected. The respondent may choose one of these doctors or present a list of three for consideration. If the parties cannot agree on a doctor, the Judge will choose one from the names provided.

*Title 85, Section 329 A* The Workers' Compensation Court maintains a list of licensed physicians who are approved to serve as independent medical evaluators. Either party may request an IME at any time in the case and most often the judge allows an appointment.

*Title 85, Section 329 B* allows the Judge to appoint an independent medical examiner to assist in determining any issue before the Court. If surgery is requested, Respondent is allowed an IME to determine the reasonableness and necessity of the recommended surgery. Such independent medical examiner shall be qualified to perform the type of surgery recommended.

#### **The Commission:**

*Title 85A, Section 50A* requires Respondent to provide treatment required with the right to choose the treating physician but allows Claimant to obtain emergency treatment at the employer's cost.

*Title 85A, Section 50B* limits the time for an employer to provide treatment to five days. If the employer fails to provide medical treatment within five days after actual knowledge of the injury, the injured employee may select a physician to provide medical treatment at the expense of the employer. As with the Curt emergency treatment at employer's expense is allowed.

*Title 85A, Section 53* mandates that an injured employee may be required to submit to examination by a doctor designated or approved by the Commission, as the Commission may require from time to time if reasonable and necessary. This is the Commission version of an Independent Medical Examination.

*Title 85A, Section 56* allows one change of treating physician. Unlike the prior system which allowed Claimant to present a list of physicians, the Commission accepts a request for a change of physician from Claimant but then allows Respondent to provide a list of three doctors from which Claimant is to choose.

*Title 85A, Section 57* allows Respondent an additional control mechanism in cases in which Claimant is non-compliant with medical treatment:

*Title 85A, Section 57A* if an injured employee misses two or more scheduled appointments for treatment, he or she shall no longer be eligible to receive benefits under this act, unless his or her absence was: 1. Caused by extraordinary circumstances beyond the employee's control as determined by the Commission; or 2. The employee gave the employer at least two hours prior notice of the absence and had a valid excuse.

*Title 85A, Section 57B* inability to get transportation to or from the appointment shall neither be considered extraordinary circumstances nor a valid excuse for the absence.

## Full & Final Settlement

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The Oregon workers' compensation system is one that allows the parties involved in a disputed workers' compensation claim to enter into a full and final settlement agreement. This settlement agreement, called a Disputed Claim Settlement, resolves all aspects of a disputed workers' compensation claim once approved by a judge who found the settlement agreement to be reasonable. *ORS 656.289(4)(a)*. A full and final settlement agreement approved by a judge is still subject to review and modification, if requested by a party within 30 days from the date the approval order was mailed to the parties. *ORS 656.289(3)*. In practice, however, the parties to a Disputed Claim Settlement rarely request review of an order approving their own agreement.

Additionally, because the parties to an accepted claim are prohibited from resolving the injured worker's future medical care by way of a settlement agreement, a full and final settlement of an accepted claim may not be obtained (although negotiating a Disputed Claim Settlement with respect to the worker's current condition and need for treatment can make it difficult for a worker to obtain additional medical benefits in the future). *ORS 656.236(1)(a)*. Legally, though, the worker cannot dispose of the right to future medical services in relation to an accepted claim. *Id.*

## The Issue of Medical Control

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When an injured worker suffers a compensable injury, the insurer or self-insured employer shall provide medical treatment for all conditions caused in material part by the work related injury and shall continue to do so for as long as the recovery process requires based on the nature of a given injury. *ORS 656.245(1)(a)*. However, medical treatment provided after the injured worker's condition is medically stationary is compensable only in limited situations pursuant to *ORS 656.245(1)(c)*. Furthermore, the insurer or self-insured employer may not be liable for medical treatment the Director determines is unscientific, unproven, outmoded or experimental. *ORS 656.245(3)*. Examples of treatment the Director has already deemed non-compensable can be found in *OAR 436-009-0010(12)*.

The injured worker not only has the right to initially select an attending physician or nurse practitioner within the state but is entitled to subsequently change attending physicians or nurse practitioners up to two times without approval from the Director. *ORS 656.245(2)(a)*. However, after the injured worker has exercised their right to change attending physicians or nurse practitioners twice, all subsequent changes generally require the Director's approval (if the insurer or self-insured employer requests review of the matter). *Id.*

In general, only a worker's attending physician may authorize payment of temporary disability benefits. *ORS 656.245(2)(b)(B)*. However, a non-attending physician providing medical care to the injured worker in an emergency situation (such as an emergency room physician) may authorize time loss on a temporary basis. *Id.*

If the insurer or self-insured employer contracts with a Managed Care Organization to provide medical treatment, the injured worker, after receiving notice of enrollment in

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the managed care organization, or three days after the notice was sent, generally is required to receive all medical services in the manner prescribed in the contract. *ORS 656.245(4)(a)*. If a claim has been denied, however, the injured worker is under no obligation to receive medical treatment within the employer's managed care organization (unless and until the denial is reversed). *ORS 656.245(4)(b)(D)*.

Furthermore, if the injured worker resides more than 100 miles outside the geographical area of the managed care organization, the injured worker is not required to receive treatment within said organization. *ORS 656.245(4)(a)*. *Id.* Additionally, the injured worker may receive, at the expense of the employer, emergency medical attention from a physician not within the managed care organization. *Id.*

# PENNSYLVANIA

## Full & Final Settlement

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The Pennsylvania workers' compensation system is one that allows the parties involved in a workers' compensation claim to enter into a full and final settlement agreement known as a Compromise and Release, resolving all aspects of a workers' compensation claim. *77 P.S. § 1000.5*. However, no Compromise and Release agreement is valid until approved by a Judge who conducted an open hearing and determined the injured worker understood the full legal significance of the settlement agreement. *Id.*

## The Issue of Medical Control

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Pursuant to *77 P.S. § 531*, an injured worker is entitled to receive all reasonable medical treatment as and when needed at the expense of the employer. As soon as medical treatment is required, the employer has the right to control said treatment for a limited time and may exercise that right by properly establishing a list of designated physicians.

By providing the injured worker with a list of at least six designated physicians, and properly notifying the injured worker (discussed below), the injured worker is required to seek medical treatment from any of the physicians designated by the employer for a period of 90 days from the date of the first medical examination. *77 P.S. § 531(1)(i)*. The injured worker is not only entitled to select a treating physician but may also change physicians during the initial 90 day period, so long as all medical treatment is being provided by one of the physicians designated by the employer. *Id.*

If one of the employer designated physicians finds the injured worker to be a candidate for invasive surgery, the injured worker is entitled to obtain a second opinion from any physician of their choosing, regardless of whether that physician has been designated by the employer. *Id.* However, if the injured worker elects to undergo surgery within the ninety day period from the date medical treatment was initially provided, the surgery must be performed by an employer designated physician. *Id.*

During the initial 90 day period, the injured worker is entitled to receive medical treatment from a non-employer designated physician at the expense of the employer in an emergency situation requiring immediate medical care. *Id.* Furthermore, an employer's failure to provide the injured worker with written notice of their rights and duties with respect to medical benefits at the time of hire and immediately after the work related injury and their failure to obtain evidence, by way of the injured worker's written acknowledgement, that said notices were provided, will entitle the injured worker to receive medical care from any physician of their choosing, including non-employer designated physicians, at the expense of the employer. *Id.* Additionally, the injured worker is entitled to obtain medical treatment from a non-employer designated physician at any time throughout the life of the claim; however it will be at the injured worker's expense. *Id.*

Immediately upon expiration of the initial 90 day period, the injured worker may select and receive treatment from any physician of their choosing, even a non-employer designated physician, so long as they notify the employer within five days of the first medical examination with the physician selected. *Id.* The employer will not be liable for any treatment obtained prior to receiving proper notice of the injured worker's choice of physician. *Id.*

# RHODE ISLAND

## Full & Final Settlement

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The Rhode Island workers' compensation system is one that allows the parties involved in a workers' compensation claim to enter into a full and final settlement agreement which, after a hearing has been conducted and the settlement is approved by a judge who has determined the settlement is in the best interest of all parties, entitles the employer to a duly executed release discharging them from any and all liability arising out of the injury involved in a given claim. *R.I. Gen. Laws § 28-33-25*.

However a full and final settlement agreement resolving all aspects of an accepted claim may not be executed until the injured worker has received payment of benefits for at least six months. *R.I. Gen. Laws § 28-33-25(a)(1)*. No such limitation exists where the parties settle a claim prior to the employer's liability being established (i.e. a disputed claim) by way of a full and final settlement agreement, often referred to as a Denial and Dismissal Agreement. *R.I. Gen. Laws § 28-33-6*. (Practice note: in some instances where an injury has been established, the parties may stipulate to payment of \$1.00 per week for 26 weeks as a means to settle cases where an employee has not actually received 26 weeks of benefits.)

## The Issue of Medical Control

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Pursuant to *R.I. Gen. Laws § 28-33-5*, an employer shall promptly provide an injured worker with any reasonable medical treatment for as long as necessary to cure and relieve the injured worker from the effects of his or her injury. An employer's failure to provide said treatment may constitute neglect or refusal to furnish medical care rendering the employer liable for all reasonable medical treatment obtained by the injured worker.

The injured worker shall have the freedom to select any qualified physician of his or her choosing to serve as their initial treating physician. 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 *R.I. Gen. Laws § 28-33-8(a)(1)*. If the employer has a preferred provider network and the injured worker subsequently decides to change physicians the injured worker is required to select a physician within the employer's Preferred Provider Network. *Id.* 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. *Id.* Once the injured worker's medical care is directed into the employer's preferred provider network, he or she must continue to treat within said network unless authorized otherwise by the employer or an emergency situation requires immediate medical attention. *Id.*

# SOUTH CAROLINA

## Full & Final Settlement

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The South Carolina Workers' Compensation Act allows the parties to enter into a full and final settlement ("clincher") resolving all aspects of a workers' compensation claim. *S.C. Code Ann. § 42-9-390*. If both parties are represented by an attorney, the employer is required to file a copy of the executed settlement agreement and Form 19 (Closing Report) signed by the claimant with the commission. *Id.* The employer/carrier must also submit a \$25 filing fee and self-addressed, stamped return envelope to the Commission. However, if the employee is not represented by an attorney, the settlement agreement must be approved by one member of the Commission. The employer/carrier is required to request a settlement conference with the Commission, through their attorney of record. The Commission requires the following documentation to set a settlement conference: (1) an updated Form 18/Periodic Report, (2) the final narrative report of the treating physician indicating MMI, (3) a Form 14 B filled out and signed by the treating physician and (4) a \$25 filing fee.

## The Issue of Medical Control

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Pursuant to *S.C. Code Ann. § 42-15-60*, an employer provides the injured worker with medical treatment that is reasonably required to cure or relieve the effects of the injury. The employer, in an admitted injury, provides treatment for a period not to exceed 10 weeks and for any additional treatment which "tends to lessen the period of disability" or which is found reasonable and necessary by the commission. *Id.*

The employer has the right to control the injured worker's medical care by selecting the treating physicians. *Id.* An employer's failure to provide necessary treatment may entitle the injured worker to receive medical treatment from a physician of his or her choosing at the expense of the employer. *Id.* However, absent the employer's failure to provide necessary treatment and absent an emergency situation requiring immediate medical care, the injured worker must comply with the medical treatment being furnished by the employer or risk losing further benefits.

# SOUTH DAKOTA

## Full & Final Settlement

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The South Dakota workers' compensation system is one that allows the parties involved in a workers' compensation claim to enter into a settlement agreement. Once approved by the department, after determining the settlement is in the best interest of the injured worker, resolves all aspects of a workers' compensation claim subject to a right to reopen in accord with the discussion set forth below. *S.D. Codified Laws § 62-7-5*. A copy of the settlement agreement must be submitted to the Department for approval and unless the department provides the parties with written notice of its disapproval within twenty days of the agreement being filed, the agreement shall stand as approved and enforceable. *Id.* However, a claimant may reopen a settlement if he sustains a change in physical condition that derives from an injury unknown at the time of settlement or from a known injury with its disabling character unknown. *Sopko v. C & R Transfer Co., Inc., 1998 S.D. 8, ¶ 15, 575 N.W.2d 225, 233; SDCL § 62-7-33*. A claimant's right to reopen a settled claim under a change in condition cannot be waived and provisions in agreements purporting to preclude reopening claims pursuant to a change in condition are unenforceable. *Sopko, 1998 S.D. 8, 575 N.W. 2d at 231; SDCL § 62-3-18*.

## The Issue of Medical Control

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The injured worker has the right to initially select a physician of their choosing to serve as their treating physician, so long as the physician selected is licensed to practice medicine in the state. *S.D. Codified Laws § 62-4-43*. Upon selecting a treating physician, the injured worker shall notify the employer either prior to first obtaining medical treatment from the physician selected or as soon as reasonably possible thereafter. *Id.* If the injured worker is unable to initially select a treating physician, the requirements regarding selecting physicians shall not apply for as long as the inability to make a selection persists. *Id.*

The injured worker is entitled to receive medical treatment from the physician they selected, as well as with physicians providing treatment at the recommendation or referral of the treating physician selected. *Id.* However, the employer will not be liable for medical treatment provided by any physician other than the one selected by the injured worker or referrals resulting from said physician. *Id.*

In order for the injured worker to change physicians, written approval from the employer is required. *Id.* However, the injured worker is entitled obtain a second opinion without the employer's approval, at the injured worker's own expense. *Id.*

# TENNESSEE

## Full & Final Settlement

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The Tennessee workers' compensation system is one that allows the parties involved in a workers' compensation claim to enter into a full and final settlement agreement, resolving all matters of compensation between the parties. *Tenn. Code Ann. § 50-6-206*. All settlements require approval by a Judge of the Circuit Court, the Chancery Court, or at the Tennessee Bureau of Workers' Compensation. If the injury was on or after July 1, 2015, all settlements must be approved by a Workers' Compensation Judge. Any payouts of permanent disability benefits that are not approved by a Workers' Compensation Judge act to extend the statute of limitations to two (2) years after the last payment of permanent disability benefits. Any settlements for injuries prior to July 1, 2014 that were approved somewhere other than at the Tennessee Department of Labor and Workforce Development must subsequently be forwarded to the division of workers' compensation. *Tenn. Code Ann. § 50-6-206(a)(1)*.

For injuries prior to July 1, 2014, a settlement agreement that was approved outside the Tennessee Department of Labor & Workforce Development may nonetheless be set aside, upon application from the injured worker, at any time within 30 days of being forwarded to the division of worker's compensation if it is determined the settlement agreement does not substantially provide the injured worker with the benefits they are entitled to or is not in the injured worker's best interests. *Id.* Therefore, a full and final settlement agreement approved by a judge is not final and binding until 30 days after being submitted to the division of workers' compensation, if not set aside during that time.

Additionally, full and final settlement agreements entered into by an injured worker who is not represented by an attorney require approval to be obtained in person to ensure the unrepresented worker is thoroughly informed of the scope of benefits and their rights with respect to said benefits, and the order approving may be appealed. *Tenn. Code Ann. § 50-6-206(c)(C)(5)*.

## The Issue of Medical Control

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Pursuant to *Tenn. Code Ann. § 50-6-204*, an employer shall provide the injured worker with all reasonable and necessary medical treatment as ordered by the injured worker's attending physician, also referred to as the authorized treating physician. The injured worker selects an authorized treating physician from a panel of three physicians within his or her community. This panel is composed by the employer. There are certain instances where that panel can be expanded to four (including a chiropractor) or to five (to accommodate situations where the available physicians in a certain area all practice in the same group). *Tenn. Code Ann. § 50-6-204(D)(4)(A)*.

The employer is not liable for any unauthorized treatment obtained by the injured worker, unless it fails to provide a panel to the injured worker.

When the injured worker disagrees with the attending physician's opinion regarding surgery, impairment or diagnosis, the injured worker is entitled to obtain a second opinion from another physician on the employer's original panel. *Tenn. Code Ann. § 50-6-204(D)*.

## Full & Final Settlement

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The Texas workers' compensation system prohibits the parties involved in a workers' compensation claim from entering into a full and final settlement agreement, resolving all aspects of a workers' compensation claim in exchange for a lump sum payment of an agreed upon settlement amount. *Tex. Lab. Code § 408.005*. Specifically, *Tex. Lab. Code § 408.005(b)*, prohibits the parties from limiting or terminating the injured worker's right to medical benefits and therefore prevents the parties from resolving the injured worker's future medical care by way of settlement agreement.

## The Issue of Medical Control

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Pursuant to *Tex. Lab. Code § 408.021*, an employer shall, for as long as reasonably required based on the nature of a given injury, provide an injured worker who suffered a compensable injury with reasonable medical treatment to cure or relieve the injured worker from the effects of his or her injury, promote recovery or enhance the injured worker's ability to return to employment. The injured worker is entitled to initially select a physician of his or her choosing to serve as their primary treating physician moving forward. *Tex. Lab. Code § 408.022(a)*

If the employer does not provide medical treatment through a health care network, the physician initially selected by the injured worker must be a physician who is on the commissioner's list of approved physicians. *Id.* After the injured worker makes their initial selection from the commissioner's list, the injured worker, except in an emergency situation, must receive all medical treatment from the physician selected and any additional treatment approved or recommended by the physician selected. *Tex. Lab. Code § 408.021(b)*. The injured worker may only change physicians with the approval of the division of workers' compensation and is limited to selecting another physician on the commissioner's list of approved physicians. *Id.*

If the employer does provide medical treatment through a health care network, the physician initially selected by the injured worker must be a physician within the employer's health care network. *Tex. Ins. Code § 1305.104(a)*. The injured worker is also entitled to a one time change of physician to another physician within the network. *Tex. Ins. Code § 1305.104(b)*. However, any subsequent changes in physician or treatment not within the employer's network require authorization from the employer. *Tex. Ins. Code § 1305.104(c)*. The employer is not liable for medical treatment obtained by the injured worker without authorization.

## Full & Final Settlement

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In Utah, parties are free to enter into a full and final workers' compensation settlement which extinguishes the claimant's right to obtain additional workers' compensation benefits (including medical benefits). Such agreements are not binding until put into writing, signed by all the parties and approved by an Administrative Law Judge.

An Administrative Law Judge will approve the settlement documents if there is a genuine dispute over whether additional workers' compensation benefits are due. The dispute must be detailed in the settlement for the agreement to be approved. If there is no genuine dispute on a case over future benefits, an Administrative Law Judge may still approve the settlement based on a commutation of medical benefits. For such a commutation of medical benefits to be approved, the parties must provide settlement documents which explain in detail how the settlement will provide adequate money to pay for the expected future medical benefits.

Once the settlement agreement is approved by an Administrative Law Judge, claimant is permanently barred from receiving any additional workers' compensation benefits.

## The Issue of Medical Control

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An employer is required to provide an injured worker with all reasonable medical care based on the nature of a given injury. However, the procedures for doing so vary depending on whether the employer maintains a preferred provider program.

If an employer does not maintain a preferred provider program, the injured worker is entitled to select a physician of their choosing and receive all reasonable medical treatment from the selected physician at the expense of the employer. *Utah Code Ann. § 34A-2-111*. Furthermore, the injured worker is entitled to a one time change of physician to another physician of their choosing. *Id.*

However, if the employer provides medical care through a preferred provider program, the injured worker is still entitled to initially select a treating physician but the physician must be within the employer's preferred provider program. *Id.* The injured worker is also entitled to a one time change of physician to another physician within the employer's network. *Id.* All subsequent changes require the employer's approval.

An injured worker whose employer maintains a preferred provider program may receive medical treatment from a physician outside the program only in emergency situations or if the employee has a good faith belief the treatment being obtained is for a non-industrial condition. *Id.* An injured worker who has been properly notified of their employer's preferred provider network yet obtains medical treatment from a physician not within said network may be required to pay for any charges that exceed the amount permitted within the employer's Preferred Provider Network. *Id.*

# VERMONT

## Full & Final Settlement

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The Vermont workers' compensation system is one that allows the parties involved in a workers' compensation claim to enter into a full and final settlement agreement known as a Compromise Agreement or a Form 16 Settlement, resolving all aspects of a workers' compensation claim. 21 V.S.A. § 662(a). However, a full and final settlement agreement is not valid until approved by the Commissioner who has determined the agreement is in the best interest of the injured worker. *Id.*

However, even after approved by the Commissioner, the settlement agreement is, for up to six years after the agreement was approved, subject to modification by the commissioner on the grounds of a change in condition. 21 V.S.A. § 668. Pursuant to 21 V.S.A. § 668, the Commissioner may modify a previous award by issuing an order ending, diminishing or increasing compensation that was previously awarded. *Id.*

## The Issue of Medical Control

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Pursuant to 21 V.S.A. § 640(a), an employer shall provide the injured worker with medical treatment that is reasonably required to cure or relieve the injured worker from the effects of his or her injury. When an injured worker has suffered a compensable injury, the employer has the right to designate a physician of their choosing to initially provide the injured worker with the required medical treatment. 21 V.S.A. § 640(b). If the injured worker does not subsequently change physicians, the physician initially selected by the employer will serve as the injured worker's primary treating physician for throughout the life of the claim.

However, the employee does have the right to a one time change of physician and may exercise that right by providing the employer with written notice of the newly designated treating physician selected by the injured worker and the reasons for the change. *Id.* If the injured worker provided the employer with the proper notice, the medical treatment received from the newly selected physician will be at the expense of the employer. However, an injured worker's failure to provide said notice will generally relieve the employer from their obligation to pay for the treatment provided. *Id.*

# VIRGINIA

## Full & Final Settlement

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The Virginia workers' compensation system is one that allows the parties involved in a workers' compensation claim to enter into a full and final settlement agreement, resolving all aspects of a workers' compensation claim. *Va. Code Ann. § 65.2-701(A)*. However, the full and final settlement agreement is not binding until 30 days following approval by the Commission without an appeal by any party. The Commission determines whether or not the settlement agreement is in the best interest of the injured worker. *Id.* Settlement agreements not approved by the Commission are void. *Id.*

## The Issue of Medical Control

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Pursuant to *Va. Code Ann. § 65.2-603*, an employer, for as long as necessary, shall provide the injured worker with medical treatment that is reasonable and necessary based on the nature of a given injury. After an injury occurs, the employer is to provide the injured worker with a panel of at least three physicians, from which the injured worker shall select one to serve as their primary treating physician. *Id.* Once the injured worker undergoes and establishes a course of medical treatment with the panel physician he or she selected, authorization from the employer or the Commission is needed to change the primary treating physician. The Commission generally will honor the primary treating physician's referral to a named physician specialist. If the primary treating physician refers the injured worker to a specialty without naming a specific physician, the employer may take the opportunity to offer a panel of three specialists. The employer generally may pay for an injured worker's medical care without prejudice to later contest compensability. If the claim is not accepted, however, the injured worker is free to seek treatment with a physician of her own choosing. As a general rule, the Commission will give great weight and deference to the opinions of the treating physician. The employer may not engage in "medical management" of the claim. The employer may retain a nurse case manager to assist with the claim.

The employer's failure to provide the injured worker with a panel will allow the injured worker to receive medical treatment from a physician of his or her own choosing at the expense of the employer. *Id.* Furthermore, even if a panel is provided, the injured worker is entitled to obtain medical treatment from a physician of his or her choosing in limited circumstances, such as emergency situations. *Va. Code Ann. § 65.2-603(C)*.

Furthermore, the employer may request that the employee be examined by a duly qualified physician designated and paid for by the employer. However, the employer is limited to one examination per medical specialty and subsequent requests require prior authorization from the Commission. *Va. Code Ann. § 65.2-607*.

# WASHINGTON

## Full & Final Settlement

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The Washington workers' compensation system is one that prohibits the parties involved in a workers' compensation claim from entering into a full and final settlement resolving all aspects of a workers' compensation claim and discharging the employer's liability in exchange for a lump sum payment to the injured worker. *Rev. Code Wash. § 51.04.060.*

However, pursuant to the *Revised Code of Washington, RCW 51.04.063*, the parties to a workers' compensation claim may, in limited situations, resolve certain aspects of a claim by way of a structured settlement. For example, injured workers who are at least 53 years of age (50 years of age on or after January 1, 2016) may, at any time after six months from the date an allowed claim was received, choose to resolve all benefits other than medical by way of a structured settlement approved by the Board of Industrial Insurance Appeals. *RCW 51.04.063(2).*

However, even in the limited situations where a structured settlement is permitted, medical benefits cannot be included. A worker can always apply to reopen a claim closed by way of a structured settlement for medical benefits only. *RCW 51.32.160.* As such, because the Washington workers' compensation system prohibits settlement of medical benefits by way of a compromise settlement, a full and final settlement resolving all aspects of a given claim cannot be obtained.

## The Issue of Medical Control

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An injured worker who suffers a compensable injury or occupational disease is entitled to receive proper and necessary medical treatment during the period of his or her disability resulting from the work related injury. *RCW 51.36.010(2)(a).* An injured worker who suffered a compensable injury is entitled to select a physician or licensed advanced registered nurse practitioner of his or her own choosing, if conveniently located, to serve as their primary treating provider and provide said treatment, so long as the provider selected is within the health care provider network established by the state's Department of Labor & Industries. *Id.* The injured worker may only receive medical treatment from a provider who is not within the state's health care provider network in limited situations, such as an initial visit or emergency situation requiring immediate medical attention. *RCW 51.36.010(2).* All transfers from one network provider to another must be approved by the department or self-insurer. *WAC 296-20-065.* The department or self-insurer reserves the right to require a worker to select another provider for treatment under some conditions, such as when the attending provider fails to cooperate with the department rules, where reasonable progress towards return to work is not shown, or where specialized treatment is required which the attending provider is not qualified to render. *Id.*

Additionally, whenever the director or the self-insurer finds it necessary to resolve a medical dispute between the parties, the injured worker will be required to submit to an examination with a physician selected by the director. *RCW 51.36.070.* Any worker entitled to receive any benefits, or claiming such under the Industrial Insurance Act shall submit himself or herself for a medical examination if requested by the department or self-insurer, at a place reasonably convenient for the worker, and as may be provided by the rules of the department. *RCW 51.32.110(1).*

# WEST VIRGINIA

## Full & Final Settlement

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The West Virginia workers' compensation system is one that allows the parties involved in a workers compensation claim that is in the administrative or appellate process to enter into a full and final settlement, known as a final settlement, resolving any and all issues in a given claim which precludes the parties from re-opening the claim, with the exception of instances involving fraud. *W. Va. Code § 23-5-7(a)*. If the claim is in the review or appellate process, all claim issues may be settled, even though the issues may not be currently contested. These issues include, but are not limited to, temporary total disability, temporary partial disability, permanent partial disability, permanent total disability, vocational rehabilitation. *85 CSR 12-5*. However, upon executing a Compromise Settlement, the injured worker is provided with a cooling off period of five days during which time the injured worker may revoke the executed agreement. *W. Va. Code § 23-5-7(b)*. Therefore, a fully executed and approved Compromise Settlement that has not been revoked becomes binding when the five day cooling off period has expired.

Although an injured worker who is not represented by an attorney may generally enter into a final settlement, the Insurance Commission may void any settlement agreement, entered into by an unrepresented injured worker, found to be unconscionable. *Id.* Any claims that a settlement agreement is unconscionable must be brought within 180 days of the execution of the agreement. *85 CSR 12-14.4(a)*

## The Issue of Medical Control

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Pursuant to *W. Va. Code Sec. 23-4-3 (a)(1)*, all private carriers and self-insured employers or their agents, shall disburse and pay for personal injuries to the employees who are entitled to the benefits sums for health care services, rehabilitation services, durable medical, and other goods and other supplies and medically related items as may be reasonably required. The private carrier will only pay for services that have a direct relationship to the work related injury/disease, as determined in the sole discretion of the carrier. *85 CSR 20 9.1*

An injured worker who suffers a compensable injury is entitled to select the physician of his or her choosing to serve as their primary treating physician and provide them with the necessary medical treatment in connection with their work related injury, and to coordinate all subsequent care. *85 CSR 20 6.1*. Whenever possible, the treating physician should use the least costly mode of treatment. *85 CSR 20 6.2*. Injured workers must request authorization for a change of the treating physician; this does not apply if the case involves care transferred after initial emergency treatment if done within 30 days of injury, care is transferred to a specialist by a treating physician, or care when an unforeseen emergency develops which requires facilities and skills not available to the treating physician. *85 CSR 20 6.7*.

However, if the injured worker provides medical treatment through a managed health care plan approved by the Commission, the primary treating physician selected by the injured worker must be within the employer's managed health care plan. *W. Va. Code § 23-4-3(b)(2)*. Furthermore, an injured worker receiving medical treatment

Continued >>>

within an employer's managed care network may elect a new physician to serve as their primary treating physician, so long as the new physician selected is also within the employer's managed health care plan. *Id.* 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 to do so.

In the event that a claimant elects to receive health care services from a health care provider from outside of the state of West Virginia and if that health care provider refuses to abide by and accept as full payment the reimbursement made all private carriers and self-insured employers or their agents, pursuant to the schedule of maximum reasonable amounts of fees authorized by this subsection, the claimant is personally liable for the difference between the scheduled fee and the amount demanded by the out-of-state health care provider unless the matter involves an emergency where there is an urgent need for immediate medical attention in order to prevent the death of a claimant or to prevent serious and permanent harm to the claimant or there is no health care provider reasonably near to the claimant's home who is qualified to provide the claimant's needed medical services who is located in the state of West Virginia. *W.Va. Code Sec. 23-4-3(a)(4).*

Injured workers may access providers who are not Participating Plan Providers for emergency care when access to a health care provider within the managed health care plan is unobtainable for the acute phase of care, when authorized treatment is unavailable through the managed care plan; or To obtain a second opinion when a managed health care plan physician recommends surgery and another qualified physician within the plan is not available for consultation. *85 CSR 21-13.1*

Injured workers may access providers who are not Participating Plan Providers for treatment purposes only if the injured worker has been treated by providers solely within the employer's managed care plan for a period of at least one (1) year, the injured worker has not made progress toward recovery that is reasonably consistent with the Commission's or upon termination of the Commission, the insurance commissioner, treatment guidelines, and the injured worker establishes to a reasonable certainty that proposed treatment outside the employer's Managed Care Plan would more likely provide the injured worker with a better clinical outcome than the current treatment or rehabilitation plan. *85 CSR 21-13.2*

## Full & Final Settlement

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The Wisconsin worker's compensation system is one that allows the parties involved in a disputed workers' compensation claim to enter into a full and final settlement which, after being submitted to and approved by the department, resolves all aspects of a workers' compensation claim. *Wis. Stat. § 102.16.*

However, every compromise settlement agreement is subject to being reviewed, set aside, modified, or confirmed by the department within one year from the date the agreement was filed with the department. *Id.* Additionally, if the compromise settlement agreement does not contain the word "compromise" in it, the settlement shall not be considered a compromise agreement and as a result, the claim is subject to being re-opened. *Id.*

## The Issue of Medical Control

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Pursuant to *Wis. Stat. § 102.42(1)*, an employer shall provide the injured worker with medical treatment that is reasonably required to cure or relieve the injured worker from the effects of his or her injury and shall continue doing so as long as required to prevent further deterioration of the injured worker's condition. An employer's failure to provide said treatment after receiving notice of the injury and the resulting need for medical treatment will constitute neglect or refusal to furnish the required medical care resulting in the employer's liability for all reasonable expenses incurred by the injured worker in obtaining said treatment. *Id.*

The injured worker has the right to select any licensed physician practicing in the state to serve as their treating physician, as well as the right to select a qualified physician not licensed in the state, by mutual agreement of the parties. *Wis. Stat. § 102.42(2)(a)*. In emergency situations requiring immediate medical care, the employer may unilaterally select the physician to provide said care but the injured worker must be provided the opportunity to select a treating physician of their choosing when the emergency has subsided. *Id.*

In addition to having the right to initially select a treating physician, the injured worker is also entitled to make a one-time change of physician simply by notifying the employer of the change. *Id.* However, all subsequent change of physicians requires mutual agreement of the parties. *Id.*

If the employer fails to either provide the injured worker with the necessary medical care or, after receiving notice of the work related injury, fails to notify the injured worker of their rights with respect to selecting and changing physicians, the injured worker will have the unrestricted right to receive medical treatment from any physician of their choosing at the expense of the employer. *Wis. Stat. § 102.42(3)*.

# WYOMING

## Full & Final Settlement

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The Wyoming workers' compensation system is one that does not allow the parties involved in a workers' compensation claim to enter into a full and final settlement agreement resolving all aspects of a workers' compensation claim and discharging the employer's liability due to restrictions against providing lump sum payments. *Wyo. Stat. § 27-14-403(f)*. Permanent partial disability, permanent total disability or death, or any part of such awards, may be discharged by the payment of a lump sum if the division determines that a lump sum payment is justified by exceptional necessity. *Id.* Prior to approval of a claim, the employer or the Workers' Compensation Division can settle the claim for up to two thousand five hundred dollars (\$2,500) without an admission of compensability or that the injury was work related. *Wyo. Stat. § 27-14-601(e)*.

## The Issue of Medical Control

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Pursuant to *Wyo. Stat. § 27-14-401*, the division will pay for reasonable, necessary and appropriate treatment for an injury unless the employee is entitled to free medical care or the employer provides the injured worker with adequate and proper medical treatment. *Wyo. Stat. § 27-14-401*. Although the employer or the division may designate a physician to provide non-emergency medical treatment, the injured worker may, for any reason, select a physician of his or her own choosing to serve as their primary healthcare provider. *Wyo. Stat. § 27-14-401(f)*. However, although the injured worker may select any physician of his or her choosing, the injured worker generally is only reimbursed for the cost of travel that is necessary to obtain the closest available medical treatment required. *Wyo. Stat. § 27-14-401(d)(2)*.

Once the injured worker has selected a primary healthcare provider, any subsequent change of physician requires prior notice to the Workers' Compensation Division. If the injured worker has selected a treating physician of his or her choosing rather than the physician designated by the employer, the injured worker may be required to submit to an independent medical examination with a physician of the employer's choosing. *Wyo. Stat. § 27-14-401(f)*.



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