

**First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO**

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 23-0256.01 Yelana Love x2295

HOUSE BILL 23-1076

HOUSE SPONSORSHIP

Daugherty,

SENATE SPONSORSHIP

Marchman,

House Committees

Business Affairs & Labor
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING WORKERS' COMPENSATION, AND, IN CONNECTION**
102 **THEREWITH, INCREASING THE DURATION OF BENEFITS BASED ON**
103 **MENTAL IMPAIRMENT, REMOVING THE AUTHORITY TO PETITION**
104 **OVER ARTIFICIAL DEVICES, ALLOWING AN EMPLOYEE TO**
105 **REQUEST A HEARING ON THE LOSS OF TOTAL TEMPORARY**
106 **DISABILITY BENEFITS UNDER CERTAIN CIRCUMSTANCES,**
107 **UPDATING PROVISIONS RELATED TO INDEPENDENT MEDICAL**
108 **EXAMINATIONS, INCREASING THE AMOUNT OF ATTORNEY**
109 **FEEES THAT ARE PRESUMED UNREASONABLE, AND MAKING AN**
110 **APPROPRIATION.**

Bill Summary

(Note: This summary applies to this bill as introduced and does

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.*

HOUSE
Amended 2nd Reading
April 18, 2023

not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

Section 1 of the bill increases the limit on medical impairment benefits based on mental impairment from 12 weeks to 36 weeks.

Section 2 removes language authorizing an employee to petition the division of workers' compensation in the department of labor and employment (division) prior to receiving a replacement of any artificial member, glasses, hearing aid, brace, or other external prosthetic device, including dentures.

Section 3 allows an employee to request a hearing when the employee's temporary total disability benefits end based on an attending physician's written release to return to regular employment.

Section 4 specifies that when a physician recommends medical benefits after maximum medical improvement, the benefits admitted by the insurer or self-insured employer are not limited to any specific medical treatment.

Current law requires an insurance carrier to provide an independent medical examiner and all other parties a complete copy of all medical records in its possession pertaining to an injury. **Section 5** limits the medical records required to be provided to records relevant to the injury. **Section 5** also specifies how the division is required to determine the amount and allocation of costs to be paid by the parties for an independent medical examination.

Section 6 allows a prehearing administrative law judge to issue interlocutory orders resolving disputes regarding the content and format of the independent medical examiner's medical record packet, indigency status, and the allocation of independent medical examiner costs.

Current law states that a contingent attorney fee exceeding 20% of the amount of contested benefits is presumed to be unreasonable. **Section 7** increases the amount to 25%.

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

2 **SECTION 1.** In Colorado Revised Statutes, 8-41-301, **amend**

3 (2)(b) as follows:

4 **8-41-301. Conditions of recovery - definitions.**

5 (2) (b) (I) Notwithstanding any other provision of articles 40 to 47 of this

6 ~~title~~ TITLE 8, where a claim is by reason of mental impairment, ~~the A~~

1 claimant ~~shall be~~ IS limited to ~~twelve~~ THIRTY-SIX weeks of medical
2 impairment benefits, which shall be in an amount not less than one
3 hundred fifty dollars per week and not more than fifty percent of the state
4 average weekly wage, inclusive of any temporary disability benefits;
5 except that this limitation shall not apply to any victim of a crime of
6 violence, without regard to the intent of the perpetrator of the crime, nor
7 to the victim of a physical injury or occupational disease that causes
8 neurological brain damage. ~~and~~

9 (II) Nothing in this section ~~shall limit~~ LIMITS the determination of
10 the percentage of impairment pursuant to section 8-42-107 (8) for the
11 purposes of establishing the applicable cap on benefits pursuant to section
12 8-42-107.5.

13 **SECTION 2.** In Colorado Revised Statutes, 8-42-101, **amend**
14 (1)(b) as follows:

15 **8-42-101. Employer must furnish medical aid - approval of**
16 **plan - fee schedule - contracting for treatment - no recovery from**
17 **employee - medical treatment guidelines - accreditation of physicians**
18 **and other medical providers - mental health provider qualifications**
19 **- milage reimbursement - rules - definition - repeal.** (1) (b) In all cases
20 where the injury results in the loss of a member or part of the employee's
21 body, loss of teeth, loss of vision or hearing, or damage to an existing
22 prosthetic device, the employer shall furnish within the limits of the
23 medical benefits provided in ~~paragraph (a) of this subsection (1)~~
24 SUBSECTION (1)(a) OF THIS SECTION artificial members, glasses, hearing
25 aids, braces, and other external prosthetic devices, including dentures,
26 ~~which~~ THAT are reasonably required to replace or improve the function of
27 each member or part of the body or prosthetic device so affected or to

1 improve the employee's vision or hearing. ~~The employee may petition the~~
2 ~~division for a replacement of any artificial member, glasses, hearing aid,~~
3 ~~brace, or other external prosthetic device, including dentures, upon~~
4 ~~grounds that the employee has undergone an anatomical change since the~~
5 ~~previous device was furnished or for other good cause shown, that the~~
6 ~~anatomical change or good cause is directly related to and caused by the~~
7 ~~injury, and that the replacement is necessary to improve the function of~~
8 ~~each member or part of the body so affected or to relieve pain and~~
9 ~~discomfort.~~ Implants or devices necessary to regulate the operation of, or
10 to replace, with implantable devices, internal organs or structures of the
11 body may be replaced when the authorized treating physician deems it
12 necessary. Every employer subject to the terms and provisions of articles
13 40 to 47 of this ~~title~~ TITLE 8 must insure against liability for the medical,
14 surgical, and hospital expenses provided for in this ~~article~~ ARTICLE 42,
15 unless permission is given by the director to such employer to operate
16 under a medical plan, as set forth in subsection (2) of this section.

17 **SECTION 3.** In Colorado Revised Statutes, 8-42-105, **add** (5) as
18 follows:

19 **8-42-105. Temporary total disability - hearings.** (5) (a) WITHIN
20 FORTY-FIVE DAYS AFTER AN INSURER OR SELF-INSURED EMPLOYER
21 TERMINATES AN EMPLOYEE'S TEMPORARY TOTAL DISABILITY BENEFITS
22 PURSUANT TO SUBSECTION (3)(c) OF THIS SECTION, THE EMPLOYEE MAY
23 FILE AN APPLICATION FOR AN EXPEDITED HEARING ON ANY OF THE
24 FOLLOWING ISSUES:

- 25 (I) WHO IS THE ATTENDING PHYSICIAN;
- 26 (II) WHETHER THE ATTENDING PHYSICIAN GAVE THE EMPLOYEE A
27 WRITTEN RELEASE TO RETURN TO REGULAR EMPLOYMENT; AND

1 (III) WHETHER THERE IS A DIFFERENCE OF OPINION BETWEEN
2 AUTHORIZED TREATING MEDICAL PROVIDERS REGARDING WHETHER THE
3 EMPLOYEE IS RELEASED TO RETURN TO REGULAR EMPLOYMENT.

4 (b) IF AN ADMINISTRATIVE LAW JUDGE FINDS THERE IS A
5 DIFFERENCE OF OPINION AS DESCRIBED IN SUBSECTION (5)(a)(III) OF THIS
6 SECTION, THE EMPLOYEE HAS THE BURDEN OF PROVING BY A
7 PREPONDERANCE OF THE EVIDENCE THAT, AS A PROXIMATE RESULT OF THE
8 CLAIMED INJURY OR DISEASE, THE EMPLOYEE IS UNABLE TO RETURN TO
9 REGULAR EMPLOYMENT. IF THE EMPLOYEE MEETS THIS BURDEN, THE
10 ADMINISTRATIVE LAW JUDGE SHALL REINSTATE THE EMPLOYEE'S
11 TERMINATED TEMPORARY TOTAL DISABILITY BENEFITS BACK TO THE DATE
12 OF TERMINATION.

13 **SECTION 4.** In Colorado Revised Statutes, 8-42-107, **amend**
14 (8)(f) as follows:

15 **8-42-107. Permanent partial disability benefits - schedule -**
16 **medical impairment benefits - how determined. (8) Medical**
17 **impairment benefits - determination of MMI for scheduled and**
18 **nonscheduled injuries. (f)** In all claims in which an authorized treating
19 physician recommends medical benefits after maximum medical
20 improvement, and there is no contrary medical opinion in the record, the
21 employer shall, in a final admission of liability, admit liability for related
22 reasonable and necessary medical benefits by an authorized treating
23 physician, WHICH BENEFITS ARE NOT LIMITED TO ANY SPECIFIC MEDICAL
24 TREATMENT.

25 **SECTION 5.** In Colorado Revised Statutes, 8-42-107.2, **amend**
26 (3)(b) and (5)(a) as follows:

27 **8-42-107.2. Selection of independent medical examiner -**

1 **procedure - time - allocation of costs - disclosures regarding**
2 **physician relationships with insurers, self-insured employers, or**
3 **claimants - rules - applicability.** (3) (b) Upon selection of the IME, the
4 insurance carrier shall provide to the IME and all other parties a ~~complete~~
5 copy of all medical records in its possession ~~pertaining~~ RELEVANT to the
6 subject injury, postmarked or hand-delivered within fourteen days prior
7 to the independent medical examination. If the insurance carrier or its
8 representative fails to timely submit such medical records, the claimant
9 may request that the division cancel the independent medical examination
10 or the claimant may submit COPIES OF all ~~the~~ medical records ~~he or she~~
11 RELEVANT TO THE SUBJECT INJURY THAT THE CLAIMANT has available
12 within ten days prior to the independent medical examination, or as
13 otherwise arranged by the division with the IME. If the claimant submits
14 medical records, the defaulting party may supplement such records
15 pursuant to rules of the division. This ~~paragraph (b)~~ SUBSECTION (3)(b)
16 shall not be construed to prohibit an independent medical examination
17 from being rescheduled.

18 (5) (a) (I) ~~Except as provided in paragraph (b) of this subsection~~
19 ~~(5), the requesting party shall advance the full cost of the independent~~
20 ~~medical examination to the IME at least ten days before the appointed~~
21 ~~time for the examination~~ THE DIRECTOR SHALL PROMULGATE RULES
22 CONSISTENT WITH THIS SUBSECTION (5) TO DETERMINE THE AMOUNT AND
23 ALLOCATION OF COSTS TO BE PAID BY THE PARTIES FOR THE INDEPENDENT
24 MEDICAL EXAMINATION.

25 (II) EXCEPT AS PROVIDED IN SUBSECTIONS (5)(a)(III) AND (5)(b)
26 OF THIS SECTION, THE REQUESTING PARTY SHALL PAY THE COST OF AN
27 INDEPENDENT MEDICAL EXAMINATION. THE REQUESTING PARTY SHALL

1 ADVANCE THE FULL BASE COST OF THE INDEPENDENT MEDICAL
2 EXAMINATION TO THE IME AT LEAST TEN DAYS BEFORE THE APPOINTED
3 TIME OF THE EXAMINATION.

4 (III) IF THERE IS A DISPUTE REGARDING INDIGENCY OR THE
5 AMOUNT OR ALLOCATION OF ANY COSTS TO BE PAID, INCLUDING THE
6 FORMAT, CONTENT, VOLUME, RELEVANCE, OR DUPLICATIVE MEDICAL
7 RECORDS SUBMITTED TO THE IME, A PARTY MAY REQUEST A PREHEARING
8 CONFERENCE WITH THE DIVISION TO RESOLVE THE DISPUTE. THE
9 DETERMINATION OF THE COST ALLOCATION IN EXCESS OF THE FULL BASE
10 COST MUST INCLUDE CONSIDERATION OF THE VOLUME OF MEDICAL
11 RECORDS, THE FORMAT AND CONTENT OF THE IME PACKET, AND ANY
12 OTHER CONSIDERATIONS NECESSARY TO DETERMINE THE ALLOCATION OF
13 THE IME COSTS BETWEEN THE PARTIES.

14 **SECTION 6.** In Colorado Revised Statutes, 8-43-207.5, **amend**
15 (2)(b)(VIII) and (2)(b)(IX); and **add** (2)(b)(X) as follows:

16 **8-43-207.5. Prehearing conferences - rules.** (2) (b) Prehearing
17 administrative law judges have authority to approve any stipulations of
18 the parties and issue interlocutory orders regarding procedural matters.
19 Procedural matters include:

20 (VIII) Determining the ripeness of legal issues for formal
21 adjudication; ~~and~~

22 (IX) Determining the competency of any party to a claim to enter
23 into settlement agreements; AND

24 (X) RESOLVING DISPUTES REGARDING INDIGENCY, THE CONTENT
25 AND FORMAT OF MEDICAL RECORDS SUBMITTED TO AN INDEPENDENT
26 MEDICAL EXAMINER SELECTED PURSUANT TO SECTION 8-42-107.2,
27 INCLUDING WHETHER MEDICAL RECORDS ARE RELEVANT OR DUPLICATIVE,

1 AND THE ALLOCATION OF THE COST OF THE IME TO THE RESPECTIVE
2 PARTIES IN EXCESS OF THE BASE COST.

3 **SECTION 7.** In Colorado Revised Statutes, 8-43-403, **amend** (1)
4 as follows:

5 **8-43-403. Attorney fees.** (1) ~~No~~ A contingent fee shall NOT be
6 applied to any medical benefits that have been previously incurred and
7 will be paid to the claimant or directly to the medical care provider, in a
8 permanent disability award, either by admission or settlement. ~~In the~~
9 ~~event that~~ IF medical benefits are the only contested issue, the fee
10 agreement shall provide for reasonable fees calculated on a per-hour basis
11 or, subject to approval by the director, may provide for a contingent fee
12 not to exceed the limitations imposed by this section. On unappealed
13 contested cases, a contingent fee exceeding ~~twenty~~ TWENTY-FIVE percent
14 of the amount of contested benefits ~~shall be~~ IS presumed to be
15 unreasonable. At the request of either an employee or the employee's
16 attorney, the director shall determine what portion of the benefits awarded
17 were contested, or the reasonableness of the fee charged by such attorney,
18 or both. At the request of the employer or its insurance carrier or the
19 attorney for either of them, the director shall determine the reasonableness
20 of the fee charged by the attorney for the insurance carrier. ~~No~~ THE
21 DIRECTOR SHALL NOT CONSIDER A request for determination of the
22 reasonableness of fees ~~shall be considered by the director~~ if received later
23 than one hundred eighty days after the issuance of the final order,
24 judgment, or opinion disposing of the last material issue in the case and
25 the expiration of any right to review or appeal ~~therefrom~~ THE FINAL
26 ORDER, JUDGMENT, OR OPINION. In making this determination, the director
27 shall consider fees normally charged by attorneys for cases requiring the

1 same amount of time and skill and may decrease or increase the fee
2 payable to such attorney. If the director finds that a review by the
3 industrial claim appeals office or an appeal to the court of appeals or to
4 the supreme court was perfected or if the director finds that such attorney
5 reasonably devoted an extraordinary amount of time to the case, the
6 director may award or approve a contingent fee or other fee in a
7 percentage or amount that exceeds ~~twenty~~ TWENTY-FIVE percent of the
8 amount of contested benefits. In determining the reasonableness of fees
9 charged by an attorney for an employer or employer's insurance carrier,
10 the director shall compare the fees of such attorney with the fees charged
11 by the claimant's attorney in the same case and shall not approve an
12 amount substantially greater than the reasonable amount charged by the
13 said claimant's attorney or, if the claimant did not prevail, the reasonable
14 amount the said claimant's attorney would have charged had the claimant
15 prevailed, unless the director finds, based on a showing by the attorney
16 for the employer or carrier, that higher fees are objectively justifiable.
17 Legal costs not found reasonable shall not be allowed as an expense in
18 fixing premium rates by the commissioner of insurance.

19 **SECTION 8. Appropriation.** (1) For the 2023-24 state fiscal
20 year, \$731,640 is appropriated to the department of labor and employment
21 for use by the division of workers' compensation. This appropriation is
22 from the workers' compensation cash fund created in section 8-44-112
23 (7)(a), C.R.S. To implement this act, the division may use this
24 appropriation as follows:

25 (a) \$661,620 for personal services related to workers'
26 compensation, which amount is based on an assumption that the division
27 will require an additional 7.4 FTE; and

1 (b) \$70,020 for operating expenses related to workers'
2 compensation.

3 **SECTION 9. Act subject to petition - effective date.** This act
4 takes effect at 12:01 a.m. on the day following the expiration of the
5 ninety-day period after final adjournment of the general assembly; except
6 that, if a referendum petition is filed pursuant to section 1 (3) of article V
7 of the state constitution against this act or an item, section, or part of this
8 act within such period, then the act, item, section, or part will not take
9 effect unless approved by the people at the general election to be held in
10 November 2024 and, in such case, will take effect on the date of the
11 official declaration of the vote thereon by the governor.