

CHAPTER 64

LABOR AND INDUSTRY

HOUSE BILL 96-1040

BY REPRESENTATIVES Dean, Jerke, Lamborn, Musgrave, Paschall, Prinzier, Sullivan, and Young;
also SENATORS Dennis, Mutzebaugh, and Norton.

AN ACT

CONCERNING PROCEDURES FOR THE ASSIGNMENT OF MEDICAL IMPAIRMENT RATINGS UNDER THE WORKERS' COMPENSATION SYSTEM WHEN THE AUTHORIZED TREATING PHYSICIAN IS NOT LEVEL II ACCREDITED.

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

SECTION 1. 8-42-101 (3.6) (b) and (3.6) (o), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended to read:

8-42-101. Employer must furnish medical aid - approval of plan - fee schedule - contracting for treatment - no recovery from employee - medical treatment guidelines - accreditation of physicians - repeal. (3.6) (b) ~~On and after January 1, 1993,~~ A physician who provides impairment evaluation of injured workers shall complete and must have received accreditation under the level II accreditation program. **HOWEVER, THE AUTHORIZED TREATING PHYSICIAN PROVIDING PRIMARY CARE NEED NOT BE LEVEL II ACCREDITED TO DETERMINE THAT NO PERMANENT MEDICAL IMPAIRMENT HAS RESULTED FROM THE INJURY.** Specialists who do not render primary care to injured workers and who do not perform impairment evaluations do not require accreditation. The facility where a physician provides such services cannot be accredited.

(o) Except as provided in this subsection (3.6), ~~on and after July 1, 1993,~~ neither an insurance carrier nor a self-insured employer or injured worker shall be liable for costs incurred for ~~services~~ AN IMPAIRMENT EVALUATION rendered by a physician ~~in the impairment evaluation of a patient if such attending~~ WHERE THERE IS A DETERMINATION OF PERMANENT MEDICAL IMPAIRMENT IF SUCH physician is not LEVEL II accredited ~~at a level II accreditation~~ pursuant to the provisions of this subsection (3.6).

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

SECTION 2. 8-42-107 (8) (c), Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended, and the said 8-42-107 (8) is further amended BY THE ADDITION OF A NEW PARAGRAPH, to read:

8-42-107. Permanent partial disability benefits - schedule - medical impairment benefits - how determined. (8) Medical impairment benefits.

(b.5) WHEN AN AUTHORIZED TREATING PHYSICIAN PROVIDING PRIMARY CARE WHO IS NOT ACCREDITED UNDER THE LEVEL II ACCREDITATION PROGRAM PURSUANT TO SECTION 8-42-101 (3.5) MAKES A DETERMINATION THAT AN EMPLOYEE HAS REACHED MAXIMUM MEDICAL IMPROVEMENT, THE FOLLOWING PROCEDURES SHALL APPLY:

(I) (A) IF THE EMPLOYEE IS NOT A STATE RESIDENT UPON REACHING MAXIMUM MEDICAL IMPROVEMENT, SUCH PHYSICIAN SHALL, WITHIN TWENTY DAYS AFTER THE DETERMINATION OF MAXIMUM MEDICAL IMPROVEMENT, DETERMINE WHETHER THE EMPLOYEE HAS SUSTAINED ANY PERMANENT IMPAIRMENT. IF THE EMPLOYEE HAS SUSTAINED ANY PERMANENT IMPAIRMENT, SUCH PHYSICIAN SHALL CONDUCT SUCH TESTS AS ARE REQUIRED BY THE REVISED THIRD EDITION OF THE "AMERICAN MEDICAL ASSOCIATION GUIDES TO THE EVALUATION OF PERMANENT IMPAIRMENT" TO DETERMINE SUCH EMPLOYEE'S MEDICAL IMPAIRMENT RATING AND SHALL TRANSMIT TO THE SELF-INSURED EMPLOYER OR INSURER ALL TEST RESULTS AND ALL RELEVANT MEDICAL INFORMATION.

(B) HOWEVER, IF THE EMPLOYEE CHOOSES NOT TO HAVE THE AUTHORIZED TREATING PHYSICIAN PERFORM SUCH TESTS, OR IF THE INFORMATION IS NOT TRANSMITTED IN A TIMELY MANNER, THE SELF-INSURED EMPLOYER OR INSURER SHALL ARRANGE AND PAY FOR THE EMPLOYEE TO RETURN TO COLORADO FOR EXAMINATION, TESTING, AND RATING, AT THE EXPENSE OF THE SELF-INSURED EMPLOYER OR INSURER. IF THE EMPLOYEE REFUSES TO RETURN TO COLORADO FOR EXAMINATION, NO PERMANENT DISABILITY BENEFITS SHALL BE AWARDED.

(C) THE SELF-INSURED EMPLOYER OR INSURER SHALL, WITHIN TWENTY DAYS AFTER RECEIPT OF THE MEDICAL INFORMATION DESCRIBED IN SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (I), APPOINT A LEVEL II ACCREDITED PHYSICIAN TO DETERMINE THE EMPLOYEE'S MEDICAL IMPAIRMENT RATING. IF THE EMPLOYEE WAS TREATED BY AN AUTHORIZED LEVEL II ACCREDITED PHYSICIAN IN COLORADO FOR THE SAME INJURY FOR WHICH A MEDICAL IMPAIRMENT RATING IS BEING SOUGHT, THE SELF-INSURED EMPLOYER OR INSURER SHALL REQUEST SUCH PHYSICIAN TO DETERMINE THE CLAIMANT'S MEDICAL IMPAIRMENT RATING. AT THE SAME TIME AS SUCH RATING IS TRANSMITTED TO THE SELF-INSURED EMPLOYER OR INSURER, THE LEVEL II PHYSICIAN SHALL TRANSMIT A COPY OF THE SAME TO THE AUTHORIZED TREATING PHYSICIAN AND THE EMPLOYEE.

(D) IF THE EMPLOYEE, INSURER, OR SELF-INSURED EMPLOYER DISPUTES A MEDICAL IMPAIRMENT RATING, INCLUDING A FINDING THAT THERE IS NO MEDICAL IMPAIRMENT, MADE PURSUANT TO SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (I), THE PARTIES TO THE DISPUTE MAY SELECT AN INDEPENDENT MEDICAL EXAMINER BY MUTUAL AGREEMENT TO REVIEW THE RATING. THE FINDINGS OF SUCH INDEPENDENT MEDICAL EXAMINER SHALL BE BINDING ON BOTH PARTIES AND THE DIVISION. IF THE PARTIES ARE UNABLE TO AGREE ON AN INDEPENDENT MEDICAL EXAMINER, THE DIVISION SHALL SELECT AN INDEPENDENT MEDICAL EXAMINER FROM A LIST OF INDEPENDENT MEDICAL EXAMINERS MAINTAINED BY THE DIVISION. THE COST OF

SUCH INDEPENDENT MEDICAL EXAMINATION SHALL BE BORNE BY THE REQUESTING PARTY. THE FINDING OF SUCH INDEPENDENT MEDICAL EXAMINER CONCERNING THE MEDICAL IMPAIRMENT RATING SHALL BE OVERCOME ONLY BY CLEAR AND CONVINCING EVIDENCE. ANY REVIEW BY AN INDEPENDENT MEDICAL EXAMINER SHALL BE BASED ON THE EMPLOYEE'S WRITTEN MEDICAL RECORDS ONLY, WITHOUT FURTHER EXAMINATION, UNLESS A PARTY TO THE DISPUTE REQUESTS THAT SUCH REVIEW INCLUDE A PHYSICAL EXAMINATION BY THE SELECTED INDEPENDENT MEDICAL EXAMINER. THE PARTY REQUESTING A PHYSICAL EXAMINATION SHALL PAY ALL ADDITIONAL COSTS, INCLUDING, IF APPLICABLE, THE REASONABLE COST OF RETURNING THE EMPLOYEE TO COLORADO.

(II) IF THE EMPLOYEE IS A STATE RESIDENT, SUCH PHYSICIAN SHALL, WITHIN TWENTY DAYS AFTER THE DETERMINATION OF MAXIMUM MEDICAL IMPROVEMENT, DETERMINE WHETHER THE EMPLOYEE HAS SUSTAINED ANY PERMANENT IMPAIRMENT. IF THE EMPLOYEE HAS SUSTAINED ANY PERMANENT IMPAIRMENT, SUCH PHYSICIAN SHALL REFER SUCH EMPLOYEE TO A LEVEL II ACCREDITED PHYSICIAN FOR A MEDICAL IMPAIRMENT RATING, WHICH SHALL BE BASED ON THE REVISED THIRD EDITION OF THE "AMERICAN MEDICAL ASSOCIATION GUIDES TO THE EVALUATION OF PERMANENT IMPAIRMENT". IF THE REFERRAL IS NOT TIMELY MADE BY THE AUTHORIZED TREATING PHYSICIAN, THE INSURER OR SELF-INSURED EMPLOYER SHALL REFER THE EMPLOYEE TO A LEVEL II ACCREDITED PHYSICIAN WITHIN FORTY DAYS AFTER THE DETERMINATION OF MAXIMUM MEDICAL IMPROVEMENT. IF THE EMPLOYEE, INSURER, OR SELF-INSURED EMPLOYER DISPUTES THE FINDING REGARDING PERMANENT MEDICAL IMPAIRMENT, INCLUDING A FINDING THAT THERE IS NO PERMANENT MEDICAL IMPAIRMENT, THE PARTIES TO THE DISPUTE MAY SELECT AN INDEPENDENT MEDICAL EXAMINER BY MUTUAL AGREEMENT. THE FINDING OF SUCH INDEPENDENT MEDICAL EXAMINER SHALL BE BINDING ON THE PARTIES AND ON THE DIVISION. IF THE PARTIES ARE UNABLE TO MUTUALLY AGREE ON THE SELECTION OF AN INDEPENDENT MEDICAL EXAMINER, THE DIVISION SHALL MAKE SUCH SELECTION FROM A LIST OF INDEPENDENT MEDICAL EXAMINERS MAINTAINED BY THE DIVISION. THE COST OF SUCH INDEPENDENT MEDICAL EXAMINATION SHALL BE BORNE BY THE REQUESTING PARTY. THE FINDING OF ANY SUCH INDEPENDENT MEDICAL EXAMINER REGARDING A MEDICAL IMPAIRMENT RATING SHALL BE OVERCOME ONLY BY CLEAR AND CONVINCING EVIDENCE.

(c) When the injured employee's date of maximum medical improvement has been determined pursuant to paragraph (b) of this subsection (8), AND THERE IS A DETERMINATION THAT PERMANENT MEDICAL IMPAIRMENT HAS RESULTED FROM THE INJURY, the authorized treating physician shall determine a medical impairment rating as a percentage of the whole person based on the revised third edition of the "American Medical Association Guides to the Evaluation of Permanent Impairment", in effect as of July 1, 1991. ~~On and after April 12, 1993;~~ EXCEPT FOR A DETERMINATION BY THE AUTHORIZED TREATING PHYSICIAN PROVIDING PRIMARY CARE THAT NO PERMANENT MEDICAL IMPAIRMENT HAS RESULTED FROM THE INJURY, any physician who determines a medical impairment rating shall have received accreditation under the level II accreditation program pursuant to section 8-42-101. For purposes of determining levels of medical impairment, the physician shall not render a medical impairment rating based on chronic pain without anatomic or physiologic correlation. Anatomic correlation must be based on objective findings. If either party disputes the authorized treating physician's finding of medical impairment, INCLUDING A FINDING THAT THERE IS NO PERMANENT MEDICAL

IMPAIRMENT, the parties may select an independent medical examiner by mutual agreement. The finding of such independent medical examiner shall be binding on the parties and on the division. If the parties are unable to mutually agree on the selection of an independent medical examiner, the division shall select an independent medical examiner from a list of independent medical examiners maintained by the division. THE COST OF SUCH INDEPENDENT MEDICAL EXAMINATION SHALL BE BORNE BY THE REQUESTING PARTY. The finding of such independent medical examiner regarding the medical impairment rating shall be overcome only by clear and convincing evidence. A hearing on this matter shall not take place until the finding of the independent medical examiner selected by the director has been filed with the division.

SECTION 3. 8-43-404, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

8-43-404. Examination - refusal - personal responsibility - physicians to testify and furnish results. (8) UPON REQUEST BY AN EMPLOYEE WHO HAS NOT REACHED MAXIMUM MEDICAL IMPROVEMENT AND WHOSE AUTHORIZED TREATING PHYSICIAN IS NOT LEVEL II ACCREDITED, AN INSURER OR SELF-INSURED EMPLOYER SHALL SELECT A LEVEL II ACCREDITED PHYSICIAN AS THE AUTHORIZED TREATING PHYSICIAN.

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: April 8, 1996