

CHAPTER 259

LABOR AND INDUSTRY

SENATE BILL 03-240

BY SENATOR(S) McElhany, Arnold, Cairns, Jones, Kester, and May R.;
also REPRESENTATIVE(S) McCluskey and Lundberg.

AN ACT**CONCERNING THE SELECTION PROCESS FOR AN INDEPENDENT MEDICAL EXAMINER IN WORKERS' COMPENSATION CASES.**

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

SECTION 1. 8-42-107 (8) (b.5) (I) (D), (8) (b.5) (II), and (8) (c), Colorado Revised Statutes, are amended to read:

8-42-107. Permanent partial disability benefits - schedule - medical impairment benefits - how determined. (8) Medical impairment benefits - determination of MMI for scheduled and nonscheduled injuries. (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) (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 in accordance with section 8-42-107.2 to review the rating. The cost of such independent medical examination shall be borne by the requesting party. The finding of such independent medical examiner 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 independent medical examiner. EXCEPT WHEN THE PROVISIONS OF SECTION 8-42-107.2 (5) (b) APPLY, the party requesting a physical examination shall pay all additional costs, including, if applicable, the reasonable cost of returning the employee to Colorado.

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

(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 in accordance with section 8-42-107.2. ~~The cost of such independent medical examination shall be borne by the requesting party.~~ The finding of any such independent medical examiner 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. 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 in accordance with section 8-42-107.2. ~~The cost of such independent medical examination shall be borne by the requesting party.~~ The finding of such independent medical examiner 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 has been filed with the division.

SECTION 2. 8-42-107.2 (3) and (5), Colorado Revised Statutes, are amended to read:

8-42-107.2. Selection of independent medical examiner - procedure - time - applicability. (3) (a) Upon receiving the requesting party's notice and proposal pursuant to subsection (2) of this section, the other parties have until the end of the thirtieth day after the date of mailing of such notice and proposal within which to negotiate the selection of AND SELECT AN IME, BUT SHALL NOT SELECT AN IME EARLIER THAN THE FOURTEENTH DAY AFTER THE DAY SUCH NOTICE IS MAILED. If the parties agree on an IME on or before such thirtieth day, the requesting party shall promptly notify the IME in writing that he or she has been selected. If, within such time, the parties are unable to agree or the requesting party receives no response to

the notice and proposal, the insurer or self-insured employer shall give written notice of such fact to the division within thirty days via United States mail, first-class postage paid. The division shall then, within ten days after receiving such written notice, select ~~only one IME from a list of IMEs~~ THREE PHYSICIANS BY A REVOLVING SELECTION PROCESS ESTABLISHED BY THE DIVISION FROM THE LIST OF PHYSICIANS maintained by the division. The division shall administer the list in such fashion as to ensure that the names of candidates to serve as IME in each pending case remain confidential until the IME is selected. ~~and that selections are random from the pool of IME candidates.~~ THE DIRECTOR OF THE DIVISION SHALL PROMULGATE RULES TO IMPLEMENT THE PROCESS OF SELECTING A PANEL OF THREE PHYSICIANS FROM WHICH THE PARTIES MAY SELECT A PHYSICIAN TO CONDUCT A DIVISION INDEPENDENT MEDICAL EXAMINATION. THE SELECTION OF A PHYSICIAN PANEL SHALL BE BASED ON VARIOUS FACTORS, INCLUDING, BUT NOT LIMITED TO, THE DESIGNATION BY RULE OF THE FIELDS OF SPECIALIZATION AUTHORIZED TO PERFORM INDEPENDENT MEDICAL EXAMINATIONS FOR CONDITIONS LISTED UNDER EACH MEDICAL TREATMENT GUIDELINE AND MEASURES TO PREVENT THE OVER-UTILIZATION OF PHYSICIANS OR SPECIALISTS. THE REQUESTING PARTY SHALL HAVE THE OPPORTUNITY TO STRIKE ONE OF THE THREE PHYSICIANS FROM THE LIST, FOLLOWED BY THE OPPOSING PARTY WHO SHALL THEN BE GIVEN THE OPPORTUNITY TO STRIKE ONE PHYSICIAN FROM THE LIST. THE REMAINING IME PHYSICIAN SHALL BE DESIGNATED BY THE DIVISION TO CONDUCT THE IME. IF ONE OR NEITHER PARTY STRIKES A PHYSICIAN FROM THE LIST, THE DIVISION SHALL SELECT THE PHYSICIAN TO CONDUCT THE IME FROM THE REMAINING PHYSICIANS ON THE LIST.

(b) UPON SELECTION OF THE IME, THE INSURANCE CARRIER SHALL PROVIDE TO THE IME AND ALL OTHER PARTIES A COMPLETE COPY OF ALL MEDICAL RECORDS IN ITS POSSESSION PERTAINING TO THE SUBJECT INJURY, POSTMARKED OR HAND-DELIVERED WITHIN FOURTEEN DAYS PRIOR TO THE INDEPENDENT MEDICAL EXAMINATION. IF THE INSURANCE CARRIER OR ITS REPRESENTATIVE FAILS TO TIMELY SUBMIT SUCH MEDICAL RECORDS, THE CLAIMANT MAY REQUEST THAT THE DIVISION CANCEL THE INDEPENDENT MEDICAL EXAMINATION OR THE CLAIMANT MAY SUBMIT ALL THE MEDICAL RECORDS HE OR SHE HAS AVAILABLE WITHIN TEN DAYS PRIOR TO THE INDEPENDENT MEDICAL EXAMINATION, OR AS OTHERWISE ARRANGED BY THE DIVISION WITH THE IME. IF THE CLAIMANT SUBMITS MEDICAL RECORDS, THE DEFAULTING PARTY MAY SUPPLEMENT SUCH RECORDS PURSUANT TO RULES OF THE DIVISION. THIS PARAGRAPH (b) SHALL NOT BE CONSTRUED TO PROHIBIT AN INDEPENDENT MEDICAL EXAMINATION FROM BEING RESCHEDULED.

(c) ANY SUPPLEMENTAL MEDICAL RECORDS SHALL BE PREPARED ACCORDING TO THE RULES OF THE DIVISION AND SHALL BE SUBMITTED TO THE IME AND ALL OTHER PARTIES NO LATER THAN SEVEN DAYS PRIOR TO THE INDEPENDENT MEDICAL EXAMINATION.

(5) (a) EXCEPT AS PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (5), the requesting party shall advance the full cost of the independent medical examination to the IME at least ten days before the appointed time for the examination.

(b) A CLAIMANT WHO HAS ESTABLISHED THAT HE OR SHE IS INDIGENT SHALL RECEIVE AN INDEPENDENT MEDICAL EXAMINATION WITHOUT HAVING TO ADVANCE THE COST TO THE INDEPENDENT MEDICAL EXAMINER. THE DIRECTOR OF THE DIVISION OF WORKERS' COMPENSATION SHALL PROMULGATE RULES TO ESTABLISH A

PROCEDURE TO DETERMINE INDIGENCE.

SECTION 3. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution; except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: May 14, 2003