

CHAPTER 341

LABOR AND INDUSTRY

SENATE BILL 07-258

BY SENATOR(S) Groff, Boyd, Romer, and Tochtrop;
also REPRESENTATIVE(S) Rice, Carroll M., Casso, Frangas, Labuda, and Marshall.

AN ACT

CONCERNING WORKERS' COMPENSATION, AND MAKING AN APPROPRIATION THEREFOR.

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

SECTION 1. 8-42-101 (3) (a) (I) and (3.6) (k), Colorado Revised Statutes, 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) (a) (I) The director shall establish a schedule fixing the fees for which all medical, surgical, hospital, dental, nursing, ~~and~~ vocational rehabilitation, AND MEDICAL SERVICES, WHETHER RELATED TO treatment ~~rendered~~ OR NOT, PERTAINING to INJURED employees under this section shall be compensated, and it is unlawful, void, and unenforceable as a debt for any physician, chiropractor, hospital, person, EXPERT WITNESS, REVIEWER, EVALUATOR, or institution to contract with, bill, or charge any patient for services, rendered in connection with injuries coming within the purview of this article or an applicable fee schedule, which are or may be in excess of said fee schedule unless such charges are approved by the director. Fee schedules shall be reviewed on or before July 1 of each year by the director, and appropriate health care practitioners shall be given a reasonable opportunity to be heard as required pursuant to section 24-4-103, C.R.S., prior to fixing the fees, impairment rating guidelines, which shall be 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, and medical treatment guidelines and utilization standards. Fee schedules established pursuant to this subparagraph (I) shall take effect on January 1. The director shall promulgate rules concerning reporting requirements, penalties for failure to report correctly or in a timely manner, utilization control requirements for services provided under this section, and the accreditation process in subsection

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

(3.6) of this section.

(3.6) The two-tier accreditation system shall comprise the following programs:

(k) The division shall make available to insurers, CLAIMANTS, AND EMPLOYERS a list of all accredited physicians and a list of all physicians whose accreditation has been revoked. Such lists shall be updated on a monthly basis.

SECTION 2. 8-42-107 (8) (d), Colorado Revised Statutes, is 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.** (d) Medical impairment benefits shall be determined by multiplying the medical impairment rating determined pursuant to paragraph (c) of this subsection (8) by the age factor determined pursuant to paragraph (e) of this subsection (8) and by four hundred weeks and shall be calculated at the temporary total disability rate specified in section 8-42-105. Up to ten thousand dollars of the total amount of any such award OR SCHEDULED AWARD shall be automatically paid in a lump sum less the discount as calculated in section 8-43-406 upon the injured employee's written request to the employer or, if insured, to the employer's insurance carrier. The remaining periodic payments of any such award, after subtracting the total amount of the lump sum requested by the employee without subtracting the discount calculated in section 8-43-406, shall be paid at the temporary total disability rate but not less than one hundred fifty dollars per week and not more than fifty percent of the state average weekly wage, beginning on the date of maximum medical improvement.

SECTION 3. 8-42-107.2 (3) (a), Colorado Revised Statutes, is 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 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 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. 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.

SECTION 4. 8-43-209, Colorado Revised Statutes, is amended to read:

8-43-209. Time schedule for hearings - establishment. (1) ~~The director of the office of administrative courts shall establish a time schedule for hearings by administrative law judges within the time limits for the hearings as established in this section.~~ Hearings shall ~~be heard~~ COMMENCE within ~~eighty to one hundred days~~ after the ~~occurrences listed in~~ HEARING IS SET PURSUANT TO section 8-43-211 (2). One extension of time TO COMMENCE THE HEARING of no more than sixty days shall be granted by an administrative law judge upon agreement of the parties.

(2) One extension of time TO COMMENCE THE HEARING of no more than sixty days may be granted by an administrative law judge upon written request by any party to the case and for good cause shown, in the following cases: When pulmonary lung disease, cancer, cardiovascular disease, or stroke is alleged as the cause of the disability; when the subsequent injury fund is a party; when permanent total disability is alleged; upon agreement of the parties; or when compensability of the injury is contested. In all other cases, extensions of time TO COMMENCE THE HEARING of no more than twenty days may be granted by an administrative law judge upon written request by any party to the case and for good cause shown. ~~Such extensions may be granted only when the interests of all parties will be served.~~

(3) ONCE THE HEARING IS COMMENCED, THE ADMINISTRATIVE LAW JUDGE MAY, FOR GOOD CAUSE SHOWN, CONTINUE THE HEARING TO A DATE CERTAIN TO TAKE ADDITIONAL TESTIMONY, TO FILE AN ADDITIONAL MEDICAL REPORT, TO FILE THE TRANSCRIPT OF A DEPOSITION, OR TO FILE A POSITION STATEMENT. EXCEPT UPON THE AGREEMENT OF ALL PARTIES OR FOR GOOD CAUSE SHOWN, A CONTINUANCE TO COMPLETE A HEARING SHALL NOT EXCEED THIRTY CALENDAR DAYS.

SECTION 5. 8-43-210, Colorado Revised Statutes, is amended to read:

8-43-210. Evidence. Notwithstanding section 24-4-105, C.R.S., the Colorado rules of evidence and requirements of proof for civil nonjury cases in the district courts shall apply in all hearings; except that medical and hospital records, physicians' reports, vocational reports, and records of the employer are admissible as evidence and can be filed in the record as evidence without formal identification if relevant to any issue in the case. Depositions may be substituted for testimony upon good cause shown. Convictions for alcohol-related offenses, pursuant to ~~title 42 and title 18~~ TITLES 18 AND 42, C.R.S., the transcripts of proceedings leading to such convictions, and the court files relating to such convictions may be admissible in all hearings conducted under the "Workers' Compensation Act of Colorado", ARTICLES 40 TO 47 OF THIS TITLE, where such conviction resulted from the same occurrence, accident, or injury occurring on the job that forms the basis for the workers' compensation claim. ALL RELEVANT MEDICAL RECORDS, VOCATIONAL REPORTS, EXPERT WITNESS REPORTS, AND EMPLOYER RECORDS SHALL BE

EXCHANGED WITH ALL OTHER PARTIES AT LEAST TWENTY DAYS PRIOR TO THE HEARING DATE.

SECTION 6. 8-43-211 (2) (e), Colorado Revised Statutes, is amended to read:

8-43-211. Notice - request for hearing. (2) Hearings shall be set by the office of administrative courts in the department of personnel within eighty to one hundred days after any of the following occur:

(e) Except in claims in which compensability is contested OR A HEARING IS REQUESTED IN RESPONSE TO A FINAL ADMISSION OF LIABILITY OR TO OVERCOME A CONCLUSION IN A DIVISION-SPONSORED INDEPENDENT MEDICAL EXAMINATION, the party filing an application for a hearing shall certify on the application that the party attempted to resolve with the other parties all issues listed in the application for a hearing.

SECTION 7. 8-43-215 (1), Colorado Revised Statutes, is amended to read:

8-43-215. Orders. (1) ~~Any hearing conducted under this article shall be completed within one hundred twenty days, or in the case where an extension of time of sixty days is allowable under the provisions of section 8-43-209, one hundred sixty days, after a request therefor pursuant to section 8-43-211 (2). At the~~ NO MORE THAN FIFTEEN WORKING DAYS AFTER THE conclusion of a hearing, the administrative law judge or director shall issue a written order allowing or denying said claim. Such written order shall EITHER BE A SUMMARY ORDER OR A FULL ORDER. A FULL ORDER SHALL contain specific findings of fact and conclusions of law. If compensation benefits are granted, such written order shall specify the amounts thereof, the disability for which compensation benefits are granted, by whom and to whom such benefits shall be paid, and the method and time of such payments. ~~Such written order shall be issued within thirty calendar days after the conclusion of such hearing, and~~ A certificate of mailing and a copy of such written order shall be ~~mailed,~~ SERVED by regular or electronic mail OR BY FACSIMILE to each of the parties in interest OR THEIR REPRESENTATIVES, the original of which shall be a part of the records in said case. ~~Such written order~~ IF AN ADMINISTRATIVE LAW JUDGE HAS ISSUED A SUMMARY ORDER, A PARTY DISSATISFIED WITH THE ORDER MAY MAKE A WRITTEN REQUEST FOR A FULL ORDER WITHIN SEVEN WORKING DAYS AFTER THE DATE OF MAILING OF THE SUMMARY ORDER. THE REQUEST SHALL BE A PREREQUISITE TO REVIEW UNDER SECTION 8-43-201. IF A REQUEST FOR A FULL ORDER IS MADE, THE ADMINISTRATIVE LAW JUDGE SHALL HAVE TEN WORKING DAYS AFTER RECEIPT OF THE REQUEST TO ISSUE THE ORDER. A FULL ORDER shall be entered as the final award of the administrative law judge or director subject to review as provided in this article.

SECTION 8. 8-43-303, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

8-43-303. Reopening. (4) THE PARTY ATTEMPTING TO REOPEN AN ISSUE OR CLAIM SHALL BEAR THE BURDEN OF PROOF AS TO ANY ISSUES SOUGHT TO BE REOPENED.

SECTION 9. 8-43-406, Colorado Revised Statutes, is amended to read:

8-43-406. Compensation in lump sum. (1) At any time after six months have elapsed from the date of injury, ~~the director, in the exercise of discretion, after five days' prior notice to the parties, may order payment of~~ THE CLAIMANT MAY ELECT TO TAKE all or any part of the compensation awarded in a lump sum ~~or in such manner as the director may determine to be for the best interests of the parties concerned, and the director's order shall be final and not subject to review. When payment in a lump sum is ordered,~~ BY SENDING WRITTEN NOTICE OF THE ELECTION AND THE AMOUNT OF BENEFITS REQUESTED TO THE CARRIER OR THE NONINSURED OR SELF-INSURED EMPLOYER. THE CARRIER OR SELF-INSURED EMPLOYER SHALL FILE THE CALCULATION OF THE LUMP SUM DUE AND NOTICE THAT THE LUMP SUM HAS BEEN PAID TO THE CLAIMANT WITHIN TEN DAYS AFTER THE ELECTION. WHEN THE CLAIMANT IS UNREPRESENTED, the director shall ~~fix the amount~~ CALCULATE AMOUNTS to be paid based on the present worth of partial payments, considering interest at four percent per annum, and less a deduction for the contingency of death. THE DIRECTOR SHALL MAKE THE METHOD OF CALCULATION OF LUMP SUMS AVAILABLE TO ALL PARTIES AT ALL TIMES, INCLUDING POSTING THE INFORMATION ON THE DIVISION'S WEBSITE.

(2) The aggregate of all lump sums granted to a claimant who has been awarded compensation ~~by the director for permanent total disability or death benefits shall not exceed thirty-seven SIXTY thousand five hundred sixty dollars. In the case of permanent partial disability, the director shall order payment upon application by the employee not to exceed thirty-seven thousand five hundred sixty dollars to be paid based on the present worth of partial payments, considering interest at four percent per annum.~~

SECTION 10. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the workers' compensation cash fund created in section 8-44-112 (7), Colorado Revised Statutes, not otherwise appropriated, to the department of labor and employment, for allocation to the workers' compensation division, for administrative law judge services, for the fiscal year beginning July 1, 2007, the sum of three thousand five hundred two dollars (\$3,502), or so much thereof as may be necessary, for the implementation of this act.

(2) In addition to any other appropriation, there is hereby appropriated to the department of personnel, division of administrative courts, for operating expenses, for the fiscal year beginning July 1, 2007, the sum of three thousand five hundred two dollars (\$3,502), or so much thereof as may be necessary, for the provision of administrative law judge services to the department of labor and employment related to the implementation of this act. Said sum shall be from cash funds exempt received from the department of labor and employment out of the appropriation made in subsection (1) of this section.

SECTION 11. 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: May 30, 2007