CHAPTER 357

LABOR AND INDUSTRY

SENATE BILL 08-241

BY SENATOR(S) Tochtrop, and Boyd;
also REPRESENTATIVE(S) Marshall, Frangas, Gagliardi, Green, and Madden.

AN ACT

CONCERNING CLAIMS MADE UNDER THE "WORKERS' COMPENSATION ACT OF COLORADO" FOR WORK-RELATED INJURIES.

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

SECTION 1. 8-42-101 (1) (b) and (3) (a) (I), 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 - rules - repeal. (1) (b) In all cases where the injury results in the loss of a member or part of the employee's body, loss of teeth, loss of vision or hearing, or damage to an existing prosthetic device, the employer shall furnish within the limits of the medical benefits provided in paragraph (a) of this subsection (1) ~~one~~ artificial ~~member~~ MEMBERS, glasses, ~~a~~ hearing ~~aid, a brace~~ AIDS, BRACES, and ~~any~~ other external prosthetic ~~device~~ DEVICES, including dentures, which are reasonably required to replace or improve the function of each member or part of the body or prosthetic device so affected or to improve the employee's vision or hearing. The employee may petition the division for a replacement of any artificial member, glasses, hearing aid, brace, or other external prosthetic device, including dentures, upon grounds that the employee has undergone an anatomical change since the previous device was furnished ~~and~~ OR FOR OTHER GOOD CAUSE SHOWN, that the anatomical change OR GOOD CAUSE is directly related to and caused by the injury, and that the replacement is necessary to improve the function of each member or part of the body so affected or to relieve pain and discomfort. Implants or devices necessary to regulate the operation of, or to replace, with implantable devices, internal organs or structures of the body may be replaced when the authorized treating physician deems it necessary. Every employer subject to the terms and provisions of articles 40 to 47 of this title must

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

insure against liability for the medical, surgical, and hospital expenses provided for in this article, unless permission is given by the director to such employer to operate under a medical plan, as set forth in subsection (2) of this section.

(3) (a) (I) The director shall establish a schedule fixing the fees for which all medical, surgical, hospital, dental, nursing, vocational rehabilitation, and medical services, whether related to treatment 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~~ PARTY 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 (3.6) of this section.

SECTION 2. 8-42-104 (2), Colorado Revised Statutes, is amended, and the said 8-42-104 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

8-42-104. Effect of previous injury or compensation. (2) ~~(a) In cases of permanent total disability, when there is a previous disability, the percentage of disability for a subsequent injury shall be determined by computing the percentage of the entire disability and deducting therefrom the percentage of the previous disability as it existed at the time of the subsequent injury. In such cases awards shall be based on said computed percentage.~~

~~(b) When benefits are awarded pursuant to section 8-42-107, an award of benefits for an injury shall exclude any previous impairment to the same body part.~~

~~(c) This subsection (2) shall apply to permanent total and permanent partial disability awards; except that this subsection (2) shall not apply to cases in which the provisions of section 8-46-101 are applicable.~~

(3) AN EMPLOYEE'S TEMPORARY TOTAL DISABILITY, TEMPORARY PARTIAL DISABILITY, OR MEDICAL BENEFITS SHALL NOT BE REDUCED BASED ON A PREVIOUS INJURY.

(4) AN EMPLOYEE'S RECOVERY OF PERMANENT TOTAL DISABILITY SHALL NOT BE REDUCED WHEN THE DISABILITY IS THE RESULT OF WORK-RELATED INJURY OR WORK-RELATED INJURY COMBINED WITH GENETIC, CONGENITAL, OR SIMILAR CONDITIONS; EXCEPT THAT THIS SUBSECTION (4) SHALL NOT APPLY TO REDUCTIONS

IN RECOVERY OR APPORTIONMENTS ALLOWED PURSUANT TO THE COLORADO SUPREME COURT'S DECISION IN THE CASE DENOMINATED *ANDERSON V. BRINKHOFF*, 859 P.2d 819, (COLO. 1993).

(5) IN CASES OF PERMANENT MEDICAL IMPAIRMENT, THE EMPLOYEE'S AWARD OR SETTLEMENT SHALL BE REDUCED:

(a) WHEN AN EMPLOYEE HAS SUFFERED MORE THAN ONE PERMANENT MEDICAL IMPAIRMENT TO THE SAME BODY PART AND HAS RECEIVED AN AWARD OR SETTLEMENT UNDER THE "WORKERS' COMPENSATION ACT OF COLORADO" OR A SIMILAR ACT FROM ANOTHER STATE. THE PERMANENT MEDICAL IMPAIRMENT RATING APPLICABLE TO THE PREVIOUS INJURY TO THE SAME BODY PART, ESTABLISHED BY AWARD OR SETTLEMENT, SHALL BE DEDUCTED FROM THE PERMANENT MEDICAL IMPAIRMENT RATING FOR THE SUBSEQUENT INJURY TO THE SAME BODY PART.

(b) WHEN AN EMPLOYEE HAS A NON-WORK-RELATED PREVIOUS PERMANENT MEDICAL IMPAIRMENT TO THE SAME BODY PART THAT HAS BEEN IDENTIFIED, TREATED, AND, AT THE TIME OF THE SUBSEQUENT COMPENSABLE INJURY, IS INDEPENDENTLY DISABLING. THE PERCENTAGE OF THE NON-WORK-RELATED PERMANENT MEDICAL IMPAIRMENT EXISTING AT THE TIME OF THE SUBSEQUENT INJURY TO THE SAME BODY PART SHALL BE DEDUCTED FROM THE PERMANENT MEDICAL IMPAIRMENT RATING FOR THE SUBSEQUENT COMPENSABLE INJURY.

(6) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PRECLUDE EMPLOYERS OR INSURERS FROM SEEKING CONTRIBUTION OR REIMBURSEMENT, AS PERMITTED BY LAW, FROM OTHER EMPLOYERS OR INSURERS FOR BENEFITS PAID TO OR FOR AN INJURED EMPLOYEE AS LONG AS THE EMPLOYEE'S BENEFITS ARE NOT REDUCED OR OTHERWISE AFFECTED BY SUCH CONTRIBUTION OR REIMBURSEMENT.

SECTION 3. Effective date - applicability. This act shall take effect July 1, 2008, and shall apply to injuries occurring on or after said date.

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: June 2, 2008