

CHAPTER 477

LABOR AND INDUSTRY

HOUSE BILL 22-1347

BY REPRESENTATIVE(S) Daugherty, Bacon, Bernett, Bird, Boesenecker, Duran, Exum, Gonzales-Gutierrez, Gray, Herod, Jodeh, Lindsay, Mullica, Titone, Weissman, Woodrow, Hooton, McCluskie, Michaelson Jenet, Ricks, Sirota; also SENATOR(S) Rodriguez, Danielson, Gonzales, Hinrichsen, Lee, Moreno, Pettersen, Story.

AN ACT

CONCERNING WORKERS' COMPENSATION, AND, IN CONNECTION THEREWITH, INCREASING FUNERAL BENEFITS, ALLOWING FOR ADVANCE MILEAGE EXPENSE PAYMENTS, ADDRESSING THE PAYMENT OF SCHEDULED RATINGS, AND REQUIRING REPORTING OF CERTAIN ACTIVE MEDICAL TREATMENTS.

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

SECTION 1. In Colorado Revised Statutes, 8-42-101, **amend** (7) as follows:

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 and other medical providers - mileage reimbursement - rules - definition - repeal. (7) (a) EXCEPT AS PROVIDED IN SUBSECTIONS (7)(b) AND (7)(c) OF THIS SECTION, a claimant must submit a request for mileage expense reimbursement for travel reasonably necessary and related to obtaining compensable treatment, supplies, or services specified in subsection (1)(a) of this section to the employer or, if insured, to the employer's insurer no later than one hundred twenty days after the date the expense is incurred, unless good cause for a later submission is shown. Good cause includes a failure by the employer or employer's insurer to provide the notice in the brochure required by section 8-43-203 (3)(c)(IV). Within thirty days after the date the claimant submits the request for mileage expense reimbursement, the employer or employer's insurer shall pay the mileage expenses or, if denying the request, provide written notice to the claimant stating the reason the request was denied.

(b) WITHIN SEVEN DAYS AFTER THE DATE OF RECEIPT OF A CLAIMANT'S WRITTEN REQUEST FOR ADVANCE MILEAGE EXPENSES FOR TRAVEL THAT IS REASONABLY NECESSARY AND RELATED TO OBTAINING COMPENSABLE TREATMENT, SUPPLIES, OR

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

SERVICES SPECIFIED IN SUBSECTION (1)(a) OF THIS SECTION AND REQUIRES ROUND-TRIP TRAVEL GREATER THAN ONE HUNDRED MILES, THE EMPLOYER OR THE EMPLOYER'S INSURER SHALL PAY THE ADVANCE MILEAGE EXPENSES OR, IF DENYING THE REQUEST, PROVIDE WRITTEN NOTICE TO THE CLAIMANT STATING THE REASON THE REQUEST WAS DENIED.

(c) IF ADVANCE MILEAGE EXPENSE PAYMENT IS MADE PURSUANT TO THIS SUBSECTION (7), AND THE SPECIFIC TRAVEL FOR WHICH PAYMENT WAS PROVIDED DOES NOT OCCUR, THE EMPLOYER OR, IF INSURED, THE EMPLOYER'S INSURER IS ENTITLED TO A CREDIT IN THE AMOUNT OF THE PAYMENT TO BE APPLIED AGAINST LIABILITY FOR ANY FUTURE MILEAGE EXPENSE REIMBURSEMENTS.

SECTION 2. In Colorado Revised Statutes, 8-42-107, **amend** (1)(b), (8)(a), and (8)(c.5); and **add** (7)(b)(IV) as follows:

8-42-107. Permanent partial disability benefits - schedule - medical impairment benefits - how determined. (1) **Benefits available.** (b) When an injury results in permanent medical impairment and the employee has an injury or injuries not LISTED on the schedule specified in subsection (2) of this section, the employee ~~shall be~~ is limited to medical impairment benefits as specified in subsection (8) of this section, EXCEPT AS PROVIDED IN SUBSECTION (7)(b)(IV) OF THIS SECTION.

(7) (b) (IV) WHEN AN EMPLOYEE SUSTAINS AN INJURY ON THE SCHEDULE OF INJURIES LISTED IN SUBSECTION (2) OF THIS SECTION THAT MAY ALSO BE COMPENSATED AS SPECIFIED IN SUBSECTION (8) OF THIS SECTION, IF THE AMOUNT OF COMPENSATION FOR MEDICAL IMPAIRMENT WHEN USING THE SCHEDULE OF INJURIES IN SUBSECTION (2) OF THIS SECTION WOULD BE GREATER THAN THE NONSCHEDULED IMPAIRMENT BENEFITS IN SUBSECTION (8) OF THIS SECTION, THEN THE EMPLOYEE IS ENTITLED TO THE COMPENSATION SPECIFIED IN SUBSECTION (2) OF THIS SECTION.

(8) **Medical impairment benefits - determination of MMI for scheduled and nonscheduled injuries.** (a) When an injury results in permanent medical impairment not set forth in the schedule in subsection (2) of this section, the employee ~~shall be~~ is limited to medical impairment benefits calculated as provided in this subsection (8), EXCEPT AS PROVIDED IN SUBSECTION (7)(b)(IV) OF THIS SECTION. The procedures for determination of maximum medical improvement set forth in ~~paragraph (b) of this subsection (8) shall be~~ SUBSECTION (8)(b) OF THIS SECTION ARE AVAILABLE IN CASES OF INJURIES SET FORTH IN THE SCHEDULE IN SUBSECTION (2) OF THIS SECTION AND ALSO IN CASES OF INJURIES THAT ARE NOT SET FORTH IN SAID SCHEDULE.

(c.5) When an injury results in the total loss or total loss of use of an arm at the shoulder, a forearm at the elbow, a hand at the wrist, a leg at the hip or so near thereto as to preclude the use of an artificial limb, the loss of a leg at or above the knee where the stump remains sufficient to permit the use of an artificial limb, a foot at the ankle, an eye, or a combination of any such losses, the benefits for such loss shall be determined pursuant to this subsection (8), EXCEPT AS PROVIDED IN SUBSECTION (7)(b)(IV) OF THIS SECTION.

SECTION 3. In Colorado Revised Statutes, **amend** 8-42-123 as follows:

8-42-123. Funeral and burial expenses. (1) When, as a proximate result of an injury, death occurs to an injured employee, there shall be paid in one lump sum within thirty days after death a sum not to exceed ~~seven thousand~~ TWELVE THOUSAND FIVE HUNDRED dollars for ~~reasonable~~ funeral and burial expenses. Said sum may be paid to the ~~undertaker, cemetery,~~ PERSON PROVIDING FUNERAL OR BURIAL SERVICES or any other person who has paid the funeral and burial costs. ~~if the director so orders.~~ If the employee leaves no dependents, compensation ~~shall be~~ IS limited to said sum and the compensation ~~if any, which has~~ THAT MAY HAVE accrued ~~to date of death and~~ OR BEEN PAID TO THE DECEASED EMPLOYEE DURING THE DECEASED EMPLOYEE'S LIFETIME FOR DISABILITY; the medical, surgical, and hospital expenses provided in articles 40 to 47 of this ~~title~~ TITLE 8; AND ANY AMOUNT OR PAYMENT DUE UNDER SECTION 8-46-101. If the deceased employee leaves dependents, said sum shall be paid in addition to all other sums of compensation provided for in this ~~article~~ ARTICLE 42.

(2) ON JULY 1, 2023, AND EACH JULY 1 THEREAFTER, THE DIRECTOR SHALL ADJUST THE MAXIMUM AMOUNT PAYABLE FOR FUNERAL AND BURIAL EXPENSES PROVIDED IN SUBSECTION (1) OF THIS SECTION BY THE PERCENTAGE OF THE ADJUSTMENT MADE BY THE DIRECTOR TO THE STATE AVERAGE WEEKLY WAGE PURSUANT TO SECTION 8-47-106.

SECTION 4. In Colorado Revised Statutes, 8-43-101, **amend** (1) as follows:

8-43-101. Record of injuries - occupational disease - reported to division - rules - definition. (1) (a) Every employer shall keep a record of: All EMPLOYEE injuries that result in fatality, ~~to, or~~ permanent physical impairment, ~~of, or~~ lost time from work ~~for the injured employee~~ in excess of three shifts or calendar days, OR ACTIVE MEDICAL TREATMENT FOR A PERIOD OF MORE THAN ONE HUNDRED EIGHTY CALENDAR DAYS AFTER THE DATE THE INJURY WAS FIRST REPORTED TO THE EMPLOYER; and the contraction by an employee of an occupational disease that has been listed by the director by rule. Within ten days after notice or knowledge that an employee has contracted such an occupational disease; ~~or the occurrence of a permanently physically impairing injury or~~ OF AN INJURY THAT RESULTS IN PERMANENT PHYSICAL IMPAIRMENT, OF A lost-time injury, ~~to an employee;~~ OR OF AN INJURY THAT RESULTS IN ACTIVE MEDICAL TREATMENT FOR A PERIOD OF MORE THAN ONE HUNDRED EIGHTY CALENDAR DAYS AFTER THE DATE THE INJURY WAS FIRST REPORTED TO THE EMPLOYER, or immediately in the case of a fatality, the employer shall, upon forms prescribed by the division for that purpose, report TO THE DIVISION said occupational disease, permanently physically impairing injury, lost-time injury, INJURY REQUIRING ACTIVE MEDICAL TREATMENT FOR A PERIOD OF MORE THAN ONE HUNDRED EIGHTY CALENDAR DAYS AFTER THE DATE THE INJURY WAS FIRST REPORTED TO THE EMPLOYER, or fatality. ~~to the division.~~ The report ~~shall~~ MUST contain ~~such~~ THE information ~~as shall be~~ required by the director.

(b) AS USED IN THIS SUBSECTION (1), "ACTIVE MEDICAL TREATMENT":

(I) MEANS TREATMENT THAT IS DETERMINED BY AN AUTHORIZED TREATING PHYSICIAN TO BE REASONABLY NECESSARY TO CURE AND RELIEVE THE INJURY AND THAT REQUIRES ONGOING SUPERVISION BY AN AUTHORIZED TREATING PHYSICIAN AS DOCUMENTED BY WRITTEN MEDICAL REPORT;

(II) DOES NOT INCLUDE TREATMENT THAT IS NOT REASONABLY EXPECTED TO IMPROVE THE CONDITION OR ANY TREATMENT THAT DOES NOT REQUIRE THE SUPERVISION OF A LICENSED PHYSICIAN, INCLUDING GYM OR POOL MEMBERSHIPS OR HOME EXERCISE PROGRAMS; AND

(III) TERMINATES WHEN THERE HAS BEEN AN ABANDONMENT OF CARE OR DISCHARGE FROM CARE FOR NONCOMPLIANCE PRIOR TO EXPIRATION OF THE ONE-HUNDRED-EIGHTY-DAY PERIOD SET FORTH IN SUBSECTION (1)(a) OF THIS SECTION.

SECTION 5. In Colorado Revised Statutes, 8-44-206, **amend** (3)(a), (4)(a), and (5); and **repeal** (2) as follows:

8-44-206. Guaranty fund - immediate payment fund. (2) ~~Creation of special funds board—duties.~~ (a) ~~For the purposes of carrying out this section, there is hereby created a special funds board which shall exercise its powers and perform its duties and functions as specified in this subsection (2) under the department of labor and employment as if the same were transferred to the department by a type 2 transfer as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S. Said board shall be composed of five members: Four members who are managers or employees of self-insured employers in good standing, two of whom shall demonstrate knowledge of risk management and finance, and the executive director.~~

~~(b) With the exception of the executive director, the board members shall be appointed by the governor and approved by the senate. The terms of the members of the board first appointed shall be four years, three years, two years, and one year, respectively. Thereafter, the term for each appointed board member shall be four years. Members of the board may be reappointed and the executive director shall serve continuously.~~

~~(c) The members of the board shall receive no compensation but shall be reimbursed for actual and necessary traveling and subsistence expenses incurred in the performance of their duties as members of the board.~~

~~(d) (i) The board shall determine the assessments to be made pursuant to subsections (3) and (4) of this section and shall determine the qualifications and requirements for any claims administrators hired to adjust the claims of a self-insurer who fails to meet his obligations with respect to benefits awarded pursuant to articles 40 to 47 of this title.~~

~~(ii) The board shall also participate, in an advisory capacity only, in matters concerning the granting or termination of self-insurance permits and the setting of security requirements.~~

(3) Immediate payment fund - assessments - creation of fund. (a) The board DIRECTOR shall impose an assessment upon each employer self-insured under section 8-44-201. Assessments under this subsection (3) shall be based upon a ratio equal to the self-insured employer's paid workers' compensation medical and indemnity losses for the most recent self-insurance permit year divided by the aggregate sum of paid medical and indemnity losses by all self-insured employers

for that year. Such losses shall be determined on July 1, 1990, for the most recently completed permit year, and on the first day of July for each year thereafter until the minimum fund balance has been reached. Contributions to the fund shall not be assets of the self-insured employer.

(4) **Guaranty fund - assessments - creation of fund.** (a) When the ~~board~~ DIRECTOR determines that existing security held by an employer self-insured under section 8-44-201 is insufficient to meet its existing liability for workers' compensation benefits, the ~~board~~ DIRECTOR shall impose an assessment on each self-insured employer. The assessment shall be based on a ratio which equals each self-insured employer's paid workers' compensation medical and indemnity losses for the most recent self-insurance permit year divided by the aggregate sum of paid medical and indemnity losses by all self-insured employers for that year. If necessary, the executive director may direct the ~~board~~ DIRECTOR to make an annual assessment thereafter until such time as the present value of the guaranty fund, created in ~~paragraph (b) of this subsection (4)~~ SUBSECTION (4)(b) OF THIS SECTION, equals the total liability for workers' compensation benefits which are in excess of the security held by the defaulting self-insured employers.

(5) The department shall select any claims administrators required under this section based on the qualifications and requirements established by the ~~board~~ DIRECTOR. For the purpose of contracting for such services, the department shall not be subject to articles 101 to 114 of title 24. ~~C.R.S.~~

SECTION 6. Act subject to petition - effective date - applicability. (1) This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2022 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to injuries occurring, and mileage reimbursement claims in existence, on or after the applicable effective date of this act.

Approved: June 8, 2022