

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 22-0884.02 Brita Darling x2241

HOUSE BILL 22-1354

HOUSE SPONSORSHIP

Lindsay and Michaelson Jenet,

SENATE SPONSORSHIP

Winter,

House Committees

Public & Behavioral Health & Human Services

Senate Committees

A BILL FOR AN ACT

101 CONCERNING MENTAL HEALTH IN WORKERS' COMPENSATION CASES.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill clarifies provisions in the "Workers' Compensation Act of Colorado" (act) relating to the release and disclosure of mental health records pertaining to an injured employee making a claim under the act (claimant).

The bill:

- Defines "mental health records" as psychological or psychiatric intake evaluation or progress notes or psychiatric independent medical examination and division

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

independent medical examination records pertaining to a claimant;

- Requires a mental health provider to provide an insurer with mental health records, as necessary for payment, adjustment, and adjudication of claims involving psychiatric issues;
- Prohibits the disclosure of mental health records to any person who is not directly involved in adjusting or adjudicating claims involving psychiatric issues without the consent of the mental health provider or claimant;
- Prohibits an insurer from releasing a claimant's mental health records to the claimant's employer;
- Limits an insurer's disclosure of a claimant's mental health records to an employer, supervisor, or manager to only information from the mental health records pertaining to work restrictions placed on the claimant; and
- For a self-insured employer:
 - Requires the employer to keep a claimant's mental health records separate from personnel files;
 - Limits disclosure of the claimant's mental health records to a supervisor or manager to only information from the mental health records pertaining to work restrictions placed on the claimant; and
 - Prohibits disclosure of the claimant's mental health records to any third party and redisclosure by the third party to any person who is not directly involved in adjusting or adjudicating claims involving psychiatric issues without the consent of the treating mental health provider or claimant.

The bill requires the director of the division of workers' compensation in the department of labor and employment (division) to:

- Institute a training program relating to mental health records for division employees responsible for medical policy and claims management and processing; and
- Promulgate rules necessary for the implementation of the bill.

The bill requires a person providing mental health services under the act to be a licensed mental health provider in the state.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 8-47-203.2 as

1 follows:

2 **8-47-203.2. Mental health records - disclosure - division**
3 **employee training - rules - definition.** (1) AS USED IN THIS SECTION,
4 UNLESS THE CONTEXT OTHERWISE REQUIRES, "MENTAL HEALTH RECORD"
5 MEANS PSYCHOLOGICAL OR PSYCHIATRIC INTAKE EVALUATION OR
6 PROGRESS NOTES AND PSYCHIATRIC INDEPENDENT MEDICAL EXAMINATION
7 OR DIVISION INDEPENDENT MEDICAL EXAMINATION RECORDS PERTAINING
8 TO A CLAIMANT.

9 (2) A MENTAL HEALTH PROVIDER SHALL PROVIDE MENTAL HEALTH
10 RECORDS TO:

11 (a) THE INSURER, OR IF SELF-INSURED, THE EMPLOYER, AS
12 NECESSARY FOR PAYMENT OF SERVICES AND ADJUSTMENT AND
13 ADJUDICATION OF CLAIMS INVOLVING PSYCHIATRIC ISSUES; AND

14 (b) THE REFERRING PHYSICIAN AND ANY OTHER RELEVANT
15 TREATING PROVIDERS, AS NECESSARY.

16 (3) (a) MENTAL HEALTH RECORDS SHALL NOT BE DISCLOSED TO
17 ANY PERSON WHO IS NOT DIRECTLY INVOLVED IN MEDICALLY EVALUATING
18 OR ADJUSTING OR ADJUDICATING CLAIMS INVOLVING PSYCHIATRIC ISSUES
19 WITHOUT THE CONSENT OF THE MENTAL HEALTH PROVIDER OR THE
20 CLAIMANT.

21 (b) EXCEPT AS PROVIDED IN SUBSECTION (3)(c) OF THIS SECTION,
22 AN INSURER SHALL NOT RELEASE MENTAL HEALTH RECORDS TO THE
23 EMPLOYER WITHOUT THE CONSENT OF THE MENTAL HEALTH PROVIDER OR
24 THE CLAIMANT. THE INSURER SHALL DISCLOSE TO THE CLAIMANT'S
25 EMPLOYER, SUPERVISOR, OR MANAGER ONLY INFORMATION FROM A
26 CLAIMANT'S MENTAL HEALTH RECORDS THAT PERTAINS TO ANY WORK
27 RESTRICTIONS PLACED ON THE CLAIMANT AND SHALL NOT DISCLOSE THE

1 CLAIMANT'S ACTUAL MENTAL HEALTH RECORDS WITHOUT THE CONSENT
2 OF THE MENTAL HEALTH PROVIDER OR THE CLAIMANT.

3 (c) IF AN EMPLOYER IS SELF-INSURED, UPON RECEIPT OF MENTAL
4 HEALTH RECORDS, THE EMPLOYER:

5 (I) SHALL MAINTAIN MENTAL HEALTH RECORDS UNDER
6 RESTRICTED ACCESS, SEPARATE FROM PERSONNEL FILES, AND WITH CLEAR
7 POLICIES AND TRAINING TO ENSURE THE CLAIMANT'S PRIVACY IS
8 PROTECTED;

9 (II) SHALL DISCLOSE TO THE CLAIMANT'S SUPERVISOR OR
10 MANAGER ONLY INFORMATION FROM THE CLAIMANT'S MENTAL HEALTH
11 RECORDS THAT PERTAINS TO ANY WORK RESTRICTIONS PLACED ON THE
12 CLAIMANT AND SHALL NOT DISCLOSE THE CLAIMANT'S ACTUAL MENTAL
13 HEALTH RECORDS WITHOUT THE CONSENT OF THE MENTAL HEALTH
14 PROVIDER OR THE CLAIMANT; AND

15 (III) SHALL NOT DISCLOSE A CLAIMANT'S MENTAL HEALTH
16 RECORDS TO ANY THIRD PARTY WHO IS NOT DIRECTLY INVOLVED IN
17 MEDICALLY EVALUATING OR ADJUSTING OR ADJUDICATING CLAIMS
18 INVOLVING PSYCHIATRIC ISSUES WITHOUT THE CONSENT OF THE MENTAL
19 HEALTH PROVIDER OR THE CLAIMANT. A THIRD PARTY RECEIVING MENTAL
20 HEALTH RECORDS PURSUANT TO THIS SUBSECTION (3)(c)(III) IS SUBJECT
21 TO THE RESTRICTIONS ON DISCLOSURE TO ANOTHER PERSON AS SET FORTH
22 IN THIS SUBSECTION (3)(c).

23 (4) THE DIRECTOR SHALL INSTITUTE A TRAINING PROGRAM
24 RELATING TO MENTAL HEALTH RECORDS FOR EMPLOYEES OF THE DIVISION
25 RESPONSIBLE FOR MEDICAL POLICY AND CLAIMS MANAGEMENT AND
26 PROCESSING. THE TRAINING PROGRAM MUST INCLUDE, AT A MINIMUM,
27 INFORMATION CONCERNING:

1 (a) THE IMPORTANCE OF A CLAIMANT'S PRIVACY TO THE PROVISION
2 OF MENTAL HEALTH SERVICES;

3 (b) THE RISK OF HARM TO CLAIMANTS WHEN MENTAL HEALTH
4 RECORDS ARE RELEASED WITHOUT THE KNOWLEDGE AND CONSENT OF THE
5 TREATING MENTAL HEALTH PROVIDER OR THE CLAIMANT; AND

6 (c) HOW MENTAL HEALTH RECORDS ARE TREATED IN ACCORDANCE
7 WITH THIS SECTION WITH RESPECT TO THE LIMITED WAIVER OF THE
8 DOCTOR-PATIENT PRIVILEGE AND THE INSPECTION OF CLAIM FILES
9 PURSUANT TO SECTION 8-47-203 AND OTHER PROVISIONS RELATING TO
10 THE RELEASE OF RECORDS UNDER THE "WORKERS' COMPENSATION ACT
11 OF COLORADO", ARTICLES 40 TO 47 OF THIS TITLE 8.

12 (5) THE DIRECTOR MAY PROMULGATE RULES NECESSARY FOR THE
13 IMPLEMENTATION OF THIS SECTION.

14 **SECTION 2.** In Colorado Revised Statutes, 8-47-203, **amend** (1)
15 introductory portion and (1)(b) as follows:

16 **8-47-203. Access to files, records, and orders.**

17 (1) Notwithstanding the provisions of section 8-47-202, the filing of a
18 claim for compensation is deemed to be a limited waiver of the
19 doctor-patient privilege to persons who are necessary to resolve the claim.
20 THE RELEASE OF MENTAL HEALTH RECORDS PURSUANT TO THIS SECTION
21 MUST COMPLY WITH SECTION 8-47-203.2. Access to claim files maintained
22 by the division will be permitted only as follows:

23 (b) Persons who are not parties to a claim, or their attorneys or
24 designated representatives, and who wish to inspect or obtain information
25 from claim files may submit a request to inspect a particular file, stating
26 the purpose for such inspection. The director may disallow such requests
27 if the purpose of the inspection is to further commercial interests, or to

1 disseminate information to nonparties, OR IF THE INSPECTION DOES NOT
2 COMPLY WITH SECTION 8-47-203.2. Any such request shall be considered
3 and determined by the division within seventy-two hours.

4 **SECTION 3.** In Colorado Revised Statutes, 8-42-101, **add** (3.9)
5 as follows:

6 **8-42-101. Employer must furnish medical aid - approval of**
7 **plan - fee schedule - contracting for treatment - no recovery from**
8 **employee - medical treatment guidelines - accreditation of physicians**
9 **and other medical providers - mental health provider qualifications**
10 **- rules - definition - repeal.** (3.9) A PERSON PROVIDING MENTAL HEALTH
11 SERVICES PURSUANT TO ARTICLES 40 TO 47 OF THIS TITLE 8, INCLUDING
12 COGNITIVE BEHAVIORAL THERAPY AND OTHER TREATMENT MODALITIES
13 UNDER THE WORKERS' COMPENSATION SYSTEM, MUST BE FORMALLY
14 TRAINED AND LICENSED AS A MENTAL HEALTH PROVIDER IN THIS STATE.

15 **SECTION 4. Applicability.** This act applies to claims filed on or
16 after the effective date of this act.

17 **SECTION 5. Safety clause.** The general assembly hereby finds,
18 determines, and declares that this act is necessary for the immediate
19 preservation of the public peace, health, or safety.