

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

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
Appropriations

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.

HOUSE
Amended 2nd Reading
April 22, 2022

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 - rules -**

3 **definition.** (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT
4 OTHERWISE REQUIRES, "MENTAL HEALTH RECORD" MEANS THE FOLLOWING
5 RECORDS PERTAINING TO THE CLAIMANT:

6 (a) PSYCHOLOGICAL OR PSYCHIATRIC TESTS, INCLUDING
7 NEUROPSYCHOLOGICAL TESTING;

8 (b) OTHER RECORDS PREPARED BY OR FOR A MENTAL HEALTH
9 PROVIDER;

10 (c) INDEPENDENT MEDICAL EXAMINATION RECORDS, AUDIO
11 RECORDINGS, AND REPORTS THAT ADDRESS PSYCHOLOGICAL OR
12 PSYCHIATRIC ISSUES;

13 (d) DIVISION INDEPENDENT MEDICAL EVALUATION RECORDS AND
14 REPORTS THAT ADDRESS PSYCHOLOGICAL OR PSYCHIATRIC ISSUES; AND

15 (e) RECORDS RELATING TO THE EVALUATION, DIAGNOSIS, OR
16 TREATMENT OF A SUBSTANCE USE OR ABUSE DISORDER.

17 (2) A MENTAL HEALTH PROVIDER SHALL PROVIDE MENTAL HEALTH
18 RECORDS TO:

19 (a) THE INSURER, OR IF SELF-INSURED, THE EMPLOYER, AS
20 NECESSARY FOR PAYMENT OF SERVICES AND ADJUSTMENT AND
21 ADJUDICATION OF CLAIMS INVOLVING PSYCHOLOGICAL OR PSYCHIATRIC
22 ISSUES; AND

23 (b) THE REFERRING PHYSICIAN AND ANY OTHER RELEVANT
24 TREATING OR EVALUATING PROVIDERS, AS NECESSARY.

25 (3) (a) MENTAL HEALTH RECORDS PROVIDED PURSUANT TO
26 SUBSECTION (2) OF THIS SECTION SHALL NOT BE DISCLOSED TO ANY
27 PERSON WHO IS NOT REASONABLY NECESSARY FOR THE MEDICAL

1 EVALUATION, ADJUSTMENT, OR ADJUDICATION OF CLAIMS INVOLVING
2 PSYCHOLOGICAL OR PSYCHIATRIC ISSUES UNLESS DISCLOSURE IS
3 OTHERWISE DIRECTED BY ORDER OF THE DIRECTOR OR AN
4 ADMINISTRATIVE LAW JUDGE.

5 (b) (I) AN INSURER MAY RELEASE INFORMATION FROM A
6 CLAIMANT'S MENTAL HEALTH RECORDS CONCERNING ANY WORK
7 RESTRICTIONS PLACED ON THE CLAIMANT TO THE CLAIMANT'S EMPLOYER,
8 SUPERVISOR, OR MANAGER, AND INFORMATION AS NECESSARY FOR THE
9 ADJUSTMENT AND ADJUDICATION OF A CLAIM, BUT SHALL NOT DISCLOSE
10 THE CLAIMANT'S ACTUAL MENTAL HEALTH RECORDS TO ANY THIRD PARTY
11 WHO IS NOT DIRECTLY INVOLVED IN MEDICALLY EVALUATING, ADJUSTING,
12 OR ADJUDICATING CLAIMS INVOLVING PSYCHOLOGICAL OR PSYCHIATRIC
13 ISSUES WITHOUT THE CONSENT OF THE CLAIMANT UNLESS DISCLOSURE IS
14 OTHERWISE ORDERED BY THE DIRECTOR OR AN ADMINISTRATIVE LAW
15 JUDGE.

16 (II) NOTWITHSTANDING SUBSECTION (3)(b)(I) OF THIS SECTION, IF
17 THE CLAIMANT'S MENTAL HEALTH PROVIDER OR PHYSICIAN OBJECTS TO
18 THE RELEASE OF MENTAL HEALTH RECORDS, THE INSURER SHALL NOT
19 DISCLOSE THE MENTAL HEALTH RECORDS TO A THIRD PARTY UNLESS
20 OTHERWISE ORDERED BY THE DIRECTOR OR AN ADMINISTRATIVE LAW
21 JUDGE. ■

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

24 (I) SHALL MAINTAIN MENTAL HEALTH RECORDS UNDER
25 RESTRICTED ACCESS, SEPARATE FROM PERSONNEL FILES, AND WITH CLEAR
26 POLICIES AND TRAINING TO ENSURE THE CLAIMANT'S PRIVACY IS
27 PROTECTED; AND

1 (II) (A) MAY DISCLOSE INFORMATION FROM THE CLAIMANT'S
2 MENTAL HEALTH RECORDS CONCERNING ANY WORK RESTRICTIONS PLACED
3 ON THE CLAIMANT TO THE CLAIMANT'S SUPERVISOR OR MANAGER AND
4 INFORMATION AS NECESSARY FOR THE ADJUSTMENT OR ADJUDICATION OF
5 A CLAIM, BUT SHALL NOT DISCLOSE THE CLAIMANT'S ACTUAL MENTAL
6 HEALTH RECORDS TO ANY THIRD PARTY WHO IS NOT DIRECTLY INVOLVED
7 IN MEDICALLY EVALUATING, ADJUSTING, OR ADJUDICATING CLAIMS
8 INVOLVING PSYCHOLOGICAL OR PSYCHIATRIC ISSUES WITHOUT THE
9 CONSENT OF THE CLAIMANT, UNLESS DISCLOSURE IS OTHERWISE ORDERED
10 BY THE DIRECTOR OR AN ADMINISTRATIVE LAW JUDGE.

11 (B) NOTWITHSTANDING SUBSECTION (3)(c)(II)(A) OF THIS
12 SECTION, IF THE CLAIMANT'S MENTAL HEALTH PROVIDER OR PHYSICIAN
13 OBJECTS TO THE RELEASE OF MENTAL HEALTH RECORDS, THE
14 SELF-INSURED EMPLOYER SHALL NOT DISCLOSE THE MENTAL HEALTH
15 RECORDS TO ANY THIRD PARTY UNLESS OTHERWISE ORDERED BY THE
16 DIRECTOR OR AN ADMINISTRATIVE LAW JUDGE.

17 (d) (I) A THIRD PARTY RECEIVING MENTAL HEALTH RECORDS
18 PURSUANT TO THIS SUBSECTION (3) SHALL NOT DISCLOSE THE CLAIMANT'S
19 ACTUAL MENTAL HEALTH RECORDS TO ANY PERSON WHO IS NOT DIRECTLY
20 INVOLVED IN MEDICALLY EVALUATING, ADJUSTING, OR ADJUDICATING
21 CLAIMS INVOLVING PSYCHOLOGICAL OR PSYCHIATRIC ISSUES WITHOUT THE
22 CONSENT OF THE CLAIMANT, UNLESS OTHERWISE ORDERED BY THE
23 DIRECTOR OR AN ADMINISTRATIVE LAW JUDGE.

24 (II) NOTWITHSTANDING SUBSECTION (3)(d)(I) OF THIS SECTION, IF
25 THE CLAIMANT'S MENTAL HEALTH PROVIDER OR PHYSICIAN OBJECTS TO
26 THE RELEASE OF MENTAL HEALTH RECORDS, THE THIRD PARTY SHALL NOT
27 DISCLOSE THE MENTAL HEALTH RECORDS TO ANY OTHER THIRD PARTY

1 UNLESS OTHERWISE ORDERED BY THE DIRECTOR OR AN ADMINISTRATIVE
2 LAW JUDGE.

3
4 (4) THE DIRECTOR MAY PROMULGATE RULES NECESSARY FOR THE
5 IMPLEMENTATION OF THIS SECTION.

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

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

9 (1) Notwithstanding the provisions of section 8-47-202, the filing of a
10 claim for compensation is deemed to be a limited waiver of the
11 doctor-patient privilege to persons who are necessary to resolve the claim.

12 THE RELEASE OF MENTAL HEALTH RECORDS PURSUANT TO THIS SECTION
13 MUST COMPLY WITH SECTION 8-47-203.2. Access to claim files maintained
14 by the division will be permitted only as follows:

15 (b) Persons who are not parties to a claim, or their attorneys or
16 designated representatives, and who wish to inspect or obtain information
17 from claim files may submit a request to inspect a particular file, stating
18 the purpose for such inspection. The director may disallow such requests
19 if the purpose of the inspection is to further commercial interests, or to
20 disseminate information to nonparties, OR IF THE INSPECTION DOES NOT
21 COMPLY WITH SECTION 8-47-203.2. Any such request shall be considered
22 and determined by the division within seventy-two hours.

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

25 **8-42-101. Employer must furnish medical aid - approval of**
26 **plan - fee schedule - contracting for treatment - no recovery from**
27 **employee - medical treatment guidelines - accreditation of physicians**

1 **and other medical providers - mental health provider qualifications**
2 **- rules - definition - repeal.** (3.9) A PERSON PROVIDING MENTAL HEALTH
3 SERVICES PURSUANT TO ARTICLES 40 TO 47 OF THIS TITLE 8, INCLUDING
4 COGNITIVE BEHAVIORAL THERAPY AND OTHER TREATMENT MODALITIES
5 UNDER THE WORKERS' COMPENSATION SYSTEM, MUST BE FORMALLY
6 TRAINED AND LICENSED AS A MENTAL HEALTH PROVIDER.

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

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