

**Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

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.

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 AND REPORTS
11 THAT ADDRESS PSYCHOLOGICAL OR PSYCHIATRIC ISSUES;

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

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

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

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

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

23 (3) (a) MENTAL HEALTH RECORDS PROVIDED PURSUANT TO
24 SUBSECTION (2) OF THIS SECTION SHALL NOT BE DISCLOSED TO ANY
25 PERSON WHO IS NOT REASONABLY NECESSARY FOR THE MEDICAL
26 EVALUATION, ADJUSTMENT, OR ADJUDICATION OF CLAIMS INVOLVING
27 PSYCHOLOGICAL OR PSYCHIATRIC ISSUES UNLESS DISCLOSURE IS

1 OTHERWISE DIRECTED BY ORDER OF THE DIRECTOR OR AN
2 ADMINISTRATIVE LAW JUDGE.

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

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

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

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

26 (II) (A) MAY DISCLOSE INFORMATION FROM THE CLAIMANT'S
27 MENTAL HEALTH RECORDS CONCERNING ANY WORK RESTRICTIONS PLACED

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

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

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

22 (II) NOTWITHSTANDING SUBSECTION (3)(d)(I) OF THIS SECTION, IF
23 THE CLAIMANT'S MENTAL HEALTH PROVIDER OR PHYSICIAN OBJECTS TO
24 THE RELEASE OF MENTAL HEALTH RECORDS, THE THIRD PARTY SHALL NOT
25 DISCLOSE THE MENTAL HEALTH RECORDS TO ANY OTHER THIRD PARTY
26 UNLESS OTHERWISE ORDERED BY THE DIRECTOR OR AN ADMINISTRATIVE
27 LAW JUDGE.

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

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

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

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

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

SECTION 3. In Colorado Revised Statutes, 8-42-101, **add** (3.9) 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 - mental health provider qualifications - rules - definition - repeal. (3.9) A PERSON PROVIDING MENTAL HEALTH

1 SERVICES PURSUANT TO ARTICLES 40 TO 47 OF THIS TITLE 8, INCLUDING
2 COGNITIVE BEHAVIORAL THERAPY AND OTHER TREATMENT MODALITIES
3 UNDER THE WORKERS' COMPENSATION SYSTEM, MUST BE FORMALLY
4 TRAINED AND LICENSED AS A MENTAL HEALTH PROVIDER.

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

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