

CHAPTER 370

LABOR AND INDUSTRY

HOUSE BILL 23-1076

BY REPRESENTATIVE(S) Daugherty, Amabile, Boesenecker, Brown, Dickson, English, Epps, Garcia, Gonzales-Gutierrez, Herod, Joseph, Kipp, Lieder, Lindsay, Lindstedt, Mabrey, Michaelson Jenet, Parenti, Ricks, Sharbini, Sirota, Story, Velasco, Weissman, McCluskie;
also SENATOR(S) Marchman, Buckner, Coleman, Cutter, Danielson, Exum, Fields, Gonzales, Hansen, Jaquez Lewis, Kolker, Moreno, Priola, Rodriguez, Sullivan, Winter F.

AN ACT

CONCERNING WORKERS' COMPENSATION, AND, IN CONNECTION THEREWITH, INCREASING THE DURATION OF BENEFITS BASED ON MENTAL IMPAIRMENT, REMOVING THE AUTHORITY TO PETITION OVER ARTIFICIAL DEVICES, ALLOWING AN EMPLOYEE TO REQUEST A HEARING ON THE LOSS OF TOTAL TEMPORARY DISABILITY BENEFITS UNDER CERTAIN CIRCUMSTANCES, UPDATING PROVISIONS RELATED TO INDEPENDENT MEDICAL EXAMINATIONS, INCREASING THE AMOUNT OF ATTORNEY FEES THAT ARE PRESUMED UNREASONABLE, AND MAKING AN APPROPRIATION.

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

SECTION 1. In Colorado Revised Statutes, 8-41-301, **amend** (2)(b) as follows:

8-41-301. Conditions of recovery - definitions. (2) (b) (I) Notwithstanding any other provision of articles 40 to 47 of this title ~~TITLE 8~~, where a claim is by reason of mental impairment, ~~the A claimant shall be~~ is limited to ~~twelve~~ THIRTY-SIX weeks of medical impairment benefits, which shall be in an amount not less than one hundred fifty dollars per week and not more than fifty percent of the state average weekly wage, inclusive of any temporary disability benefits; except that this limitation shall not apply to any victim of a crime of violence, without regard to the intent of the perpetrator of the crime, nor to the victim of a physical injury or occupational disease that causes neurological brain damage. ~~and~~

(II) Nothing in this section ~~shall limit~~ LIMITS the determination of the percentage of impairment pursuant to section 8-42-107 (8) for the purposes of establishing the applicable cap on benefits pursuant to section 8-42-107.5.

SECTION 2. In Colorado Revised Statutes, 8-42-101, **amend** (1)(b) as follows:

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.

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 - mileage reimbursement - rules - definition - 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)~~ SUBSECTION (1)(a) OF THIS SECTION artificial members, glasses, hearing aids, braces, and other external prosthetic devices, including dentures, ~~which~~ THAT 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 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~~ TITLE 8 must insure against liability for the medical, surgical, and hospital expenses provided for in this ~~article~~ ARTICLE 42, 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.

SECTION 3. In Colorado Revised Statutes, 8-42-105, **add** (5) as follows:

8-42-105. Temporary total disability - hearings. (5) (a) WITHIN FORTY-FIVE DAYS AFTER AN INSURER OR SELF-INSURED EMPLOYER TERMINATES AN EMPLOYEE'S TEMPORARY TOTAL DISABILITY BENEFITS PURSUANT TO SUBSECTION (3)(c) OF THIS SECTION, THE EMPLOYEE MAY FILE AN APPLICATION FOR AN EXPEDITED HEARING ON ANY OF THE FOLLOWING ISSUES:

(I) WHO IS THE ATTENDING PHYSICIAN;

(II) WHETHER THE ATTENDING PHYSICIAN GAVE THE EMPLOYEE A WRITTEN RELEASE TO RETURN TO REGULAR EMPLOYMENT; AND

(III) WHETHER THERE IS A DIFFERENCE OF OPINION BETWEEN AUTHORIZED TREATING MEDICAL PROVIDERS REGARDING WHETHER THE EMPLOYEE IS RELEASED TO RETURN TO REGULAR EMPLOYMENT.

(b) IF AN ADMINISTRATIVE LAW JUDGE FINDS THERE IS A DIFFERENCE OF OPINION AS DESCRIBED IN SUBSECTION (5)(a)(III) OF THIS SECTION, THE EMPLOYEE HAS THE BURDEN OF PROVING BY A PREPONDERANCE OF THE EVIDENCE THAT, AS A PROXIMATE RESULT OF THE CLAIMED INJURY OR DISEASE, THE EMPLOYEE IS UNABLE TO RETURN TO REGULAR EMPLOYMENT. IF THE EMPLOYEE MEETS THIS BURDEN, THE ADMINISTRATIVE LAW JUDGE SHALL REINSTATE THE EMPLOYEE'S TERMINATED TEMPORARY TOTAL DISABILITY BENEFITS BACK TO THE DATE OF TERMINATION.

SECTION 4. In Colorado Revised Statutes, 8-42-107, **amend** (8)(f) as follows:

8-42-107. Permanent partial disability benefits - schedule - medical impairment benefits - how determined. (8) Medical impairment benefits - determination of MMI for scheduled and nonscheduled injuries. (f) In all claims in which an authorized treating physician recommends medical benefits after maximum medical improvement, and there is no contrary medical opinion in the record, the employer shall, in a final admission of liability, admit liability for related reasonable and necessary medical benefits by an authorized treating physician, WHICH BENEFITS ARE NOT LIMITED TO ANY SPECIFIC MEDICAL TREATMENT.

SECTION 5. In Colorado Revised Statutes, 8-42-107.2, **amend** (3)(b) and (5)(a) as follows:

8-42-107.2. Selection of independent medical examiner - procedure - time - allocation of costs - disclosures regarding physician relationships with insurers, self-insured employers, or claimants - rules - applicability. (3) (b) Upon selection of the IME, the insurance carrier shall provide to the IME and all other parties a ~~complete~~ copy of all medical records in its possession ~~pertaining~~ RELEVANT to the subject injury, postmarked or hand-delivered within fourteen days prior to the independent medical examination. If the insurance carrier or its representative fails to timely submit such medical records, the claimant may request that the division cancel the independent medical examination or the claimant may submit COPIES OF all the medical records ~~he or she~~ RELEVANT TO THE SUBJECT INJURY THAT THE CLAIMANT has available within ten days prior to the independent medical examination, or as otherwise arranged by the division with the IME. If the claimant submits medical records, the defaulting party may supplement such records pursuant to rules of the division. ~~This paragraph (b)~~ SUBSECTION (3)(b) shall not be construed to prohibit an independent medical examination from being rescheduled.

~~(5) (a) (I) Except as provided in paragraph (b) of this subsection (5), the requesting party shall advance the full cost of the independent medical examination to the IME at least ten days before the appointed time for the examination. THE DIRECTOR SHALL PROMULGATE RULES CONSISTENT WITH THIS SUBSECTION (5) TO DETERMINE THE AMOUNT AND ALLOCATION OF COSTS TO BE PAID BY THE PARTIES FOR THE INDEPENDENT MEDICAL EXAMINATION.~~

(II) EXCEPT AS PROVIDED IN SUBSECTIONS (5)(a)(III) AND (5)(b) OF THIS SECTION, THE REQUESTING PARTY SHALL PAY THE COST OF AN INDEPENDENT MEDICAL EXAMINATION. THE REQUESTING PARTY SHALL ADVANCE THE FULL BASE COST OF THE INDEPENDENT MEDICAL EXAMINATION TO THE IME AT LEAST TEN DAYS BEFORE THE APPOINTED TIME OF THE EXAMINATION.

(III) IF THERE IS A DISPUTE REGARDING INDIGENCY OR THE AMOUNT OR ALLOCATION OF ANY COSTS TO BE PAID, INCLUDING THE FORMAT, CONTENT, VOLUME, RELEVANCE, OR DUPLICATIVE MEDICAL RECORDS SUBMITTED TO THE IME, A PARTY MAY REQUEST A PREHEARING CONFERENCE WITH THE DIVISION TO RESOLVE THE DISPUTE. THE DETERMINATION OF THE COST ALLOCATION IN EXCESS OF THE FULL BASE COST MUST INCLUDE CONSIDERATION OF THE VOLUME OF MEDICAL RECORDS, THE FORMAT AND CONTENT OF THE IME PACKET, AND ANY OTHER

CONSIDERATIONS NECESSARY TO DETERMINE THE ALLOCATION OF THE IME COSTS BETWEEN THE PARTIES.

SECTION 6. In Colorado Revised Statutes, 8-43-207.5, **amend** (2)(b)(VIII) and (2)(b)(IX); and **add** (2)(b)(X) as follows:

8-43-207.5. Prehearing conferences - rules. (2) (b) Prehearing administrative law judges have authority to approve any stipulations of the parties and issue interlocutory orders regarding procedural matters. Procedural matters include:

(VIII) Determining the ripeness of legal issues for formal adjudication; ~~and~~

(IX) Determining the competency of any party to a claim to enter into settlement agreements; AND

(X) RESOLVING DISPUTES REGARDING INDIGENCY, THE CONTENT AND FORMAT OF MEDICAL RECORDS SUBMITTED TO AN INDEPENDENT MEDICAL EXAMINER SELECTED PURSUANT TO SECTION 8-42-107.2, INCLUDING WHETHER MEDICAL RECORDS ARE RELEVANT OR DUPLICATIVE, AND THE ALLOCATION OF THE COST OF THE IME TO THE RESPECTIVE PARTIES IN EXCESS OF THE BASE COST.

SECTION 7. In Colorado Revised Statutes, 8-43-403, **amend** (1) as follows:

8-43-403. Attorney fees. (1) ~~No~~ A contingent fee shall NOT be applied to any medical benefits that have been previously incurred and will be paid to the claimant or directly to the medical care provider, in a permanent disability award, either by admission or settlement. ~~In the event that~~ If medical benefits are the only contested issue, the fee agreement shall provide for reasonable fees calculated on a per-hour basis or, subject to approval by the director, may provide for a contingent fee not to exceed the limitations imposed by this section. On unappealed contested cases, a contingent fee exceeding ~~twenty~~ TWENTY-FIVE percent of the amount of contested benefits ~~shall be~~ is presumed to be unreasonable. At the request of either an employee or the employee's attorney, the director shall determine what portion of the benefits awarded were contested, or the reasonableness of the fee charged by such attorney, or both. At the request of the employer or its insurance carrier or the attorney for either of them, the director shall determine the reasonableness of the fee charged by the attorney for the insurance carrier. ~~No~~ THE DIRECTOR SHALL NOT CONSIDER A request for determination of the reasonableness of fees ~~shall be considered by the director~~ if received later than one hundred eighty days after the issuance of the final order, judgment, or opinion disposing of the last material issue in the case and the expiration of any right to review or appeal ~~therefrom~~ THE FINAL ORDER, JUDGMENT, OR OPINION. In making this determination, the director shall consider fees normally charged by attorneys for cases requiring the same amount of time and skill and may decrease or increase the fee payable to such attorney. If the director finds that a review by the industrial claim appeals office or an appeal to the court of appeals or to the supreme court was perfected or if the director finds that such attorney reasonably devoted an extraordinary amount of time to the case, the director may award or approve a contingent fee or other fee in a percentage or amount that exceeds ~~twenty~~ TWENTY-FIVE percent of the amount of contested benefits. In determining the reasonableness of fees charged by an attorney for an employer or employer's insurance carrier, the director shall compare the fees of such

attorney with the fees charged by the claimant's attorney in the same case and shall not approve an amount substantially greater than the reasonable amount charged by the said claimant's attorney or, if the claimant did not prevail, the reasonable amount the said claimant's attorney would have charged had the claimant prevailed, unless the director finds, based on a showing by the attorney for the employer or carrier, that higher fees are objectively justifiable. Legal costs not found reasonable shall not be allowed as an expense in fixing premium rates by the commissioner of insurance.

SECTION 8. Appropriation. (1) For the 2023-24 state fiscal year, \$731,640 is appropriated to the department of labor and employment for use by the division of workers' compensation. This appropriation is from the workers' compensation cash fund created in section 8-44-112 (7)(a), C.R.S. To implement this act, the division may use this appropriation as follows:

(a) \$661,620 for personal services related to workers' compensation, which amount is based on an assumption that the division will require an additional 7.4 FTE; and

(b) \$70,020 for operating expenses related to workers' compensation.

SECTION 9. Act subject to petition - effective date. 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 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: June 5, 2023