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SENATE BILL 14-191

BY SENATOR(S) Tochtrop, Heath, Jones, Nicholson, Schwartz;
also REPRESENTATIVE(S) Pabon, Hulinghorst, Williams.

CONCERNING THE PROCEDURES FOR RESOLUTION OF WORKERS'
COMPENSATION CLAIMS.

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

SECTION 1. In Colorado Revised Statutes, 8-43-201, **add** (3) as follows:

8-43-201. Disputes arising under "Workers' Compensation Act of Colorado". (3) IT IS APPROPRIATE FOR THE DIRECTOR OR AN ADMINISTRATIVE LAW JUDGE TO CONSIDER THE MEDICAL TREATMENT GUIDELINES ADOPTED UNDER SECTION 8-42-101 (3) IN DETERMINING WHETHER CERTAIN MEDICAL TREATMENT IS REASONABLE, NECESSARY, AND RELATED TO AN INDUSTRIAL INJURY OR OCCUPATIONAL DISEASE. THE DIRECTOR OR ADMINISTRATIVE LAW JUDGE IS NOT REQUIRED TO UTILIZE THE MEDICAL TREATMENT GUIDELINES AS THE SOLE BASIS FOR SUCH DETERMINATIONS.

SECTION 2. In Colorado Revised Statutes, 8-43-204, **add** (8) as follows:

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

8-43-204. Settlements - rules. (8) THE DIRECTOR SHALL ADOPT RULES AS NECESSARY TO IMPLEMENT THE PROCEDURE TO REVIEW AND APPROVE SETTLEMENT DOCUMENTS. AT A MINIMUM, THE RULES MUST:

(a) ALLOW A REPRESENTED CLAIMANT TO SUBMIT SETTLEMENT DOCUMENTS FOR APPROVAL BY ELECTRONIC MAIL;

(b) PROVIDE FOR THE APPROVAL OF SETTLEMENT DOCUMENTS IF THE CLAIMANT'S SIGNATURE IS NOT AN ORIGINAL BUT IS NOTARIZED; AND

(c) REQUIRE THE DIVISION TO ELECTRONICALLY MAIL TO COUNSEL OF RECORD, OR TO THE INSURANCE CARRIER OR SELF-INSURED EMPLOYER IF NOT REPRESENTED, A COPY OF THE DIVISION'S ORDER APPROVING THE SETTLEMENT AGREEMENT OF THE PARTIES.

SECTION 3. In Colorado Revised Statutes, 8-43-209, **amend** (1) as follows:

8-43-209. Time schedule for hearings - establishment.

(1) Hearings ~~shall~~ MUST commence within one hundred TWENTY days ~~after~~ FROM the ~~hearing is set~~ DATE OF THE NOTICE OF SETTING BY THE DIRECTOR PURSUANT TO SECTION 8-43-211 (2) (a) OR OF THE DATE SHOWN ON THE CERTIFICATE OF SERVICE ACCOMPANYING THE REQUEST, NOTICE, OR APPLICATION BY A PARTY OR THE PARTY'S ATTORNEY pursuant to section 8-43-211 (2) (b) OR (2) (c). UPON AGREEMENT OF THE PARTIES, AN ADMINISTRATIVE LAW JUDGE SHALL GRANT one extension of time, NOT EXCEEDING SIXTY DAYS, to commence the hearing. ~~of no more than sixty days shall be granted by an administrative law judge upon agreement of the parties.~~

SECTION 4. In Colorado Revised Statutes, **amend** 8-43-211 as follows:

8-43-211. Notice - request for hearing. (1) At least thirty days ~~prior to~~ BEFORE any hearing, the office of administrative courts in the department of personnel shall send written notice to all parties by regular or electronic mail or by facsimile. The notice ~~shall~~ MUST:

(a) Give the time, date, and place of the hearing;

(b) Inform the parties that they must be prepared to present their evidence concerning the issues to be heard;

(c) Inform the parties that they have the right to be represented by an attorney or other person of their choice at the hearing.

(2) Hearings shall be set by the office of administrative courts in the department of personnel within eighty to one hundred TWENTY days after any of the following occur:

(a) The director sets any issue for hearing. The director may expedite the hearing for good cause shown.

(b) Any party requests a hearing on issues ripe for adjudication by filing a written request with the office of administrative courts in the department of personnel on forms provided by the office. The request shall be mailed to all parties at the time they are filed with the office of administrative courts. After the filing of the requests, the office of administrative courts in the department of personnel shall set the matter for hearing insofar as is practicable in the order in which requests are received by the office of administrative courts.

(c) Any party or the attorney of such party sends notice to set a hearing on issues ripe for adjudication to opposing parties or their attorneys. The director of the office of administrative courts shall determine the place and time or times during which settings can be made. At such setting, the party requesting the setting shall submit a completed request for hearing form. Any notice to set shall be mailed to opposing parties at least ten days prior to the setting date.

~~(d)~~ (3) If an attorney requests a hearing or files a notice to set a hearing on an issue that is not ripe for adjudication at the time the request or filing is made, the attorney may be assessed the reasonable attorney fees and costs of the opposing party in preparing for the hearing or setting. The requesting party must prove its attempt to have an unripe issue stricken by a prehearing administrative law judge to request fees or costs. Requested fees or costs incurred after a prehearing conference may only be awarded if they are directly caused by the listing of the unripe issue.

~~(e)~~ (4) Except in claims in which compensability is contested or a

hearing is requested in response to a final admission of liability or to overcome a conclusion in a division-sponsored independent medical examination, the party filing an application for a hearing shall certify on the application that the party attempted to resolve with the other parties all issues listed in the application for a hearing.

SECTION 5. In Colorado Revised Statutes, 8-43-215, **amend** (1) as follows:

8-43-215. Orders. (1) No more than fifteen working days after the conclusion of a hearing, the administrative law judge or director shall issue a written order allowing or denying ~~said~~ THE claim. ~~Such~~ THE written order ~~shall~~ MUST either be a summary order or a full order. A full order ~~shall~~ MUST contain specific findings of fact and conclusions of law. If compensation benefits are granted, ~~such~~ THE written order ~~shall~~ MUST specify the amounts thereof, the disability for which compensation benefits are granted, by whom and to whom such benefits ~~shall~~ ARE TO be paid, and the method and time of ~~such~~ THE payments. A certificate of mailing and a copy of ~~such~~ THE written order shall be served by regular or electronic mail or by facsimile to each of the parties in interest or their representatives, the original of which ~~shall be~~ IS a part of the records in ~~said~~ THE case. If an administrative law judge has issued a summary order, a party dissatisfied with the order may make a written request for a full order within ~~seven~~ TEN working days after the date of mailing of the summary order. The request ~~shall be~~ IS a prerequisite to review under section 8-43-301. If a request for a full order is made, the administrative law judge ~~shall have~~ HAS ten working days after receipt of the request to issue the order. A full order shall be entered as the final award of the administrative law judge or director subject to review as provided in this article.

SECTION 6. In Colorado Revised Statutes, **amend** 8-43-315 as follows:

8-43-315. Witnesses and testimony - mileage - fees - costs. (1) The director or any agent, deputy, or administrative law judge ~~of the division has the power to~~ MAY issue subpoenas to compel the attendance of witnesses or parties and the production of books, papers, or records and to administer oaths. Any person who serves a subpoena shall receive the same fee as the sheriff. Each witness who is subpoenaed on behalf of the director and who appears in obedience thereto shall receive for attendance

the fees and mileage provided for witnesses in civil cases in the district court, which ~~shall be~~ ARE audited and paid from the state treasury in the same manner as other expenses are audited and paid, upon the presentation of a proper voucher approved by the director. The director has the discretion to assess the cost of attendance and mileage of witnesses subpoenaed by either party to any proceeding against ~~the other~~ ANOTHER party to ~~such~~ THE proceeding when, in the director's judgment, the necessity of subpoenaing ~~such~~ THE witnesses arises out of the raising of any incompetent, irrelevant, or sham issues by ~~such~~ THE other party.

(2) THE DIRECTOR, AN AGENT, DEPUTY, OR ADMINISTRATIVE LAW JUDGE OF THE DIVISION, OR AN ADMINISTRATIVE LAW JUDGE FROM THE OFFICE OF ADMINISTRATIVE COURTS, MAY, UPON A SHOWING OF GOOD CAUSE, ORDER THE ATTENDANCE AT A HEARING OR DEPOSITION OF ANY PARTY, OR OF AN OFFICER, DIRECTOR, EMPLOYEE, OR AGENT OF ANY PARTY, WHO IS LOCATED IN ANOTHER STATE. A WITNESS SO ORDERED SHALL APPEAR AS INDICATED IN THE ORDER OR SHALL BE AVAILABLE BY TELEPHONE AT THE TIME AND PLACE SET FORTH IN THE ORDER.

(3) IF A PARTY OR AN OFFICER, DIRECTOR, EMPLOYEE, OR AGENT OF A PARTY FAILS, IN THE ABSENCE OF A REASONABLE EXCUSE, TO OBEY AN ORDER ISSUED PURSUANT TO SUBSECTION (2) OF THIS SECTION, THE PARTY, OFFICER, DIRECTOR, EMPLOYEE, OR AGENT IS LIABLE FOR PENALTIES AS SPECIFIED IN SECTION 8-43-304 (1).

SECTION 7. In Colorado Revised Statutes, **add** 8-43-318 as follows:

8-43-318. Remand of case or order - time limit for further proceedings consistent with ruling on appeal. IF A CASE OR ORDER IS APPEALED TO THE PANEL, THE COURT OF APPEALS, OR THE SUPREME COURT, AND THE CASE OR ORDER IS REMANDED WITH DIRECTIONS, THE DIRECTOR, ADMINISTRATIVE LAW JUDGE, OR PANEL, AS THE CASE MAY BE, SHALL ISSUE AN ORDER CONSISTENT WITH THOSE DIRECTIONS WITHIN THIRTY DAYS FROM RECEIPT OF THE REMAND. THE REMANDING TRIBUNAL HAS CONTINUING JURISDICTION TO ENFORCE THE REMAND ORDER.

SECTION 8. In Colorado Revised Statutes, 8-43-404, **amend** (1) (b) (I); and **add** (10) as follows:

8-43-404. Examination - refusal - personal responsibility - physicians to testify and furnish results - injured worker right to select treating physicians - injured worker right to third-party communications - definitions - rules. (1) (b) (I) At least three business days in advance of an examination under paragraph (a) of this subsection (1), if requested by the claimant, the employer or insurer shall pay to the claimant the claimant's estimated expenses of attending the examination, including transportation, mileage, food, and hotel costs. IN ADDITION, IF THE CLAIMANT VERIFIES THAT HE OR SHE WILL INCUR UNCOMPENSATED WAGE LOSSES AS A RESULT OF ATTENDING THE EXAMINATION, THE EMPLOYER OR INSURER SHALL REIMBURSE THE CLAIMANT AT THE RATE OF SEVENTY-FIVE DOLLARS PER DAY. Failure to provide payment in accordance with this subparagraph (I) constitutes grounds for the claimant to refuse to attend the examination.

(10) (a) IF AN AUTHORIZED PHYSICIAN REFUSES TO PROVIDE MEDICAL TREATMENT TO AN INJURED EMPLOYEE OR DISCHARGES AN INJURED EMPLOYEE FROM MEDICAL CARE FOR NONMEDICAL REASONS WHEN THE INJURED EMPLOYEE REQUIRES MEDICAL TREATMENT TO CURE OR RELIEVE THE EFFECTS OF THE WORK INJURY, THEN THE PHYSICIAN SHALL, WITHIN THREE BUSINESS DAYS FROM THE REFUSAL OR DISCHARGE, PROVIDE WRITTEN NOTICE OF THE REFUSAL OR DISCHARGE BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE INJURED EMPLOYEE AND THE INSURER OR SELF-INSURED EMPLOYER. THE NOTICE MUST EXPLAIN THE REASONS FOR THE REFUSAL OR DISCHARGE AND MUST OFFER TO TRANSFER THE INJURED EMPLOYEE'S MEDICAL RECORDS TO ANY NEW AUTHORIZED PHYSICIAN UPON RECEIPT OF A SIGNED AUTHORIZATION TO DO SO FROM THE INJURED EMPLOYEE. THE DIRECTOR OR ANY ADMINISTRATIVE LAW JUDGE OF THE OFFICE OF ADMINISTRATIVE COURTS HAS JURISDICTION TO RESOLVE DISPUTES REGARDING WHETHER A REFUSAL TO PROVIDE MEDICAL TREATMENT OR A DISCHARGE FROM MEDICAL CARE WAS FOR MEDICAL OR NONMEDICAL REASONS.

(b) IF THE INSURER OR SELF-INSURED EMPLOYER RECEIVES WRITTEN NOTICE PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (10), OR IF THE INSURER OR SELF-INSURED EMPLOYER AND THE AUTHORIZED TREATING PHYSICIAN RECEIVE WRITTEN NOTICE BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, FROM THE INJURED EMPLOYEE OR THE INJURED EMPLOYEE'S LEGAL REPRESENTATIVE THAT AN AUTHORIZED PHYSICIAN REFUSED TO PROVIDE MEDICAL TREATMENT TO THE INJURED EMPLOYEE OR DISCHARGED

THE INJURED EMPLOYEE FROM MEDICAL CARE FOR NONMEDICAL REASONS WHEN SUCH INJURED EMPLOYEE REQUIRES MEDICAL TREATMENT TO CURE OR RELIEVE THE EFFECTS OF THE WORK INJURY, AND THERE IS NO OTHER AUTHORIZED PHYSICIAN WILLING TO PROVIDE MEDICAL TREATMENT, THEN THE INSURER OR SELF-INSURED EMPLOYER SHALL, WITHIN FIFTEEN CALENDAR DAYS FROM RECEIVING THE WRITTEN NOTICE, DESIGNATE A NEW AUTHORIZED PHYSICIAN WILLING TO PROVIDE MEDICAL TREATMENT. IF THE INSURER OR SELF-INSURED EMPLOYER FAILS TO DESIGNATE A NEW PHYSICIAN PURSUANT TO THIS PARAGRAPH (b), THEN THE INJURED EMPLOYEE MAY SELECT THE PHYSICIAN WHO ATTENDS TO THE INJURED EMPLOYEE.

SECTION 9. In Colorado Revised Statutes, 8-43-406, **amend** (2); and **add** (3) and (4) as follows:

8-43-406. Compensation in lump sum. (2) IF A CLAIMANT WHO HAS BEEN AWARDED COMPENSATION IS THE INJURED WORKER OR THE SOLE DEPENDENT OF A DECEASED INJURED WORKER, the aggregate of all lump sums granted to a THE claimant ~~who has been awarded compensation shall~~ MUST not exceed ~~sixty~~ EIGHTY thousand EIGHT HUNDRED SIXTY-EIGHT dollars AND TEN CENTS.

(3) IF A CLAIMANT WHO HAS BEEN AWARDED COMPENSATION IS ONE OF MULTIPLE DEPENDENTS OF A DECEASED INJURED WORKER, THE AGGREGATE OF ALL LUMP SUMS GRANTED TO THE CLAIMANT MUST BE A PROPORTIONATE SHARE, AS DETERMINED BY THE DIRECTOR OR ADMINISTRATIVE LAW JUDGE, OF AN AMOUNT NOT TO EXCEED ONE HUNDRED SIXTY-ONE THOUSAND SEVEN HUNDRED THIRTY-FOUR DOLLARS AND FIFTEEN CENTS.

(4) FOR INJURIES SUSTAINED ON OR AFTER JANUARY 1, 2014, THE DIRECTOR SHALL ADJUST THE LUMP-SUM LIMITS SET FORTH IN SUBSECTIONS (2) AND (3) OF THIS SECTION ON JULY 1, 2014, AND EACH JULY 1 THEREAFTER, BY THE PERCENTAGE OF THE ADJUSTMENT MADE BY THE DIRECTOR TO THE STATE AVERAGE WEEKLY WAGE PURSUANT TO SECTION 8-47-106. A CLAIMANT WHO HAS RECEIVED COMPENSATION UNDER THIS SECTION IS NOT ENTITLED TO ANY FURTHER COMPENSATION UNDER THIS SECTION RELATED TO THE CLAIM AS A RESULT OF AN ADJUSTMENT BY THE DIRECTOR PURSUANT TO THIS SUBSECTION (4).

SECTION 10. Effective date. This act takes effect July 1, 2014.

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

Morgan Carroll
PRESIDENT OF
THE SENATE

Mark Ferrandino
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO