

**First Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO**

PREAMENDED

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

LLS NO. 07-1010.01 Kristen Forrestal

SENATE BILL 07-258

SENATE SPONSORSHIP

Groff,

HOUSE SPONSORSHIP

Rice,

Senate Committees

State, Veterans & Military Affairs
Appropriations

House Committees

Business Affairs and Labor
Appropriations

A BILL FOR AN ACT

101 **CONCERNING WORKERS' COMPENSATION, AND MAKING AN**
102 **APPROPRIATION THEREFOR.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Clarifies that the workers' compensation fee schedule applies to all services provided by a medical professional. Requires that a list of accredited and nonaccredited physicians be provided to all parties to a workers' compensation claim. Requires scheduled awards to be calculated the same as lump sum awards.

Deletes the requirement that the parties wait 14 days after the notice of the request to select an independent medical examiner (IME) is

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

SENATE
3rd Reading Unamended
April 30, 2007

SENATE
Amended 2nd Reading
April 27, 2007

mailed to select an IME. Requires witness reports and employer records to be exchanged at least 20 days prior to the hearing date.

Removes the requirement that a party certify that he or she attempted to resolve a dispute when a hearing is requested in response to a final admission of liability or to overcome a conclusion in a division-sponsored independent medical examination.

Eliminates the requirement that a judge prepare a full order in certain circumstances. Allows motions to be granted or denied by a stamp. Places the burden of proof on the party that attempts to reopen an issue or claim as to any issues sought to be reopened.

Requires the treating physician to inform the injured worker that he or she has the right to request a different physician. Allows an employee to bring another person to a medical appointment.

Deletes the requirement that the division of workers' compensation order and calculate a lump sum award. Increases the allowable aggregate lump sum award.

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

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3 **SECTION 1.** 8-42-107 (8) (d), Colorado Revised Statutes, is
4 amended to read:

5 **8-42-107. Permanent partial disability benefits - schedule -**
6 **medical impairment benefits - how determined. (8) Medical**
7 **impairment benefits - determination of MMI for scheduled and**
8 **nonscheduled injuries. (d) Medical impairment benefits shall be**
9 **determined by multiplying the medical impairment rating determined**
10 **pursuant to paragraph (c) of this subsection (8) by the age factor**
11 **determined pursuant to paragraph (e) of this subsection (8) and by four**
12 **hundred weeks and shall be calculated at the temporary total disability**
13 **rate specified in section 8-42-105. Up to ten thousand dollars of the total**
14 **amount of any such award OR SCHEDULED AWARD shall be automatically**
15 **paid in a lump sum less the discount as calculated in section 8-43-406**
16 **upon the injured employee's written request to the employer or, if insured,**

1 to the employer's insurance carrier. The remaining periodic payments of
2 any such award, after subtracting the total amount of the lump sum
3 requested by the employee without subtracting the discount calculated in
4 section 8-43-406, shall be paid at the temporary total disability rate but
5 not less than one hundred fifty dollars per week and not more than fifty
6 percent of the state average weekly wage, beginning on the date of
7 maximum medical improvement.

8 **SECTION 2.** 8-42-107.2 (3) (a), Colorado Revised Statutes, is
9 amended to read:

10 **8-42-107.2. Selection of independent medical examiner -**
11 **procedure - time - applicability.** (3) (a) Upon receiving the requesting
12 party's notice and proposal pursuant to subsection (2) of this section, the
13 other parties have until the end of the thirtieth day after the date of
14 mailing of such notice and proposal within which to negotiate and select
15 an IME. ~~but shall not select an IME earlier than the fourteenth day after~~
16 ~~the day such notice is mailed.~~ If the parties agree on an IME on or before
17 such thirtieth day, the requesting party shall promptly notify the IME in
18 writing that he or she has been selected. If, within such time, the parties
19 are unable to agree or the requesting party receives no response to the
20 notice and proposal, the insurer or self-insured employer shall give
21 written notice of such fact to the division within thirty days via United
22 States mail, first-class postage paid. The division shall then, within ten
23 days after receiving such written notice, select three physicians by a
24 revolving selection process established by the division from the list of
25 physicians maintained by the division. The division shall administer the
26 list in such fashion as to ensure that the names of candidates to serve as
27 IME in each pending case remain confidential until the IME is selected.

1 The director of the division shall promulgate rules to implement the
2 process of selecting a panel of three physicians from which the parties
3 may select a physician to conduct a division independent medical
4 examination. The selection of a physician panel shall be based on various
5 factors, including, but not limited to, the designation by rule of the fields
6 of specialization authorized to perform independent medical examinations
7 for conditions listed under each medical treatment guideline and measures
8 to prevent the over-utilization of physicians or specialists. The requesting
9 party shall have the opportunity to strike one of the three physicians from
10 the list, followed by the opposing party who shall then be given the
11 opportunity to strike one physician from the list. The remaining IME
12 physician shall be designated by the division to conduct the IME. If one
13 or neither party strikes a physician from the list, the division shall select
14 the physician to conduct the IME from the remaining physicians on the
15 list.

16 **SECTION 3.** 8-43-209, Colorado Revised Statutes, is amended,
17 and the said 8-43-209 is further amended BY THE ADDITION OF A
18 NEW SUBSECTION, to read:

19 **8-43-209. Time schedule for hearings - establishment.** (1) The
20 director of the office of administrative courts shall establish a time
21 schedule for hearings by administrative law judges within the time limits
22 for the hearings as established in this section. Hearings shall be heard
23 COMMENCE within eighty to one hundred days after the occurrences listed
24 in HEARING IS SET PURSUANT TO section 8-43-211 (2). One extension of
25 time TO COMMENCE THE HEARING of no more than sixty days shall be
26 granted by an administrative law judge upon agreement of the parties.

27 (2) One extension of time TO COMMENCE THE HEARING of no more

1 than sixty days may be granted by an administrative law judge upon
2 written request by any party to the case and for good cause shown, in the
3 following cases: When pulmonary lung disease, cancer, cardiovascular
4 disease, or stroke is alleged as the cause of the disability; when the
5 subsequent injury fund is a party; when permanent total disability is
6 alleged; upon agreement of the parties; or when compensability of the
7 injury is contested. In all other cases, extensions of time TO COMMENCE
8 THE HEARING of no more than twenty days may be granted by an
9 administrative law judge upon written request by any party to the case and
10 for good cause shown. Such extensions may be granted only when the
11 interests of all parties will be served.

12 (3) ONCE THE HEARING IS COMMENCED, THE ADMINISTRATIVE LAW
13 JUDGE MAY, FOR GOOD CAUSE SHOWN, CONTINUE THE HEARING TO A DATE
14 CERTAIN TO TAKE ADDITIONAL TESTIMONY, TO FILE AN ADDITIONAL
15 MEDICAL REPORT, TO FILE THE TRANSCRIPT OF A DEPOSITION, OR TO FILE
16 A POSITION STATEMENT. EXCEPT UPON THE AGREEMENT OF ALL PARTIES
17 OR FOR GOOD CAUSE SHOWN, A CONTINUANCE TO COMPLETE A HEARING
18 SHALL NOT EXCEED THIRTY CALENDAR DAYS.

19 **SECTION 4.** 8-43-210, Colorado Revised Statutes, is amended
20 to read:

21 **8-43-210. Evidence.** Notwithstanding section 24-4-105, C.R.S.,
22 the Colorado rules of evidence and requirements of proof for civil
23 nonjury cases in the district courts shall apply in all hearings; except that
24 medical and hospital records, physicians' reports, vocational reports, and
25 records of the employer are admissible as evidence and can be filed in the
26 record as evidence without formal identification if relevant to any issue
27 in the case. Depositions may be substituted for testimony upon good

1 cause shown. Convictions for alcohol-related offenses, pursuant to ~~title~~
2 ~~42 and title 18~~ TITLES 18 AND 42, C.R.S., the transcripts of proceedings
3 leading to such convictions, and the court files relating to such
4 convictions may be admissible in all hearings conducted under the
5 "Workers' Compensation Act of Colorado", ARTICLES 40 TO 47 OF THIS
6 TITLE, where such conviction resulted from the same occurrence,
7 accident, or injury occurring on the job that forms the basis for the
8 workers' compensation claim. ALL RELEVANT MEDICAL RECORDS,
9 VOCATIONAL REPORTS, EXPERT WITNESS REPORTS, AND EMPLOYER
10 RECORDS SHALL BE EXCHANGED WITH ALL OTHER PARTIES AT LEAST
11 TWENTY DAYS PRIOR TO THE HEARING DATE.

12 **SECTION 5.** 8-43-211 (2) (e), Colorado Revised Statutes, is
13 amended to read:

14 **8-43-211. Notice - request for hearing.** (2) Hearings shall be set
15 by the office of administrative courts in the department of personnel
16 within eighty to one hundred days after any of the following occur:

17 (e) Except in claims in which compensability is contested OR A
18 HEARING IS REQUESTED IN RESPONSE TO A FINAL ADMISSION OF LIABILITY
19 OR TO OVERCOME A CONCLUSION IN A DIVISION-SPONSORED INDEPENDENT
20 MEDICAL EXAMINATION, the party filing an application for a hearing shall
21 certify on the application that the party attempted to resolve with the other
22 parties all issues listed in the application for a hearing.

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25 **SECTION 6.** 8-43-215 (1), Colorado Revised Statutes, is
26 amended to read:

27 **8-43-215. Orders.** (1) Any hearing conducted under this article

1 shall be completed within one hundred twenty days, or in the case where
2 an extension of time of sixty days is allowable under the provisions of
3 section 8-43-209, one hundred sixty days, after a request therefor
4 pursuant to section 8-43-211 (2). At the NO MORE THAN FIFTEEN
5 WORKING DAYS AFTER THE conclusion of a hearing, the administrative law
6 judge or director shall issue a written order allowing or denying said
7 claim. Such written order shall EITHER BE A SUMMARY ORDER OR A FULL
8 ORDER. A FULL ORDER SHALL contain specific findings of fact and
9 conclusions of law. If compensation benefits are granted, such written
10 order shall specify the amounts thereof, the disability for which
11 compensation benefits are granted, by whom and to whom such benefits
12 shall be paid, and the method and time of such payments. Such written
13 order shall be issued within thirty calendar days after the conclusion of
14 such hearing, and A certificate of mailing and a copy of such written
15 order shall be mailed, SERVED by regular or electronic mail OR BY
16 FACSIMILE to each of the parties in interest OR THEIR REPRESENTATIVES,
17 the original of which shall be a part of the records in said case. Such
18 written order IF AN ADMINISTRATIVE LAW JUDGE HAS ISSUED A SUMMARY
19 ORDER, A PARTY DISSATISFIED WITH THE ORDER MAY MAKE A WRITTEN
20 REQUEST FOR A FULL ORDER WITHIN SEVEN WORKING DAYS AFTER THE
21 DATE OF MAILING OF THE SUMMARY ORDER. THE REQUEST SHALL BE A
22 PREREQUISITE TO REVIEW UNDER SECTION 8-43-201. IF A REQUEST FOR A
23 FULL ORDER IS MADE, THE ADMINISTRATIVE LAW JUDGE SHALL HAVE TEN
24 WORKING DAYS AFTER RECEIPT OF THE REQUEST TO ISSUE THE ORDER. A
25 FULL ORDER shall be entered as the final award of the administrative law
26 judge or director subject to review as provided in this article.

27 **SECTION 7.** 8-43-303, Colorado Revised Statutes, is amended

1 BY THE ADDITION OF A NEW SUBSECTION to read:

2 **8-43-303. Reopening.** (4) THE PARTY ATTEMPTING TO REOPEN
3 AN ISSUE OR CLAIM SHALL BEAR THE BURDEN OF PROOF AS TO ANY ISSUES
4 SOUGHT TO BE REOPENED.

5 ~~=====~~
6 **SECTION 8.** 8-43-406, Colorado Revised Statutes, is amended
7 to read:

8 **8-43-406. Compensation in lump sum.** (1) At any time after six
9 months have elapsed from the date of injury, ~~the director, in the exercise~~
10 ~~of discretion, after five days' prior notice to the parties, may order~~
11 ~~payment of~~ THE CLAIMANT MAY ELECT TO TAKE all or any part of the
12 compensation awarded in a lump sum ~~or in such manner as the director~~
13 ~~may determine to be for the best interests of the parties concerned, and~~
14 ~~the director's order shall be final and not subject to review. When~~
15 ~~payment in a lump sum is ordered,~~ BY SENDING WRITTEN NOTICE OF THE
16 ELECTION AND THE AMOUNT OF BENEFITS REQUESTED TO THE CARRIER OR
17 THE NONINSURED OR SELF-INSURED EMPLOYER. THE CARRIER OR
18 SELF-INSURED EMPLOYER SHALL FILE THE CALCULATION OF THE LUMP SUM
19 DUE AND NOTICE THAT THE LUMP SUM HAS BEEN PAID TO THE CLAIMANT
20 WITHIN TEN DAYS AFTER THE ELECTION. WHEN THE CLAIMANT IS
21 UNREPRESENTED, the director shall fix the amount CALCULATE AMOUNTS
22 to be paid based on the present worth of partial payments, considering
23 interest at four percent per annum, and less a deduction for the
24 contingency of death. THE DIRECTOR SHALL MAKE THE METHOD OF
25 CALCULATION OF LUMP SUMS AVAILABLE TO ALL PARTIES AT ALL TIMES,
26 INCLUDING POSTING THE INFORMATION ON THE DIVISION'S WEBSITE.

27 (2) The aggregate of all lump sums granted to a claimant who has

1 been awarded compensation by the director for permanent total disability
2 or death benefits shall not exceed thirty-seven SIXTY thousand five
3 hundred sixty dollars. In the case of permanent partial disability, the
4 director shall order payment upon application by the employee not to
5 exceed thirty-seven thousand five hundred sixty dollars to be paid based
6 on the present worth of partial payments, considering interest at four
7 percent per annum.

8 **SECTION 9. Appropriation.** (1) In addition to any other
9 appropriation, there is hereby appropriated, out of any moneys in the
10 workers' compensation cash fund created in section 8-44-112 (7),
11 Colorado Revised Statutes, not otherwise appropriated, to the department
12 of labor and employment, for allocation to the workers' compensation
13 division, for administrative law judge services, for the fiscal year
14 beginning July 1, 2007, the sum of three thousand five hundred two
15 dollars (\$3,502), or so much thereof as may be necessary, for the
16 implementation of this act.

17 (2) In addition to any other appropriation, there is hereby
18 appropriated to the department of personnel, division of administrative
19 courts, for operating expenses, for the fiscal year beginning July 1, 2007,
20 the sum of three thousand five hundred two dollars (\$3,502), or so much
21 thereof as may be necessary, for the provision of administrative law judge
22 services to the department of labor and employment related to the
23 implementation of this act. Said sum shall be from cash funds exempt
24 received from the department of labor and employment out of the
25 appropriation made in subsection (1) of this section.

26 **SECTION 10. Safety clause.** The general assembly hereby finds,

- 1 determines, and declares that this act is necessary for the immediate
- 2 preservation of the public peace, health, and safety.