

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

ENGROSSED

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

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

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
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:*

2 **SECTION 1.** 8-42-101 (3) (a) (I) and (3.6) (k), Colorado Revised
3 Statutes, are amended to read:

4 **8-42-101. Employer must furnish medical aid - approval of**
5 **plan - fee schedule - contracting for treatment - no recovery from**
6 **employee - medical treatment guidelines - accreditation of physicians**
7 **- repeal.** (3) (a) (I) The director shall establish a schedule fixing the fees
8 for which all medical, surgical, hospital, dental, nursing, and vocational
9 rehabilitation, AND MEDICAL SERVICES, WHETHER RELATED TO treatment
10 ~~rendered~~ OR NOT, PERTAINING TO INJURED employees under this section
11 shall be compensated, and it is unlawful, void, and unenforceable as a
12 debt for any physician, chiropractor, hospital, person, EXPERT WITNESS,
13 REVIEWER, EVALUATOR, or institution to contract with, bill, or charge any
14 patient for services, rendered in connection with injuries coming within
15 the purview of this article or an applicable fee schedule, which are or may
16 be in excess of said fee schedule unless such charges are approved by the

1 director. ___ ___ Fee schedules shall be reviewed on or before July 1 of
2 each year by the director, and appropriate health care practitioners shall
3 be given a reasonable opportunity to be heard as required pursuant to
4 section 24-4-103, C.R.S., prior to fixing the fees, impairment rating
5 guidelines, which shall be based on the revised third edition of the
6 "American Medical Association Guides to the Evaluation of Permanent
7 Impairment", in effect as of July 1, 1991, and medical treatment
8 guidelines and utilization standards. Fee schedules established pursuant
9 to this subparagraph (I) shall take effect on January 1. The director shall
10 promulgate rules concerning reporting requirements, penalties for failure
11 to report correctly or in a timely manner, utilization control requirements
12 for services provided under this section, and the accreditation process in
13 subsection (3.6) of this section.

14 (3.6) The two-tier accreditation system shall comprise the
15 following programs:

16 (k) The division shall make available to insurers, CLAIMANTS, AND
17 EMPLOYERS a list of all accredited physicians and a list of all physicians
18 whose accreditation has been revoked. Such lists shall be updated on a
19 monthly basis.

20 **SECTION 2.** 8-42-107 (8) (d), Colorado Revised Statutes, is
21 amended to read:

22 **8-42-107. Permanent partial disability benefits - schedule -**
23 **medical impairment benefits - how determined. (8) Medical**
24 **impairment benefits - determination of MMI for scheduled and**
25 **nonscheduled injuries. (d) Medical impairment benefits shall be**
26 **determined by multiplying the medical impairment rating determined**
27 **pursuant to paragraph (c) of this subsection (8) by the age factor**

1 determined pursuant to paragraph (e) of this subsection (8) and by four
2 hundred weeks and shall be calculated at the temporary total disability
3 rate specified in section 8-42-105. Up to ten thousand dollars of the total
4 amount of any such award OR SCHEDULED AWARD shall be automatically
5 paid in a lump sum less the discount as calculated in section 8-43-406
6 upon the injured employee's written request to the employer or, if insured,
7 to the employer's insurance carrier. The remaining periodic payments of
8 any such award, after subtracting the total amount of the lump sum
9 requested by the employee without subtracting the discount calculated in
10 section 8-43-406, shall be paid at the temporary total disability rate but
11 not less than one hundred fifty dollars per week and not more than fifty
12 percent of the state average weekly wage, beginning on the date of
13 maximum medical improvement.

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

16 **8-42-107.2. Selection of independent medical examiner -**
17 **procedure - time - applicability.** (3) (a) Upon receiving the requesting
18 party's notice and proposal pursuant to subsection (2) of this section, the
19 other parties have until the end of the thirtieth day after the date of
20 mailing of such notice and proposal within which to negotiate and select
21 an IME. ~~but shall not select an IME earlier than the fourteenth day after~~
22 ~~the day such notice is mailed.~~ If the parties agree on an IME on or before
23 such thirtieth day, the requesting party shall promptly notify the IME in
24 writing that he or she has been selected. If, within such time, the parties
25 are unable to agree or the requesting party receives no response to the
26 notice and proposal, the insurer or self-insured employer shall give
27 written notice of such fact to the division within thirty days via United

1 States mail, first-class postage paid. The division shall then, within ten
2 days after receiving such written notice, select three physicians by a
3 revolving selection process established by the division from the list of
4 physicians maintained by the division. The division shall administer the
5 list in such fashion as to ensure that the names of candidates to serve as
6 IME in each pending case remain confidential until the IME is selected.
7 The director of the division shall promulgate rules to implement the
8 process of selecting a panel of three physicians from which the parties
9 may select a physician to conduct a division independent medical
10 examination. The selection of a physician panel shall be based on various
11 factors, including, but not limited to, the designation by rule of the fields
12 of specialization authorized to perform independent medical examinations
13 for conditions listed under each medical treatment guideline and measures
14 to prevent the over-utilization of physicians or specialists. The requesting
15 party shall have the opportunity to strike one of the three physicians from
16 the list, followed by the opposing party who shall then be given the
17 opportunity to strike one physician from the list. The remaining IME
18 physician shall be designated by the division to conduct the IME. If one
19 or neither party strikes a physician from the list, the division shall select
20 the physician to conduct the IME from the remaining physicians on the
21 list.

22 SECTION 4. 8-43-209, Colorado Revised Statutes, is amended,
23 and the said 8-43-209 is further amended BY THE ADDITION OF A
24 NEW SUBSECTION, to read:

25 8-43-209. Time schedule for hearings - establishment. (1) The
26 director of the office of administrative courts shall establish a time
27 schedule for hearings by administrative law judges within the time limits

1 for the hearings as established in this section. Hearings shall be heard
2 COMMENCE within eighty to one hundred days after the occurrences listed
3 in HEARING IS SET PURSUANT TO section 8-43-211 (2). One extension of
4 time TO COMMENCE THE HEARING of no more than sixty days shall be
5 granted by an administrative law judge upon agreement of the parties.

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

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

25 **SECTION 5.** 8-43-210, Colorado Revised Statutes, is amended
26 to read:

27 **8-43-210. Evidence.** Notwithstanding section 24-4-105, C.R.S.,

1 the Colorado rules of evidence and requirements of proof for civil
2 nonjury cases in the district courts shall apply in all hearings; except that
3 medical and hospital records, physicians' reports, vocational reports, and
4 records of the employer are admissible as evidence and can be filed in the
5 record as evidence without formal identification if relevant to any issue
6 in the case. Depositions may be substituted for testimony upon good
7 cause shown. Convictions for alcohol-related offenses, pursuant to ~~title~~
8 ~~42 and title 18~~ TITLES 18 AND 42, C.R.S., the transcripts of proceedings
9 leading to such convictions, and the court files relating to such
10 convictions may be admissible in all hearings conducted under the
11 "Workers' Compensation Act of Colorado", ARTICLES 40 TO 47 OF THIS
12 TITLE, where such conviction resulted from the same occurrence,
13 accident, or injury occurring on the job that forms the basis for the
14 workers' compensation claim. ALL RELEVANT MEDICAL RECORDS,
15 VOCATIONAL REPORTS, EXPERT WITNESS REPORTS, AND EMPLOYER
16 RECORDS SHALL BE EXCHANGED WITH ALL OTHER PARTIES AT LEAST
17 TWENTY DAYS PRIOR TO THE HEARING DATE.

18 **SECTION 6.** 8-43-211 (2) (e), Colorado Revised Statutes, is
19 amended to read:

20 **8-43-211. Notice - request for hearing.** (2) Hearings shall be set
21 by the office of administrative courts in the department of personnel
22 within eighty to one hundred days after any of the following occur:

23 (e) Except in claims in which compensability is contested OR A
24 HEARING IS REQUESTED IN RESPONSE TO A FINAL ADMISSION OF LIABILITY
25 OR TO OVERCOME A CONCLUSION IN A DIVISION-SPONSORED INDEPENDENT
26 MEDICAL EXAMINATION, the party filing an application for a hearing shall
27 certify on the application that the party attempted to resolve with the other

1 parties all issues listed in the application for a hearing.

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SECTION 7. 8-43-215 (1), Colorado Revised Statutes, is

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amended to read:

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

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shall be completed within one hundred twenty days, or in the case where

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an extension of time of sixty days is allowable under the provisions of

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section 8-43-209, one hundred sixty days, after a request therefor

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pursuant to section 8-43-211 (2). At the NO MORE THAN FIFTEEN

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WORKING DAYS AFTER THE conclusion of a hearing, the administrative law

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judge or director shall issue a written order allowing or denying said

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claim. Such written order shall EITHER BE A SUMMARY ORDER OR A FULL

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ORDER. A FULL ORDER SHALL contain specific findings of fact and

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conclusions of law. If compensation benefits are granted, such written

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order shall specify the amounts thereof, the disability for which

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compensation benefits are granted, by whom and to whom such benefits

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shall be paid, and the method and time of such payments. Such written

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order shall be issued within thirty calendar days after the conclusion of

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such hearing, and A certificate of mailing and a copy of such written

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order shall be mailed, SERVED by regular or electronic mail OR BY

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FACSIMILE to each of the parties in interest OR THEIR REPRESENTATIVES,

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the original of which shall be a part of the records in said case. Such

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written order IF AN ADMINISTRATIVE LAW JUDGE HAS ISSUED A SUMMARY

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ORDER, A PARTY DISSATISFIED WITH THE ORDER MAY MAKE A WRITTEN

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REQUEST FOR A FULL ORDER WITHIN SEVEN WORKING DAYS AFTER THE

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DATE OF MAILING OF THE SUMMARY ORDER. THE REQUEST SHALL BE A

1 PREREQUISITE TO REVIEW UNDER SECTION 8-43-201. IF A REQUEST FOR A
2 FULL ORDER IS MADE, THE ADMINISTRATIVE LAW JUDGE SHALL HAVE TEN
3 WORKING DAYS AFTER RECEIPT OF THE REQUEST TO ISSUE THE ORDER. A
4 FULL ORDER shall be entered as the final award of the administrative law
5 judge or director subject to review as provided in this article.

6 **SECTION 8.** 8-43-303, Colorado Revised Statutes, is amended
7 BY THE ADDITION OF A NEW SUBSECTION to read:

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

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12 **SECTION 9.** 8-43-406, Colorado Revised Statutes, is amended
13 to read:

14 **8-43-406. Compensation in lump sum.** (1) At any time after six
15 months have elapsed from the date of injury, ~~the director, in the exercise~~
16 ~~of discretion, after five days' prior notice to the parties, may order~~
17 ~~payment of~~ THE CLAIMANT MAY ELECT TO TAKE all or any part of the
18 compensation awarded in a lump sum ~~or in such manner as the director~~
19 ~~may determine to be for the best interests of the parties concerned, and~~
20 ~~the director's order shall be final and not subject to review. When~~
21 ~~payment in a lump sum is ordered,~~ BY SENDING WRITTEN NOTICE OF THE
22 ELECTION AND THE AMOUNT OF BENEFITS REQUESTED TO THE CARRIER OR
23 THE NONINSURED OR SELF-INSURED EMPLOYER. THE CARRIER OR
24 SELF-INSURED EMPLOYER SHALL FILE THE CALCULATION OF THE LUMP SUM
25 DUE AND NOTICE THAT THE LUMP SUM HAS BEEN PAID TO THE CLAIMANT
26 WITHIN TEN DAYS AFTER THE ELECTION. WHEN THE CLAIMANT IS
27 UNREPRESENTED, the director shall fix the amount CALCULATE AMOUNTS

1 to be paid based on the present worth of partial payments, considering
2 interest at four percent per annum, and less a deduction for the
3 contingency of death. THE DIRECTOR SHALL MAKE THE METHOD OF
4 CALCULATION OF LUMP SUMS AVAILABLE TO ALL PARTIES AT ALL TIMES,
5 INCLUDING POSTING THE INFORMATION ON THE DIVISION'S WEBSITE.

6 (2) The aggregate of all lump sums granted to a claimant who has
7 been awarded compensation by the director for permanent total disability
8 or death benefits shall not exceed ~~thirty-seven~~ SIXTY thousand five
9 hundred sixty dollars. ~~In the case of permanent partial disability, the~~
10 ~~director shall order payment upon application by the employee not to~~
11 ~~exceed thirty-seven thousand five hundred sixty dollars to be paid based~~
12 ~~on the present worth of partial payments, considering interest at four~~
13 ~~percent per annum.~~

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

23 (2) In addition to any other appropriation, there is hereby
24 appropriated to the department of personnel, division of administrative
25 courts, for operating expenses, for the fiscal year beginning July 1, 2007,
26 the sum of three thousand five hundred two dollars (\$3,502), or so much
27 thereof as may be necessary, for the provision of administrative law judge

1 services to the department of labor and employment related to the
2 implementation of this act. Said sum shall be from cash funds exempt
3 received from the department of labor and employment out of the
4 appropriation made in subsection (1) of this section.

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