

**Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO**

PREAMENDED

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

LLS NO. 14-0976.01 Duane Gall x4335

SENATE BILL 14-191

SENATE SPONSORSHIP

Tochtrop,

HOUSE SPONSORSHIP

(None),

Senate Committees

Business, Labor, & Technology
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE PROCEDURES FOR RESOLUTION OF WORKERS'**
102 **COMPENSATION CLAIMS.**

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://www.leg.state.co.us/billsummaries>.)

Section 1 of the bill explicitly authorizes the director of the division of workers' compensation (director), or an administrative law judge (ALJ) presiding over a workers' compensation case, to consider the medical treatment guidelines adopted by the director in determining whether certain medical treatment is appropriate.

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.

Section 2 requires the director to adopt rules governing the approval of settlements in workers' compensation cases, including procedures for electronic transmission of documents and verification of signatures.

Sections 3 and 4 adjust the measurement of time within which a hearing must commence, from 100 days after the date the hearing is set to 120 days after the date of service of the request for hearing or the notice to set.

Section 5 extends the time for objection to a summary order by an ALJ from 7 days to 10 days.

Section 6 allows the director or an ALJ to summon out-of-state parties to appear, either in person or by telephone, at a hearing or deposition and authorizes sanctions for a failure to appear.

Section 7 sets a 30-day deadline for the director, ALJ, or administrative panel to comply with the directions accompanying the remand of a case or order by an appellate tribunal.

Section 8 allows a claimant to receive \$75 per day, in addition to transportation and lodging, if the claimant is required to travel for a medical examination requested by the employer and misses work as a result.

Section 8 also requires an authorized physician to give written notice, with an explanation, to the claimant and the employer if the physician refuses to treat the claimant or discharges the claimant from medical care for a nonmedical reason. After receiving the notice, the employer has 15 days to select another physician before the claimant is allowed to select a physician independently.

Section 9 adjusts the maximum amount payable in a lump-sum settlement, replacing the current limit of \$60,000 with a range of \$80,868 to \$161,734, depending on the number of claimants, to be adjusted periodically whenever adjustments are made to the state average weekly wage.

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

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

4 **8-43-201. Disputes arising under "Workers' Compensation**
5 **Act of Colorado".** (3) IT IS APPROPRIATE FOR THE DIRECTOR OR AN
6 ADMINISTRATIVE LAW JUDGE TO CONSIDER THE MEDICAL TREATMENT
7 GUIDELINES ADOPTED UNDER SECTION 8-42-101 (3) IN DETERMINING

1 WHETHER CERTAIN MEDICAL TREATMENT IS REASONABLE, NECESSARY,
2 AND RELATED TO AN INDUSTRIAL INJURY OR OCCUPATIONAL DISEASE. THE
3 DIRECTOR OR ADMINISTRATIVE LAW JUDGE IS NOT REQUIRED TO UTILIZE
4 THE MEDICAL TREATMENT GUIDELINES AS THE SOLE BASIS FOR SUCH
5 DETERMINATIONS.

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

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

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

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

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

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

21 **8-43-209. Time schedule for hearings - establishment.**

22 (1) Hearings ~~shall~~ MUST commence within one hundred TWENTY days
23 ~~after~~ FROM the ~~hearing is set~~ DATE OF THE NOTICE OF SETTING BY THE
24 DIRECTOR PURSUANT TO SECTION 8-43-211 (2) (a) OR OF THE DATE SHOWN
25 ON THE CERTIFICATE OF SERVICE ACCOMPANYING THE REQUEST, NOTICE,
26 OR APPLICATION BY A PARTY OR THE PARTY'S ATTORNEY pursuant to
27 section 8-43-211 (2) (b) OR (2) (c). UPON AGREEMENT OF THE PARTIES, AN

1 ADMINISTRATIVE LAW JUDGE SHALL GRANT one extension of time, NOT
2 EXCEEDING SIXTY DAYS, to commence the hearing. ~~of no more than sixty~~
3 ~~days shall be granted by an administrative law judge upon agreement of~~
4 ~~the parties.~~

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

7 **8-43-211. Notice - request for hearing.** (1) At least thirty days
8 ~~prior to~~ BEFORE any hearing, the office of administrative courts in the
9 department of personnel shall send written notice to all parties by regular
10 or electronic mail or by facsimile. The notice ~~shall~~ MUST:

- 11 (a) Give the time, date, and place of the hearing;
- 12 (b) Inform the parties that they must be prepared to present their
13 evidence concerning the issues to be heard;
- 14 (c) Inform the parties that they have the right to be represented by
15 an attorney or other person of their choice at the hearing.

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

- 19 (a) The director sets any issue for hearing. The director may
20 expedite the hearing for good cause shown.
- 21 (b) Any party requests a hearing on issues ripe for adjudication by
22 filing a written request with the office of administrative courts in the
23 department of personnel on forms provided by the office. The request
24 shall be mailed to all parties at the time they are filed with the office of
25 administrative courts. After the filing of the requests, the office of
26 administrative courts in the department of personnel shall set the matter
27 for hearing insofar as is practicable in the order in which requests are

1 received by the office of administrative courts.

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

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

18 ~~(e)~~ (4) Except in claims in which compensability is contested or
19 a hearing is requested in response to a final admission of liability or to
20 overcome a conclusion in a division-sponsored independent medical
21 examination, the party filing an application for a hearing shall certify on
22 the application that the party attempted to resolve with the other parties
23 all issues listed in the application for a hearing.

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

26 **8-43-215. Orders.** (1) No more than fifteen working days after
27 the conclusion of a hearing, the administrative law judge or director shall

1 issue a written order allowing or denying ~~said~~ THE claim. ~~Such~~ THE
2 written order ~~shall~~ MUST either be a summary order or a full order. A full
3 order ~~shall~~ MUST contain specific findings of fact and conclusions of law.
4 If compensation benefits are granted, ~~such~~ THE written order ~~shall~~ MUST
5 specify the amounts thereof, the disability for which compensation
6 benefits are granted, by whom and to whom such benefits ~~shall~~ ARE TO be
7 paid, and the method and time of ~~such~~ THE payments. A certificate of
8 mailing and a copy of ~~such~~ THE written order shall be served by regular
9 or electronic mail or by facsimile to each of the parties in interest or their
10 representatives, the original of which ~~shall be~~ IS a part of the records in
11 ~~said~~ THE case. If an administrative law judge has issued a summary order,
12 a party dissatisfied with the order may make a written request for a full
13 order within ~~seven~~ TEN working days after the date of mailing of the
14 summary order. The request ~~shall be~~ IS a prerequisite to review under
15 section 8-43-301. If a request for a full order is made, the administrative
16 law judge ~~shall have~~ HAS ten working days after receipt of the request to
17 issue the order. A full order shall be entered as the final award of the
18 administrative law judge or director subject to review as provided in this
19 article.

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

22 **8-43-315. Witnesses and testimony - mileage - fees - costs.**

23 (1) The director or any agent, deputy, or administrative law judge ~~of the~~
24 ~~division has the power to~~ MAY issue subpoenas to compel the attendance
25 of witnesses or parties and the production of books, papers, or records
26 and to administer oaths. Any person who serves a subpoena shall receive
27 the same fee as the sheriff. Each witness who is subpoenaed on behalf of

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

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

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

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

26 **8-43-318. Remand of case or order - time limit for further**
27 **proceedings consistent with ruling on appeal.** IF A CASE OR ORDER IS

1 APPEALED TO THE PANEL, THE COURT OF APPEALS, OR THE SUPREME
2 COURT, AND THE CASE OR ORDER IS REMANDED WITH DIRECTIONS, THE
3 DIRECTOR, ADMINISTRATIVE LAW JUDGE, OR PANEL, AS THE CASE MAY BE,
4 SHALL ISSUE AN ORDER CONSISTENT WITH THOSE DIRECTIONS WITHIN
5 THIRTY DAYS FROM RECEIPT OF THE REMAND. THE REMANDING TRIBUNAL
6 HAS CONTINUING JURISDICTION TO ENFORCE THE REMAND ORDER.

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

9 **8-43-404. Examination - refusal - personal responsibility -**
10 **physicians to testify and furnish results - injured worker right to**
11 **select treating physicians - injured worker right to third-party**
12 **communications - definitions - rules.** (1) (b) (I) At least three business
13 days in advance of an examination under paragraph (a) of this subsection
14 (1), if requested by the claimant, the employer or insurer shall pay to the
15 claimant the claimant's estimated expenses of attending the examination,
16 including transportation, mileage, food, and hotel costs. IN ADDITION, IF
17 THE CLAIMANT VERIFIES THAT HE OR SHE WILL INCUR UNCOMPENSATED
18 WAGE LOSSES AS A RESULT OF ATTENDING THE EXAMINATION, THE
19 EMPLOYER OR INSURER SHALL REIMBURSE THE CLAIMANT AT THE RATE OF
20 SEVENTY-FIVE DOLLARS PER DAY. Failure to provide payment in
21 accordance with this subparagraph (I) constitutes grounds for the claimant
22 to refuse to attend the examination.

23 (10) (a) IF AN AUTHORIZED PHYSICIAN REFUSES TO PROVIDE
24 MEDICAL TREATMENT TO AN INJURED EMPLOYEE OR DISCHARGES AN
25 INJURED EMPLOYEE FROM MEDICAL CARE FOR NONMEDICAL REASONS
26 WHEN THE INJURED EMPLOYEE REQUIRES MEDICAL TREATMENT TO CURE
27 OR RELIEVE THE EFFECTS OF THE WORK INJURY, THEN THE PHYSICIAN

1 SHALL, WITHIN THREE BUSINESS DAYS FROM THE REFUSAL OR DISCHARGE,
2 PROVIDE WRITTEN NOTICE OF THE REFUSAL OR DISCHARGE BY CERTIFIED
3 MAIL, RETURN RECEIPT REQUESTED, TO THE INJURED EMPLOYEE AND THE
4 INSURER OR SELF-INSURED EMPLOYER. THE NOTICE MUST EXPLAIN THE
5 REASONS FOR THE REFUSAL OR DISCHARGE AND MUST OFFER TO TRANSFER
6 THE INJURED EMPLOYEE'S MEDICAL RECORDS TO ANY NEW AUTHORIZED
7 PHYSICIAN UPON RECEIPT OF A SIGNED AUTHORIZATION TO DO SO FROM
8 THE INJURED EMPLOYEE. THE DIRECTOR OR ANY ADMINISTRATIVE LAW
9 JUDGE OF THE OFFICE OF ADMINISTRATIVE COURTS HAS JURISDICTION TO
10 RESOLVE DISPUTES REGARDING WHETHER A REFUSAL TO PROVIDE MEDICAL
11 TREATMENT OR A DISCHARGE FROM MEDICAL CARE WAS FOR MEDICAL OR
12 NONMEDICAL REASONS.

13 (b) IF THE INSURER OR SELF-INSURED EMPLOYER RECEIVES
14 WRITTEN NOTICE PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (10),
15 OR IF THE INSURER OR SELF-INSURED EMPLOYER AND THE AUTHORIZED
16 TREATING PHYSICIAN RECEIVE WRITTEN NOTICE BY CERTIFIED MAIL,
17 RETURN RECEIPT REQUESTED, FROM THE INJURED EMPLOYEE OR THE
18 INJURED EMPLOYEE'S LEGAL REPRESENTATIVE THAT AN AUTHORIZED
19 PHYSICIAN REFUSED TO PROVIDE MEDICAL TREATMENT TO THE INJURED
20 EMPLOYEE OR DISCHARGED THE INJURED EMPLOYEE FROM MEDICAL CARE
21 FOR NONMEDICAL REASONS WHEN SUCH INJURED EMPLOYEE REQUIRES
22 MEDICAL TREATMENT TO CURE OR RELIEVE THE EFFECTS OF THE WORK
23 INJURY, AND THERE IS NO OTHER AUTHORIZED PHYSICIAN WILLING TO
24 PROVIDE MEDICAL TREATMENT, THEN THE INSURER OR SELF-INSURED
25 EMPLOYER SHALL, WITHIN FIFTEEN CALENDAR DAYS FROM RECEIVING THE
26 WRITTEN NOTICE, DESIGNATE A NEW AUTHORIZED PHYSICIAN WILLING TO
27 PROVIDE MEDICAL TREATMENT. IF THE INSURER OR SELF-INSURED

1 EMPLOYER FAILS TO DESIGNATE A NEW PHYSICIAN PURSUANT TO THIS
2 PARAGRAPH (b), THEN THE INJURED EMPLOYEE MAY SELECT THE
3 PHYSICIAN WHO ATTENDS TO THE INJURED EMPLOYEE.

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

6 **8-43-406. Compensation in lump sum.** (2) IF A CLAIMANT WHO
7 HAS BEEN AWARDED COMPENSATION IS THE INJURED WORKER OR THE SOLE
8 DEPENDENT OF A DECEASED INJURED WORKER, the aggregate of all lump
9 sums granted to a THE claimant ~~who has been awarded compensation~~
10 ~~shall~~ MUST not exceed ~~sixty~~ EIGHTY thousand EIGHT HUNDRED
11 SIXTY-EIGHT dollars AND TEN CENTS.

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

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

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

2 **SECTION 11. Safety clause.** The general assembly hereby finds,

3 determines, and declares that this act is necessary for the immediate

4 preservation of the public peace, health, and safety.