

All About Claims

Colorado Department of Labor & Employment
Division of Workers' Compensation
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All About Claims is a newsletter published by the Colorado Division of Workers' Compensation designed to provide information to claims handlers. Please send comments or suggestions for future topics to JoAnne Ibarra at 303.318.8790 or by e-mail to JoAnne.Ibarra@state.co.us.

From the Director's Desk...2010 Legislative Update

Legislation enacted by the 2010 General Assembly contained a number of critical amendments to the Colorado Workers' Compensation Act which are of importance for practitioners. There are also a number of procedural changes of which claims handlers will want to take notice. The following reiteration will highlight changes that should be fully considered and implemented to ensure compliance. This is not intended to be an exhaustive summary.

House Bill 10-1038

Signed 05/26/10: effective upon signature

- Adds a subsection to the notice requirement at C.R.S. §8-43-203, requiring that an employer or insurer provide an informational brochure to the injured worker at the same time an admission or denial is provided. The brochure will describe the claims process and inform the claimant of his or her rights. The language and content of the brochure must be developed by the Director after consultation with employers, insurers and representatives of injured workers. C.R.S. § 8-43-203(3).

Applicability: For position statements filed on or after the effective date of the bill.

Implementation: No rule making is anticipated. See Division website to obtain required language:
<http://www.colorado.gov/cs/Satellite/CDLE-WorkComp/CDLE/1251574404663>

House Bill 10-1076

Signed 04/28/10: Effective August 11, 2010

- Expands the definition of "employee" to include elderly or disabled persons working under the Property Tax Work-Off Program" (pursuant to Article 3.7 of Title 39, C.R.S.), for purposes of workers' compensation. Workers' compensation insurance may be purchased for the express purpose of covering these individuals. C.R.S. 8-40-202(3); 8-40-301(9) and 8-41-210.

Applicability: For dates of injury on or after August 11, 2010.

Implementation: No rule making is anticipated.

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House Bill 10-1108

Signed 04/15/10: Effective upon signature.

- Excludes sports coaches claiming independent contractor status from the definition of “employee” for purposes of workers’ compensation coverage. The legislation is specific to non-profit youth sports organizations and requires a written agreement between the coach and the organization specifying that the coach is an independent contractor and the nonprofit “is not obligated to secure compensation for the coach.” It sets forth the requirements of the written agreement between the parties. C.R.S. 8-40-202(2)(e)(I).

Applicability: For all injuries occurring on or after April 15, 2010.

Implementation: No rule making is anticipated at this time.

House Bill 10-1109

Signed 04/29/10: Effective August 11, 2010.

- Creates an exception to the inmate statute which excludes individuals confined to a city or county jail or any department of corrections facility, from the definition of “employee” for purposes of workers’ compensation coverage. The exception was carved out specifically to include inmates participating in a program certified by the federal Prison Industry Enhancement Certification Program (PIECP). Accordingly, such inmates are excluded from the limitation on payments to prisoners. The legislation requires that public entities participating in this program obtain and maintain workers’ compensation insurance for these employees. C.R.S. § 8-40-301(3)(a); 8-42-113(4) and 8-44-101(3)(a)(I) & (II).

Applicability: For all injuries occurring on or after August 11, 2010

Implementation: No rule making is anticipated at this time.

Senate Bill 10-011

Section 1 is effective July 1, 2010. The remaining sections are effective upon signature of the Governor. Signed 05/27/10.

- **Section 1.** Affords the parties to a Division Independent Medical Evaluation (DIME) the opportunity to request that a potential evaluating physician disclose any business, employment, financial or advisory relationships between the physician or any entity affiliated with the physician and the parties to the claim. The purpose is to assist the parties in deciding which physician to strike. Rulemaking is required 1) to prohibit a physician from conducting a DIME where the information has not been provided; 2) set timeframes for reviewing the information; 3) ensure the information is provided in summarized format, and 4) detail the form and manner in which the summary is to be provided. C.R.S. § 8-42-107.2(3.5)(a)& (b).
- **Section 2.** Adds a provision to prohibit insurers, their contractors, healthcare providers or their employees from receiving financial incentives based on: 1) claims admission or denial rates; 2) number of days to reach maximum medical improvement; 3) number of medical or diagnostic procedures or treatments approved; or 4) any other criteria that is intended to encourage violation of the Act. Violators will be subject to sanctions under Title 10 insurance regulations and/or fines in accordance with the general penalty provision at C.R.S. §8-43-304(1.5). C.R.S. § 8-43-401.5.
- **Section 3.** Prohibits a treating physician from communicating with the employer or insurer regarding the injured worker unless the injured worker is present or the treating physician makes an accurate record of the communication and provides it to the injured worker in the same manner as medical records are required to be provided by rule. C.R.S. § 8-43-404(5)(c).
- **Section 4.** Renders unenforceable any provision to an insurance contract that allows an insurer a revisionary interest to receive residual indemnity benefits, including and specific to, an annuity. C.R.S. § 8-44-116(5)(c).

Applicability: Section 1 applies to all requests for Division IMEs made on or after July 1, 2010. Sections 2 and 5 apply to acts occurring on or committed after the effective date. The remaining sections take effect upon passage.

Implementation: A notice of rule hearing was filed to amend Rule 11-3 (Requests for an IME), of the Workers' Compensation Rules of Procedure, 7 CCR 1101-3. A rule hearing is scheduled for June 21, 2010. See Division website for details:

<http://www.colorado.gov/cs/Satellite?c=Page&childpagename=CDLE-WorkComp%2FCDLELayout&cid=1248095316766&pagename=CDLEWrapper>.

Senate Bill 10-012

Signed 05/26/10: Effective August 11, 2010

- Increases the penalty for violation of the workers' compensation laws from \$500 to \$1000 per day, and requires it be apportioned between the aggrieved party and the workers' compensation cash fund at the discretion of the Director or Administrative Law Judge. A minimum of 50% must be apportioned to the aggrieved party. C.R.S. § 8-43-304(1).
- Changes the mental standard for delaying payment of medical benefits by insurers from "willfully" to "knowingly." This is in cases where the insurer knowingly delays or stops payment of medical benefits for more than 30 days. No penalty is due if the insurer can prove that the delay was the result of "excusable neglect." Penalties (limited to 8% of the wrongly withheld benefits), are to be apportioned, in whole or part, among the aggrieved party, the medical provider and the workers' compensation cash fund. C.R.S. § 8-43-401(2)(a).

Applicability: Applies to acts occurring on or after the effective date.

Implementation: No rule making is anticipated.

Senate Bill 10-013

Signed 05/27/10: Effective July 1, 2010

- Requires that insurers conduct an exit survey of injured workers or, if deceased, the decedent's dependents upon closure of a claim. The Director is to develop the form and manner of the survey with input from insurers with the least administrative burden possible. The survey must include questions regarding courtesy; promptness of medical care; timeliness in handling the claim; resolution of issues, and general satisfaction with the insurer experience. Neither the employer nor the insurer may retaliate against the injured worker or dependents for completing the survey. The survey results must be reported to the Division annually and posted on the Division website. C.R.S. § 8-43-220
- Mandates that the Division include on its website a procedure that injured workers may follow in order to file a complaint on any issue in which the Director has authority to pursue, settle or enforce. C.R.S. § 8-47-112.
- Requires that Pinnacle Assurance submit a report to the legislature of its business operations, resources, and liabilities on an annual basis. The report includes, but is not limited to:
 - ✓ total assets;
 - ✓ total surplus;
 - ✓ number of claims admitted or denied within the 20 day period pursuant to section 8-43-203;
 - ✓ number of medical procedures denied;
 - ✓ amount of total compensation each executive or staff member receives including bonuses or deferred compensation; and
 - ✓ any other information the chief executive officer deems relevant to the report.

C.R.S. § 8-45-122

Applicability: Effective July 1, 2010.

Implementation: A notice of rule hearing was filed to amend Rule 5-14 (Claimant Surveys), of the Workers' Compensation Rules of Procedure, 7 CCR 1101-3. A rule hearing was held on June 15, 2010. See Division website for details:

<http://www.colorado.gov/cs/Satellite?c=Page&childpagename=CDLE-WorkComp%2FCDLELayout&cid=1248095316766&pagename=CDLEWrapper>

Senate Bill 10-163

Signed 03/31/10: Effective upon signature

- Clarifies that the following statutory provisions enacted in 2009, were procedural in nature and intended to apply to all claims regardless of the date of filing:
 - ✓ Section 1 prohibits the Independent Medical Examiner (IME) under C.R.S. 8-42-107.2 from contacting any of the authorized treating, examining or reviewing physicians or requesting that a claimant undergo repeat testing when the results are valid and any disparity has been resolved. C.R.S. § 8-42-107.2(3)(d)(II);
 - ✓ Section 2 limits the recovery of an overpayment to one year after knowledge of the overpayment following the filing of a Final Admission, and is excepted in cases of fraud. C.R.S. C.R.S § 8-42-113.5(b.5)(II);
 - ✓ Section 3 requires the party that seeks to modify an issue determined by admission or order, bear the burden of proof for any such modification. C.R.S § 8-43-201(2);
 - ✓ Section 4 states that an Application for Hearing on issues set forth in a Final Admission need not be re-filed, if the IME process in C.R.S. 8-42-107.2, is terminated. C.R.S. § 8-43-203(2)(b)(II)(B); and
 - ✓ Section 7 requires all Independent Medical Examinations requested by the employer in accordance with C.R.S. 8-43-404, be reduced to writing and audio-recorded in their entirety. The audio recordings are to be retained by the examining physician until requested by any party. The Director must promulgate rules that include provisions for the protection and privacy of the information contained in the recordings. C.R.S § 8-43-404(2)(b).
- Section 5 requires the Director review mortality tables from the U.S. government and private industry for the purpose of aiding settlements and to issue rules establishing a single life expectancy table on July 1 of every even-numbered year beginning on July 1, 2010. In addition, any full or partial settlement payable in a lump sum shall be paid within 15 calendar days after the settlement order has been executed. C.R.S § 8-43-204(6) and (7).
- Section 6 adds a provision requiring that all documents required to be exchanged under the workers' compensation statute be transmitted or served in the same manner or by the same means to all required recipients. C.R.S § 8-43-317.

Applicability: Sections 5 and 6 apply to all claims pending or filed on or after the effective date of this legislation. Sections 1, 2, 3, 4 & 7 are procedural and apply to all claims regardless of the date of filing, as stated.

Implementation: Notices of rule hearing were filed to:

1) amend Rule 7-4 (Single Life Expectancy Table), of the Workers' Compensation Rules of Procedure, 7 CCR 1101-3. A rule hearing was held on June 16, 2010. See Division website for details:

<http://www.colorado.gov/cs/Satellite?c=Page&childpagename=CDLE-WorkComp%2FCDLELayout&cid=1248095316766&pagename=CDLEWrapper>; and

2) amend Rule 8-8 (Independent Medical Examinations), of the Workers' Compensation Rules of Procedure, 7 CCR 1101-3. A rule hearing was held on June 14, 2010. See Division website for details:

<http://www.colorado.gov/cs/Satellite?c=Page&childpagename=CDLE-WorkComp%2FCDLELayout&cid=1248095316766&pagename=CDLEWrapper>

Senate Bill 10-178

Signed 05/26/10: Effective July 1, 2010

- Creates the “Provider Review and Disclosure Act” requiring insurers to disclose performance program data and methodologies used in the selection of authorized health care providers for their policy holders. The legislative declaration states that in order “to avoid improper profiling, all performance programs must be fair, objective, consistently applied and accord providers due process.” It also discusses the need to align “incentives” with efficiency and quality care. The act includes: 1) a definitions section; 2) a section on the required elements of performance programs that are used to evaluate a medical provider or to characterize its performance to the public; 3) a section outlining the due process procedure that affords providers the opportunity to challenge the performance program results prior to release; 4) a requirement that an insurer file a detailed description of any new or amended program with the director at least 30 days prior to implementation; and 5) language subjecting violators to sanctions under Title 10 insurance regulations for unfair or deceptive acts or practices. C.R.S § 8-43-601 thru 607.

Applicability: Applies to performance programs conducted on or after July 1, 2010

Implementation: No rule making is anticipated.

Senate Bill 10-187

Signed 05/27/10: Effective July 1, 2010

- Contains the following amendments or additions to the statute:
 - ✓ Section 1 excludes indigent health care programs such as Medicaid from being factored into the calculation of “wages.” C.R.S. § 8-40-201(19)(b);
 - ✓ Section 2 awards the injured worker all reasonable costs incurred pursuing medical maintenance benefits recommended by an authorized treating physician if such benefits are admitted less than twenty days before a hearing or ordered after an application for hearing is filed. Such costs do not include attorney fees. C.R.S. C.R.S § 8-42-101(5);
 - ✓ Section 3 clarifies that the phrase “at the time of injury” in subsection (2) of C.R.S. 8-42-102, refers to the wage on the date of accident for purposes of determining the worker’s average weekly wage. This clarification does not alter the discretion of the Division or Director to fairly determine a worker’s average weekly wage. C.R.S § 8-42-102 (5)(a) and (b);
 - ✓ Section 4 eliminates offset of permanent partial disability benefits by receipt of federal old age, survivors and disability insurance and repeals the requirement that injured workers make application for retirement or survivor’s benefits upon request of the insurer and respond to requests for a status of the application. Also eliminated is the corresponding language that failure to comply is cause for suspension of benefits. C.R.S. § 8-42-103(1)(c)(I), (III) and (1)(d)(I).
 - ✓ Section 5 establishes that refusal to accept an offer of modified employment by the claimant will not constitute responsibility for the termination in cases where: 1) the offer would require the claimant travel more than 50 miles in one direction greater than the claimant’s pre-injury travel; and 2) a judge determines that the claimant’s rejection of the offer was reasonable considering the totality of the claimant’s circumstances. C.R.S § 8-42-105(4)(a),(b) and (c);
 - ✓ Section 6 removes from the schedule of injuries the loss of an eye by enucleation, and replaces it with the loss of a tooth and assigns it a 6 week value. C.R.S § 8-42-107(2)(ff);
 - ✓ Section 7 adjusts the cap for combined temporary and permanent partial disability payments beginning on July 1, 2011, and each July 1 every year thereafter, by the percentage of adjustment to the state average weekly wage pursuant to section 8-47-106. Applies to injuries sustained on or after January 1, 2012. C.R.S § 8-42-107.5; and

✓ Section 8 prohibits the Director or Administrative Law Judge from conditioning a lump sum payment on the claimant waiving the right to pursue permanent total disability benefits.
C.R.S § 8-43-406(2)(b).

Applicability: Applies to claims with a date of injury on or after July 1, 2010 in sections 1 through 8 with the exception of section 7 which applies to injuries on or after January 1, 2012

Implementation: A notice of rule hearing was filed to amend Rule 5-10 (Lump Sum Payment of an Award), of the Workers' Compensation Rules of Procedure, 7 CCR 1101-3. A rule hearing is scheduled for June 30, 2010. See Division website for details:

<http://www.colorado.gov/cs/Satellite?c=Page&childpagename=CDLE-WorkComp%2FCDLELayout&cid=1248095316766&pagename=CDLEWrapper>

TO: ALL WORKERS' COMPENSATION INSURANCE CARRIERS, THIRD-PARTY ADMINISTRATORS, AND ALL SELF-INSURED EMPLOYERS

FROM: PAUL TAURIELLO, ACTING DIRECTOR
COLORADO DIVISION OF WORKERS' COMPENSATION

DATE: JULY 1, 2010

SUBJECT: MAXIMUM RATES FOR WORKERS' COMPENSATION BENEFITS FOR THE YEAR BEGINNING JULY 1, 2010, THROUGH AND INCLUDING JUNE 30, 2011.

EFFECTIVE JULY 1, 2010, AT 12:01 AM

MAXIMUM COMPENSATION BENEFIT RATE: To qualify, a wage of \$ 1,216.00 per week must be earned. C.R.S. § 8-42-105.

SCHEDULED IMPAIRMENT RATE: Payable at a weekly compensation rate of \$ 255.13. C.R.S. § 8-42-107(6)(b)

FREQUENCY OF BENEFITS: Payable at least once every two weeks. C.R.S. § 8-42-105 (2) (a) and Rule 5-6, Workers' Compensation Rules of Procedure, 7 CCR 1101-3.

TEMPORARY TOTAL BENEFITS: Payable to a maximum of \$ 810.67 per week. C.R.S. § 8-42-105 (1).

TEMPORARY PARTIAL BENEFITS: See C.R.S. § 8-42-106. Payable at least once every two weeks, to a weekly maximum of \$ 810.67.

PERMANENT TOTAL BENEFITS: Payable to maximum of \$ 810.67 per week. C.R.S. § 8-42-111 (1).

PERMANENT PARTIAL BENEFITS: See C.R.S. § 8-42-107.

BODILY DISFIGUREMENT: Maximum is \$ 4,304.00 and up to \$ 8,608.00 for extensive facial or body scars, burn scars or stumps resulting from the loss of limbs. C.R.S. § 8-42-108.

FATAL CASE: Maximum of \$ 810.67 per week, C.R.S § 8-42-114.

Lifetime benefits: for widows and widowers totally dependent, C.R.S. § 8-42-120.

Upon remarriage of Widow or Widower: a Two-Year Lump Sum without discount less any lump sums previously paid, must be awarded if there are no dependent children at time of marriage, C.R.S. § 8-42-120.

Dependents Benefits: and the extent of their dependency is determined as of the date of injury. The right to death benefits becomes fixed as of that date except as provided in C.R.S. § 8-41-501 (1)(c).

Social Security Offset: Benefits reduced by 50% (applicable to injuries occurring on or after May 29, 1991). C.R.S. § 8-42-103(1)(c)

Minimum Death Benefit: 25% of Maximum Weekly Benefit or \$ 202.67, C.R.S. § 8-42-114.

Maximum Funeral and Burial Benefit: \$7,000.00, C.R.S. § 8-42-123 (applicable to injuries occurring on or after February 1, 2000).

**STATE OF COLORADO
DEPARTMENT OF LABOR AND EMPLOYMENT
DIVISION OF WORKERS' COMPENSATION**

ORDER

Pursuant to Colorado Revised Statute § 8-47-106, the State Average Weekly Wage shall be established by the Director of the Division of Workers' Compensation annually, on or before July 1, and

The Director of the Division of Employment and Training has furnished statistics to the Director of the Division of Workers' Compensation based upon the average weekly earnings in Colorado as referenced in C.R.S. § 8-73-102 (1)-(3), and

The Director of the Division of Workers' Compensation having reviewed the statistics furnished and being fully advised in the premises;

THE DIRECTOR FINDS AS FOLLOWS:

1. That the Colorado State Average Weekly Wage as referenced in C.R.S. § 8-73-102 (1)-(3) is \$ 890.84
2. That the maximum benefit rate for Temporary Total Disability, Temporary Partial Disability, Permanent Total Disability, and Death Benefits under the Workers' Compensation Act of Colorado shall be ninety-one percent (91%) of such Average Weekly Wage or \$ 810.67.
3. That to be eligible for the maximum of \$ 810.67 the claimant must have a weekly income of \$1,216.00.
4. Pursuant to C.R.S. § 8-42-108(3) the limits of disfigurement are adjusted based on the percentage of adjustment to the state average weekly wage. The maximum limit for disfigurement is \$4,304.00 and up to \$8,608.00 for extensive facial scars or body scars, burn scars or stumps resulting from the loss of limbs.

IT IS ORDERED: That as of 12:01 a.m. July 1, 2010, and for the ensuing twelve months through and including June 30, 2011, the maximum rate for compensation benefits for Temporary Total Disability, Temporary Partial Disability, Permanent Total Disability, and Death Benefits shall be at the weekly rate of \$ 810.67 or at the daily rate of \$115.81.

Dated: June 7, 2010.

DIVISION OF WORKERS' COMPENSATION



By Paul Tauriello
Acting Director

AVERAGE WEEKLY WAGE & MAXIMUM BENEFIT RATES FOR COLORADO

Effective 7/1	State AWW	Maximum PPD Rate	Amount to Qualify	Maximum Compensation Rate	Scheduled Rate	Disfigurement Maximum
1980	305.80			244.65		
1981	336.45			261.80		
1982	354.60			283.71		
1983	370.99			296.80		
1984	395.00			315.98		
1985	420.56			336.42		
1986	439.59			351.68		
1987	447.04		536.45	357.63		
1988	443.33		532.04	354.69		
1989	407.94		556.82	371.21		
1990	417.18		569.42	379.61		
1991	434.85	217.42	593.57	395.71	150.00	
1992	454.97	227.48	621.08	414.05	150.00	
1993	475.01	237.50	648.38	432.25	150.00	
1994	486.37	243.18	663.92	442.61	150.00	
1995	495.83	247.91	676.83	451.22	150.00	
1996	514.76	257.38	702.66	468.44	150.00	
1997	541.80	270.90	739.62	493.08	150.00	
1998	570.97	285.48	779.42	519.61	150.00	
1999	614.53	307.26	838.85	559.23	176.00	
2000	652.50	326.25	890.72	593.81	186.24	
2001	709.81	354.90	968.94	645.96	203.28	
2002	724.33	362.16	988.68	659.12	207.45	
2003	723.98	361.99	988.26	658.84	207.35	
2004	741.33	370.66	1011.92	674.59	212.32	
2005	766.15	383.07	1045.79	697.20	219.42	
2006	790.94	395.47	1079.61	719.74	226.52	
2007	827.91	413.95	1130.11	753.41	237.11	4000.00 / 8000.00
2008	863.93	431.96	1179.25	786.17	247.42	4174.00 / 8348.00
2009	887.10	443.55	1210.86	807.24	254.06	4286.00 / 8572.00
2010	890.84	445.42	1216.00	810.67	255.13	4304.00 / 8608.00