



Colorado Division of Workers' Compensation
2009
Legislative Advisory

Legislation enacted by the 2009 General Assembly contained several 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.

[Senate Bill 09-070](#)

[Effective August 4, 2009](#)

- Requires that the first payment of compensation be made on the date that liability for the claim is admitted (deleting the previous requirement that payment be made no later than the 20th day *following written notice or knowledge of the claim.*) [C.R.S. § 8-42-105\(2\)\(a\)](#)
- Deletes obsolete language which was determined to be unconstitutional by the Supreme Court specific to termination of benefits at age 65 (for injuries occurring on or after July 1, 1991 and before July 1, 1994.) [C.R.S. § 8-42-111\(5\)](#)
- Clarifies filing procedures for petitions to review, distinguishing locations for filing between those of the Director and those of the Office of Administrative Courts. [C.R.S. § 8-43-301\(2\),\(6\) & \(7\)](#)
- Clarifies in cease-and desist orders and orders which impose fines on uninsured employers that a hearing may not be required. [C.R.S. § 8-43-409\(2\)](#)
- Prohibits Administrative Law Judges in the Office of Administrative Courts from hearing and deciding matters if the Director has issued an order to enforce a provision of the Act. [C.R.S. 8-47-101](#)

[Applicability:](#) For actions occurring on or after August 4, 2009.

[Implementation:](#) No rule making is anticipated.

[Senate Bill 09-168](#)

[Effective August 5, 2009](#)

- 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\(3\)\(d\)](#)
- Limits the time period to pursue 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. § 8-42-113\(1\)\(b.5\)](#)
- 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](#)

- States that if the DIME process in C.R.S. 8-42-107.2 is terminated for any reason, the parties shall proceed to hearing on any issue for which a hearing or an Application for Hearing is pending, without the need to re-file an Application for Hearing. [C.R.S. § 8-43-203\(2\)\(b\)\(II\)](#)
- 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 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\(2\)](#)

Applicability: For claims filed on or after August 5, 2009.

Implementation: A notice of rule hearing was filed to amend Rule 8 (Authorized Treating Physician/Independent Medical Examination), of the Workers' Compensation Rules of Procedure, 7 CCR 1101-3. A rule hearing is scheduled for July 13, 2009. See Division website for details:

<http://www.coworkforce.com/dwc/Notices/Proposed%20Rules/Proposed%20Rules.asp>

Senate Bill 09-243

Effective July 1, 2009

- Excludes mental impairment benefits from the limitation of payment caps set forth under C.R.S. 8-42-107.5, (except where it is combined with other impairments to determine the applicable cap for those benefits.) [C.R.S. 8-42-107.5](#); [C.R.S. § 8-41-301\(2\)\(b\)](#) and [C.R.S. § 8-42-107\(7\)\(b\)\(III\)](#)
- Makes the fee schedule applicable to all medical, dental vocational, expert witness/reviewer services that are provided after a final order, final admission or settlement. [C.R.S. § 8-42-101\(3\)\(a\)\(I\)](#)
- Authorizes payment for health care services at a public facility or through a publicly funded program within 150 miles of a claimant's residence where: the claim is initially denied but later found compensable; the services of a physician are not tendered by the employer at the time of injury; and the treatment is reasonable, necessary and related to the injury. [C.R.S. § 8-44-404\(9\)\(a\)](#)

Applicability: For all injuries occurring on or after July 1, 2009

Implementation: No rule making is anticipated at this time.

House Bill 09-1260

Effective July 1, 2009

- Amends the provision for those presumed wholly dependent in fatal cases to include persons designated in a *designated beneficiary agreement* for purposes of receiving workers' compensation benefits. The presumption may be rebutted by competent evidence if it is shown that the designated beneficiary was voluntarily separated and living apart from the deceased at the time of injury or death or was not dependent upon the deceased for support. [C.R.S. § 8-41-501\(1\)\(a.5\)](#)

Applicability: For all injuries occurring on or after July 1, 2009

Implementation: No rule making is anticipated at this time.

Senate Bill 09-037

Effective August 5, 2009

- Limits surcharge collection for both Major Medical and Subsequent Injury Funds to an amount sufficient to pay the anticipated costs for the next fiscal year. In addition, it is required that a cash balance be maintained in each of the funds, equal to approximately one year's worth of claim payments as well as the direct and indirect costs of administration. The Director may move revenue between the funds as necessary.

C.R.S. § 8-46-102(2)(a)(I) & 3(a)

Applicability: Effective August 5, 2009.

Implementation: Rule 2-5 (Workers' Compensation Premium Surcharge Rate) is adopted in the spring to be effective July 1st, and can only be amended once per year.

Senate Bill 09-281

Effective June 1, 2009

- Amends the powers, rights and duties of Pinnacol Assurance's board of directors which had equated to those held by the board of a domestic mutual insurance company. C.R.S. § 8-45-101(2)(c)
- Requires annual audit/examination of Pinnacol Assurance to include both a financial audit and in 2009, a performance audit to include executive compensation, premium rate structure, known loss reserves, incurred but not reported losses, and injured workers' claims experience. The state auditor is to report findings along with any recommendations to the Governor, General Assembly, Executive Director of the Department of Labor & Employment, and the State Insurance Commissioner. C.R.S. § 8-45-121(2)
- Creates an interim committee to study, make recommendations and report findings on the operation of Pinnacol Assurance including, but not limited to:
 - the feasibility of continued operation as a division of state government, and;
 - the feasibility and public policy implication of selling Pinnacol Assurance to a willing third-party buyer.

C.R.S. § 8-45-125(1)

Applicability: The Interim Committee shall report its findings to the Colorado Legislature during the 2009 interim by a date specified in the joint rules of the Senate and House of Representatives. The section creating the legislative committee for its specified purpose is effectively repealed July 1, 2011.

Implementation: No rule making is anticipated.