

2010 Amendments to Colorado Workers' Compensation Statute

(Please note that these statutory amendments have different effective dates)

8-40-201 Signed May 27, 2010: Effective July 1, 2010 Amended SB-10-187

Definitions - repeal. (19)(b) The term "wages" ~~shall include~~ INCLUDES the amount of the employee's cost of continuing the employer's group health insurance plan and, upon termination of the continuation, the employee's cost of conversion to a similar or lesser insurance plan, and gratuities reported to the federal internal revenue service by or for the worker for purposes of filing federal income tax returns and the reasonable value of board, rent, housing, and lodging received from the employer, the reasonable value of which shall be fixed and determined from the facts by the division in each particular case, but ~~shall~~ DOES not include any similar advantage or fringe benefit not specifically enumerated in this subsection (19). If, after the injury, the employer continues to pay any advantage or fringe benefit specifically enumerated in this subsection (19), including the cost of health insurance coverage or the cost of the conversion of ~~such~~ health insurance coverage, ~~such~~ THAT advantage or benefit shall not be included in the determination of the employee's wages so long as the employer continues to make ~~such~~ payment. MEDICAID AND OTHER INDIGENT HEALTH CARE PROGRAMS ARE NOT HEALTH INSURANCE PLANS FOR THE PURPOSES OF THIS SECTION.

8-40-202 Signed April 15, 2010: Effective upon signature New HB-10-1108

Employee. (2) (e) (I) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, A WRITTEN AGREEMENT BETWEEN A NONPROFIT YOUTH SPORTS ORGANIZATION AND A COACH, SPECIFYING THAT THE COACH IS AN INDEPENDENT CONTRACTOR AND NOT AN EMPLOYEE OF THE NONPROFIT YOUTH SPORTS ORGANIZATION AND OTHERWISE SATISFYING THE REQUIREMENTS OF THIS PARAGRAPH (e), SHALL BE CONCLUSIVE EVIDENCE THAT THE RELATIONSHIP BETWEEN THE NONPROFIT YOUTH SPORTS ORGANIZATION AND THE COACH IS AN INDEPENDENT CONTRACTOR RELATIONSHIP RATHER THAN AN EMPLOYMENT RELATIONSHIP AND THAT THE NONPROFIT YOUTH SPORTS ORGANIZATION IS NOT OBLIGATED TO SECURE COMPENSATION FOR THE COACH IN ACCORDANCE WITH THE "WORKERS' COMPENSATION ACT OF COLORADO".

(II) THE WRITTEN AGREEMENT SHALL CONTAIN A DISCLOSURE, IN BOLD-FACED, UNDERLINED, OR LARGE TYPE, IN A CONSPICUOUS LOCATION, AND ACKNOWLEDGED BY THE PARTIES BY SIGNATURE, INITIALS, OR OTHER MEANS DEMONSTRATING THAT THE PARTIES HAVE READ AND UNDERSTAND THE DISCLOSURE, INDICATING THAT THE COACH:

(A) IS AN INDEPENDENT CONTRACTOR AND NOT AN EMPLOYEE OF THE NONPROFIT YOUTH SPORTS ORGANIZATION;

(B) IS NOT ENTITLED TO WORKERS' COMPENSATION BENEFITS IN CONNECTION WITH HIS OR HER CONTRACT WITH THE NONPROFIT YOUTH SPORTS ORGANIZATION; AND

(C) IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON ANY MONEYS PAID PURSUANT TO THE CONTRACT FOR COACHING SERVICES AND THAT THE NONPROFIT YOUTH SPORTS ORGANIZATION WILL NOT WITHHOLD ANY AMOUNTS FROM THE COACH FOR PURPOSES OF SATISFYING THE COACH'S INCOME TAX LIABILITY.

(III) A WRITTEN AGREEMENT BETWEEN A NONPROFIT YOUTH SPORTS ORGANIZATION AND A COACH IN ACCORDANCE WITH THIS PARAGRAPH (e) SHALL NOT BE CONCLUSIVE EVIDENCE OF AN INDEPENDENT CONTRACTOR RELATIONSHIP FOR PURPOSES OF ANY CIVIL ACTION INSTITUTED BY A THIRD PARTY.

(IV) AS USED IN THIS PARAGRAPH (e), "NONPROFIT YOUTH SPORTS ORGANIZATION" MEANS AN ORGANIZATION THAT IS EXEMPT FROM FEDERAL TAXATION UNDER SECTION 501 (c) (3) OF THE FEDERAL "INTERNAL REVENUE CODE OF 1986", AS AMENDED, AND IS PRIMARILY ENGAGED IN CONDUCTING ORGANIZED SPORTS PROGRAMS FOR PERSONS UNDER TWENTY-ONE YEARS OF AGE.

8-40-202 **Signed April 28, 2010: Effective August 11, 2010** **New** **HB-10-1076**

Employee. (3) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, "EMPLOYEE" INCLUDES A PERSON WHO PARTICIPATES IN A PROPERTY TAX WORK-OFF PROGRAM ESTABLISHED PURSUANT TO ARTICLE 3.7 OF TITLE 39, C.R.S.

8-40-301 **Signed April 29, 2010: Effective August 11, 2010** **Amended** **HB-10-1109**

Scope of term "employee". (3) (a) Notwithstanding the provisions of section 8-40-202 (1) (a) (IV), "employee" excludes any person who is confined to a city or county jail or any department of corrections facility as an inmate and who, as a part of such confinement, is working, performing services, or participating in a training or rehabilitation or work release program; EXCEPT THAT "EMPLOYEE" INCLUDES AN INMATE OF A DEPARTMENT OF CORRECTIONS FACILITY OR A CITY, COUNTY, OR CITY AND COUNTY JAIL WHO IS WORKING, PERFORMING SERVICES, OR PARTICIPATING IN A TRAINING, REHABILITATION, OR WORK RELEASE PROGRAM THAT HAS BEEN CERTIFIED BY THE FEDERAL PRISON INDUSTRY ENHANCEMENT CERTIFICATION PROGRAM PURSUANT TO THE FEDERAL "JUSTICE SYSTEM IMPROVEMENT ACT OF 1979", 18 U.S.C. SEC. 1761 (c). FOR THE PURPOSES OF ARTICLES 40 TO 47 OF THIS TITLE, AN INMATE PARTICIPATING IN A PROGRAM CERTIFIED BY THE FEDERAL PRISON INDUSTRY ENHANCEMENT CERTIFICATION PROGRAM IS AN EMPLOYEE OF THAT CERTIFIED PROGRAM, WHICH CERTIFIED PROGRAM SHALL CARRY WORKERS' COMPENSATION INSURANCE PURSUANT TO ARTICLES 40 TO 47 OF THIS TITLE. NO INMATE PARTICIPATING IN A CERTIFIED PROGRAM SHALL BE DEEMED TO BE AN EMPLOYEE OF THE STATE, CITY, COUNTY, OR CITY AND COUNTY THAT OWNS, OPERATES, OR CONTRACTS FOR THE OPERATION OF THE FACILITY OR JAIL IN WHICH THE INMATE IS INCARCERATED.

8-40-301 **Signed April 28, 2010: Effective August 11, 2010** **New** **HB-10-1076**

Scope of term "employee". (9) NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, "EMPLOYEE" INCLUDES A PERSON WHO PARTICIPATES IN A PROPERTY TAX WORK-OFF PROGRAM ESTABLISHED PURSUANT TO ARTICLE 3.7 OF TITLE 39, C.R.S.

8-41-210 **Signed April 28, 2010: Effective August 11, 2010** **New** **HB-10-1076**

Coverage for property tax work-off program participants. NOTWITHSTANDING ANY PROVISION OF LAW TO THE CONTRARY, A GOVERNMENTAL ENTITY OR PRIVATE NONPROFIT OR FOR-PROFIT ENTITY THAT HAS A CONTRACT WITH A GOVERNMENTAL ENTITY THAT IS SELF-INSURED UNDER ARTICLES 40 TO 47 OF THIS TITLE MAY PURCHASE WORKERS' COMPENSATION INSURANCE FROM ANY INSURER AUTHORIZED TO TRANSACT THE BUSINESS OF WORKERS' COMPENSATION INSURANCE IN THIS STATE FOR THE EXPRESS PURPOSE OF COVERING PARTICIPANTS IN THE PROPERTY TAX WORK-OFF PROGRAM ESTABLISHED PURSUANT TO ARTICLE 3.7 OF TITLE 39, C.R.S.

8-42-101 **Signed May 27, 2010: Effective July 1, 2010** **New** **SB-10-187**

Employer must furnish medical aid - approval of plan - fee schedule - contracting for treatment - no recovery from employee - medical treatment guidelines - accreditation of physicians - rules - repeal. (5) IF ANY PARTY FILES AN APPLICATION FOR HEARING ON WHETHER THE CLAIMANT IS ENTITLED TO MEDICAL MAINTENANCE BENEFITS RECOMMENDED BY AN AUTHORIZED TREATING PHYSICIAN THAT ARE UNPAID AND CONTESTED, AND ANY REQUESTED MEDICAL MAINTENANCE BENEFIT IS ADMITTED FEWER THAN TWENTY DAYS BEFORE THE HEARING OR ORDERED AFTER APPLICATION FOR HEARING IS FILED, THE COURT SHALL AWARD THE CLAIMANT ALL REASONABLE COSTS INCURRED IN PURSUING THE MEDICAL BENEFIT. SUCH COSTS DO NOT INCLUDE ATTORNEY FEES.

Basis of compensation - "wages" defined - average weekly wage - "at the time of injury" clarified.

(5)(a) THE GENERAL ASSEMBLY HEREBY FINDS THAT THE PHRASE "AT THE TIME OF INJURY" IN SUBSECTION (2) OF THIS SECTION REFERS TO THE DATE OF THE EMPLOYEE'S ACCIDENT. WHEN SUBSECTION (2) OF THIS SECTION IS USED TO DETERMINE A WORKER'S AVERAGE WEEKLY WAGE, THE WAGE ON THE DATE OF THE ACCIDENT SHALL BE USED.

(b) NOTHING IN THIS SUBSECTION (5) ALTERS THE DISCRETION OF THE DIVISION OR THE DIRECTOR TO FAIRLY DETERMINE A WORKER'S AVERAGE WEEKLY WAGE IN ACCORDANCE WITH SUBSECTION (3) OF THIS SECTION.

Disability indemnity payable as wages - period of disability. (1) If the injury or occupational disease causes disability, a disability indemnity shall be payable as wages pursuant to ~~the provisions of section 8-42-105~~ (2) (a) subject to the following limitations:

(c) (I) In cases where it is determined that periodic disability benefits granted by the federal ~~old age, survivors, and disability insurance act~~ "OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE AMENDMENTS OF 1965", PUB.L. 89-97, are payable to an individual and ~~said~~ THE individual's dependents, the aggregate benefits payable for temporary total disability, temporary partial disability, ~~permanent partial disability~~, and permanent total disability pursuant to this section shall be reduced, but not below zero, by an amount equal as nearly as practical to one-half ~~such~~ THE federal periodic benefits; but, if ~~provisions of the federal old age, survivors, and disability insurance act should be~~ "OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE AMENDMENTS OF 1965", PUB.L. 89-97, IS amended to provide for a reduction of an individual's disability benefits thereunder because of compensation benefits payable under articles 40 to 47 of this title, the reduction of compensation benefits provided in said articles shall be decreased by an amount equal to ~~such~~ THE federal reduction. Upon request of the insurer or employer, the employee shall apply for such federal periodic DISABILITY benefits and respond to requests from the insurer or employer as to the status of such application. Failure to comply with this section ~~shall be~~ CONSTITUTES cause for suspension of benefits.

(III) Notwithstanding ~~the provisions of sub-subparagraph (A) of subparagraph (II) of this paragraph (c), if provisions of the federal old age, survivors, and disability insurance act should be~~ "OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE AMENDMENTS OF 1965", PUB.L. 89-97, IS amended to provide for a reduction of an individual's periodic benefits thereunder because of compensation benefits payable under articles 40 to 47 of this title, the reduction of compensation benefits provided in said articles shall be decreased by an amount equal to ~~such~~ THE federal reduction. ~~Upon request of the insurer or employer, the employee shall apply for such federal benefits no later than such time as the employee is entitled to a full award of such benefits and shall respond to requests from the insurer or employer as to the status of such application. Failure to comply with this section shall be cause for suspension of benefits.~~

(d) (I) In cases where it is determined that periodic disability benefits are payable to an employee under ~~the provisions of~~ a pension or disability plan financed in whole or in part by the employer, hereinafter called "employer pension or disability plan", the aggregate benefits payable for temporary total disability, temporary partial disability, ~~permanent partial disability~~, and permanent total disability pursuant to this section shall be reduced, but not below zero, by an amount equal as nearly as practical to ~~such~~ THE employer pension or disability plan benefits, with the following limitations:

Temporary total disability. (4) (a) In cases where it is determined that a temporarily disabled employee is responsible for termination of employment, the resulting wage loss shall not be attributable to the on-the-job injury.

(b) THE CLAIMANT'S REFUSAL TO ACCEPT AN OFFER OF MODIFIED EMPLOYMENT UNDER EITHER OF THE FOLLOWING CONDITIONS DOES NOT CONSTITUTE RESPONSIBILITY FOR TERMINATION:

(I) THE OFFER OF MODIFIED EMPLOYMENT WOULD REQUIRE THE CLAIMANT TO TRAVEL A DISTANCE OF GREATER THAN FIFTY MILES ONE WAY MORE THAN THE CLAIMANT'S PRE-INJURY COMMUTE; OR

(II) AN ADMINISTRATIVE LAW JUDGE DETERMINES THAT THE CLAIMANT'S REJECTION OF THE OFFER OF MODIFIED EMPLOYMENT WAS REASONABLE CONSIDERING THE TOTALITY OF THE CLAIMANT'S CIRCUMSTANCES, INCLUDING ACCOUNTING FOR:

(A) THE CONSEQUENCES OF THE INDUSTRIAL INJURY;

(B) THE FINANCIAL HARDSHIP THAT WOULD BE IMPOSED ON THE CLAIMANT IN ORDER TO ACCEPT THE OFFER OF MODIFIED EMPLOYMENT; OR

(C) ANY OTHER REASONS THAT WOULD, IN THE OPINION OF THE ADMINISTRATIVE LAW JUDGE, MAKE IT IMPRACTICABLE FOR THE CLAIMANT TO ACCEPT THE OFFER OF MODIFIED EMPLOYMENT.

(c) THE CIRCUMSTANCES DESCRIBED IN PARAGRAPH (b) OF THIS SUBSECTION (4) ARE NOT EXHAUSTIVE.

8-42-107 **Signed May 27, 2010: Effective July 1, 2010** **Amended** **SB-10-187**

Permanent partial disability benefits - schedule medical impairment benefits - how determined. (2) Scheduled injuries. In case an injury results in a loss set forth in the following schedule, the injured employee, in addition to compensation to be paid for temporary disability, shall receive compensation for the period as specified:

(ff) The loss of ~~an eye by enucleation (including disfigurement resulting therefrom)~~ A TOOTH-~~139 weeks~~ 6 WEEKS

8-42-107.2 **Signed March 31, 2010: Effective upon signature** **Amended** **SB-10-163**

Selection of independent medical examiner - procedure - time - applicability. (3) (d) (I) The IME shall neither contact any of the authorized treating physicians or any examining or reviewing physician nor request a claimant to undergo repeat testing when the testing results were valid and the IME has resolved any disparity in testing results.

(II) SUBPARAGRAPH (I) OF THIS PARAGRAPH (d), AS ENACTED BY SENATE BILL 09-168, ENACTED IN 2009, IS DECLARED TO BE PROCEDURAL AND WAS INTENDED TO AND SHALL APPLY TO ALL WORKERS' COMPENSATION CLAIMS, REGARDLESS OF THE DATE THE CLAIM WAS FILED.

8-42-107.2 **Signed May 27, 2010: Effective July 1, 2010** **New** **SB-10-011**

Selection of independent medical examiner - procedure - time - disclosures regarding physician relationships with insurers, self-insured employers, or claimants - rules - applicability. (3.5) (a) PRIOR TO MAKING A DETERMINATION TO STRIKE A PHYSICIAN FROM THE LIST OF IME PHYSICIANS PROVIDED BY THE DIVISION IN ACCORDANCE WITH PARAGRAPH (a) OF SUBSECTION (3) OF THIS SECTION, A PARTY MAY REQUEST AND SHALL BE ENTITLED TO OBTAIN AND REVIEW A SUMMARY DISCLOSURE PERTAINING TO ANY BUSINESS, FINANCIAL, EMPLOYMENT, OR ADVISORY RELATIONSHIP BETWEEN A LISTED PHYSICIAN, OR ANY ENTITY AFFILIATED WITH THE PHYSICIAN, AND THE INSURER, SELF-INSURED EMPLOYER, OR CLAIMANT WHO IS A PARTY TO THE CLAIM. THE PARTY SHALL NOT BE REQUIRED TO MAKE ITS

DETERMINATION TO STRIKE A PHYSICIAN FROM THE LIST UNTIL HE OR SHE HAS RECEIVED AND HAS HAD A REASONABLE OPPORTUNITY TO REVIEW THE SUMMARY DISCLOSURE.

(b) THE DIRECTOR SHALL ADOPT RULES AS NECESSARY TO IMPLEMENT THIS SUBSECTION (3.5). AT A MINIMUM, THE RULES SHALL:

(I) REQUIRE PHYSICIANS TO DISCLOSE THE REQUESTED BUSINESS, FINANCIAL, EMPLOYMENT, OR ADVISORY RELATIONSHIP INFORMATION IN A SUMMARIZED FORMAT;

(II) DETAIL THE FORM AND MANNER IN WHICH THE SUMMARY DISCLOSURE IS TO BE PROVIDED;

(III) SET PARAMETERS REGARDING THE PERIOD WITHIN WHICH A REQUESTING PARTY IS ALLOWED TO REVIEW THE SUMMARY DISCLOSURE PRIOR TO MAKING A DETERMINATION TO STRIKE A PHYSICIAN FROM THE LIST; AND

(IV) PROHIBIT A PHYSICIAN WHO FAILS TO DISCLOSE THE REQUESTED SUMMARIZED INFORMATION FROM CONDUCTING AN INDEPENDENT MEDICAL EXAMINATION UNTIL HE OR SHE COMPLIES WITH THE REQUEST.

8-42-107.5 **Signed May 27, 2010: Effective July 1, 2010**

Amended

SB-10-187

Limits on temporary disability payments and permanent partial disability payments. No claimant whose impairment rating is twenty-five percent or less may receive more than seventy-five thousand dollars from combined temporary disability payments and permanent partial disability payments. No claimant whose impairment rating is greater than twenty-five percent may receive more than one hundred fifty thousand dollars from combined temporary disability payments and permanent partial disability payments. For the purposes of this section, any mental impairment rating shall be combined with the physical impairment rating to establish a claimant's impairment rating for determining the applicable cap. FOR INJURIES SUSTAINED ON AND AFTER JANUARY 1, 2012, THE DIRECTOR SHALL ADJUST THESE LIMITS ON THE AMOUNT OF COMPENSATION FOR COMBINED TEMPORARY DISABILITY PAYMENTS AND PERMANENT PARTIAL DISABILITY PAYMENTS ON JULY 1, 2011, AND EACH JULY 1 THEREAFTER, BY THE PERCENTAGE OF ADJUSTMENT MADE BY THE DIRECTOR TO THE STATE AVERAGE WEEKLY WAGE PURSUANT TO SECTION 8-47-106.

8-42-113 **Signed April 29, 2010: Effective August 11, 2010**

New

SB-10-1109

Limitations on payments to prisoners - incentives to sheriffs and department of corrections. (1) Notwithstanding any other provision of law to the contrary EXCEPT AS PROVIDED IN SUBSECTION (4) OF THIS SECTION, any individual who is otherwise entitled to benefits under articles 40 to 47 of this title shall neither receive nor be entitled to such benefits for any week following conviction during which such individual is confined in a jail, prison, or any department of corrections facility.

(4) THIS SECTION SHALL NOT APPLY TO BENEFITS UNDER ARTICLES 40 TO 47 OF THIS TITLE TO WHICH AN INMATE OF A DEPARTMENT OF CORRECTIONS FACILITY OR A CITY, COUNTY, OR CITY AND COUNTY JAIL IS ENTITLED FOR INJURY OR OCCUPATIONAL DISEASE ARISING OUT OF AND IN THE COURSE OF THE INMATE WORKING, PERFORMING SERVICES, OR PARTICIPATING IN A TRAINING, REHABILITATION, OR WORK RELEASE PROGRAM THAT HAS BEEN CERTIFIED BY THE FEDERAL PRISON INDUSTRY ENHANCEMENT CERTIFICATION PROGRAM PURSUANT TO THE FEDERAL "JUSTICE SYSTEM IMPROVEMENT ACT OF 1979", 18 U.S.C. SEC. 1761 (c). THE INMATE SHALL BE ENTITLED TO BENEFITS IN ACCORDANCE WITH SECTION 8-40-301 (3) (a).

8-42-113.5 **Signed March 31, 2010: Effective upon signature**

New

SB-10-163

Recovery of overpayments - notice required. (1)(b.5)(I) After the filing of a final admission of liability, except in cases of fraud, any attempt to recover an overpayment shall be asserted within one year after the time the requestor knew of the existence of the overpayment.

(II) SUBPARAGRAPH (I) OF THIS PARAGRAPH (b.5), AS ENACTED BY SENATE BILL 09-168, ENACTED IN 2009, IS DECLARED TO BE PROCEDURAL AND WAS INTENDED TO AND SHALL

APPLY TO ALL WORKERS' COMPENSATION CLAIMS, REGARDLESS OF THE DATE THE CLAIM WAS FILED.

8-43-201 **Signed March 31, 2010: Effective upon signature** **New** **SB-10-163**

Disputes arising under "Workers' Compensation Act of Colorado". (1) The director and administrative law judges employed by the office of administrative courts in the department of personnel shall have original jurisdiction to hear and decide all matters arising under articles 40 to 47 of this title; except that the following principles shall apply: A claimant in a workers' compensation claim shall have the burden of proving entitlement to benefits by a preponderance of the evidence; the facts in a workers' compensation case shall not be interpreted liberally in favor of either the rights of the injured worker or the rights of the employer; a workers' compensation case shall be decided on its merits; and a party seeking to modify an issue determined by a general or final admission, a summary order, or a full order shall bear the burden of proof for any such modification.

(2) THE AMENDMENTS MADE TO SUBSECTION (1) OF THIS SECTION BY SENATE BILL 09-168, ENACTED IN 2009, ARE DECLARED TO BE PROCEDURAL AND WERE INTENDED TO AND SHALL APPLY TO ALL WORKERS' COMPENSATION CLAIMS, REGARDLESS OF THE DATE THE CLAIM WAS FILED.

8-43-203 **Signed March 31, 2010: Effective upon signature** **New** **SB-10-163**

Notice concerning liability - notice to claimant - rules. (2) (b) (II) (A) An admission of liability for final payment of compensation shall include a statement that this is the final admission by the workers' compensation insurance carrier in the case, that the claimant may contest this admission if the claimant feels entitled to more compensation, to whom the claimant should provide written objection, and notice to the claimant that the case will be automatically closed as to the issues admitted in the final admission if the claimant does not, within thirty days after the date of the final admission, contest the final admission in writing and request a hearing on any disputed issues that are ripe for hearing, including the selection of an independent medical examiner pursuant to section 8-42-107.2 if an independent medical examination has not already been conducted. If an independent medical examination is requested pursuant to section 8-42-107.2, the claimant is not required to file a request for hearing on disputed issues that are ripe for hearing until the division's independent medical examination process is terminated for any reason. Any issue for which a hearing or an application for a hearing is pending at the time that the final admission of liability is filed shall proceed to the hearing without the need for the applicant to refile an application for hearing on the issue. This information shall also be included in the admission of liability for final payment of compensation. The respondents shall have thirty days after the date of mailing of the report from the division's independent medical examiner to file a revised final admission or to file an application for hearing. The claimant shall have thirty days after the date respondents file the revised final admission or application for hearing to file an application for hearing, or a response to the respondents' application for hearing, as applicable, on any disputed issues that are ripe for hearing. The revised final admission shall contain the statement required by this subparagraph (II), and the provisions relating to contesting the revised final admission shall apply. When the final admission is predicated upon medical reports, such reports shall accompany the final admission.

(B) THE AMENDMENTS MADE TO SUB-SUBPARAGRAPH (A) OF THIS SUBPARAGRAPH (II) BY SENATE BILL 09-168, ENACTED IN 2009, ARE DECLARED TO BE PROCEDURAL AND WERE INTENDED TO AND SHALL APPLY TO ALL WORKERS' COMPENSATION CLAIMS, REGARDLESS OF THE DATE THE CLAIM WAS FILED.

8-43-203 **Signed May 26, 2010: Effective upon signature** **New** **HB-10-1038**

Notice concerning liability - notice to claimant - rules. (3) IN ADDITION TO ANY OTHER NOTICE REQUIRED BY THIS SECTION, AT THE TIME THAT THE EMPLOYER OR, IF INSURED, THE EMPLOYER'S INSURANCE CARRIER PROVIDES THE NOTICE REQUIRED BY SUBSECTION (1) OF THIS SECTION, THE EMPLOYER OR INSURANCE CARRIER SHALL PROVIDE TO THE CLAIMANT A BROCHURE WRITTEN IN EASILY UNDERSTOOD LANGUAGE, IN A FORM DEVELOPED BY THE

DIRECTOR AFTER CONSULTATION WITH EMPLOYERS, INSURANCE CARRIERS, AND REPRESENTATIVES OF INJURED WORKERS, DESCRIBING THE CLAIMS PROCESS AND INFORMING THE CLAIMANT OF HIS OR HER RIGHTS. IF THE CLAIMANT HAS PREVIOUSLY AUTHORIZED THE EMPLOYER OR, IF INSURED, THE EMPLOYER'S INSURANCE CARRIER TO COMMUNICATE WITH THE CLAIMANT THROUGH ELECTRONIC TRANSMISSION, THE BROCHURE MAY BE SENT TO THE CLAIMANT ELECTRONICALLY. THE BROCHURE SHALL, AT A MINIMUM, CONTAIN THE FOLLOWING INFORMATION:

(a) WHO THE CLAIMANT MAY CONTACT WITH QUESTIONS CONCERNING THE CLAIM, THE CLAIM'S PROCESS, AND ASSISTANCE WITH THE CLAIM, INCLUDING:

- (I) THE INSURANCE CARRIER OR EMPLOYER;
- (II) THE DIVISION AND THE WEB SITE FOR THE DIVISION;
- (III) THE OFFICE OF ADMINISTRATIVE COURTS AND THE WEB SITE FOR THE OFFICE; AND
- (IV) AN ATTORNEY HIRED AT THE EXPENSE OF THE CLAIMANT.

(b) THE CLAIMANT'S RIGHT TO RECEIVE MEDICAL CARE FOR WORK RELATED INJURIES OR OCCUPATIONAL DISEASES PAID FOR BY THE EMPLOYER OR THE EMPLOYER'S INSURANCE CARRIER INCLUDING:

- (I) THAT MOST CLAIMANTS HAVE A RIGHT TO CHOOSE FROM A LIST OF AT LEAST TWO DIFFERENT DOCTORS;
- (II) THAT MOST CLAIMANTS HAVE A RIGHT TO CHANGE DOCTORS ONE TIME WITHIN NINETY DAYS AFTER THE INJURY AND ALL CLAIMANTS HAVE THE RIGHT TO REQUEST A CHANGE OF DOCTOR AT OTHER TIMES UNDER CERTAIN OTHER CIRCUMSTANCES;
- (III) THE CLAIMANT'S DOCTOR'S RIGHT TO REFER THE CLAIMANT TO OTHER MEDICAL PROVIDERS AND SPECIALISTS TO PROVIDE THE REASONABLE AND NECESSARY MEDICAL CARE THAT THE CLAIMANT'S WORK-RELATED INJURIES OR ILLNESS REQUIRE;
- (IV) THE CLAIMANT'S RIGHT TO DISCUSS WITH HIS OR HER DOCTOR WHO SHOULD BE PRESENT DURING A CLAIMANT'S MEDICAL APPOINTMENT, AND THE RIGHT TO REFUSE TO HAVE A NURSE CASE MANAGER EMPLOYED ON THE CLAIMANT'S CLAIM PRESENT AT THE CLAIMANT'S MEDICAL APPOINTMENT;
- (V) THE CLAIMANT'S RIGHT TO SEE AND HAVE COPIES OF ALL OF THE CLAIMANT'S MEDICAL RECORDS RELATED TO THE MEDICAL CARE THE CLAIMANT RECEIVED FOR HIS OR HER WORK-RELATED INJURY OR ILLNESS;
- (VI) THE CLAIMANT'S RIGHT TO SEEK MEDICAL CARE AND MEDICAL OPINIONS ABOUT THE CLAIMANT'S WORK-RELATED INJURY AT THE CLAIMANT'S OWN EXPENSE; AND
- (VII) THE CLAIMANT'S RIGHT TO A MEDICAL EXAMINATION BY A DOCTOR CHOSEN BY THE CLAIMANT OR BY THE DIVISION AT THE CLAIMANT'S EXPENSE;
- (VIII) THE CLAIMANT'S RIGHT TO A PERMANENT IMPAIRMENT EVALUATION AFTER THE CLAIMANT'S TREATING DOCTORS DETERMINE THAT THE CLAIMANT HAS REACHED MAXIMUM MEDICAL IMPROVEMENT; AND
- (IX) THE CLAIMANT'S RIGHT TO BE INFORMED WHETHER MEDICAL CARE AFTER MAXIMUM MEDICAL IMPROVEMENT WILL BE PROVIDED AND TO RECEIVE REASONABLE CONTINUED MEDICAL CARE IF IT IS NECESSARY TO MAINTAIN MAXIMUM MEDICAL IMPROVEMENT.

(c) A DESCRIPTION OF THE CLAIMANT'S RIGHT TO RECEIVE BENEFIT PAYMENTS, INCLUDING THE CLAIMANT'S RIGHT TO RECEIVE:

- (I) WAGE REPLACEMENT PAYMENTS IN THE FORM OF TEMPORARY TOTAL DISABILITY PAYMENTS OR TEMPORARY PARTIAL DISABILITY PAYMENTS;
- (II) PERMANENT IMPAIRMENT BENEFITS IF THE CLAIMANT IS LEFT WITH A PERMANENT IMPAIRMENT AS A RESULT OF A WORK-RELATED INJURY OR DISEASE;

(III) DISFIGUREMENT PAYMENTS FOR PERMANENT SCARRING OR DISFIGUREMENT CAUSED BY THE CLAIMANT'S WORK-RELATED INJURY OR SURGERY REQUIRED BECAUSE OF THE CLAIMANT'S WORK-RELATED INJURY;
AND
(IV) MILEAGE EXPENSES FOR TRAVEL TO AND FROM WORK-RELATED MEDICAL CARE AND TO AND FROM PHARMACIES TO OBTAIN MEDICAL PRESCRIPTIONS FOR WORK-RELATED MEDICAL CARE.

(d) A DESCRIPTION OF HOW THE CLAIMS PROCESS WORKS, INCLUDING:

(I) THE CLAIMANT'S RIGHT TO FILE A CLAIM FOR WORKERS' COMPENSATION WITH THE DIVISION WITHIN TWO YEARS AFTER THE DATE OF THE CLAIMANT'S INJURY OR OCCUPATIONAL DISEASE;
(II) THE CLAIMANT'S RIGHT TO RECEIVE A GENERAL ADMISSION OF LIABILITY OR NOTICE OF CONTEST ONCE THE CLAIM HAS BEEN PROPERLY REPORTED TO THE DIVISION;
(III) THE CLAIMANT'S RIGHT TO VERIFY THAT THE CLAIMANT'S AVERAGE WEEKLY WAGE PAYMENTS FOR TEMPORARY TOTAL DISABILITY HAVE BEEN PROPERLY CALCULATED BY THE CLAIMANT'S EMPLOYER OR THE EMPLOYER'S INSURANCE CARRIER;
(IV) THE CLAIMANT'S RIGHT TO PREHEARINGS AND HEARINGS ON DISPUTED ISSUES;
(V) THE CLAIMANT'S RIGHT TO PRESENT EVIDENCE, TESTIFY, INTRODUCE MEDICAL AND OTHER RECORDS, PRESENT WITNESSES, AND MAKE ARGUMENTS AT ANY HEARING;
(VI) THE CLAIMANT'S RIGHT TO OBJECT TO AND REQUEST A HEARING ON ANY FINAL ADMISSION OF LIABILITY WITHIN THIRTY DAYS AFTER THE MAILING OF THE ADMISSION IN ORDER TO RETAIN CERTAIN RIGHTS;
(VII) THE CLAIMANT'S RIGHT TO CHALLENGE A FINDING OF AN IMPAIRMENT RATING OR MAXIMUM MEDICAL IMPROVEMENT IN A FINAL ADMISSION OF LIABILITY WITHIN THIRTY DAYS AFTER THE MAILING OF THE ADMISSION IN ORDER TO RETAIN CERTAIN RIGHTS;
(VIII) THE CLAIMANT'S RIGHT TO PURSUE PENALTIES FOR VIOLATIONS OF THE LAW INCLUDING LATE PAYMENT OF BENEFITS OR IMPROPER REFUSAL TO PAY BENEFITS;
(IX) THE CLAIMANT'S RIGHT, SUBJECT TO CERTAIN REQUIREMENTS, TO REOPEN A CLAIM WITHIN SIX YEARS AFTER THE DATE OF THE INJURY OR ILLNESS OR WITHIN TWO YEARS AFTER THE DATE OF THE LAST RECEIPT OF MEDICAL OR WAGE BENEFITS; AND
(X) A DESCRIPTION OF OTHER RIGHTS CONFERRED UPON A CLAIMANT PURSUANT TO LAW OR RULE.

8-43-204 **Signed March 31, 2010: Effective upon signature** **New** **SB-10-163**

Settlements - rules. (6) TO AID IN SETTLEMENT, THE DIRECTOR SHALL REVIEW MORTALITY TABLES FROM THE UNITED STATES GOVERNMENT AND PRIVATE INDUSTRY AND ISSUE RULES ESTABLISHING A SINGLE LIFE EXPECTANCY TABLE ON JULY 1 IN EVERY EVEN-NUMBERED YEAR, COMMENCING JULY 1, 2010. THE DIRECTOR MAY ADOPT CURRENT MORTALITY TABLES USED BY MEDICARE. NOTHING IN THIS SUBSECTION (6) SHALL BE CONSTRUED TO LIMIT THE USE OF RATED AGES.

(7) ANY LUMP SUM PAYABLE AS A FULL OR PARTIAL SETTLEMENT SHALL BE PAID TO THE CLAIMANT OR THE CLAIMANT'S ATTORNEY WITHIN FIFTEEN CALENDAR DAYS AFTER THE DATE THE EXECUTED SETTLEMENT ORDER IS RECEIVED BY THE CARRIER OR THE NONINSURED OR SELF-INSURED EMPLOYER.

8-43-220 **Signed May 27, 2010: Effective July 1, 2010** **New** **SB-10-013**

Injured worker exit survey. (1) UPON CLOSURE OF A CLAIM, EACH INSURER SHALL SURVEY THE CLAIMANT OR, IF DECEASED, THE DECEDENT'S DEPENDENTS REGARDING THE CLAIMANT'S SATISFACTION WITH THE INSURER FOR CLAIMS THAT ARE REPORTED TO THE DIVISION PURSUANT TO SECTION 8-43-101. THE SURVEY SHALL BE CONDUCTED IN A FORM AND MANNER AS PRESCRIBED BY THE DIRECTOR. THE DIRECTOR SHALL DEVELOP THE FORM AND MANNER OF

THE SURVEY WITH INPUT FROM INSURERS THAT PROVIDE WORKERS' COMPENSATION POLICIES PURSUANT TO ARTICLES 40 TO 55 OF THIS TITLE, AND WITH THE LEAST ADMINISTRATIVE BURDEN AS POSSIBLE. THE SURVEY SHALL INCLUDE QUESTIONS REGARDING COURTESY, PROMPTNESS OF MEDICAL CARE, PROMPTNESS OF HANDLING THE CLAIM, PROMPTNESS OF RESOLVING THE CLAIM, AND OVERALL SATISFACTION WITH THE EXPERIENCE WITH THE INSURER. AN EMPLOYER OR AN INSURER SHALL NOT TAKE DISCIPLINARY ACTION OR OTHERWISE RETALIATE AGAINST A CLAIMANT OR HIS OR HER DEPENDENTS FOR COMPLETING THE SURVEY.

(2) THE INSURER SHALL REPORT THE SURVEY RESULTS ANNUALLY TO THE DIVISION. THE DIRECTOR SHALL POST THE RESULTS OF THE SURVEYS ON THE DIVISION'S WEB SITE.

8-43-304 **Signed May 26, 2010: Effective August 11, 2010** **Amended** **SB-10-012**

Violations - penalty - offset for benefits obtained through fraud - rules. (1) Any employer or insurer, or any officer or agent of either, or any employee, or any other person who violates any provision of articles 40 to 47 of this title, or does any act prohibited thereby, or fails or refuses to perform any duty lawfully enjoined within the time prescribed by the director or panel, for which no penalty has been specifically provided, or fails, neglects, or refuses to obey any lawful order made by the director or panel or any judgment or decree made by any court as provided by said articles shall be subject to such order being reduced to judgment by a court of competent jurisdiction and shall also be punished by a fine of not more than ~~five hundred~~ ONE THOUSAND dollars per day for each such offense, ~~seventy-five percent payable~~ to BE APPORTIONED, IN WHOLE OR PART, AT THE DISCRETION OF THE DIRECTOR OR ADMINISTRATIVE LAW JUDGE, BETWEEN the aggrieved party and ~~twenty-five percent to the subsequent injury fund created in section 8-46-101~~ THE WORKERS' COMPENSATION CASH FUND CREATED IN SECTION 8-44-112 (7) (a); EXCEPT THAT THE AMOUNT APPORTIONED TO THE AGGRIEVED PARTY SHALL BE A MINIMUM OF FIFTY PERCENT OF ANY PENALTY ASSESSED.

8-43-317 **Signed March 31, 2010: Effective upon signature** **New** **SB-10-163**

Service of documents. ALL DOCUMENTS THAT ARE REQUIRED TO BE EXCHANGED UNDER ARTICLES 40 TO 47 OF THIS TITLE SHALL BE TRANSMITTED OR SERVED IN THE SAME MANNER OR BY THE SAME MEANS TO ALL REQUIRED RECIPIENTS.

8-43-401 **Signed May 26, 2010: Effective August 11, 2010** **Amended** **SB-10-012**

Attorney general, district attorney, or attorney of division to act for director or office - penalties for failure of insurer to pay benefits. (2) (a) After all appeals have been exhausted or in cases where there have been no appeals, all insurers and self-insured employers shall pay benefits within thirty days ~~of when~~ AFTER any benefits are due. If any insurer or self-insured employer ~~willfully~~ KNOWINGLY delays payment of medical benefits for more than thirty days or ~~willfully~~ KNOWINGLY stops payments, such insurer or self-insured employer shall pay a penalty ~~to the division~~ of eight percent of the amount of wrongfully withheld benefits; EXCEPT THAT NO PENALTY IS DUE IF THE INSURER OR SELF-INSURED EMPLOYER PROVES THAT THE DELAY WAS THE RESULT OF EXCUSABLE NEGLIGENCE. If any insurer or self-insured employer willfully withholds permanent partial disability benefits within thirty days of when due, the insurer or self-insured employer shall pay a penalty to the division of ten percent of the amount of such benefits due. THE PENALTIES SHALL BE APPORTIONED, IN WHOLE OR PART, AT THE DISCRETION OF THE DIRECTOR OR ADMINISTRATIVE LAW JUDGE, AMONG THE AGGRIEVED PARTY, THE MEDICAL SERVICES PROVIDER, AND THE WORKERS' COMPENSATION CASH FUND CREATED IN SECTION 8-44-112 (7) (a).

8-43-401.5 **Signed May 27, 2010: Effective upon signature** **New** **SB-10-011**

Financial incentives to deny or delay claim or medical care - prohibition - bad faith - penalties. (1) NO INSURER, EMPLOYEE OR CONTRACTOR OF AN INSURER, SELF-INSURED EMPLOYER, EMPLOYEE OR CONTRACTOR OF A SELF-INSURED EMPLOYER, HEALTH CARE PROVIDER, OR EMPLOYEE OR CONTRACTOR OF A HEALTH CARE PROVIDER TREATING AN INJURED WORKER

UNDER THE PROVISIONS OF ARTICLES 40 TO 47 OF THIS TITLE SHALL PAY OR RECEIVE ANY FORM OF FINANCIAL REMUNERATION THAT IS BASED ON ANY OF THE FOLLOWING:

- (a) THE NUMBER OF DAYS TO MAXIMUM MEDICAL IMPROVEMENT;
 - (b) THE RATE OF CLAIMS APPROVAL OR DENIAL;
 - (c) THE NUMBER OF MEDICAL PROCEDURES, DIAGNOSTIC PROCEDURES, OR TREATMENT APPOINTMENTS APPROVED; OR
 - (d) ANY OTHER CRITERIA DESIGNED OR INTENDED TO ENCOURAGE A VIOLATION OF ANY PROVISION OF ARTICLES 40 TO 47 OF THIS TITLE.
- (2)(a) PAYMENT OF REMUNERATION IN VIOLATION OF THIS SECTION CONSTITUTES AN UNFAIR ACT OR PRACTICE IN THE BUSINESS OF INSURANCE, AND THE INSURER OR SELF-INSURED EMPLOYER WHO PAYS OR DIRECTS THE PAYMENT OF THE REMUNERATION SHALL BE SUBJECT TO PENALTIES IN ACCORDANCE WITH PART 11 OF ARTICLE 3 OF TITLE 10, C.R.S.
- (b) IN ADDITION TO, OR AS AN ALTERNATIVE TO, ANY PENALTIES IMPOSED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2), AN INSURER OR SELF-INSURED EMPLOYER WHO IS FOUND TO HAVE VIOLATED SUBSECTION (1) OF THIS SECTION MAY BE SUBJECT TO FINES AS DETERMINED BY THE DIRECTOR PURSUANT TO SECTION 8-43-304 (1.5).
- (3) NOTHING IN THIS SECTION:
- (a) RESTRICTS OR LIMITS THE ABILITY OF A CLAIMS ADJUSTER OR EMPLOYEE OR CONTRACTED CLAIMS PERSONNEL TO INVESTIGATE, DETECT, OR PREVENT FRAUD; OR
 - (b) LIMITS THE PAYMENT OR RECEIPT OF FINANCIAL INCENTIVES FOR ANY OTHER LAWFUL PURPOSE.

8-43-404 Signed March 31, 2010: Effective upon signature New SB-10-163

Examination - refusal - personal responsibility - physicians to testify and furnish results - definitions - rules. (2) (a) The employee shall be entitled to have a physician, provided and paid for by the employee, present at any such examination. If an employee is examined by a chiropractor at the request of the employer, the employee shall be entitled to have a chiropractor provided and paid for by the employee present at any such examination. After any examination conducted under this section, the examiner shall prepare a written report giving a description of the examination performed, the written documents or any other materials reviewed, and all findings or conclusions of the examiner. The employee shall be entitled to receive from the examining physician or chiropractor a copy of any report that the physician or chiropractor makes to the employer, insurer, or division upon the examination, and the copy shall be furnished to the employee at the same time it is furnished to the employer, insurer, or division. The employee shall also be entitled to receive reports from any physician selected by the employer to treat the employee upon the same terms and conditions and at the same time the reports are furnished by the physician to the employer. All such examinations shall be recorded in audio in their entirety and retained by the examining physician until requested by any party. Prior to commencing the audio recording, the examining physician shall disclose to the employee the fact that the exam is being recorded. If requested, an exact copy of the recording shall be provided to the parties. Nothing in this subsection (2) shall be construed to prevent any party to the claim from making an audio recording of the examination. The division shall promulgate rules regarding such recordings that shall include provisions for the protection of the audio recordings and the privacy of information contained in such recordings. The employer shall be entitled to receive reports from any physician or chiropractor selected by the employee to treat or examine the employee in connection with such injury upon the same terms and at the same time the reports are furnished by the physician or chiropractor to the employee.

(b) THE AMENDMENTS MADE TO PARAGRAPH (a) OF THIS SUBSECTION (2) BY SENATE BILL 09-168, ENACTED IN 2009, ARE DECLARED TO BE PROCEDURAL AND WERE INTENDED TO AND SHALL APPLY TO ALL WORKERS' COMPENSATION CLAIMS, REGARDLESS OF THE DATE THE CLAIM WAS FILED.

8-43-404 Signed May 27, 2010: Effective upon signature New SB-10-011

Examination - refusal - personal responsibility - physicians to testify and furnish results - injured worker right to select treating physicians - injured worker right to third-party communications - definitions - rules. (5) (c) A TREATING PHYSICIAN SHALL NOT COMMUNICATE WITH THE EMPLOYER OR INSURER OF AN INJURED WORKER REGARDING THAT INJURED WORKER UNLESS:

- (I) THE INJURED WORKER IS PRESENT FOR THE COMMUNICATION; OR
- (II) THE TREATING PHYSICIAN MAKES AN ACCURATE WRITTEN RECORD OF THE COMMUNICATION, CONTAINING ALL RELEVANT AND MATERIAL INFORMATION THAT WAS COMMUNICATED, AND PROVIDES THE INJURED WORKER ACCESS TO THE WRITING IN THE SAME MANNER AS MEDICAL RECORDS DISCLOSURES AS REQUIRED BY DIRECTOR RULES.

8-43-406 **Signed May 27, 2010: Effective July 1, 2010** **Amended** **SB-10-187**

Compensation in lump sum. (1) At any time after six months have elapsed from the date of injury, the claimant may elect to take all or any part of the compensation awarded in a lump sum by sending written notice of the election and the amount of benefits requested to the carrier or the noninsured or self-insured employer. The carrier or self-insured employer shall file the calculation of the lump sum due and notice that the lump sum has been paid to the claimant within ten days after the election. When the claimant is unrepresented, the director shall calculate amounts to be paid based on the present worth of partial payments, considering interest at four percent per annum, and less a deduction for the contingency of death. The director shall make the method of calculation of lump sums available to all parties at all times, including posting the information on the division's web site. NEITHER THE DIRECTOR NOR AN ADMINISTRATIVE LAW JUDGE SHALL IN ANY WAY ATTEMPT TO CONDITION THE LUMP SUM PAYMENT ON THE CLAIMANT WAIVING THE RIGHT TO PURSUE PERMANENT TOTAL DISABILITY BENEFITS.

8-43-601 - 607 **Signed May 26, 2010: Effective July 1, 2010** **New** **SB-10-178**

8-43-601. Short title. THIS PART 6 SHALL BE KNOWN AND MAY BE CITED AS THE "PROVIDER REVIEW AND DISCLOSURE ACT".

8-43-602. Legislative declaration. THE GENERAL ASSEMBLY FINDS, DETERMINES, AND DECLARES THAT INSURER PERFORMANCE PROGRAMS ARE USED IN MARKETING, SALES, AND OTHER EFFORTS, AND, AS SUCH, MAY IMPACT AN EMPLOYER'S SELECTION OF AN AUTHORIZED HEALTH CARE PROVIDER. TO PROTECT PATIENTS, EMPLOYERS, AND PROVIDERS, AND TO AVOID IMPROPER PROFILING, ALL PERFORMANCE PROGRAMS MUST BE FAIR, OBJECTIVE, CONSISTENTLY APPLIED, AND ACCORD PROVIDERS DUE PROCESS. CONSISTENT WITH THESE GOALS, PERFORMANCE PROGRAMS SHOULD ALIGN INCENTIVES NOT ONLY WITH EFFICIENT OPERATIONS, BUT ALSO WITH COST-EFFECTIVE, HIGH-QUALITY CARE. ACCORDINGLY, THE GENERAL ASSEMBLY FINDS THAT REQUIRING MINIMUM STANDARDS AND FULL DISCLOSURE OF PERFORMANCE PROGRAM DATA AND METHODOLOGIES WILL HELP IMPROVE THE QUALITY AND EFFICIENCY OF HEALTH CARE DELIVERED TO COLORADO WORKERS.

8-43-603. Definitions. AS USED IN THIS PART 6, UNLESS THE CONTEXT OTHERWISE REQUIRES:

- (1) "INSURER" MEANS AN ENTITY THAT PROVIDES WORKERS' COMPENSATION INSURANCE COVERAGE REQUIRED BY ARTICLE 44 OF THIS TITLE, INCLUDING ANY THIRD-PARTY INSURER OR SELF-INSURED EMPLOYER.
- (2) "METHODOLOGY" MEANS THE METHOD BY WHICH AN ASSESSMENT OR MEASUREMENT IS DETERMINED, INCLUDING ALGORITHMS OR STUDIES, EVALUATION OF DATA, APPLICATION OF GUIDELINES, OR PERFORMANCE MEASURES.
- (3) "PATIENT" MEANS A PERSON WHO QUALIFIES FOR HEALTH CARE BENEFITS UNDER ARTICLES 40 TO 47 OF THIS TITLE.

(4) "PERFORMANCE PROGRAM" MEANS ANY PROGRAM, SYSTEM, OR PROCESS THROUGH WHICH AN INSURER RATES OR RECOGNIZES THE COST, EFFICIENCY, QUALITY, OR OTHER ASSESSMENT OR MEASUREMENT OF A PROVIDER'S CARE, WHETHER THROUGH AWARDS, PAYMENTS, ASSIGNMENT, OR CHARACTERIZATION OR REPRESENTATION THAT IS DISCLOSED TO PATIENTS, OTHER PROVIDERS, EMPLOYERS, OR THE PUBLIC.

(5) "PROVIDER" MEANS A PHYSICIAN LICENSED UNDER THE "COLORADO MEDICAL PRACTICE ACT", ARTICLE 36 OF TITLE 12, C.R.S., OR A CLINIC THAT PROVIDES HEALTH CARE PURSUANT TO ARTICLES 40 TO 47 OF THIS TITLE.

8-43-604. Performance programs. (1) ALL PERFORMANCE PROGRAMS SHALL INCLUDE, AT A MINIMUM:

(a) A QUALITY OF CARE COMPONENT THAT IS SATISFIED BY USING STANDARD TREATMENT GUIDELINES PROMULGATED BY THE DIRECTOR PURSUANT TO SECTION 8-42-101 OR EVIDENCED-BASED ADMINISTRATIVE, OPERATIONAL, OR CLINICAL PERFORMANCE MEASURES THAT IMPROVE CARE;

(b) A CLEAR REPRESENTATION OF THE WEIGHT GIVEN TO THE QUALITY OF CARE COMPONENT IN COMPARISON WITH OTHER FACTORS, WHICH WEIGHT SHALL BE EQUAL TO OR GREATER THAN ANY OTHER FACTOR;

(c) IF A PERFORMANCE PROGRAM INCLUDES AN EMPLOYER SATISFACTION ELEMENT, A PATIENT SATISFACTION ELEMENT, WHICH SHALL BE WEIGHTED EQUAL TO OR GREATER THAN THE EMPLOYER SATISFACTION ELEMENT;

(d) STATISTICAL ANALYSES THAT ARE OBJECTIVE, ACCURATE, VALID, RELIABLE, AND VERIFIABLE;

(e) A PERIOD OF ASSESSMENT OF DATA, PERTINENT TO THE PERFORMANCE PROGRAM, WHICH SHALL BE UPDATED AT APPROPRIATE INTERVALS;

(f) IF CLAIMS DATA ARE USED, ACCURATE CLAIMS DATA APPROPRIATELY ATTRIBUTED TO THE PROVIDER. WHEN REASONABLY AVAILABLE, THE INSURER SHALL USE AGGREGATED DATA FROM OTHER INSURERS TO SUPPLEMENT ITS OWN CLAIMS DATA.

(g) THE PROVIDER'S RESPONSIBILITY FOR HEALTH CARE DECISIONS AND THE FINANCIAL CONSEQUENCES OF THOSE DECISIONS, WHICH SHALL BE FAIRLY AND ACCURATELY ATTRIBUTED TO THE PROVIDER.

(2) PERFORMANCE PROGRAM RESULTS SHALL BE REPORTED TO EACH PROVIDER REVIEWED IN THE PROGRAM AND SHALL INCLUDE COMPARISON OF THE PROVIDER'S RESULTS TO THE RESULTS OF THE PROVIDER'S PEERS.

(3) ANY DISCLOSURE TO PATIENTS, OTHER PROVIDERS, EMPLOYERS, OR THE PUBLIC OF THE RESULTS OF A PERFORMANCE PROGRAM SHALL BE ACCOMPANIED BY A CONSPICUOUS DISCLAIMER WRITTEN IN BOLD-FACED TYPE STATING THAT THE INFORMATION IS INTENDED ONLY AS A GUIDE, SHOULD NOT BE THE SOLE FACTOR IN SELECTING A PROVIDER, HAS A RISK OF ERROR, AND SHOULD BE DISCUSSED WITH THE PROVIDER.

8-43-605. Due process. (1) AT LEAST FORTY-FIVE DAYS BEFORE DISCLOSING THE RESULTS OF A PERFORMANCE PROGRAM, AN INSURER SHALL GIVE A PROVIDER WRITTEN NOTICE OF THE AVAILABILITY OF THE PROVIDER'S INDIVIDUAL RESULT, SPECIFIC INSTRUCTIONS ON HOW THE PROVIDER CAN ACCESS THE RESULT, AND A DESCRIPTION OF THE IMPLICATIONS TO THE PROVIDER. THE WRITTEN NOTICE SHALL DESCRIBE THE PROCEDURES BY WHICH THE PROVIDER MAY REQUEST:

(a) THE INFORMATION REQUIRED TO BE DISCLOSED UNDER SUBSECTION (2) OF THIS SECTION; AND

(b) AN APPEAL OF THE RESULT PURSUANT TO SUBSECTION (3) OF THIS SECTION.

(2) (a) WITHIN TEN BUSINESS DAYS AFTER RECEIVING A REQUEST BY OR ON BEHALF OF A PROVIDER, AN INSURER SHALL DISCLOSE, IN A MANNER THAT IS REASONABLY UNDERSTANDABLE AND THAT ALLOWS THE PROVIDER TO VERIFY

THE DATA AGAINST HIS OR HER RECORDS, THE METHODOLOGY AND ALL DATA UPON WHICH A PROVIDER'S PERFORMANCE PROGRAM RESULT WAS CALCULATED, WITH SUFFICIENT DETAIL TO ALLOW THE PROVIDER TO DETERMINE THE EFFECT OF THE METHODOLOGY ON THE DATA REVIEWED.

(b) AN INSURER SHALL NOT USE THE "UNIFORM TRADE SECRETS ACT", ARTICLE 74 OF TITLE 7, C.R.S., TO AVOID COMPLIANCE WITH THIS SECTION.

(3) INSURERS SHALL ESTABLISH PROCEDURES FOR PROVIDERS TO APPEAL THE RESULTS OF A PERFORMANCE PROGRAM. SUCH PROCEDURES, IN ADDITION TO THE DISCLOSURES AND THE WRITTEN NOTICE FURNISHED, SHALL PROVIDE:

(a) A REASONABLE METHOD BY WHICH THE PROVIDER MAY SUBMIT NOTICE OF THE DESIRE TO APPEAL;

(b) THE NAME, TITLE, QUALIFICATIONS, AND RELATIONSHIP TO THE INSURER OF ANY PERSON RESPONSIBLE FOR DECIDING THE APPEAL, WHO SHALL BE AUTHORIZED TO UPHOLD, MODIFY, OR REJECT RESULTS OR REQUIRE ADDITIONAL ACTION TO ENSURE THAT RESULTS ARE FAIR, REASONABLE, ACCURATE, AND COMPLY WITH THE REQUIREMENTS OF THIS PART 6;

(c) AN OPPORTUNITY FOR A PROVIDER TO SUBMIT OR HAVE CONSIDERED CORRECTED DATA OR OTHER INFORMATION RELEVANT TO THE RESULTS OR THE APPROPRIATENESS OF THE METHODOLOGY USED. IF REQUESTED, A PROVIDER MAY APPEAR AT A FACE-TO-FACE MEETING WITH THOSE RESPONSIBLE FOR THE APPEAL DECISION AT A LOCATION REASONABLY CONVENIENT TO THE PROVIDER OR BY TELECONFERENCE. THE PROVIDER SHALL SUBMIT IN WRITING ANY CORRECTED DATA OR INFORMATION IN ADVANCE OF THE MEETING.

(d) THE PROVIDER'S RIGHT TO BE ASSISTED BY A REPRESENTATIVE, INCLUDING AN ATTORNEY;

(e) A DETAILED WRITTEN DECISION REGARDING THE APPEAL THAT STATES THE REASONS FOR UPHOLDING, MODIFYING, OR REJECTING THE APPEAL;

(f) RESOLUTION OF THE APPEAL WITHIN FORTY-FIVE DAYS AFTER THE DATE UPON WHICH THE DATA AND METHODOLOGY ARE DISCLOSED UNLESS OTHERWISE AGREED TO BY THE PARTIES TO THE APPEAL; AND

(g) A STAY ON THE IMPLEMENTATION, USE, AND DISCLOSURE OF AND ACTION UPON THE INDIVIDUAL RESULTS OF THE PERFORMANCE PROGRAM UNTIL THE APPEAL AND ANY SUBSEQUENT HEARING REQUESTED PURSUANT TO SECTION 8-43-207 HAS BECOME FINAL.

8-43-606. Enforcement. (1) AN INSURER SHALL NOT LIMIT, BY CONTRACT OR OTHER MEANS, THE RIGHT OF A PROVIDER TO ENFORCE THIS PART 6.

(2) THIS PART 6 MAY BE ENFORCED THROUGH A HEARING PURSUANT TO SECTION 8-43-207 OR IN A CIVIL ACTION, AND ANY REMEDIES AT LAW AND IN EQUITY ARE AVAILABLE.

(3) A VIOLATION OF THIS PART 6 CONSTITUTES AN UNFAIR OR DECEPTIVE ACT OR PRACTICE UNDER PART 11 OF ARTICLE 3 OF TITLE 10, C.R.S.

8-43-607. Filing with director. AT LEAST THIRTY DAYS BEFORE IMPLEMENTING ANY NEW OR AMENDED PERFORMANCE PROGRAM, AN INSURER SHALL FILE A DETAILED DESCRIPTION OF THE PERFORMANCE PROGRAM WITH THE DIRECTOR.

8-44-101 **Signed April 29, 2010: Effective August 11, 2010** **Amended** **HB-10-1109**

Insurance requirements. (3) (a) (I) EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (a), all public entities in the state shall insure and keep insured the payment of compensation by electing one of the three methods provided in subsection (1) of this section. A public entity having an insured payroll of less than one million dollars annually shall not be eligible for self-insurance; except that public entities forming a pool pursuant to section 8-44-204 (3) shall be eligible if the total of all the payrolls of the public entities in the pool exceeds the required minimum.

(II) ANY PUBLIC ENTITY IN THE STATE THAT IS PARTICIPATING IN THE FEDERAL PRISON INDUSTRY ENHANCEMENT CERTIFICATION PROGRAM PURSUANT TO THE FEDERAL "JUSTICE SYSTEM IMPROVEMENT ACT OF 1979", 18 U.S.C. SEC. 1761 (c), SHALL INSURE AND KEEP INSURED THE PAYMENT OF COMPENSATION BY ELECTING ONE OF THE METHODS PROVIDED IN SUBSECTION (1) OF THIS SECTION; EXCEPT THAT THE METHOD FOR INSURING THE PARTICIPANTS OF SUCH PROGRAM NEED NOT BE THE SAME METHOD SELECTED BY THE PUBLIC ENTITY PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH (a).

8-44-116 **Signed May 27, 2010: Effective upon signature** **New** **SB-10-011**

Reversionary interests in indemnity benefits prohibited. NO PROVISION IN A CONTRACT FOR INSURANCE REGULATED BY THIS ARTICLE OR ANY CONTRACT ANCILLARY TO SUCH A CONTRACT, INCLUDING SPECIFICALLY A CONTRACT SETTING UP AN ANNUITY FOR INDEMNITY BENEFITS, SHALL ESTABLISH A REVERSIONARY INTEREST IN THE INSURER FOR THE INDEMNITY BENEFITS. ANY SUCH PROVISION IS VOID AND UNENFORCEABLE AS AGAINST PUBLIC POLICY.

8-45-101 **Signed May 26, 2010: Effective July 1, 2010** **New** **HB-10-1009**

Pinnacol Assurance - creation - powers and duties. (5) The board shall:

(m) POST THE DATE, TIME, AND LOCATION OF EACH BOARD MEETING ON THE PINNACOL ASSURANCE WEB SITE AT LEAST SEVEN CALENDAR DAYS PRIOR TO THE SCHEDULED MEETING.

8-45-122 **Signed May 27, 2010: Effective July 1, 2010** **Amended** **SB-10-013**

Annual report. (1) THE CHIEF EXECUTIVE OFFICER OF PINNACOL ASSURANCE SHALL SUBMIT AN ANNUAL REPORT TO THE GOVERNOR; THE BUSINESS AFFAIRS AND LABOR COMMITTEE OF THE HOUSE OF REPRESENTATIVES; THE BUSINESS, LABOR AND TECHNOLOGY COMMITTEE OF THE SENATE; AND THE HEALTH AND HUMAN SERVICES COMMITTEES OF THE HOUSE OF REPRESENTATIVES AND THE SENATE, OR THEIR SUCCESSOR COMMITTEES, REPORTING ON THE BUSINESS OPERATIONS, RESOURCES, AND LIABILITIES OF THE PINNACOL ASSURANCE FUND.

(2) THE REPORT REQUIRED IN SUBSECTION (1) OF THIS SECTION SHALL INCLUDE THE FOLLOWING INFORMATION FOR THE PREVIOUS CALENDAR YEAR:

- (a) THE NUMBER OF POLICIES HELD BY PINNACOL ASSURANCE;
- (b) THE TOTAL ASSETS OF PINNACOL ASSURANCE;
- (c) THE AMOUNT OF RESERVES;
- (d) THE AMOUNT OF SURPLUS;
- (e) THE NUMBER OF CLAIMS FILED;
- (f) THE NUMBER OF CLAIMS ADMITTED OR CONTESTED WITHIN THE TWENTY-DAY PERIOD PURSUANT TO SECTION 8-43-203, SPECIFYING THE NUMBER OF CONTESTED CLAIMS THAT ARE MEDICAL ONLY AND THOSE THAT ARE INDEMNITY CLAIMS;
- (g) THE NUMBER OF MEDICAL PROCEDURES DENIED;
- (h) THE AMOUNT OF TOTAL COMPENSATION EACH EXECUTIVE OFFICER OR STAFF MEMBER RECEIVES, INCLUDING BONUSES OR DEFERRED COMPENSATION;
- (i) THE AMOUNT SPENT ON COMMISSIONS;
- (j) THE AMOUNT PAID TO TRADE ASSOCIATIONS FOR MARKETING FEES;
- (k) ALL INFORMATION RELATING TO BONUS PROGRAMS; AND
- (l) ANY OTHER INFORMATION THE CHIEF EXECUTIVE OFFICER DEEMS RELEVANT TO THE REPORT.

8-47-112 **Signed May 27, 2010: Effective July 1, 2010** **New** **SB-10-013**

Division web site - procedures to file complaints. THE DIRECTOR SHALL CLEARLY POST ON THE DIVISION'S WEB SITE THE PROCEDURE FOR AN INJURED WORKER TO FOLLOW TO FILE A

COMPLAINT WITH THE DIVISION REGARDING ANY ISSUE OVER WHICH THE DIRECTOR OR HIS OR HER DESIGNEE HAS AUTHORITY TO PURSUE, SETTLE, OR ENFORCE PURSUANT TO ARTICLES 40 TO 47 OF THIS TITLE.

8-55-105 **Signed April 5, 2010: Effective upon signature** **Amended** **SB-10-1247**
Repeal of article. (1) This article is repealed, effective July 1, ~~2010~~ 2021.