Colorado Division of Workers' Compensation

2014
Legislative Advisory

Legislation enacted by the 2014 General Assembly contained amendments to the Colorado Workers' Compensation Act of importance to practitioners. There are also a number of significant 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 14-125 Signed June 5, 2014: Effective July 1, 2014

- Creates the "Transportation Network Company Act" to define and provide regulation of services that use a digital network to connect riders to drivers for the purpose of providing transportation. C.R.S. § 40-10.1-602(3)
- Defines a transportation network company "driver" as an individual who uses his or her personal vehicle to provide services for riders matched through a transportation network company's digital network. A driver need not be an employee of the transportation network company. C.R.S. § 40-10.1-602(4)
- Affords the Director of the Division of Workers' Compensation ("Director") authority to determine by rule, whether transportation network companies have an obligation to provide or offer workers' compensation insurance coverage for purchase, to transportation network company drivers. Any determination must take existing Colorado statute and case law into consideration. C.R.S. § 8-41-211

Applicability**:** The bill takes effect July 1, 2014, and applies to those individuals or entities defined under the new Part 6 of article 10.1, title 40; except that it reserves for determination by the Director, the question of whether to require or make available workers' compensation insurance for network drivers.

Implementation**:** Rule making by the Division of Workers' Compensation ("Division") may be indicated at a later date.

Senate Bill 14-172 Signed June 5, 2014: Effective January 1, 2015

- Provides employer-paid benefits for eligible firefighters who suffer cardiac or circulatory illness as the as the result of a strenuous work event. The newly created *Firefighter Heart and Circulatory Malfunction Benefits* under title 29, is defined to include a diagnosis of sudden and serious coronary thrombosis, a cerebral vascular accident, a myocardial infarction or cardiac arrest. It does not include hypertension or angina. C.R.S. § 29-5-301(3)
- Offsets benefits paid pursuant to this section, by benefits awarded under the Workers' Compensation Act of Colorado. C.R.S. § 29-5-302(7)(a)(I)

- Treats the new heart and circulatory malfunction benefits as an on-the-job injury for purposes of employer policies and benefits, but does not affect a determination as to whether the heart and circulatory malfunction is compensable under the Workers' Compensation Act of Colorado. C.R.S. § 29-5-302(10)

Applicability**:** The bill takes effect January 1, 2015, and applies to benefits awarded under Part 3 of article 5, Title 29; *Firefighter Heart and Circulatory Malfunction Benefits*, only. Benefits awarded under the Workers' Compensation Act offset benefits awarded under this provision.

Implementation**:** No rule making by the Division of Workers' Compensation is anticipated.

Senate Bill 14-191 Signed May 31, 2014: Effective July 1, 2014

- Section 1. Acknowledges that while the Director or administrative law judge may appropriately consider the medical treatment guidelines when determining reasonable, necessary and related medical treatment, there is no requirement that the guidelines be used as the sole basis for the determination. C.R.S. § 8-43-201(3)
- Section 2. Memorializes efficiencies adopted by the Division for approving settlement agreements to:
  - Allow represented claimants to submit settlement documents by electronic mail;
  - Accept notarized, though not original, signatures by represented claimants, and;
  - Require that the Division electronically mail a copy of the order approving a settlement to the counsel of record or the insurance carrier or self-insured employer if unrepresented. C.R.S. § 8-43-204(8)
- Sections 3 & 4. Extends the date a hearing is required to commence, from 100 to 120 days from the date of the notice to set or the certificate of service on the request or application for hearing. C.R.S. § 8-43-209(1)
- Section 5. Extends the time for requesting a full order from 7 to 10 working days. C.R.S. § 8-43-215(1)
- Section 6. Affords the Director, his/her agents, deputies and administrative law judges from the Division and the Office of Administrative Courts, the authority to order out-of-state parties to appear in person or by telephone for a deposition or hearing, upon good cause shown. If a party fails to comply with the order, and in the absence of a reasonable excuse, s/he is liable for penalties under section 8-43-304(1). C.R.S. § 8-43-315(2)&(3)
- Section 7. Adds a section requiring that within 30 days receipt of a remand order with directions, the Director or administrative law judge or panel, issue an order consistent with those directions. The remanding tribunal has authority to enforce the remand order. C.R.S. § 8-43-318
- Section 8.
  - Reimburses the claimant for uncompensated wage loss at a rate of $75.00 per day for attending an independent medical examination requested by the employer/insurer. C.R.S. § 8-43-404(1)(b)(I)
  - Requires that upon refusal to treat or the discharge of an injured worker from care for *nonmedical reasons*, an authorized physician:
    - Notify the injured worker and insurer by certified mail within 3 business days;
    - Explain the reasons for refusal or discharge and;
    - Offer to transfer the employee's medical records to any new authorized physician upon receipt of a signed authorization to do so. C.R.S. § 8-43-404(10)(a)

- Assigns to the Director or administrative law judge jurisdiction to resolve disputes as to whether discharge from medical care or refusal to treat was for medical or nonmedical reasons. C.R.S. § 8-43-404(10)(a)
- Directs the insurer to designate a new authorized physician within 15 (calendar) days receipt of a notice from the authorized physician or the injured worker, of a discharge or refusal to treat for nonmedical reasons, where:
  - Further treatment is necessary, and;
  - There is no other authorized physician willing to provide treatment.

  The right of selection of a new authorized physician shifts to the claimant where the insurer fails to designate a new physician in conformity with the requirements of this section. C.R.S. § 8-43-404(10)(b)

- Section 9.
  - Limits the aggregate of all lump sums granted to a claimant or a sole dependent in a compensable claim, to $80,868.10. If a claimant is one of multiple dependents of a deceased worker, the aggregate of all lump sums granted that claimant must be the proportionate share, as determined by the Director or administrative law judge, of an amount not to exceed $161,734.15. These amounts are applicable to dates of injury occurring prior to January 1, 2014. C.R.S. § 8-43-406(2),(3)
  - Requires the Director adjust lump sum limits on July 1 of every year, by the percentage increase or decrease of the state average weekly wage. A claimant who has received the maximum lump sum is not entitled to additional lump sum benefits resulting from any subsequent annual increases to the lump sum maximum effective July 1. Claimants injured on or after January 1, 2014, may receive an aggregate of $81,435.67 in lump sum disbursements. C.R.S. § 8-43-406(4)

Applicability**:** It is the Division's position that Sections 1, 2, and 6 are procedural in nature and apply to all claims regardless of date of injury. Sections 3, 4, 5, 7 and 8 apply to actions occurring on or after July 1, 2014. Paragraph 3 of Section 9 applies to dates of injury prior to January 1, 2014; and paragraph 4 of Section 9 applies to dates of injury on or after January 1, 2014.

Implementation**:** At a minimum, rulemaking will address settlement practices under Section 2, and lump sum awards under Section 9.

House Bill 14-1278 Signed May 31, 2014: Effective July 1, 2014

- Continues the program accrediting health care providers (both Level I and Level II) until September 1, 2025, as administered by the Division of Workers' Compensation (division). C.R.S. § 8-42-101(3.6)(r)(I)
- Allows the division to set physician registration fees sufficient to cover all Level I and Level II accreditation program costs including all course work and materials. C.R.S. § 8-42-101(3.6)(d)

Applicability**:** The bill takes effect July 1, 2014, and applies to program activities on and after that date.

Implementation**:** No rule making by the Division of Workers' Compensation is anticipated.

House Bill 14-1343 Signed June 6, 2014: Effective upon signature and effectively repealed December 31, 2015

- Creates a task force to research work-related post-traumatic stress disorders in peace officers and submit findings to the legislature by January 15, 2015. The task force must make recommendations on best policies and practices for employers of peace officers to include:
  - Identification, prevention, and treatment of work-related post-traumatic stress disorders;
  - Covered workers' compensation claims;
  - Standardized pre-employment psychological screenings; and
  - Education of both management and employees on this mental health issue.

  C.R.S. § 29-5-113

Applicability**:** Applies to representatives of various public agencies, associations and private organizations appointed to participate on the task force.

Implementation**:** No rule making by the Division of Workers' Compensation is indicated.

House Bill 14-1383 Signed June 5, 2014: Effective April 1, 2015, unless a referendum petition is filed by August 5, 2014

- Increases the number of medical providers from which an injured worker may choose a treating physician by requiring that an employer designate the names of at least four (4) physicians, corporate medical providers or a combination of both, where available. At least one of the designated providers must be at a distinct location from the other three and have distinct ownership.
  - *If there are not at least two* physicians (or corporate medical providers) within 30 miles of the employer's place of business with distinct locations and ownership, then an employer may designate providers at the same location and with shared ownership interests. C.R.S. § 8-43-404(5)(a)(I)(A)
- [Existing subparagraph B of this section provides for designation of one (1) physician or one corporate medical provider where *there are fewer than four* providers within 30 miles of the employer's place of business willing to treat injured workers. C.R.S. § 8-43-404(5)(a)(I)(B). Current statute also provides that where an employer is a health care provider or a governmental agency that has its own occupational health care provider system, it may designate providers from within its system. C.R.S. § 8-43-404(5)(a)(I)(B)(II)(A)]
- *If there are more than three but less than nine* physicians or corporate medical providers willing to treat injured workers within 30 miles of the employer's place of business, then two physicians or corporate medical providers, (or a combination), at distinct locations and with distinct ownership, may be designated.
  - *If there are not at least two* physicians (or corporate medical providers) within 30 miles of the employer's place of business with distinct locations and ownership, then an employer may designate providers at the same location and with shared ownership interests. C.R.S. § 8-43-404(5)(a)(I)(C)
- In all cases and upon request, a designated provider must provide a list of ownership interests and employment relationships, if any, to an interested party to the claim, within 5 days receipt of the request. C.R.S. § 8-43-404(5)(a)(I)(A) &(C)

Applicability**:** Applicable to employers on or after April 1, 2015, in the absence of referendum petition.

Implementation**:** Rule making may be necessary at a later date.