# All About Claims

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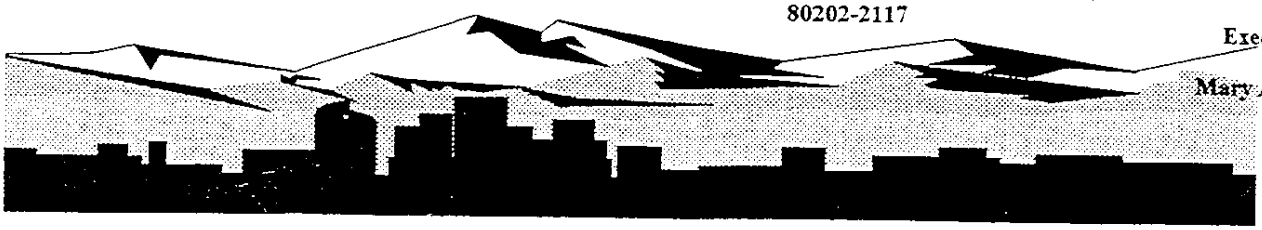



**November 1998** **Volume 11**

*All About Claims* is a newsletter published by the Claims Services Section of the Colorado Division of Workers' Compensation. It is designed to provide a forum for information exchange among claims handlers working in this area of specialization. Comments or suggestions for future topics may be directed to JoAnne Ibarra, Manager of Claims Services, at (303) 575-8816, or by mail at the above Division address.


## Highlights of HB 98-1062 *by JoAnne Ibarra - Manager, Claims Services*

House Bill 1062, whose stated purpose was to create greater efficiencies in the timely prosecution and closure of claims, went into effect on August 5, 1998. This date was the result of a clause in the act specifying the effective date to be 12:01 a.m., on the ninety-first (91st) day following adjournment of the General Assembly and would apply to dates of injury occurring on or after that date.

HB 1062 provides for the automatic closure of issues if the claimant does not, within thirty days of the date of mailing of the final admission, contest the admission in writing, file an application for hearing on any disputed issues that are ripe for hearing, and/or propose the name(s) of an independent medical examiner if either whole person impairment rating or MMI is disputed.

Given the short time frame for implementation, the Director adopted emergency rules on August 4, 1998, in the areas of claims handling, hearings, and independent medical examinations. These were replaced by permanent rules that went into effect on November 1, 1998. In addition, several forms were mandated for use including new final admission of liability forms, distinguishing the 60-day and 30-day objection deadlines and a new IME application form for use on all IME requests.

*Highlights of the new statute and rules are on page 2.*

## HB 98-1062's Impact on the IME Program *by Susan Warren - Manager, Medical Services Delivery*

A product of the 1998 Legislature was the passage of House Bill 1062. Portions of the bill changed the timing requirements for taking action when an individual or an insurer disagrees with the final admission or a finding of MMI.

The Division's Independent Medical Examination program was impacted by HB 98-1062. In essence, the bill requires the parties to attempt to agree on a physician to conduct the examination so that the process can proceed as efficiently as possible. Only if the parties can not agree on an examiner must they then apply to the Division to have an examiner chosen through the IME program. At this point, the process then mimics what has been established in the program for the last few years. The Division selects three qualified physicians, the parties can exercise one strike each, and the remaining physician is the person chosen for the review.

The legislation requires the Division to make its selection within ten days of the receipt of the application for an IME. Prior rules allowed twenty days to accomplish the selection. Because of this shortening of time and the indefinite start date (the Division's **receipt** of the application) some changes in process have become necessary. The Division IME staff will call the parties on the fourth business day after receiving the application and leave the physician panel information either on voice mail of the parties' representatives, or by speaking with someone in the office. The parties then have three business days in which to walk-in or fax their strike to the Division. If not, the Division will select the doctor for the IME and call the results to the parties. (Any party that is representing him/herself may call to get the panel list, and call to make his/her strike, sending a written confirmation as follow up.)

These changes can be found in Rule XIV of the Colorado Workers' Compensation Rules of Procedure, 7CCR 1101-3, Medical Cost Containment Rules. This is the same location of the previous IME rules, which have now been deleted. The IME application form has been revised to comport with HB 1062 as well. It contains substantially similar information with some additional statements, and the format layout was changed to make it easier to follow. The Division and Customer Service have copies of this new form.

After November 1, the parties will need to file the new applicable form, and the new rules will be applied in all cases. If the wrong application is submitted the IME unit will contact the requesting party to request further information and/or the new form.

*Questions should be directed to the IME Office at 303-575-8840 or Customer Service at 303-575-8700, 1-888-390-7936.*

**Charts outlining HB 98-1062, as well as the Division IME Process are enclosed.**

## Highlights of HB 98-1062 *cont. from page 1*

| Statutory Changes: | Rule Changes: |
|---|---|
| **Closure:**<br>Automatic closure of admitted issues if claimant fails to provide written notice *AND* mail or deliver an Application for Hearing within 30 days, on any disputed issues that are ripe for hearing; *AND/OR* propose an Independent Medical Examiner to conduct an IME on the issue of MMI or whole person impairment if either is disputed.<br>C.R.S. 8-43-203(2)(b)(II). | **Closure:**<br>The period for objecting to a final admission begins on the mailing date of the *last* final admission . Rule IV.L.2.<br><br>Mandatory use of new final admission form which includes an Objection to Final Admission of Liability and a Notice and Proposal to Select an Independent Medical Examiner. The two-sided page is a required attachment to all FAs for dates of injury on or after August 5, 1998, and is considered part of the final admission form.<br>Rule IV.N.1.a. |
| **Disputes on MMI or PPD:**<br>If either party disputes MMI or whole person impairment, the time for selection of an IME is as follows:<br>*Claimant:* time of selection begins on the date of mailing of a final admission that includes an impairment rating.<br>*Carrier:* time for selection begins on the date the disputed finding or determination is **mailed or physically delivered** to the insurer.<br>C.R.S. 8-42-107.2 (2)(a)(I)(A) and (B). | **Disputes on MMI or PPD:**<br><br>*Claimant:* no change.<br><br>*Carrier:* Within 30 days after the date of **mailing or delivery** of a determination of medical impairment (whole person or scheduled) by an authorized level II accredited physician, the carrier must take action in accordance with Rule IV. N.5, N.6 or N.8. This is distinguished from the previous rule which required action following *receipt* of the information. |
| **Issues that are ripe for hearing:**<br>The case will automatically be 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 and request a hearing on any disputed issues that are ripe for hearing.<br>C.R.S. 8-43-203(2)(b)(II). | **Issues that are ripe for hearing:**<br>Disputes about MMI and whole person impairment are not ripe for review until a Division IME has been completed or an Administrative Law Judge determines such issues are ripe for hearing.<br>Rule VIII.A.1.a.2. |

| Statutory Changes: | Rule Changes: |
|---|---|
| **Selection of an IME:**<br>Upon receipt of the requesting party's notice and proposal to select an IME, the parties have 30 days from the date of mailing of the notice to negotiate the selection of an IME.<br>C.R.S. 8-42-107.2 (3).<br>***by agreement:***<br>If the parties agree on the selection of an IME on or before the 30th day, the requesting party shall promptly notify the IME doctor.<br>C.R.S. 8-42-107.2 (3).<br><br>***by the Division:***<br>If within such time, the parties fail to agree or there is no response to the proposal, ***the Carrier must give written notice to the Division within 30 days of such failure.***<br>C.R.S. 8-42-107.2 (3). | **Selection of an IME:**<br><br>***by agreement:***<br>Level II physicians who are selected by agreement and are not IME panel members must bill for these reviews pursuant to Rule XVIII F.6.d.(2)(b).<br><br>If despite the good faith efforts of the parties, an agreement that was reached fails, either party may apply for a Division IME within 30 days of such failure.<br>Rule XIV.L.3.a.(2).<br><br>***by the Division:***<br>If the claimant is the requesting party, s/he must complete the application and forward it to the Carrier to submit to the Division within the required 30 days of the failure to agree or respond. Should the requesting party not complete the application, the Carrier shall, nonetheless, submit an Application for Division Independent Medical Examination and may note that the requesting party did not complete the application.<br>Rule XIV.L.3.a.(3).<br><br>The Carrier is not designated as the requesting party simply because it submits the application for IME. The requesting party is the party disputing the determinations of the authorized treating physician and seeking review of those determinations.<br>Rule XIV.L.3.a.(4).<br><br>If the claimant is the requesting party and the Carrier fails to submit the IME application within the required 30 days, the claimant may do so. Rule XIV.L.3.a.(3). |

## Did You Know? *by Patricia Smith, Carrier Practices Officer*

**NEW FINAL ADMISSION FORMS**

Due to the provisions of HB 98-1062, Final Admission of Liability forms were revised to distinguish between the 30-day and 60-day time frames in which the claimant may object to a Final Admission. Two Final Admission forms have been developed and are to be used in order to differentiate between claims with dates of injury before and after August 5, 1998. Final versions of the Final Admission forms were mailed to workers' compensation practitioners in late October. Division Claims Management continues to monitor Final Admissions and require revision if the notice requirements are incorrect. Adjusters must file the correct Final Admission form for the date of injury, complete the form in its entirety, and send all pages and attachments to all parties to avoid disputes regarding closure of the claim.

The Director encourages conversion to the final versions of the Final Admission forms as soon as possible. **All new forms must be implemented by February 1, 1999.** Once implemented, the Final Admission forms may not be modified from the official Division version in terms of language, format, and readable font size without express permission from the Director. After February 1, 1999, strict enforcement is anticipated. Forms may be purchased from Bradford Publishing, (303) 292-2500, or an electronic copy in WordPerfect 6.1 format is available through the Division's Education Unit, (303) 575-8802.

**NEW FATAL ADMISSION FORMS**

The admission form for Fatal Cases was also reviewed and revised after passage of HB 98-1062 to ensure consistency with admission forms. There are now both General and Final admission forms for use in filing admissions on fatal cases. The new Fatal Case-General Admission enables the adjuster to capture the time periods and amount of liability for each dependent. The Fatal Case-Final Admission provides the carrier the ability to close the claim after benefits are paid out by filing a Final Admission which provides notice to dependents of the time limits in which to object.

These forms must be implemented by February 1, 1999 for any new fatal case. The old Admission-Fatal Case may be used to update cases already established with the Division. Cases already established with the Division may be closed by the filing of a Motion or the filing of the new Fatal Case-Final Admission.

**NEW CARRIER EDUCATION**

The Carrier Practice Unit conducts compliance reviews with the intent of providing education in the areas of proper claims handling practices. Education is felt to be so important, that any new company registered to adjust Colorado workers' compensation claims is sent an introductory letter and a packet of information to assist with Colorado claims handling. This packet of information is also available through the Carrier Practices Unit to assist all current carriers, third-party administrators and self-insured employers with claims handling. Emphasis is given to Rules IV, IX, X, and XI and sections of the Act that impact the claims handling practices that are monitored by the Carrier Practices Unit in compliance reviews. Desk aids are also provided. Members of the Carrier Practices Unit are available to provide training to carriers, third-party administrators, and self insured employers. Please call (303) 575-8821 for information packets or to schedule training.

**INFORMATION LETTER**

Providing information to claimants at the outset of a claim is important in order to outline the benefits that are provided to injured workers under the Act and to prevent misunderstandings that may lead to unnecessary litigation. An information letter will be sent from the Division on all new claims established with the Division. This letter will outline benefits provided under the Act and will reinforce the information provided to a claimant by the adjuster. The claimant is informed that an Employee's Guide providing more detailed information is available through Customer Service.

**SPANISH LANGUAGE PROJECT**

The Claims Section is also working on a project to meet the needs of Spanish-speaking customers. Informational materials such as the Employee's Guide, the Division information letter, the Mediation brochure, and letters sent by Claims Management are being translated into Spanish. Review and input on these materials is under way by members of the AFL-CIO, the Hispanic Chamber of Commerce, and a local church. Interested members of the Spanish-speaking community who would like to review the materials may call Dawn Velasquez de Perez at (303) 575-8830.

# Claims Review Team Recommends Changes for DOWC Claims Managers

*By Mike Worley - Carrier Practices Officer*

During the past four and a half years, the Division of Workers' Compensation Carrier Practices Unit has conducted 70 compliance reviews of carriers, self-insured employers, and third-party administrators. These reviews have measured statutory compliance in the areas of timely filing of position statements and forms, computation of average weekly wage and compensation rates, support for modification and termination of benefits, filing of valid Final Admissions of Liability, and timely payment of indemnity benefits and medical bills.

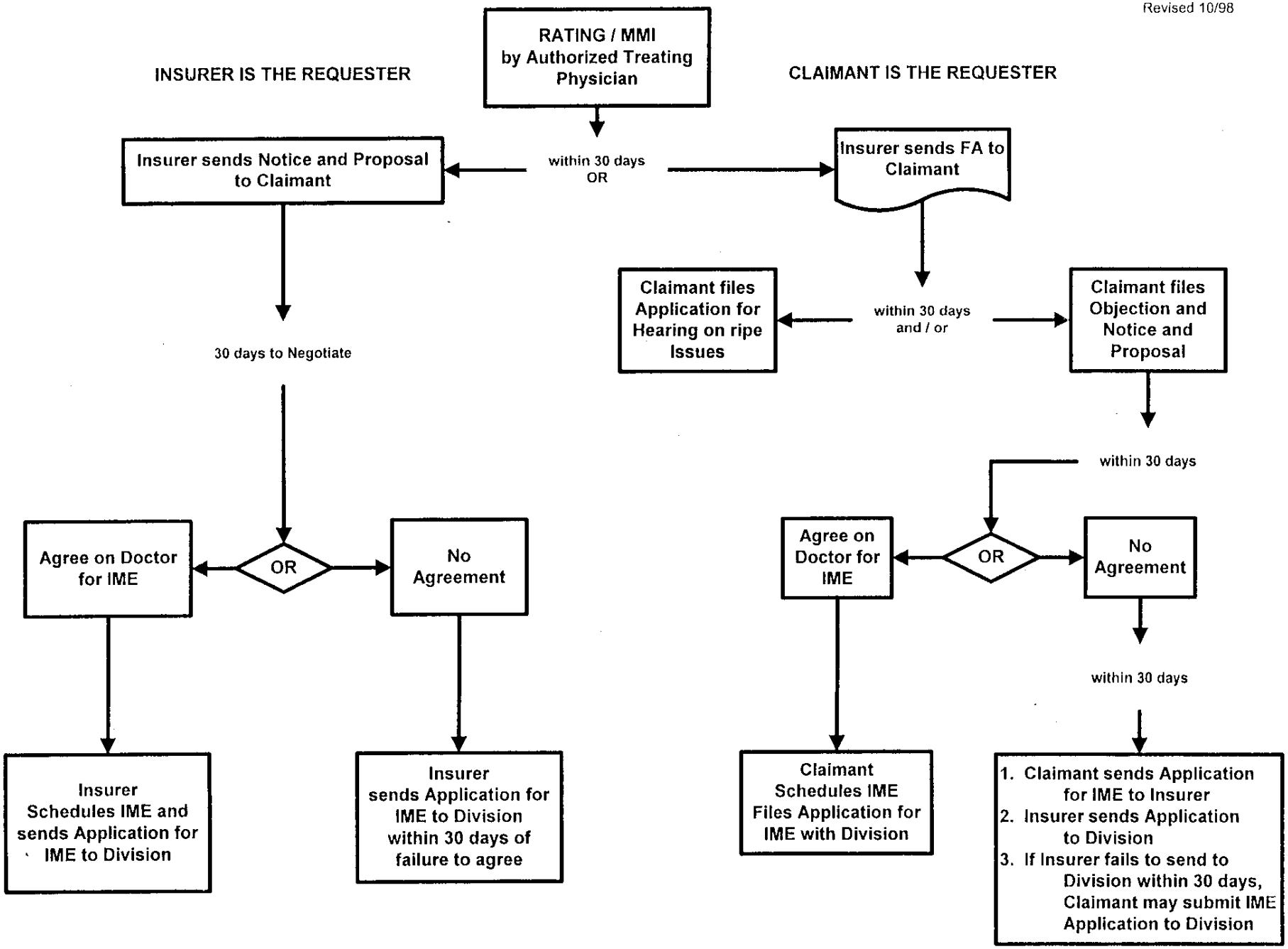
Several months ago the Claims Services Section began a review of a completely different nature--a review of our own standard operating procedures. The review team consisted of JoAnne Ibarra, Manager of the Claims Services Section; Darla Olds, Claims Supervisor; Dee Hyslop, Carrier Practices Supervisor; and the carrier practices officers. The purpose of the review was to ensure consistent oversight of claims both in the audit and review of individual files and admissions, and the intervention of the Claims Services Section on specific cases.

Each year over 40,000 new claims are established with the Division, and more than 100,000 admissions are filed with the Division. All admissions are reviewed by the Claims Services Section for compliance in mathematical calculations of benefits, support for the average weekly wage and

*continued on page 4 Changes for DOWC*

# HB98 - 1062

Revised 10/98



# DIVISION IME PROCESS

Revised 11/98

| | |
|---|---|
| **IME Request Form Mailed** | |
| **DOWC selects 3 Physicians & calls parties to inform them of names between 8:30 am - 12 noon**<br>**Pro se Claimant may call or walk-in** | 4th business day after receipt of Application form |
| **Parties submit strikes to DOWC in writing by Fax or walk-in** | By 5:00 pm on the 3rd business day following the call |
| **DOWC notifies parties by phone of selected physician**<br>**Mailed to pro se claimant** | Within 3 business days |
| **Requester schedules IME exam & advises all parties & DOWC** | Within 5 business days of physician selection |
| **Carrier submits medical records to IME Physician & other parties** | At least 14 calendar days prior to IME exam |
| **Claimant notifies carrier & DOWC if language interpreter needed** | At least 14 calendar days prior to IME exam |
| **Requester pays IME fee to physician** | At least 10 calendar days before Exam |
| **Last day to cancel IME without penalty** | 8 calendar days prior to IME exam |
| **IME Examination** | No less than 35 & no more than 50 calendar days from date requester calls physician for appointment |
| **IME Report Mailed to DOWC & Parties** | Within 20 calendar days of Exam |
| **Carrier files Admission or Application for Hearing** | Within 30 days of IME Report |

## Changes for DOWC

*cont. from page 3*

compensation rates, support for termination or modification of benefits, and support for permanent impairment. When discrepancies are found or clarification is needed, a letter (often referred to as an "error letter") is generated to the adjuster asking for appropriate documentation and/or an amended admission.

For several weeks, the review team studied the error letter process, reviewed all incoming admissions, reviewed and edited all outgoing letters from the Claims Services Section to carriers regarding the admissions, and also reviewed many of the responses from carriers to Division correspondence. The claims managers' correspondence was measured for accuracy, clarity, and appropriate intervention relevant to the Workers' Compensation Act and Rules of Procedure. As is the case when conducting a compliance review, the review team reached an agreement on the findings by providing feedback to the claims managers on all admissions and correspondence reviewed.

The review team provided recommendations upon completing the review. The claims managers reviewed the recommendations and a standard operating procedure was developed, including guidelines for intervention by the Claims Services Section and standardized language to be used in correspondence.

While conducting the review, the review team suggested a rethinking of the Claims Services Section's position on sending claimants information regarding disfigurement. Disfigurement information was previously sent on any claim involving surgery, burns, lacerations, or scarring, as noted on the First Report or subsequent medical reports, in order, to comply with the legislative mandate to educate and inform the public on a benefit which was often unknown to claimants, especially those not represented by counsel.

In recent years, however, the Division of Administrative Hearings, in an effort to clear docket time and provide more efficient service, has encouraged claimants to submit photos for a disfigurement finding, in lieu of a hearing. Some carriers have voluntarily admitted for disfigurement benefits when it is determined the claimants were entitled to this benefit. Other carriers began informing claimants of this benefit as part of an informational letter or packet on the front end of a claim, or when filing the Final Admission. Therefore, letters on disfigurement sent by the Division could be viewed as duplicative or counterproductive to the carrier effectively adjusting the claim.

Consequently, the review team recommended, and the Claims Services Section has adopted as standard procedure, that disfigurement information be sent only on the basis of a request from the claimant or an adjuster. Further, the team recommended an informational letter be sent at the outset of each claim, outlining benefit information and access to Division Services. This is ready to go on line. In the mean time, the Carrier Practices Unit will continue to recommend as part of their compliance reviews that all carriers, self-insured employers, and third-party administrators make a full disclosure to claimants of all possible benefits at the beginning of each claim.

The Claims Services Section also adopted a standard procedure on the basis of a recommendation from the review team regarding average weekly wage (AWW). Letters will be sent by the claims managers only when there is a discrepancy regarding the AWW, such as conflicting information on the First Report and Worker's Claim, incorrect mathematical calculations, failure to include components of the AWW such as overtime and tips, and when a claimant communicates a specific dispute regarding the AWW. The Carrier Practices Unit will continue to recommend as part of their compliance reviews that all carriers, self-insured employers, and third-party administrators obtain a wage history in the first instance on all claims to ensure accuracy in calculating the AWW.

As public servants we are advocates of an efficient operation of the Colorado workers' compensation system. We encourage anyone with questions, comments, or suggestions on our correspondence or service to call us at 303-575-8821.

# Colorado Division of Workers' Compensation
# HB 1062 Frequently Asked Questions & Answers

*This is a draft of frequently asked questions and proposed answers regarding House Bill 1062. The Division of Workers' Compensation continues to work on this collection of commonly asked questions and answers. The Division of Workers' Compensation is making this draft available for educational purposes at this time. The Divisions of Workers' Compensation and Administrative Hearings are engaged in discussions and reviewing the efficient administrative handling of issues arising under HB 1062.*

**Q. What is House Bill 98-1062?**
*A.* House Bill 1062 is an amendment to the Colorado workers' compensation law.

**Q. When does the new law (HB 98-1062) become effective?**
*A.* August 5, 1998--all dates of injury on or after August 5, 1998, are subject to HB 1062.

**Q. What about injuries occurring before August 5, 1998?**
*A.* The law does not apply to injuries occurring before August 5, 1998.

**Q. What does it provide?**
*A.* HB 1062 provides that a workers' compensation claim may be closed if benefits are not disputed within 30 days. If benefits are disputed, it requires a party take action within 30 days to challenge a determination of those benefits.

**Q. What triggers the 30 days?**
*A.* For a claimant, the 30 days begin to run the date a Final Admission of Liability ( "FA") is mailed by the insurance carrier or self-insured employer ("carrier"). The Final Admission must include a statement on permanent impairment.

*continued on page 5*

## Frequently Asked Questions

*continued from page 4*

For a carrier, the time begins to run from the date of mailing or delivery of a determination of maximum medical improvement ("MMI") or permanent impairment by the authorized treating physician.

**Q. If a carrier files a revised or corrected FA, when does the 30 days for disputing an issue begin to run?**

*A.* Upon the mailing date of the *last* Final Admission.

**Q. Does the 30-day requirement apply to fully contested cases (that is, cases in which a Notice of Contest has been filed)?**

*A.* No. It applies to claims in which a Final Admission of Liability has been filed which includes an impairment rating.

**Q. If, as an injured worker, I object to something on the final admission, what am I supposed to do?**

*A.* Within 30 days of the date of the final admission, you must:

a. Complete the Objection form or write a letter to the Division of Workers' Compensation, 1515 Arapahoe St., Denver, Colorado 80202-2117, and send a copy to the insurance carrier or self-insured employer, stating that you object to the admission of liability; AND

b. If you disagree with either the date of MMI or whole person impairment determinations, complete the Notice and Proposal to Select an Independent Medical Examiner form, within 30 days, and send it to the insurance carrier. You must propose the name of one or more doctors, to conduct a Division Independent Medical Examination (IME), if one has not already been conducted through the Division; AND/OR

c. If you dispute any other issues on the final admission that are ripe for hearing, mail or deliver a completed Application for Hearing, within 30 days, to the Division of Administrative Hearings, 1120 Lincoln St., 14th Floor, Denver, Colorado 80203, or if you live on the western slope, mail to 222 South 6th, Grand Junction, Colorado 81501.

Any necessary forms may be requested through the Division.

**Q. What happens if I don't take action within the above listed time frames?**

*A.* Your claim will automatically close as to the benefits that have been admitted in the final admission.

**Q. How will I know whether the issues I dispute are ripe for hearing?**

*A.* Disputes about MMI and/or whole person impairment ratings are not ripe for hearing until an IME has been completed. If you disagree with a scheduled rating, you may proceed directly to a hearing without an IME. If you believe that a scheduled rating should be a whole person rating, you may request an IME.

If you have any questions about whether a specific issue is ripe for hearing, you may file a request for a determination of ripeness by an Administrative Law Judge. This can be done by either requesting a Prehearing Conference or filing a motion.

**Q. Do I have to file an Application for Hearing on issues that are in dispute if I am not certain whether these issues are ripe?**

*A.* No. However, a request to determine whether a particular issue is ripe must be filed within 30 days of the date of mailing of the Final Admission to stop the time from running. [It is proposed that: If an Administrative Law Judge (either at the Division of Workers' Compensation or the Division of Administrative Hearings) decides that a particular issue is ripe, the party who is disputing the issue would have 30 days from the date of the order to file an Application for Hearing.] The Division of Workers' Compensation Administration Law Judges will issue written orders on all such cases.

**Q. If either party disagrees with the authorized treating doctor's opinion on the date of maximum medical improvement or the amount of permanent impairment, what happens?**

*A.* The party disputing MMI or impairment must object to the Final Admission of Liability in writing and propose the name or names of a level II accredited doctor to conduct an independent medical examination. This must occur within 30 days of the date of the Final Admission of Liability.

**Q. What is a Level II accredited doctor and how do I find one?**

*A.* A level II accredited doctor has received special training through the Division of Worker's Compensation in evaluating permanent impairment for the purposes of this law. For information or a listing of level II accredited doctors, both by specialty and region, you may contact the Customer Service Unit at (303) 575-8700.

**Q. How much time do the parties have to negotiate the selection of an IME doctor?**

*A.* 30 days. This is in addition to the 30 day period to object to the Final Admission of Liability. The party that disputes MMI or impairment should obtain an Application for IME (Form WC77) during these 30 days so s/he can submit the completed application when an agreement is reached or if the parties proceed to a Division IME.

**Q. What happens if we can't agree on a doctor to conduct the examination?**

*A.* If there is no agreement on the IME physician or no response from the opposing party, then the requester must complete the Application for IME. If the injured worker is the requesting party, s/he must forward the Application for IME to the carrier. The carrier has 30 days after the parties fail to agree to submit the application to the Division.

**Q. If the claimant is requesting the IME and fails to complete the application and forward it to the carrier within the required time frame, what happens?**

*A.* The carrier must notify the Division in writing; however, the carrier may note that the requesting party did not complete the application.

*continued on page 6*

## Frequently Asked Questions

*continued from page 5*

**Q. If the carrier submits the Application for Division IME, does the carrier then become the requesting party?**

*A.* No. Insurance carriers are not designated as the requesting party simply due to their obligation to submit the required documents. The requesting party is the party disputing the determinations of the authorized treating physician and seeking review of those determinations.

**Q. What if the carrier fails to submit the Application for Division IME within the required time frame?**

*A.* The injured worker may submit the form to the Division.

**Q. If the parties agree to a doctor, is the doctor required to perform the examination?**

*A.* No. If the physician agreed upon by the parties does not wish to perform the IME, the parties must either agree upon another physician or submit an Application for Division IME within the required time frame.

**Q. If the parties have agreed to an IME doctor and the agreement falls through, what happens?**

*A.* If, despite the good faith efforts of the parties, the agreement fails, either party may apply for a Division IME within 30 days of the date of the failed agreement.

**Q. Do the same IME procedures apply to all cases with regard to submission of records, communication with the IME doctor, etc.?**

*A.* The procedures outlined in the Division rules apply to those IMEs administered by the Division. The Division does not administer those IMEs which are performed by agreement of the parties; however, the same principles should govern the process between the parties.

**Q. What is the cost of an IME and who pays the cost?**

*A.* The cost is usually $450.00, but can vary depending on the time the IME physician spends on the process. The cost of the IME is paid for by the requesting party.

**Q. New forms related to this bill have been developed. When do the new forms go into effect?**

*A.* Final Admissions of Liability (for dates of injury on or after August 5, 1998), and accompanying "Objection" forms have been mandated for use on all applicable claims. All Final Admission forms have been revised and have a revision date of 10/98. These new forms must be implemented for use by claims handlers by February 1, 1999.

Information on the use of these forms may be obtained by calling the Customer Service Unit at (303) 575-8700.

**Q. Do carriers need to refile an FA if they use the wrong form?**

*A.* Yes. They have not provided proper statutory notice to the injured worker otherwise.

Note: The Division sends a letter to carriers who use the wrong admission form, requesting that they file a final admission using the proper form.

**SPECIAL NOTICE 11/16/98**

**CORRECTIONS TO NEW FORMS ENCLOSED WITH THIS NEWSLETTER**

COLORADO DIVISION OF WORKERS' COMPENSATION
CLAIMS SERVICES SECTION
1515 ARAPAHOE ST
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