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COLORADO DEPARTMENT OF LABOR AND EMPLOYMENT

# ALL ABOUT CLAIMS



*All About Claims* is a newsletter published by the Colorado Division of Workers' Compensation designed to provide information to claims practitioners. Please send comments or suggestions for future topics to Lise Maes by e-mailing [lise.maes@state.co.us](mailto:lise.maes@state.co.us).

ISSUE 33

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## 2012 LEGISLATIVE ADVISORY

Legislation enacted by the 2012 General Assembly was fairly minimal but contained amendments to the Colorado Workers' Compensation Act which are of importance for practitioners. There are also several 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. To review statutory amendments, [see the Division website](#).

### Senate Bill 12-110

Signed 5/3/12: Effective July 1, 2012

- Directs the Commissioner of Insurance to establish a two-tiered surcharge on insurers to finance the Insurance Fraud Cash Fund. Appropriations from the fund are made to the Department of Law for the investigation and prosecution of insurance fraud. The two-tiered fee schedule is to be based on the prior year's written premiums, gross contract funds and charges received in Colorado. Entities collecting more than one million dollars will pay one fee; and those collecting one million dollars or less will pay a lesser fee. The fee is not to exceed three thousand dollars and is payable on March 1 of each year. The intent is to provide greater parity to insurers in the investigation and prosecution of fraud by the Office of the Attorney General. C.R.S. §§8-43-401(1) and 8-45-117(1) (c); and C.R.S. § 24-31-104.5.

Applicability: Applies to all entities regulated by the Colorado Division of Insurance and takes effect on July 1, 2012.

Implementation: No rule making is anticipated.

### House Bill 12-1033

Signed 3/22/12: Effective August 8, 2012

- Precludes the imposition of penalties by the Director when the Division determines, as part of a compliance audit, that an insurer failed to timely report an injury, occupational disease or death because the insurer did not have notice or knowledge which would have allowed reporting within the time specified by statute.
- Imposition of penalties is not precluded where, as part of a compliance audit, the Director determines that late reporting did not result from a lack of notice or knowledge of an injury by the insurer, but instead, constituted a knowing or repeated pattern of non-compliance with statutory reporting requirements. C.R.S. § 8-43-304(1.5)(a)

Applicability: Applies to fines resulting from compliance audits of workers' compensation insurers and self-insured pools on or after August 8, 2012.

Implementation: No rule making is anticipated.

### House Bill 12-1120

Signed 3/19/12: Effective August 8, 2012

- Substitutes statutory references to the Division of Employment and Training in the Workers' Compensation Act, to reflect activities re-assigned to the newly created Division of Unemployment Insurance (UI). The legislation transfers administration of all unemployment insurance programs to a new UI Division, distinguishing it from workforce development programs located within the Division of Employment and Training. C.R.S. § 8-47-111(2)

Applicability: Applies solely to the administration of programs within the Unemployment Insurance and Employment and Training Divisions occurring on or after August 8, 2012. No additional processes or requirements are imposed on workers' compensation practitioners as the result of this legislation.

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

## 2012 MAXIMUM BENEFIT RATES

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

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

DATE: JULY 1, 2012

SUBJECT: MAXIMUM RATES FOR WORKERS' COMPENSATION BENEFITS FOR THE YEAR BEGINNING  
JULY 1, 2012, THROUGH AND INCLUDING JUNE 30, 2013.

### EFFECTIVE JULY 1, 2012, AT 12:01 AM

**MAXIMUM COMPENSATION BENEFIT RATE:** To qualify, a wage of \$1,273.23 per week must be earned.  
C.R.S. § 8-42-105.

**SCHEDULED IMPAIRMENT RATE:** Payable at a weekly compensation rate of \$266.98. C.R.S.  
§ 8-42-107(6)(b)

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

**TEMPORARY TOTAL BENEFITS:** Payable to a maximum of \$848.82 per week. C.R.S. § 8-42-105 (1).

**TEMPORARY PARTIAL BENEFITS:** See C.R.S. § 8-42-106. Payable at least once every two weeks, to a weekly  
maximum of \$848.82.

**PERMANENT TOTAL BENEFITS:** Payable to maximum of \$848.82 per week. C.R.S. § 8-42-111 (1).

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

**BODILY DISFIGUREMENT:** Maximum is \$4,504.00 and up to \$9,007.00 for extensive facial or body scars, burn  
scars or stumps resulting from the loss of limbs. C.R.S. § 8-42-108.

**STATUTORY CAPS:** The limits on the amount of compensation for combined temporary disability payments and partial  
disability payments is \$78,482.00 for claimants whose impairment rating is twenty-five percent of the whole person or  
less and \$156,962.00 for claimants whose whole person impairment rating is greater than twenty-five percent.

**FATAL CASE:** Maximum of \$848.82 week, C.R.S. § 8-42-114.

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

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

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

**Social Security Offset:** Benefits reduced by 50% (applicable to injuries occurring on or after May 29,  
1991). C.R.S. § 8-42-103(1)(c) and C.R.S. § 8-42-114

**Minimum Death Benefit:** 25% of Maximum Weekly Benefit or \$212.21, C.R.S.  
§ 8-42-114.

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

## NEW PREHEARING PROCEDURE

For those who may be having difficulty obtaining an early date for a prehearing conference (as when a hearing, DIME, etc., is nearing) there is a new procedure for getting on the prehearing docket quickly, effective immediately. You may request a trailing prehearing time. You will be offered an afternoon or morning slot. If morning, your prehearing conference will occur sometime between 8:00 and 11:30 a.m. If afternoon, your prehearing will occur between 1:00 and 4:30 p.m.

The parties to a trailing prehearing conference must be by their office telephones during the appropriate time slot, and when a judge becomes free, he or she will call the parties.

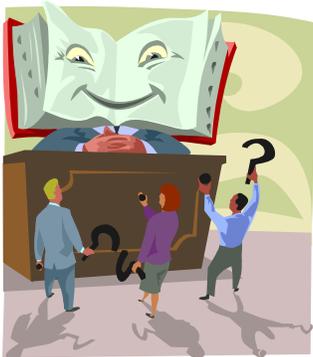
Clearing a date and time slot with opposing counsel must still be done.



One morning and one afternoon trailing prehearing time slot will be available on Mondays and Fridays. On Tuesdays through Thursdays, two trailing prehearings may be set in the morning and 2 in the afternoon.

We hope this will alleviate time pressures for litigants until our new judge starts in mid-June.

Also, to free up time for others, please remember as soon as possible, to call and tell us about any settlement or prehearing conferences which you and opposing counsel may decide to cancel. When we learn of cancellations only hours or the day before, we do not have sufficient time to make that time on the docket available for others.



## TRAINING

There will be a **Claims Management Workshop** on Wednesday, July 25 from 8:30 a.m. until 12:30 p.m. in the 2nd Floor Conference Room at 633 17th Street, Denver, CO 80202. This workshop will be a great refresher on Rules of Procedure for claims administrators, managers, supervisors, attorneys, and adjusters!

Registration and a pocket calculator are required. The registration deadline is July 13 for webinar participants and July 18 for those attending in person.

General topics will include *W.C.R.P. Rules 5, 6, and 7*, *DOWC Practice Problems*, *Case Law Updates*, and *Tips from Carrier Practices*, among others. Visit our website [here](#) for more information on how to register or contact DOWC staff members Joyce Meaux (303-318-8615) or Ed Horak (303-318-8601).

## 2012 WORKERS' COMPENSATION EDUCATIONAL CONFERENCE

### *Continuing Education Credits will be offered—CLEs, CMEs, CCMs!!!*



The Colorado Division of Workers' Compensation is extremely excited for the upcoming conference at the Sheraton Denver Downtown Hotel. The conference will be held in cooperation with the International Workers' Compensation Foundation (IWCF) on Monday, July 30 and Tuesday, July 31. Continuing education credits will be available, specifically, CLE credits for attorneys, CME credits for medical doctors and physician assistants, and CCM credits for case managers and rehabilitation providers.

July 30th is a half day commencing with a presentation by special guest speaker Staci Meyer, an Industrial Commissioner from North Carolina who will discuss

***Evidence and Ethics: Social Networking in Workers' Compensation Trials.*** Given the recent explosion of social media websites, the ethical question as to whether posted information can be used in a workers' compensation case has been raised. In this highly informative discussion, find out what the law has specified and how potential pitfalls can be avoided.

A presentation by special guest speaker and local psychologist Dr. Daniel Bruns will follow with the topic ***What You Don't Know About Chronic Pain: It Can Hurt You and Your Business.*** Discover how misconceptions about pain can compromise treatment and how the guidelines serve to educate in this regard.

Next, ***Utilization Standards— Rule 16 Mechanics: Payment of Medical Bills; Prior Authorization; Adjuster Responsibilities*** will be presented by Division experts Dan Sung and Mike Worley. Learn the role Rule 16 plays in timely payment of medical bills and requests for prior authorization through specific examples of its application.

In addition, the second day of the conference will feature simultaneous tracks devoted to the specific areas of interest in the medical and legal fields of workers' compensation. The legal track will include the following topics:

#### ***Coverage Enforcement—Julie Yakes***

Workers' compensation insurance coverage is mandatory, and employers who don't have it face stiff penalties. An overview of who needs to have insurance will be presented, including discussions of "independent" contractors, corporate officers, and special requirements for the construction industry. Enforcement processes and penalties for non-compliance will be explained, along with what you can do to verify coverage information or report a non-insured employer.

#### ***"The Good, the Bad and the Ugly" Case Law Updates—Craig Eley***

You don't know what the law is until they *tell* you what the law is. Find out what the courts have been up to with this explanation of significant workers' compensation decisions from the past 6 months.

#### ***At the Movies: Surveillance –Using & De-Fusing (Defense + Plaintiff Videos)- Frank Cavanaugh & John Sbarbaro***

Video cameras are everywhere and workers' compensation is no exception. View a real-life video example and discuss the legal ramifications of video surveillance from both a plaintiff and respondents' attorney perspective.

#### ***Administrative Hearings in the Regional Areas—Martin Stuber & Keith Mottram***

Find out what hot button issues are currently being addressed in administrative hearings being held in the outlying areas of our state from two of our administrative law judges.

#### ***Maximizing Your Appeal: Appeals Process & Practice Tips— John Baird & Brandee Galvin***

Examiners for the Industrial Claim Appeals Office will review the administrative appellate process for workers' compensation and provide practical tips for handling appeals.

*continued on final page*

## FROM THE MEDICAL SERVICES DELIVERY SECTION

### *A few tips for adjusters, attorneys, case managers and others:*

Just a few things to keep in mind when reviewing medical reports, especially “closing” reports from the primary physician or a DIME report:

- Check for discrepancies and/or inconsistencies within the report. For example, if the date of the MMI is discussed in several places, is the given date the same? Apply the same scrutiny to discussions of impairment ratings.
- Apportionment of Impairment: When reviewing reports, be alert for specifics on whether a prior injury was work-related or not work-related, and any related discussion regarding prior disabling effects. Remember that the 2008 statute requires that non-work-related prior impairments can be apportioned-out only if the prior injury had been treated and was independently disabling at the time of the current work injury.
- The Division recently issued a new desk aid, “Apportionment Calculation Guide,” denoted as DeskAid #14 (on the Division’s website). This Guide is designed as a sort of “worksheet” for physicians but it may also be of use to other medical professionals, adjusters, legal personnel, risk managers, and others. See the last page of this newsletter for reference.

When filling out the application form to request a DIME:

- Complete the treating physician list thoroughly, including full addresses.  
Claimant attorneys: run this list past your client for accuracy and completeness.
- Be specific on the description of body parts or conditions; e.g., if it is a knee, say “knee” not “leg.”
- When negotiating on an “agreed-upon” physician to do the DIME, you may designate a doctor on the DIME panel list or any Level II-accredited doctor. However, be sure that they are accredited to rate or will agree to rate the conditions at issue, especially if both a physical injury and a mental impairment issue are involved. Call the DIME unit (303-318-8655) or the Physicians’ Accreditation Program (303-318-8763) if you have questions about a doctor’s accreditation status.

And a few other DIME reminders:

- Observe the applicable timelines as set forth in Rule 11.
- Remember to advise the DIME unit when a follow-up DIME has been or is being scheduled, and/or if a case with a pending or open DIME has settled.

THANK YOU!

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## ***NEW!* APPORTIONMENT CALCULATION GUIDE**

As mentioned above, the IME unit has developed a new desk aid in the form of an Apportionment Calculation Guide. The Apportionment Calculation Guide is a tool or worksheet which can assist with application of the 2008 revision to the apportionment statute, C.R.S. § 8-42-104. It offers an algorithm-type approach which may help to simplify the calculation of apportioned impairment ratings for cases with dates of injury both before and after July 1, 2008. While this form was designed primarily for physicians who perform impairment ratings, it may be of use to any party involved in the workers’ comp system.

The desk aid (DK #14) can be found on the Division website [here](#).



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DIVISION OF WORKERS' COMPENSATION

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"Quality and Excellence in all we do."

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***Nuts & Bolts of Claims & Compliance (Termination of Benefits, Claims Compliance & Apportionment) - Bev Richmond/Mary Miller/Becky Greben/Ellen Oakes***

In this session, learn how to terminate indemnity and medical benefits correctly; receive an overview of the compliance audit process and the method for calculating fines; and how apportionment of impairment is applied using case examples to highlight the distinction between medical & legal applications.

For those interested in medical topics, a full day of Medical Treatment Guidelines sessions will be facilitated by the Division's Medical Director, Dr. Kathryn Mueller. Dr. Mueller will be joined by special guest instructors Dr. Hugh Macaulay and Dr. Bart Goldman. Doctors Macaulay and Goldman have previously lectured on Medical Treatment Guidelines and have served on Division Medical Treatment Guidelines task forces. Sessions are comprised of the following topics:

***Guidelines General Principles – Laying a Foundation; Review of Methodology***

The General Guidelines Principles as well as methodological concepts are critical to the appropriate implementation of the Division Guidelines. Principles of evidence-based medicine and how evidence statements are formulated will be described. The discussion will include how Division staff determines quality of the medical literature. Similarly, attendees will learn how consensus statements are formulated.

***Highlights from the Cervical Spine Injury and Low Back Pain Guidelines***

A clinical review of the most pertinent topics related to injuries of the low back and cervical spine.

***Shoulder Injury and Knee Injury – Lecture and Problem Based Learning Case Studies***

In this session, participants will learn how to apply the Division Medical Treatment Guidelines as a reference tool to review evaluation and treatment strategies for injured workers with shoulder and/or knee injuries. The lecture and case study format will provide you with useful information for evaluation and treatment of surgical and non-surgical patients. Appropriate functional and post-operative goals will be discussed.

***Cumulative Trauma Conditions – Includes Causation and Case Studies***

The diagnosis, determination of occupational relationship, and treatment of cumulative trauma conditions such as carpal tunnel syndrome and lateral/medial epicondylitis can be a complex process. Come to this session and learn specific steps that are used to determine medical causation. Also learn about return-to-work issues and specific recommendations for clinical treatments.

***Chronic Pain and Complex Regional Pain Syndrome (CRPS) - Lecture and Problem-Based Learning Case Study on CRPS***

The Chronic Pain and CRPS Medical Treatment Guidelines are the Division's most recently adopted guidelines (December 2011). They became effective on February 14<sup>th</sup>, 2012. Several pertinent topics will be reviewed during this lecture and case study format.

***Metamorphosis: How a Low Back Pain Injury Can Turn into Chronic Pain - Lecture and Problem-Based Learning Case Study***

You've had the experience: a seemingly simple and uncomplicated low back injury insidiously takes a series of unexpected turns and balloons into a nightmare of multiple tests, treatments and voluminous documentation. Costs continue to rise and the patient is not getting better. This lecture and case study will equip you with several important preventive and management strategies if this unfortunate turn of events occurs.

Registration and other details can be found on the [IWCF website](#) or the [Division website](#).

***Excerpt from a letter to state employees dated 2/1/11:***

**We are committed to redefining good government. We know our daily work must be effective, efficient and elegant.**

**Specifically:**

- ***Effective.*** Are we getting done what we need to? Do we have the same priorities as the people of Colorado? We need to look at outcomes to judge whether our programs are successful.
- ***Efficient.*** Services should be timely and cost-effective. We will measure everything in order to become more efficient. We will eliminate waste and duplication wherever we find it.
- ***Elegant.*** When we say elegant, we are not talking about fashion. We are talking about the delivery of state services in a way that elevates you and the person receiving state services. When someone applies for a license or inspection they shouldn't feel disrespected by the interaction, and neither should you. This is the essence of customer service.

***Governor John Hickenlooper***