



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 36

JUNE 2013

## WORKERS' COMPENSATION LEGISLATIVE YEAR IN REVIEW

Legislation enacted by the 2013 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. To view statutory amendments, please visit the Division website [here](#).

### [Senate Bill 13-147](#)

[Effective upon signature](#)

- Creates a presumption that a "buyer of goods" is excluded from the definition of statutory employer, when a lessee, sublessee, contractor or subcontractor, is injured delivering goods while not on the buyer's premises. This presumption can be overcome if it is shown that the job would normally be performed by an employee of the buyer of goods.
- Does not create a presumption of a statutory employer-employee relationship even if, injury to the lessee occurs on the buyer's premises.

Reiterates that section 8-41-401(1)(a)(I) defines lessor contractors as "statutory employers" for purposes of establishing liability and responsibility to pay benefits under the workers' compensation act. Specifically, a statutory employer includes individuals or companies (lessor contractors) who conduct business by leasing or contracting out any or all of the work to a lessee, sublessee, contractor or subcontractor.

C.R.S. § 8-41-101(1)(a)(II) and (1)(a)(III)

[Applicability](#): Applies to all lessor contractors and their statutory employees and is effective immediately upon signature.

[Implementation](#): No rulemaking by the Division of Workers' Compensation is anticipated.

### [Senate Bill 13-249](#)

[Signed May 25, 2013: Effective August 7, 2013](#)

- Eliminates confusion over what triggers the start date for an insurer to react to the results of a Division Independent Medical Evaluation (DIME); shortens the time to admit or appeal the outcome; and establishes a time frame for the physician to correct errors identified by the Division. Specifically:
  - The insurer's action following a DIME is triggered by the date the Division issues a Notice of DIME Report Receipt, and not the date the physician mails the report;
  - The insurer's 30 days to admit liability or request a hearing is reduced to 20 days; and
  - The DIME physician has 20 days to revise the report in the event of noted deficiencies by the Division.

C.R.S. §§8-42-107.2(4) and 8-43-203(2)(b)(II)(A)

[Applicability](#): Applies to all Division Independent Medical Evaluations requested on or after August 7, 2013.

[Implementation](#): Minor rulemaking to conform rule requirements to new statutory time frames is anticipated. For a related article, see page 4.

## WORKERS' COMPENSATION LEGISLATIVE YEAR IN REVIEW

### Senate Bill 13-285

Effective July 1, 2013

- **Section 1.** Requires that an injured worker or other payer be reimbursed for reasonable, necessary and related medical expenses when an employer fails to provide medical care after receiving notice of a claim that is later found to be compensable. In addition:
  - An insurer or provider may not recover medical costs from an injured worker where the employer has furnished medical treatment except in the case of fraud.
  - An insurer must reimburse an injured worker for the full amount paid. It may however, seek reimbursement from the medical provider for amounts paid in excess of the fee schedule. C.R.S. § 8-42-101(6)(a), and (6)(b)
- **Section 2.** Sets a 15-day timeframe to recalculate the average weekly wage and begin payment of benefits at the adjusted rate, along with any interest, from the date of notice that a fringe benefit was terminated. Benefits and interest are payable from the date of termination. C.R.S. § 8-42-103(2)
- **Section 3.** Effects and mirrors the requirement that payment of temporary total benefits at least once every two weeks, apply to the payment of temporary partial benefits. C.R.S. § 8-42-106(1)
- **Section 4.** Requires the insurer provide a complete copy of the claim file within 15 days after the mailing of a written request by the injured worker/representative. This includes all medical records, pleadings, correspondence, investigation reports/files, witness statements, etc., and wage and fringe benefit information for the twelve months leading up to the date of injury and thereafter. If a privilege or other protection is claimed for any materials, the materials must be detailed in an accompanying privilege log. C.R.S. § 8-43-203(4)
- **Section 5.** Requires that a party requesting attorney's fees on an issue that is not ripe for adjudication prove they've attempted to have the issue stricken by a prehearing law judge. The potential for imposition of attorney's fees and costs of preparation remains if it can be shown that costs were incurred as the direct result of the listing. Fees and costs may only be imposed on attorneys. C.R.S. § 8-43-211(2)(d)
- **Section 6.** Extends the time from the date of injury (from 18 to 24 months), before an insurer can request a division independent medical examination (DIME) to overrule the treating physician's opinion that the injured worker has not yet reached maximum medical improvement (MMI). If the DIME physician determines the injured worker has reached MMI, s/he will also determine the injured worker's permanent impairment rating. The DIME physician's findings, both as to maximum medical improvement and permanent impairment, can only be overcome by clear and convincing evidence. C.R.S. § 8-42-107(8)(b)(II)(A), (8)(b)(III) and (8)(c)

**Applicability:** Sections 1 through 6 apply to claims in existence on or after July 1, 2013.

**Implementation:** Rulemaking may be necessary at a later date. In addition, the Division will revise form WC78, currently titled *Application for "18 Month" Division Independent Medical Examination*, to reflect the legislative changes effective July 1. See Section 6, above.

### House Bill 13-1025

Signed April 26, 2013: Effective July 1, 2013

- Changes the maximum deductible from \$5000.00 per claim (on deductible policies) to an amount not to exceed the *split point* approved by the Commissioner of Insurance.
  - For purposes of this section, "split point" means the amount an insurer can claim as a primary loss on

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each workers' compensation claim.

- The full amount of primary losses counts in an employer's experience modification for purposes of calculating its credit or surcharge on workers' compensation coverage.
- Reiterates the employer's responsibility to pay the full amount of compensation and benefits due under the statute, rendering it a violation to require an employee pay any part of compensation or benefits provided by the act.
- Makes it a violation for an employer to require that an employee use any other type of insurance or employment benefit to pay compensation or benefits due under the act.
- Does not relieve insurers the obligation to offer no-deductible policies. C.R. S. § 8-44-111(1)

**Applicability:** Applies to new and renewing workers' compensation insurance policies on or after July 1, 2013.

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



## SURCHARGE ONLINE PAYMENT AVAILABLE JUNE 25

An electronic sur-

charge calculator and payment engine is due to go live on June 25 and will afford insurers and self-insured employers the ability to calculate surcharge, file required reports and pay or claim a zero payment due—in the same way you'd renew your license or file for your vehicle registration online.

Online collection has been the culmination of several years' work and agreements between the Colorado Department of Labor & Employment, the State Treasury, JP Morgan Chase, and the state's web portal contractor, Colorado Interactive.

Historically, surcharge payments have been made by check and were mailed or hand-delivered.

Surcharge, by definition, offsets the costs of administration of the Colorado workers' compensation system through funding of the *Workers' Compensation Cash Fund*; the *Workers' Compensation Cost Containment Act* through its premium cost containment program; and the *Major Medical* and *Subsequent Injury Funds*. This is done by levying a surcharge on insurers for workers' compensation premiums received in the state. In the case of self-insured employers, it is calculated as a surcharge on premium *equivalents*. Each year, the Division Director is required to per-

form a review to determine the monies needed to operate each of the programs.

To make the whole process easier, the new surcharge application will allow payers to calculate surcharge and save filing information for up to 30 days. Utilizing the calculator should eliminate unnecessary errors. There is also an electronic notary component and/or the ability to upload notarized signatures. Information may also be uploaded as in the case of a self-insured employer of day laborers with multiple job classifications to report. Those who elect to make a surcharge payment online will receive confirmation of payment to ensure timely receipt and proof of

compliance.

The next surcharge collection period begins on July 1 and runs through July 31. Payers are encouraged to go online and experience the ease of filing beginning June 25. Go to: <http://tinyurl.com/862wgdy>.

FOR MORE INFORMATION ON THE DIVISION'S ELECTRONIC SURCHARGE CALCULATOR AND PAYMENT ENGINE, PLEASE CONTACT REVENUE ASSESSMENT OFFICER BRENDA CARRILLO AT (303) 318-8767

## A GUIDE TO SENATE BILL 13-249

### CHANGES TO DIVISION IME PROCESS, EFFECTIVE AUGUST 7, 2013 C.R.S. 8-42-107.2(4) AND C.R.S. 8-43-203(2)(b)(ID)(A)

- DIME report is received from physician via fax or mail; date-stamped in by DIME unit staff.  
\* Note—If the doctor’s office mails the report, often the report will arrive at the Division 2-3 days later than it is usually received by the parties. This is due to additional handling and sorting by state mail services.
- From the date of stamp-in, the DIME unit has 5 business days to review the report and issue one of the following documents, with Cert of Mailing:
  1. Notice of Receipt of IME Report—Report Complete
  2. Notice of Receipt of IME Report—“Not at MMI”
  3. Notice of Incomplete Report

The issuance of each of these documents will trigger different steps or events. The Division will endeavor to mail out these documents via what is referred to internally as “Same Day Mail,” so that the document is actually mailed out by state mail services on the same day as shown in the Cert of Mailing or Service. The Division may consider other methods of transmittal as long as all parties can be contacted in the same manner, e.g., fax. The statute does not specifically require the use of standard mail.

- For the Notices shown as (1) and (2) above, the respondent has 20 calendar days from the date of issuance to admit or contest. In case of a DIME finding of “Not at MMI,” the respondent may file a general admission and return the claimant to an authorized treating physician for additional treatment. Standard “Follow-up IME” procedures will later apply, to incorporate the process initiated by the first arrow above.
- For Incomplete Notices, the DIME physician has 20 calendar days to “remedy the deficiencies and resubmit the report.”
  - When the report is resubmitted within 20 days, the DIME unit will date-stamp the report as received and the sequence initiated in the first arrow above will start over.
  - If the doctor’s report does not arrive at the Division by the 20th day, on the 21st day, the DIME unit will issue a Notice of Receipt of IME Report, modified to set forth the various events and deadlines which had transpired to that point. The doctor’s initial (or otherwise most recent), unrevised report will become the final report.
- The respondent has 20 calendar days from the date of issuance of the Notice to file an admission or Notice of Hearing.
- Timelines for the claimant are not changed.

Other than retaining it in the Division’s claim file, the DIME unit will take no action on any supplemental or revised DIME report that is received after the 20 day deadline, even if deficiencies are still noted. The Division takes no position on the parties’ subsequent use of any such revised report.

**A simplified view of this process is also represented by the small flow chart on the last page of this newsletter. It can also be viewed on the Division website [here](#).**



COLORADO  
DEPARTMENT OF  
LABOR AND EMPLOYMENT

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**"QUALITY AND EXCELLENCE IN  
ALL WE DO."**

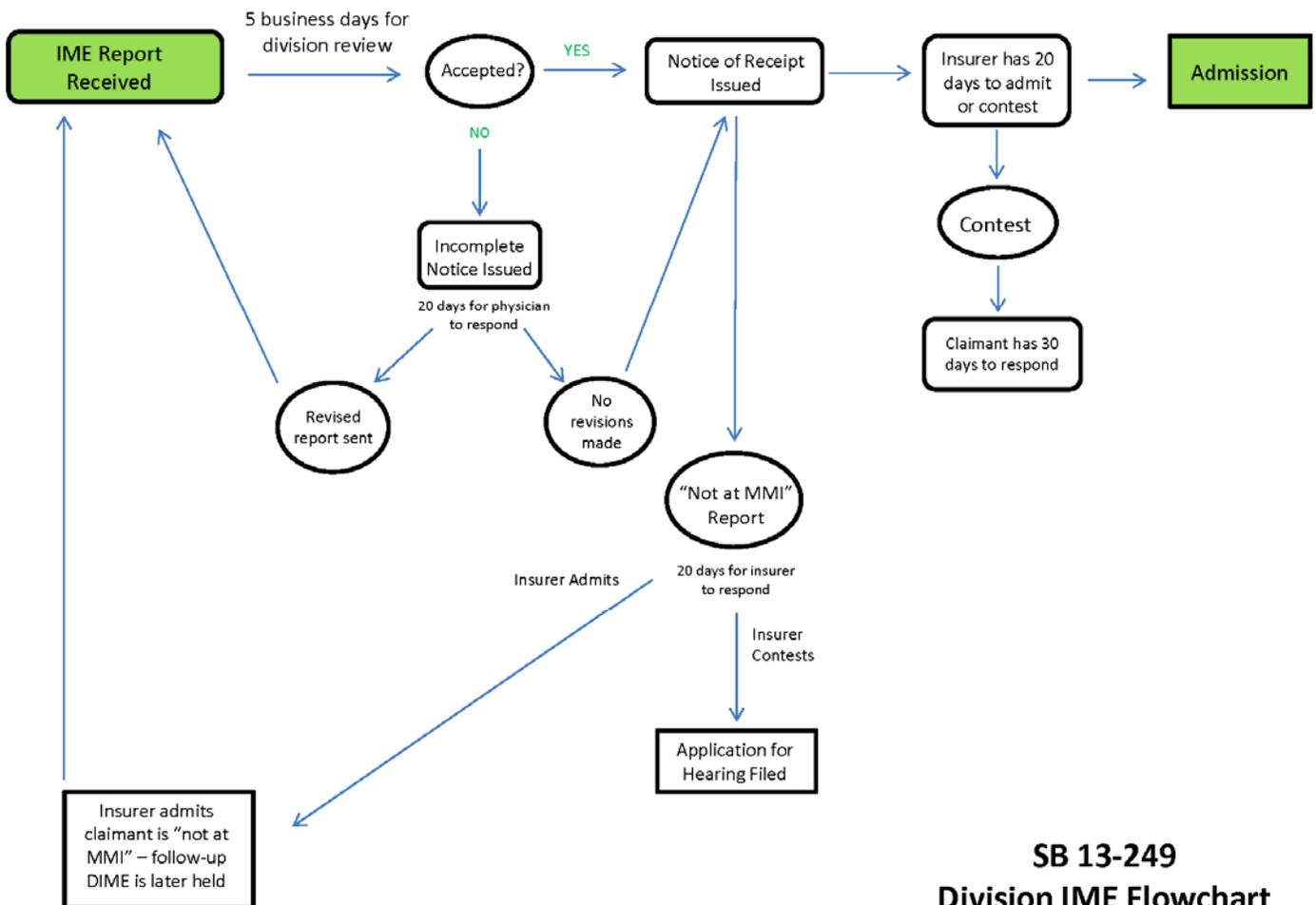
**Excerpt from a letter to state employees dated 2/1/11:**

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*



**SB 13-249  
Division IME Flowchart**