Director's Interpretations of Issues Impacting the Colorado Workers' Compensation System

In an effort to provide guidance on the practical applications of the Colorado Workers' Compensation Act, we are publishing Director's interpretations of statutes and other factors affecting the system, in the form of *Interpretive Bulletins.* The purpose is to provide greater levels of consistency and predictability as to how the Colorado system is intended to operate. While the opinions do not have the force and effect of rule, they are offered as navigational tools to clarify and simplify processes, create efficiencies, and to reduce litigation.

If you have questions regarding this information or issues you would like to see addressed in future bulletins, please direct your inquiries to Paul Tauriello, Director of the Division of Workers' Compensation, at 633 17th St., Suite 400, Denver, CO 80202-3660, fax 303.318.8632, or email at paul.tauriello@state.co.us.

Non-compliance Does *Not* Equal MMI

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A provider should not be asked to place a claimant at MMI simply because the claimant fails to attend medical appointments or is otherwise non-compliant with treatment recommendations. Placing a claimant at MMI, without regard to whether their condition has stabilized, has subjected providers and insurance carriers to penalty claims and even allegations of malpractice.

MMI is statutorily defined as the point in time when the claimant's impairment is stable and "no further treatment is reasonably expected to improve the condition." §8-40-201(11.5), C.R.S. (2005). The initial MMI determination is made by the authorized treating physician and is binding on the parties unless a Division IME is requested. §8-42-107(8)(b), C.R.S. (2005). The MMI determination has significant legal and financial consequences. When a claimant reaches MMI, temporary disability benefits cease and permanency can be determined. The MMI determination is a medical assessment of the claimant's condition and should *not* be used as a sanction for a claimant's non-compliance.

The law provides various procedural mechanisms for an insurance carrier to bring a case to closure when a claimant fails to attend medical appointments or is non-compliant with treatment recommendations. These mechanisms are designed to require a stricter standard to ensure that a claimant has been given the requisite due process afforded by the Workers Compensation Act.

If a claimant is receiving temporary disability benefits and fails to attend medical appointments, an insurer can unilaterally suspend temporary disability benefits if the

claimant fails to attend a rescheduled appointment with the authorized treating physician after receiving actual notice of the appointment. §8-42-105(2)(c), C.R.S. 2005; WCRP 6(1). If the claimant is not receiving temporary disability benefits, the law allows an insurance carrier to file a motion to compel the claimant to attend a medical appointment. §8-43-404(3), C.R.S. (2005). If the claimant fails to obey the order compelling attendance at the medical appointment the insurance carrier can then request that the claim be dismissed or that the case be closed for failure to prosecute. §8-43-207(1)(n), C.R.S. 2005, Sheid v. Hewlett Packard, 826 P.2d 396 (Colo. App. 1991).

The Division is currently considering the addition of provision to Rule 7 which would allow insurance carriers to file a final admission of liability in situations where the claimant is not receiving temporary disability benefits, has not attended regularly scheduled medical appointments and the claimant failed to respond to a "30 day letter" from the insurance carrier. The "30 day letter" is a letter advising the claimant that a final admission of liability will be filed in 30 days if the claimant fails to return to the doctor for an evaluation or fails notify the insurance carrier that they require additional medical treatment or are claiming permanent impairment.

Because there are other options to close a claim, providers should not feel pressured into placing a non-compliant claimant at MMI at the request of an employer or an insurance carrier. The WC 164 form, "Physician's Report of Workers Compensation Injury," has been changed to more accurately reflect this process. (See attached). A claimant may be discharged from care for non-compliance by checking the corresponding box in section 7. If the provider is unable to determine that the claimant's condition is stable because of the claimant's non-compliance, the provider should check the box in section 8 indicating that the "MMI date is unknown at this time because..."

This does not mean, however, that in every case a provider must actually see a claimant before putting them at MMI. If the provider is able to determine that the claimant's condition is stable and requires no further medical treatment without scheduling an appointment, it is certainly acceptable to place the claimant at MMI.