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HOUSE BILL 22-1354

BY REPRESENTATIVE(S) Lindsay and Michaelson Jenet, Amabile, Bacon, Benavidez, Bernett, Bird, Boesenecker, Caraveo, Cutter, Daugherty, Duran, Exum, Froelich, Gonzales-Gutierrez, Herod, Hooton, Jodeh, Kipp, Lontine, McCluskie, McCormick, Mullica, Ricks, Snyder, Sullivan, Titone, Valdez A., Weissman, Woodrow, Young, Esgar, Sirota;
also SENATOR(S) Winter, Bridges, Buckner, Danielson, Ginal, Hansen, Jaquez Lewis, Kolker, Moreno, Pettersen, Rodriguez, Story.

CONCERNING MENTAL HEALTH IN WORKERS' COMPENSATION CASES.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** 8-47-203.2 as follows:

8-47-203.2. Mental health records - disclosure - rules - definition. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES, "MENTAL HEALTH RECORD" MEANS THE FOLLOWING RECORDS PERTAINING TO THE CLAIMANT:

(a) PSYCHOLOGICAL OR PSYCHIATRIC TESTS, INCLUDING NEUROPSYCHOLOGICAL TESTING;

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(b) OTHER RECORDS PREPARED BY OR FOR A MENTAL HEALTH PROVIDER;

(c) INDEPENDENT MEDICAL EXAMINATION RECORDS, AUDIO RECORDINGS, AND REPORTS THAT ADDRESS PSYCHOLOGICAL OR PSYCHIATRIC ISSUES;

(d) DIVISION INDEPENDENT MEDICAL EVALUATION RECORDS AND REPORTS THAT ADDRESS PSYCHOLOGICAL OR PSYCHIATRIC ISSUES; AND

(e) RECORDS RELATING TO THE EVALUATION, DIAGNOSIS, OR TREATMENT OF A SUBSTANCE USE OR ABUSE DISORDER.

(2) A MENTAL HEALTH PROVIDER SHALL PROVIDE MENTAL HEALTH RECORDS TO:

(a) THE INSURER, OR IF SELF-INSURED, THE EMPLOYER, AS NECESSARY FOR PAYMENT OF SERVICES AND ADJUSTMENT AND ADJUDICATION OF CLAIMS INVOLVING PSYCHOLOGICAL OR PSYCHIATRIC ISSUES;

(b) THE EMPLOYER, AS NECESSARY FOR THE EMPLOYER TO COMPLY WITH APPLICABLE STATE OR FEDERAL LAWS, RULES, AND REGULATIONS; AND

(c) THE REFERRING PHYSICIAN AND ANY OTHER RELEVANT TREATING OR EVALUATING PROVIDERS, AS NECESSARY.

(3) (a) MENTAL HEALTH RECORDS PROVIDED PURSUANT TO SUBSECTION (2) OF THIS SECTION SHALL NOT BE DISCLOSED TO ANY PERSON WHO IS NOT REASONABLY NECESSARY FOR THE MEDICAL EVALUATION, ADJUSTMENT, OR ADJUDICATION OF CLAIMS INVOLVING PSYCHOLOGICAL OR PSYCHIATRIC ISSUES UNLESS DISCLOSURE IS OTHERWISE DIRECTED BY ORDER OF THE DIRECTOR OR AN ADMINISTRATIVE LAW JUDGE.

(b)(I) AN INSURER MAY RELEASE INFORMATION FROM A CLAIMANT'S MENTAL HEALTH RECORDS CONCERNING ANY WORK RESTRICTIONS PLACED ON THE CLAIMANT TO THE CLAIMANT'S EMPLOYER, SUPERVISOR, OR MANAGER, AND INFORMATION AS NECESSARY FOR THE ADJUSTMENT AND ADJUDICATION OF A CLAIM, BUT SHALL NOT DISCLOSE THE CLAIMANT'S

ACTUAL MENTAL HEALTH RECORDS TO ANY THIRD PARTY WHO IS NOT DIRECTLY INVOLVED IN MEDICALLY EVALUATING, ADJUSTING, OR ADJUDICATING CLAIMS INVOLVING PSYCHOLOGICAL OR PSYCHIATRIC ISSUES WITHOUT THE CONSENT OF THE CLAIMANT UNLESS DISCLOSURE IS OTHERWISE ORDERED BY THE DIRECTOR OR AN ADMINISTRATIVE LAW JUDGE.

(II) NOTWITHSTANDING SUBSECTION (3)(b)(I) OF THIS SECTION, IF THE CLAIMANT'S MENTAL HEALTH PROVIDER OR PHYSICIAN OBJECTS TO THE RELEASE OF MENTAL HEALTH RECORDS, THE INSURER SHALL NOT DISCLOSE THE MENTAL HEALTH RECORDS TO A THIRD PARTY UNLESS OTHERWISE ORDERED BY THE DIRECTOR OR AN ADMINISTRATIVE LAW JUDGE.

(c) IF AN EMPLOYER IS SELF-INSURED, UPON RECEIPT OF MENTAL HEALTH RECORDS, THE EMPLOYER:

(I) SHALL MAINTAIN MENTAL HEALTH RECORDS UNDER RESTRICTED ACCESS, SEPARATE FROM PERSONNEL FILES, AND WITH CLEAR POLICIES AND TRAINING TO ENSURE THE CLAIMANT'S PRIVACY IS PROTECTED; AND

(II) (A) MAY DISCLOSE INFORMATION FROM THE CLAIMANT'S MENTAL HEALTH RECORDS CONCERNING ANY WORK RESTRICTIONS PLACED ON THE CLAIMANT TO THE CLAIMANT'S SUPERVISOR OR MANAGER AND INFORMATION AS NECESSARY FOR THE ADJUSTMENT OR ADJUDICATION OF A CLAIM, BUT SHALL NOT DISCLOSE THE CLAIMANT'S ACTUAL MENTAL HEALTH RECORDS TO ANY THIRD PARTY WHO IS NOT DIRECTLY INVOLVED IN MEDICALLY EVALUATING, ADJUSTING, OR ADJUDICATING CLAIMS INVOLVING PSYCHOLOGICAL OR PSYCHIATRIC ISSUES WITHOUT THE CONSENT OF THE CLAIMANT, UNLESS DISCLOSURE IS OTHERWISE ORDERED BY THE DIRECTOR OR AN ADMINISTRATIVE LAW JUDGE.

(B) NOTWITHSTANDING SUBSECTION (3)(c)(II)(A) OF THIS SECTION, IF THE CLAIMANT'S MENTAL HEALTH PROVIDER OR PHYSICIAN OBJECTS TO THE RELEASE OF MENTAL HEALTH RECORDS, THE SELF-INSURED EMPLOYER SHALL NOT DISCLOSE THE MENTAL HEALTH RECORDS TO ANY THIRD PARTY UNLESS OTHERWISE ORDERED BY THE DIRECTOR OR AN ADMINISTRATIVE LAW JUDGE.

(d) (I) A THIRD PARTY RECEIVING MENTAL HEALTH RECORDS PURSUANT TO THIS SUBSECTION (3) SHALL NOT DISCLOSE THE CLAIMANT'S ACTUAL MENTAL HEALTH RECORDS TO ANY PERSON WHO IS NOT DIRECTLY

INVOLVED IN MEDICALLY EVALUATING, ADJUSTING, OR ADJUDICATING CLAIMS INVOLVING PSYCHOLOGICAL OR PSYCHIATRIC ISSUES WITHOUT THE CONSENT OF THE CLAIMANT, UNLESS OTHERWISE ORDERED BY THE DIRECTOR OR AN ADMINISTRATIVE LAW JUDGE.

(II) NOTWITHSTANDING SUBSECTION (3)(d)(I) OF THIS SECTION, IF THE CLAIMANT'S MENTAL HEALTH PROVIDER OR PHYSICIAN OBJECTS TO THE RELEASE OF MENTAL HEALTH RECORDS, THE THIRD PARTY SHALL NOT DISCLOSE THE MENTAL HEALTH RECORDS TO ANY OTHER THIRD PARTY UNLESS OTHERWISE ORDERED BY THE DIRECTOR OR AN ADMINISTRATIVE LAW JUDGE.

(4) THE DIRECTOR MAY PROMULGATE RULES NECESSARY FOR THE IMPLEMENTATION OF THIS SECTION.

SECTION 2. In Colorado Revised Statutes, 8-47-203, **amend** (1) introductory portion and (1)(b) as follows:

8-47-203. Access to files, records, and orders.

(1) Notwithstanding the provisions of section 8-47-202, the filing of a claim for compensation is deemed to be a limited waiver of the doctor-patient privilege to persons who are necessary to resolve the claim. THE RELEASE OF MENTAL HEALTH RECORDS PURSUANT TO THIS SECTION MUST COMPLY WITH SECTION 8-47-203.2. Access to claim files maintained by the division will be permitted only as follows:

(b) Persons who are not parties to a claim, or their attorneys or designated representatives, and who wish to inspect or obtain information from claim files may submit a request to inspect a particular file, stating the purpose for such inspection. The director may disallow such requests if the purpose of the inspection is to further commercial interests, ~~or~~ to disseminate information to nonparties, OR IF THE INSPECTION DOES NOT COMPLY WITH SECTION 8-47-203.2. Any such request shall be considered and determined by the division within seventy-two hours.

SECTION 3. In Colorado Revised Statutes, 8-42-101, **add** (3.9) as follows:

8-42-101. Employer must furnish medical aid - approval of plan - fee schedule - contracting for treatment - no recovery from employee

- medical treatment guidelines - accreditation of physicians and other medical providers - mental health provider qualifications - rules - definition - repeal. (3.9) A PERSON PROVIDING MENTAL HEALTH SERVICES PURSUANT TO ARTICLES 40 TO 47 OF THIS TITLE 8, INCLUDING COGNITIVE BEHAVIORAL THERAPY AND OTHER TREATMENT MODALITIES UNDER THE WORKERS' COMPENSATION SYSTEM, MUST BE FORMALLY TRAINED AND LICENSED AS A MENTAL HEALTH PROVIDER.

SECTION 4. Applicability. This act applies to claims filed on or after the effective date of this act.

SECTION 5. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Alec Garnett
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Steve Fenberg
PRESIDENT OF
THE SENATE

Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO