

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 10-0215.01 Christy Chase

SENATE BILL 10-011

SENATE SPONSORSHIP

Carroll M., Hodge, Tochtrop

HOUSE SPONSORSHIP

Miklosi, Pace, Ryden

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 CONCERNING MEASURES TO REDUCE CONFLICTS OF INTEREST IN
102 WORKERS' COMPENSATION CASES.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries.>)

Interim Committee to Study Issues Related to Pinnacol Assurance. Section 1 of the bill requires a physician who has been proposed by the division of workers' compensation (division) in the department of labor and employment to perform an independent medical examination (IME) of an injured worker to disclose any business,

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

employment, financial, or advisory relationship with an insurer or self-insured employer if a party requests the information. **Section 1** gives a party to the IME process the right to obtain and review the information regarding any physicians proposed to conduct the IME prior to making a determination to eliminate one of the proposed physicians as an examiner. **Section 1** also directs the director of the division to adopt rules as necessary to implement the disclosure requirements.

Section 2 of the bill prohibits the payment of a financial incentive by an insurer, self-insured employer, or health care provider to deny or delay a workers' compensation claim, or to deny or delay medical care or payment for medical treatment for any such claim. **Section 2** declares that a violation of its provisions constitutes bad faith and an unfair or deceptive practice in the business of insurance and subjects the person committing the violation to penalties under the unfair or deceptive insurance practices statutes, which may be up to \$3,000 per violation, not to exceed an aggregate penalty of \$30,000, or, in the case of knowing violations, up to \$30,000 per violation, not to exceed an aggregate penalty of \$750,000 annually. **Section 2** also subjects persons violating its provisions to penalties under the "Workers' Compensation Act of Colorado".

Section 3 prohibits a treating physician from communicating with the insurer or employer of an injured worker unless the injured worker is present or the communication is in writing and is provided to the injured worker.

Section 4 specifies that contractual provisions that establish a reversionary interest in an insurer for indemnity benefits are void as against public policy.

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

2 **SECTION 1.** 8-42-107.2, Colorado Revised Statutes, is amended

3 BY THE ADDITION OF A NEW SUBSECTION to read:

4 **8-42-107.2. Selection of independent medical examiner -**

5 **procedure - time - information regarding physician relationships**

6 **with insurers - rules - applicability.** (3.5) (a) PRIOR TO MAKING A

7 DETERMINATION TO STRIKE A PHYSICIAN FROM THE LIST OF IME

8 PHYSICIANS PROVIDED BY THE DIVISION IN ACCORDANCE WITH PARAGRAPH

9 (a) OF SUBSECTION (3) OF THIS SECTION, A PARTY MAY REQUEST AND

10 SHALL BE ENTITLED TO OBTAIN AND REVIEW INFORMATION PERTAINING TO

1 ANY BUSINESS, FINANCIAL, EMPLOYMENT, OR ADVISORY RELATIONSHIP
2 BETWEEN A LISTED PHYSICIAN, OR ANY ENTITY AFFILIATED WITH THE
3 PHYSICIAN, AND AN INSURER OR SELF-INSURED EMPLOYER. THE PARTY
4 SHALL NOT BE REQUIRED TO MAKE ITS DETERMINATION TO STRIKE A
5 PHYSICIAN FROM THE LIST UNTIL HE OR SHE HAS RECEIVED AND HAS HAD
6 A REASONABLE OPPORTUNITY TO REVIEW THE INFORMATION.

7 (b) THE DIRECTOR SHALL ADOPT RULES AS NECESSARY TO
8 IMPLEMENT THIS SUBSECTION (3.5). AT A MINIMUM, THE RULES SHALL:

9 (I) REQUIRE PHYSICIANS TO DISCLOSE THE REQUESTED BUSINESS,
10 FINANCIAL, EMPLOYMENT, OR ADVISORY RELATIONSHIP INFORMATION;

11 (II) DETAIL THE FORM AND MANNER IN WHICH THE INFORMATION
12 IS TO BE PROVIDED;

13 (III) SET PARAMETERS REGARDING THE PERIOD WITHIN WHICH A
14 REQUESTING PARTY IS ALLOWED TO REVIEW THE INFORMATION PRIOR TO
15 MAKING A DETERMINATION TO STRIKE A PHYSICIAN FROM THE LIST; AND

16 (IV) PROHIBIT A PHYSICIAN WHO FAILS TO DISCLOSE THE
17 REQUESTED INFORMATION FROM CONDUCTING AN INDEPENDENT MEDICAL
18 EXAMINATION UNTIL HE OR SHE COMPLIES WITH THE REQUEST.

19 **SECTION 2.** Part 4 of article 43 of title 8, Colorado Revised
20 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
21 read:

22 **8-43-401.5. Financial incentives to deny or delay claim or**
23 **medical care - prohibition - bad faith - penalties.** (1) NO INSURER,
24 EMPLOYEE OR CONTRACTOR OF AN INSURER, SELF-INSURED EMPLOYER,
25 EMPLOYEE OR CONTRACTOR OF A SELF-INSURED EMPLOYER, HEALTH CARE
26 PROVIDER, OR EMPLOYEE OR CONTRACTOR OF A HEALTH CARE PROVIDER
27 TREATING AN INJURED WORKER UNDER THE PROVISIONS OF ARTICLES 40

1 TO 47 OF THIS TITLE SHALL PAY OR RECEIVE ANY FORM OF FINANCIAL
2 REMUNERATION DESIGNED TO ENCOURAGE A CLAIM FOR COMPENSATION
3 TO BE DENIED OR DELAYED, OR TO DENY OR DELAY MEDICAL CARE OR
4 PAYMENT FOR MEDICAL TREATMENT FOR ANY SUCH CLAIM.

5 (2) (a) PAYMENT OR RECEIPT OF REMUNERATION IN VIOLATION OF
6 THIS SECTION CONSTITUTES BAD FAITH AND AN UNFAIR ACT OR PRACTICE
7 IN THE BUSINESS OF INSURANCE, AND THE PERSON WHO PAYS OR RECEIVES
8 THE REMUNERATION SHALL BE SUBJECT TO PENALTIES IN ACCORDANCE
9 WITH PART 11 OF ARTICLE 3 OF TITLE 10, C.R.S.

10 (b) IN ADDITION TO, OR AS AN ALTERNATIVE TO, ANY PENALTIES
11 IMPOSED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2), A PERSON
12 WHO IS FOUND TO HAVE VIOLATED SUBSECTION (1) OF THIS SECTION MAY
13 BE SUBJECT TO PENALTIES IN ACCORDANCE WITH SECTION 8-43-401 (2).

14 **SECTION 3.** 8-43-404 (5), Colorado Revised Statutes, is
15 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

16 **8-43-404. Examination - refusal - personal responsibility -**
17 **physicians to testify and furnish results - injured worker right to**
18 **select treating physicians - injured worker right to third-party**
19 **communications - definitions - rules.** (5) (c) A TREATING PHYSICIAN
20 SHALL NOT COMMUNICATE WITH THE EMPLOYER OR INSURER OF AN
21 INJURED WORKER REGARDING THAT INJURED WORKER UNLESS:

22 (I) THE INJURED WORKER IS PRESENT FOR THE COMMUNICATION;
23 OR

24 (II) THE COMMUNICATION IS CONDUCTED IN WRITING, IN WHICH
25 CASE THE INJURED WORKER HAS THE RIGHT TO OBTAIN A COPY OF THE
26 WRITTEN COMMUNICATION. THE PERSON SENDING THE WRITTEN
27 COMMUNICATION SHALL EITHER SEND A COPY OF THE COMMUNICATION TO

1 THE INJURED WORKER WHEN HE OR SHE SENDS THE WRITTEN
2 COMMUNICATION TO THE PERSON TO WHOM IT IS ADDRESSED OR SHALL
3 PROVIDE A COPY AS PART OF MEDICAL RECORDS DISCLOSURES REQUIRED
4 BY DIRECTOR RULES.

5 **SECTION 4.** Part 1 of article 44 of title 8, Colorado Revised
6 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
7 read:

8 **8-44-116. Reversionary interests in indemnity benefits**
9 **prohibited.** NO PROVISION IN A CONTRACT FOR INSURANCE REGULATED
10 BY THIS ARTICLE OR ANY CONTRACT ANCILLARY TO SUCH A CONTRACT,
11 INCLUDING SPECIFICALLY A CONTRACT SETTING UP AN ANNUITY FOR
12 INDEMNITY BENEFITS, SHALL ESTABLISH A REVERSIONARY INTEREST IN
13 THE INSURER FOR THE INDEMNITY BENEFITS. ANY SUCH PROVISION,
14 INCLUDING ONE IN AN EXISTING CONTRACT, IS VOID AND UNENFORCEABLE
15 AS AGAINST PUBLIC POLICY.

16 **SECTION 5. Effective date - applicability.** (1) Section 1 of
17 this act shall take effect July 1, 2010, and shall apply to requests for
18 independent medical examinations made on or after said date.

19 (2) The remainder of this act shall take effect upon passage and
20 section 2 of this act shall apply to acts occurring or committed on or after
21 said date.

22 **SECTION 6. Safety clause.** The general assembly hereby finds,
23 determines, and declares that this act is necessary for the immediate
24 preservation of the public peace, health, and safety.