

**Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

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
Judiciary

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.

SENATE
3rd Reading Unamended
April 26, 2010

SENATE
Amended 2nd Reading
April 23, 2010

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 - disclosures regarding physician relationships with**
6 **insurers, self-insured employers, or claimants - rules - applicability.**
7 (3.5) (a) PRIOR TO MAKING A DETERMINATION TO STRIKE A PHYSICIAN
8 FROM THE LIST OF IME PHYSICIANS PROVIDED BY THE DIVISION IN
9 ACCORDANCE WITH PARAGRAPH (a) OF SUBSECTION (3) OF THIS SECTION,
10 A PARTY MAY REQUEST AND SHALL BE ENTITLED TO OBTAIN AND REVIEW

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

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

11 (I) REQUIRE PHYSICIANS TO DISCLOSE THE REQUESTED BUSINESS,
12 FINANCIAL, EMPLOYMENT, OR ADVISORY RELATIONSHIP INFORMATION IN
13 A SUMMARIZED FORMAT;

14 (II) DETAIL THE FORM AND MANNER IN WHICH THE SUMMARY
15 DISCLOSURE IS TO BE PROVIDED;

16 (III) SET PARAMETERS REGARDING THE PERIOD WITHIN WHICH A
17 REQUESTING PARTY IS ALLOWED TO REVIEW THE SUMMARY DISCLOSURE
18 PRIOR TO MAKING A DETERMINATION TO STRIKE A PHYSICIAN FROM THE
19 LIST; AND

20 (IV) PROHIBIT A PHYSICIAN WHO FAILS TO DISCLOSE THE
21 REQUESTED SUMMARIZED INFORMATION FROM CONDUCTING AN
22 INDEPENDENT MEDICAL EXAMINATION UNTIL HE OR SHE COMPLIES WITH
23 THE REQUEST.

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

27 **8-43-401.5. Financial incentives to deny or delay claim or**

1 **medical care - prohibition - bad faith - penalties.** (1) NO INSURER,
2 EMPLOYEE OR CONTRACTOR OF AN INSURER, SELF-INSURED EMPLOYER,
3 EMPLOYEE OR CONTRACTOR OF A SELF-INSURED EMPLOYER, HEALTH CARE
4 PROVIDER, OR EMPLOYEE OR CONTRACTOR OF A HEALTH CARE PROVIDER
5 TREATING AN INJURED WORKER UNDER THE PROVISIONS OF ARTICLES 40
6 TO 47 OF THIS TITLE SHALL PAY OR RECEIVE ANY FORM OF FINANCIAL
7 REMUNERATION DESIGNED TO ENCOURAGE A CLAIM FOR COMPENSATION
8 TO BE WRONGFULLY DENIED OR DELAYED, OR TO ENCOURAGE THE
9 WRONGFUL DENIAL OR DELAY OF MEDICAL CARE OR PAYMENT FOR
10 MEDICAL TREATMENT FOR ANY SUCH CLAIM.

11 (2) (a) PAYMENT OF REMUNERATION IN VIOLATION OF THIS
12 SECTION CONSTITUTES BAD FAITH AND AN UNFAIR ACT OR PRACTICE IN THE
13 BUSINESS OF INSURANCE, AND THE INSURER OR SELF-INSURED EMPLOYER
14 WHO PAYS OR DIRECTS THE PAYMENT OF THE REMUNERATION SHALL BE
15 SUBJECT TO PENALTIES IN ACCORDANCE WITH PART 11 OF ARTICLE 3 OF
16 TITLE 10, C.R.S.

17 (b) IN ADDITION TO, OR AS AN ALTERNATIVE TO, ANY PENALTIES
18 IMPOSED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2), AN
19 INSURER OR SELF-INSURED EMPLOYER WHO IS FOUND TO HAVE VIOLATED
20 SUBSECTION (1) OF THIS SECTION MAY BE SUBJECT TO PENALTIES IN
21 ACCORDANCE WITH SECTION 8-43-401 (2).

22 (3) NOTHING IN THIS SECTION:

23 (a) RESTRICTS OR LIMITS THE ABILITY OF A CLAIMS ADJUSTER OR
24 EMPLOYEE OR CONTRACTED CLAIMS PERSONNEL TO INVESTIGATE, DETECT,
25 OR PREVENT FRAUD; OR

26 (b) LIMITS THE PAYMENT OR RECEIPT OF FINANCIAL INCENTIVES
27 FOR ANY OTHER LAWFUL PURPOSE.

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

3 **8-43-404. Examination - refusal - personal responsibility -**
4 **physicians to testify and furnish results - injured worker right to**
5 **select treating physicians - injured worker right to third-party**
6 **communications - definitions - rules.** (5) (c) A TREATING PHYSICIAN
7 SHALL NOT COMMUNICATE WITH THE EMPLOYER OR INSURER OF AN
8 INJURED WORKER REGARDING THAT INJURED WORKER UNLESS:

9 (I) THE INJURED WORKER IS PRESENT FOR THE COMMUNICATION;
10 OR

11 ==
12 (II) THE TREATING PHYSICIAN MAKES A COMPLETE AND ACCURATE
13 WRITTEN RECORD OF THE COMMUNICATION AND PROVIDES THE INJURED
14 WORKER ACCESS TO THE WRITING IN THE SAME MANNER AS MEDICAL
15 RECORDS DISCLOSURES AS REQUIRED BY DIRECTOR RULES.

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

19 **8-44-116. Reversionary interests in indemnity benefits**
20 **prohibited.** NO PROVISION IN A CONTRACT FOR INSURANCE REGULATED
21 BY THIS ARTICLE OR ANY CONTRACT ANCILLARY TO SUCH A CONTRACT,
22 INCLUDING SPECIFICALLY A CONTRACT SETTING UP AN ANNUITY FOR
23 INDEMNITY BENEFITS, SHALL ESTABLISH A REVERSIONARY INTEREST IN
24 THE INSURER FOR THE INDEMNITY BENEFITS. ANY SUCH PROVISION
25 IS VOID AND UNENFORCEABLE AS AGAINST PUBLIC POLICY.

26 **SECTION 5.** 10-3-1104 (1), Colorado Revised Statutes, is
27 amended BY THE ADDITION OF A NEW PARAGRAPH to read:

1 **10-3-1104. Unfair methods of competition and unfair or**
2 **deceptive acts or practices.** (1) The following are defined as unfair
3 **methods of competition and unfair or deceptive acts or practices in the**
4 **business of insurance:**

5 **(hh) VIOLATION OF SECTION 8-43-401.5, C.R.S.**

6 **SECTION 6. Effective date - applicability.** (1) Section 1 of
7 this act shall take effect July 1, 2010, and shall apply to requests for
8 independent medical examinations made on or after said date.

9 (2) The remainder of this act shall take effect upon passage and
10 **sections 2 and 5** of this act shall apply to acts occurring or committed on
11 or after said date.

12 **SECTION 7. Safety clause.** The general assembly hereby finds,
13 determines, and declares that this act is necessary for the immediate
14 preservation of the public peace, health, and safety.