

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

DRAFT
10.7.09

BILL 8

LLS NO. 10-0220.01 Duane Gall

INTERIM COMMITTEE BILL

Interim Committee to Study Issues Related to Pinnacol Assurance

SHORT TITLE: "Work Comp Reinstate Vocational Rehab"

A BILL FOR AN ACT

101 CONCERNING REINSTATEMENT OF THE VOCATIONAL REHABILITATION
102 BENEFIT IN WORKERS' COMPENSATION.

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Interim Committee to Study Issues Related to Pinnacol Assurance. Vocational rehabilitation benefits were required to be offered to injured workers prior to 1987, but these benefits were made optional in 1987. This bill restores the pre-1987 requirement, in updated form and with the additional provision that the director of the division of workers' compensation shall maintain a list of approved providers of vocational rehabilitation services to evaluate the injured employee's need

*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

for, and appropriate course of, vocational rehabilitation benefits.

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

2 **SECTION 1.** 8-42-101 (1) (a), Colorado Revised Statutes, is
3 amended, and the said 8-42-101 is further amended BY THE ADDITION
4 OF A NEW PARAGRAPH, to read:

5 **8-42-101. Employer must furnish medical aid - approval of**
6 **plan - fee schedule - contracting for treatment - no recovery from**
7 **employee - medical treatment guidelines - accreditation of physicians**
8 **- rules - repeal.** (1) (a) Every employer, regardless of said employer's
9 method of insurance, shall furnish such medical, surgical, dental, nursing,
10 and hospital treatment, medical, hospital, and surgical supplies, crutches,
11 and apparatus, AND VOCATIONAL REHABILITATION, WHICH SHALL INCLUDE
12 TUITION, FEES, TRANSPORTATION, AND WEEKLY MAINTENANCE
13 EQUIVALENT TO THAT WHICH THE EMPLOYEE WOULD RECEIVE UNDER
14 SECTION 8-42-105 FOR THE PERIOD OF TIME THAT THE EMPLOYEE IS
15 ATTENDING A VOCATIONAL REHABILITATION COURSE, as may reasonably
16 be needed at the time of the injury or occupational disease and thereafter
17 during the disability AND PERIOD OF VOCATIONAL REHABILITATION to cure
18 and relieve the employee from the effects of the injury.

19 (d) VOCATIONAL REHABILITATION SHALL BE SUBJECT TO SECTION
20 8-42-109.5. IN NO EVENT SHALL THE INJURED EMPLOYEE BE ENTITLED TO
21 RECEIVE BOTH TEMPORARY TOTAL DISABILITY BENEFITS AND INCOME
22 MAINTENANCE BENEFITS WHILE ATTENDING A VOCATIONAL
23 REHABILITATION PROGRAM.

24 **SECTION 2.** Article 42 of title 8, Colorado Revised Statutes, is
25 amended BY THE ADDITION OF A NEW SECTION to read:

1 **8-42-109.5. Vocational rehabilitation.** (1) (a) EVERY EMPLOYEE
2 WHO HAS SUFFERED AN INJURY COVERED BY ARTICLES 40 TO 47 OF THIS
3 TITLE SHALL BE ENTITLED TO VOCATIONAL REHABILITATION AT A FACILITY
4 OR INSTITUTION APPROVED BY THE DIVISION WHEN, AS A RESULT OF THE
5 INJURY OR OCCUPATIONAL DISEASE, THE EMPLOYEE IS UNABLE TO
6 PERFORM WORK FOR WHICH HE OR SHE HAS PREVIOUS TRAINING OR
7 EXPERIENCE. SUCH VOCATIONAL REHABILITATION SERVICES SHALL
8 CONTINUE FOR SUCH PERIOD OF TIME AS MAY BE REASONABLY NECESSARY,
9 NOT EXCEEDING TWENTY-SIX WEEKS, FOR THE PURPOSE OF RESTORING THE
10 EMPLOYEE TO SUITABLE EMPLOYMENT. THE DIRECTOR, FOR GOOD CAUSE
11 SHOWN, MAY EXTEND, FOR AN ADDITIONAL PERIOD NOT TO EXCEED
12 TWENTY-SIX WEEKS, THE VOCATIONAL REHABILITATION TREATMENT OR
13 SERVICES REQUIRED. IN NO EVENT SHALL THE TOTAL TIME EXCEED
14 FIFTY-TWO WEEKS FOR THE REHABILITATION SERVICES PROVIDED
15 PURSUANT TO THIS SUBSECTION (1) OR FOR THE PAYMENT OF INCOME
16 MAINTENANCE BENEFITS AS PROVIDED IN SECTION 8-42-101 (1) (a).

17 (b) IF VOCATIONAL REHABILITATION SERVICES ARE NOT
18 VOLUNTARILY OFFERED BY THE EMPLOYER OR THE EMPLOYER'S
19 INSURANCE CARRIER AND ACCEPTED BY THE EMPLOYEE, THE DIRECTOR,
20 ON THE DIRECTOR'S OWN MOTION OR UPON APPLICATION BY ANY PARTY IN
21 INTEREST, MAY REFER THE EMPLOYEE TO A QUALIFIED PHYSICIAN OR
22 FACILITY SELECTED IN ACCORDANCE WITH PARAGRAPH (c) OF THIS
23 SUBSECTION (1) FOR EVALUATION OF THE PRACTICABILITY OF, NEED FOR,
24 AND KIND OF SERVICE, TREATMENT, OR TRAINING NECESSARY AND
25 APPROPRIATE TO RENDER THE EMPLOYEE FIT FOR A REMUNERATIVE
26 OCCUPATION. UPON A SHOWING THAT VOCATIONAL REHABILITATION IS
27 REASONABLY NECESSARY, THE DIRECTOR MAY ORDER SERVICES AND

1 TREATMENT RECOMMENDED OR SUCH OTHER REHABILITATION,
2 TREATMENT, OR SERVICE AS THE DIRECTOR MAY DEEM NECESSARY. SUCH
3 REHABILITATION, TREATMENT, OR SERVICE SHALL BE PROVIDED AND PAID
4 FOR IN THE SAME MANNER AND WITH THE SAME LIMITATIONS AS PROVIDED
5 BY SECTION 8-42-101 (1) (a).

6 (c) (I) THE DIRECTOR SHALL MAINTAIN A LIST OF VOCATIONAL
7 REHABILITATION PROVIDERS, USING PUBLIC AND PRIVATE RESOURCES AS
8 ARE AVAILABLE AND APPROPRIATE IN DETERMINING STANDARDS AND
9 QUALIFICATIONS FOR SUCH PROVIDERS. IF THE EMPLOYER AND EMPLOYEE
10 ARE UNABLE TO AGREE ON A PROVIDER TO CONDUCT THE EVALUATION
11 CONTEMPLATED BY PARAGRAPH (b) OF THIS SUBSECTION (I), THE
12 DIRECTOR SHALL SELECT, THROUGH A REVOLVING SELECTION PROCESS
13 ESTABLISHED BY THE DEPARTMENT, A PROVIDER FROM THE LIST. THE
14 COST OF THE EVALUATION SHALL BE BORNE BY THE REQUESTING PARTY.
15 IN NO INSTANCE SHALL THE PROVIDER CONDUCTING THE EVALUATION
16 BECOME THE PROVIDER OF THE VOCATIONAL REHABILITATION SERVICES
17 FURNISHED TO THE EMPLOYEE.

18 (II) NOTHING IN THIS SECTION SHALL PRECLUDE ANY PARTY FROM
19 OBTAINING A VOCATIONAL REHABILITATION EVALUATION FROM A
20 PROVIDER WHO IS NOT ON THE DIRECTOR'S LIST.

21 (III) A PERSON CONDUCTING A VOCATIONAL REHABILITATION
22 EVALUATION PURSUANT TO THIS PARAGRAPH (c) SHALL BE IMMUNE FROM
23 LIABILITY IN ANY CIVIL ACTION BROUGHT AGAINST SAID PERSON FOR ACTS
24 OCCURRING IN CONNECTION WITH THE EVALUATION IF SUCH PERSON WAS
25 ACTING IN GOOD FAITH WITHIN THE SCOPE OF THE RESPECTIVE CAPACITY,
26 MADE A REASONABLE EFFORT TO OBTAIN THE FACTS OF THE MATTER AS TO
27 WHICH ACTION WAS TAKEN, AND ACTED IN THE REASONABLE BELIEF THAT

1 THE ACTION TAKEN BY SUCH PERSON WAS WARRANTED BY THE FACTS.

2 (2) AN EMPLOYEE WHO IS ELIGIBLE FOR VOCATIONAL
3 REHABILITATION SHALL NOT HAVE HIS OR HER DEGREE OF PERMANENT
4 PARTIAL DISABILITY DETERMINED UNTIL HE OR SHE HAS COMPLETED AN
5 APPROPRIATE PROGRAM OF VOCATIONAL REHABILITATION. IF THE
6 EMPLOYEE VOLUNTARILY, WITHOUT GOOD CAUSE, WITHDRAWS FROM
7 SUCH VOCATIONAL REHABILITATION PROGRAM, THE DEGREE OF
8 PERMANENT PARTIAL DISABILITY SHALL BE DETERMINED AS THOUGH THE
9 EMPLOYEE HAD SUCCESSFULLY COMPLETED THE PROGRAM.

10 (3) THE DIVISION AND THE DEPARTMENT OF HUMAN SERVICES
11 SHALL ENTER INTO COOPERATIVE AGREEMENTS TO COORDINATE THE
12 ADMINISTRATION AND DELIVERY OF REHABILITATIVE SERVICES TO
13 ELIGIBLE EMPLOYEES IN ORDER TO AVOID UNNECESSARY DUPLICATION OF
14 AVAILABLE VOCATIONAL REHABILITATION BENEFITS.

15 **SECTION 3.** 8-42-111 (3), Colorado Revised Statutes, is
16 amended to read:

17 **8-42-111. Award for permanent total disability.** (3) A disabled
18 employee capable of rehabilitation ~~which~~ THAT would enable the
19 employee to earn any wages in the same or other employment, who
20 refuses an offer of employment by the same or other employer or an offer
21 of vocational rehabilitation THROUGH A PROVIDER APPROVED BY THE
22 DIRECTOR IN ACCORDANCE WITH SECTION 8-42-109.5 AND paid for by the
23 employer shall not be awarded permanent total disability.

24 **SECTION 4. Act subject to petition - effective date -**
25 **applicability.** (1) This act shall take effect at 12:01 a.m. on the day
26 following the expiration of the ninety-day period after final adjournment
27 of the general assembly (August 11, 2010, if adjournment sine die is on

1 May 12, 2010); except that, if a referendum petition is filed pursuant to
2 section 1 (3) of article V of the state constitution against this act or an
3 item, section, or part of this act within such period, then the act, item,
4 section, or part shall not take effect unless approved by the people at the
5 general election to be held in November 2010 and shall take effect on the
6 date of the official declaration of the vote thereon by the governor.

7 (2) The provisions of this act shall apply to injuries occurring on
8 or after the applicable effective date of this act.