

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

DRAFT
10.9.09

BILL 13

LLS NO. 10-0215.01 Christy Chase

INTERIM COMMITTEE BILL

Interim Committee to Study Issues Related to Pinnacol Assurance

SHORT TITLE: "Workers' Comp Conflicts Of Interest"

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 necessarily reflect any amendments that may be subsequently adopted.)

Interim Committee to Study Issues Related to Pinnacol Assurance. Section I 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, employment, financial, or advisory relationship with an insurer or self-insured employer if a party requests the information. Section I gives

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

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 of the bill 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 of the bill 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 of the bill also subjects persons violating its provisions to penalties under the "Workers' Compensation Act of Colorado".

Section 3 specifies that contractual provisions that establish a reversionary interest in an insurer 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
11 ANY BUSINESS, FINANCIAL, EMPLOYMENT, OR ADVISORY RELATIONSHIP
12 BETWEEN A LISTED PHYSICIAN, OR ANY ENTITY AFFILIATED WITH THE
13 PHYSICIAN, AND AN INSURER OR SELF-INSURED EMPLOYER. THE PARTY
14 SHALL NOT BE REQUIRED TO MAKE ITS DETERMINATION TO STRIKE A

1 PHYSICIAN FROM THE LIST UNTIL HE OR SHE HAS RECEIVED AND HAS HAD
2 A REASONABLE OPPORTUNITY TO REVIEW THE INFORMATION.

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

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

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

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

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

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

18 **8-43-401.5. Financial incentives to deny or delay claim or**
19 **medical care - prohibition - bad faith - penalties.** (1) NO INSURER,
20 EMPLOYEE OR CONTRACTOR OF AN INSURER, SELF-INSURED EMPLOYER,
21 EMPLOYEE OR CONTRACTOR OF A SELF-INSURED EMPLOYER, HEALTH CARE
22 PROVIDER, OR EMPLOYEE OR CONTRACTOR OF A HEALTH CARE PROVIDER
23 TREATING AN INJURED WORKER UNDER THE PROVISIONS OF ARTICLES 40
24 TO 47 OF THIS TITLE SHALL PAY OR RECEIVE ANY FORM OF FINANCIAL
25 REMUNERATION DESIGNED TO ENCOURAGE A CLAIM FOR COMPENSATION
26 TO BE DENIED OR DELAYED, OR TO DENY OR DELAY MEDICAL CARE OR
27 PAYMENT FOR MEDICAL TREATMENT FOR ANY SUCH CLAIM.

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

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

10 **SECTION 3.** Part 1 of article 44 of title 8, Colorado Revised
11 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
12 read:

13 **8-44-116. Reversionary interests prohibited.** NO PROVISION IN
14 A CONTRACT FOR INSURANCE REGULATED BY THIS ARTICLE OR ANY
15 CONTRACT ANCILLARY TO SUCH A CONTRACT, INCLUDING SPECIFICALLY
16 A CONTRACT SETTING UP AN ANNUITY, SHALL ESTABLISH A REVERSIONARY
17 INTEREST IN THE INSURER. ANY SUCH PROVISION, INCLUDING ONE IN AN
18 EXISTING CONTRACT, IS VOID AND UNENFORCEABLE AS AGAINST PUBLIC
19 POLICY.

20 **SECTION 4. Effective date - applicability.** (1) Section 1 of
21 this act shall take effect July 1, 2010, and shall apply to requests for
22 independent medical examinations made on or after said date.

23 (2) The remainder of this act shall take effect upon passage and
24 Section 2 of this act shall apply to acts occurring or committed on or after
25 said date.

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

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