A BILL FOR AN ACT

CONCERNING THE TREATING PHYSICIAN IN 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://leg.colorado.gov.)

The bill provides injured workers control over the selection of the primary treating physician in workers' compensation cases, allowing them to choose from any level I or level II accredited physician through the division of workers' compensation. The bill creates the mechanism by which the injured worker may select the treating physician, and requires the employer or insurer to choose the physician when an injured worker
is unable or unwilling to select the treating physician.

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

SECTION 1. In Colorado Revised Statutes, 8-43-404, amend (5)(a) and (10)(b) as follows:

8-43-404. Examination - refusal - personal responsibility - physicians to testify and furnish results - injured worker right to select treating physician - injured worker right to third-party communications - rules. (5) (a) (I) (A) In all cases of injury, the employer or insurer shall provide a list of at least four physicians or four corporate medical providers or at least two physicians and two corporate medical providers or a combination thereof where available, in the first instance, from which list an injured employee may select the physician who attends the injured employee. At least one of the four designated physicians or corporate medical providers offered must be at a distinct location from the other three designated physicians or corporate medical providers without common ownership. If there are not at least two physicians or corporate medical providers at distinct locations without common ownership within thirty miles of the employer's place of business, then an employer may designate physicians or corporate medical providers at the same location or with shared ownership interests. Upon request by an interested party to the workers' compensation claim, a designated provider on the employer's list shall provide a list of ownership interests and employment relationships, if any, to the requesting party within five days of the receipt of the request. If the services of a physician are not tendered at the time of injury, the employee shall have the right to select a physician or chiropractor. For
purposes of this section, "corporate medical provider" means a medical
organization in business as a sole proprietorship, professional
corporation, or partnership. Within seven business days following
notice of an on-the-job injury, an employer or insurer shall
provide the injured employee with an authorized treating
physician designation form prescribed by the director. The
employee may designate a level I or level II accredited physician
licensed under the "Colorado Medical Practice Act", article 240
of title 12, as the employee's authorized treating physician. The
employee must designate the treating physician in writing on the
form prescribed by the director. The employee may make one
treating physician designation on the form prescribed by the
director any time after the on-the-job injury but before being
placed at maximum medical improvement.

(B) If there are fewer than four physicians or corporate medical
providers within thirty miles of the employer's place of business who are
willing to treat an injured employee, the employer or insurer may instead
designate one physician or one corporate medical provider, and
subparagraphs (III) and (IV) of this paragraph (a) shall not apply. A
physician is presumed willing to treat injured workers unless he or she
indicates to the employer or insurer to the contrary. If the injured
employee is unable to designate a treating physician and the
emergency nature of the injury requires immediate medical care,
or if the injured employee does not desire to designate a
treating physician and so advises the employer or insurer, the
employer or insurer shall designate a level I or level II
accredited physician licensed under the "Colorado Medical
PRACTICE ACT, ARTICLE 240 OF TITLE 12, AS THE EMPLOYEE'S TREATING PHYSICIAN. DESIGNATION BY AN EMPLOYER OR INSURER UNDER THIS SUBSECTION (5)(a)(I)(B) DOES NOT PREVENT THE EMPLOYEE FROM SUBSEQUENTLY DESIGNATING A TREATING PHYSICIAN AS PROVIDED IN SUBSECTION (5)(a)(I)(A) OF THIS SECTION FOR CONTINUANCE OF REQUIRED MEDICAL CARE. THE EMPLOYEE'S SUBSEQUENT DESIGNATION OF A TREATING PHYSICIAN RENDERS THE EMPLOYER- OR INSURER-DESIGNATED TREATING PHYSICIAN UNAUTHORIZED.

(C) If there are more than three physicians or corporate medical providers, but fewer than nine physicians or corporate medical providers within thirty miles of the employer's place of business who are willing to treat an injured employee, the employer or insurer may instead designate two physicians or two corporate medical providers or any combination thereof. The two designated providers shall be at two distinct locations without common ownership. If there are not two providers at two distinct locations without common ownership within thirty miles of the employer's place of business, then an employer may designate two providers at the same location or with shared ownership interests. Upon request by an interested party to the workers' compensation claim, a designated provider on the employer's list shall provide a list of ownership interests and employment relationships, if any, to the requesting party within five days of the receipt of the request.

(D) Except as otherwise provided by sub-subparagraph (E) of this subparagraph (I), any party may request an expedited hearing on the issue of whether the employer or insurer provided a list in compliance with this subsection (5) if the application for expedited hearing is filed within forty-five days after the claimant provides notice of the injury to the
employer.

(E) If the insurer or self-insured employer admits liability for the claim, any party may request an expedited hearing on the issue of whether the employer or insurer provided a list in compliance with this subsection (5) if the application for expedited hearing is filed within forty-five days after the initial admission of liability for the claim. The director shall set any expedited matter for hearing within sixty days after the date of the application. The time schedule for an expedited hearing is subject to the extensions set forth in section 8-43-209. If the party elects not to request an expedited hearing under this subsection (5), the time schedule for hearing the matter is as set forth in section 8-43-209:

(H) (A) If the employer is a health-care provider or a governmental entity that currently has its own occupational health-care provider system, the employer may designate health-care providers from within its own system and is not required to provide an alternative physician or corporate medical provider from outside its own system:

(B) If the employer has its own on-site health-care facility, the employer may designate such on-site health-care facility as the authorized treating physician, but the employer shall comply with subparagraph (III) of this paragraph (a). For purposes of this sub-subparagraph (B), "on-site health-care facility" means an entity that meets all applicable state requirements to provide health-care services on the employer's premises:

(III) An employee may obtain a one-time change in the designated authorized treating physician under this section by providing notice that meets the following requirements:

(A) The notice is provided within ninety days after the date of the injury, but before the injured worker reaches maximum medical
improvement;

(B) The notice is in writing and submitted on a form designated by the director. The notice provided in this subparagraph (III) shall also simultaneously serve as a request and authorization to the initially authorized treating physician to release all relevant medical records to the newly authorized treating physician:

(C) The notice is directed to the insurance carrier or to the employer’s authorized representative, if self-insured, and to the initially authorized treating physician and is deposited in the United States mail or hand-delivered to the employer, who shall notify the insurance carrier, if necessary, and the initially authorized treating physician;

(D) The new physician is on the employer’s designated list or provides medical services for a designated corporate medical provider on the list;

(E) The transfer of medical care does not pose a threat to the health or safety of the injured employee;

(F) An insurance carrier, or an employer’s authorized representative if the employer is self-insured, shall track how often injured employees change their authorized treating physician pursuant to this subparagraph (III) and shall report such information to the division upon request:

(IV) (A) When an injured employee changes his or her designated authorized treating physician, the newly authorized treating physician shall make a reasonable effort to avoid any unnecessary duplication of medical services:

(B) The originally authorized treating physician shall send all medical records in his or her possession pertaining to the injured
employee to the newly authorized treating physician within seven calendar days after receiving a request for medical records from the newly authorized treating physician:

(C) The originally authorized treating physician shall continue as the authorized treating physician for the injured employee until the injured employee's initial visit with the newly authorized treating physician, at which time the treatment relationship with the initially authorized treating physician shall terminate:

(D) The opinion of the originally authorized treating physician regarding work restrictions and return to work shall control unless and until such opinion is expressly modified by the newly authorized treating physician:

(E) The newly authorized treating physician shall be presumed to have consented to treat the injured employee unless the newly authorized treating physician expressly refuses in writing within five days after the date of the notice to change authorized treating physicians. If the newly authorized treating physician refuses to treat the injured employee, the employee may return to the employer to request an alternative authorized treating physician. If the employer does not provide an alternative authorized treating physician within five days after the employee's request, rules established by the division shall control:

(V) If the authorized treating physician moves from one facility to another, or from one corporate medical provider to another, an injured employee may continue care with the authorized treating physician, and the original facility or corporate medical provider shall provide the injured employee's medical records to the authorized treating physician within seven days after receipt of a request for medical records from the
authorized treating physician.

(VI) (II) (A) In addition to the one-time change of physician
allowed in subparagraph (III) of this paragraph (a), Upon written request
to the insurance carrier INSURER or to the employer's authorized
representative if THE EMPLOYER IS self-insured, an injured employee may
procure written permission to have a personal physician or chiropractor
treat the employee. The EMPLOYEE MUST COMPLETE THE written request
must be completed on a form that is prescribed by the director. If
permission is neither granted nor refused THE EMPLOYER OR INSURER
NEITHER GRANTS NOR REFUSES THE PERMISSION REQUEST within twenty
days after the date of the certificate of service of the request form, the
employer or insurance carrier shall be INSURER IS deemed to have waived
any objection to the employee's request. IF THE EMPLOYER OR INSURER
OBJECTS TO THE REQUEST, THE EMPLOYER OR INSURER SHALL MAKE THE
objection shall be in writing on a form prescribed by the director and shall
be served SERVE THE WRITTEN OBJECTION on the employee or, if
represented, the employee's authorized representative within twenty days
after the date of the certificate of service of the request form. An
insurance carrier INSURER, or an employer's authorized representative if
THE EMPLOYER IS self-insured, shall track how often an injured employee
requests to change his or her THE EMPLOYEE'S physician and how often
such change is granted or denied and shall report such information to the
division upon request. Upon the proper showing to the division, the
employee may procure the division's permission at any time to have a
physician of the employee's selection treat the employee, and in any
nonsurgical case the employee, with such permission, in lieu of medical
aid, may procure any nonmedical treatment recognized by the laws of this
The practitioner administering the treatment shall receive fees under the medical provisions of articles 40 to 47 of this title as specified by the division.

(B) If an injured employee is permitted to change physicians under sub-subparagraph (A) of this subparagraph (VI) resulting in a new authorized treating physician who will provide primary care for the injury, then the previously authorized treating physician providing primary care shall continue as the authorized treating physician providing primary care for the injured employee until the injured employee's initial visit with the newly authorized treating physician, at which time the treatment relationship with the previously authorized treating physician providing primary care is terminated.

(C) Nothing in this subparagraph (VI) precludes any former authorized treating physician from performing an examination under subsection (1) of this section.

(D) If an injured employee is permitted to change physicians pursuant to sub-subparagraph (A) of this subparagraph (VI) resulting in a new authorized treating physician who will provide primary care for the injury, then the opinion of the previously authorized treating physician providing primary care regarding work restrictions and return to work controls unless that opinion is expressly modified by the newly authorized treating physician.

(10) (b) If the insurer or self-insured employer receives written notice pursuant to paragraph (a) of this subsection, or if the insurer or self-insured employer and the authorized treating physician receive written notice by certified mail,
return receipt requested, from the injured employee or the injured employee's legal representative that an authorized physician refused to provide medical treatment to the injured employee or discharged the injured employee from medical care for nonmedical reasons when such the injured employee requires medical treatment to cure or relieve the effects of the work injury, and there is no other authorized physician willing to provide medical treatment, then the insurer or self-insured employer shall, within fifteen calendar days from after receiving the written notice, designate a new authorized physician willing to provide medical treatment. If the insurer or self-insured employer fails to designate a new physician pursuant to this paragraph (b), then the injured employee may select the physician who attends to the injured employee. ADVISE THE INJURED EMPLOYEE IN WRITING THAT THE INJURED EMPLOYEE MAY DESIGNATE A NEW LEVEL I OR LEVEL II ACCREDITED PHYSICIAN LICENSED UNDER THE "COLORADO MEDICAL PRACTICE ACT", ARTICLE 240 OF TITLE 12, AS THE EMPLOYEE'S NEW AUTHORIZED TREATING PHYSICIAN. THE EMPLOYEE MUST DESIGNATE THE NEW TREATING PHYSICIAN IN WRITING ON THE FORM PRESCRIBED BY THE DIRECTOR.

SECTION 2. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2022 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.