

**First Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 21-0757.01 Yelana Love x2295

SENATE BILL 21-197

SENATE SPONSORSHIP

Rodriguez,

HOUSE SPONSORSHIP

Woodrow,

Senate Committees

Business, Labor, & Technology

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE TREATING PHYSICIAN IN WORKERS' COMPENSATION**
102 **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

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

SENATE
Amended 2nd Reading
May 3, 2021

is unable or unwilling to select the treating physician.

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

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

4 **8-43-404. Examination - refusal - personal responsibility -**
5 **physicians to testify and furnish results - injured worker right to**
6 **select treating physician - injured worker right to third-party**
7 **communications - rules.** (5) (a) (I) (A) ~~In all cases of injury, the~~
8 ~~employer or insurer shall provide a list of at least four physicians or four~~
9 ~~corporate medical providers or at least two physicians and two corporate~~
10 ~~medical providers or a combination thereof where available, in the first~~
11 ~~instance, from which list an injured employee may select the physician~~
12 ~~who attends the injured employee. At least one of the four designated~~
13 ~~physicians or corporate medical providers offered must be at a distinct~~
14 ~~location from the other three designated physicians or corporate medical~~
15 ~~providers without common ownership. If there are not at least two~~
16 ~~physicians or corporate medical providers at distinct locations without~~
17 ~~common ownership within thirty miles of the employer's place of~~
18 ~~business, then an employer may designate physicians or corporate medical~~
19 ~~providers at the same location or with shared ownership interests. Upon~~
20 ~~request by an interested party to the workers' compensation claim, a~~
21 ~~designated provider on the employer's list shall provide a list of~~
22 ~~ownership interests and employment relationships, if any, to the~~
23 ~~requesting party within five days of the receipt of the request. If the~~
24 ~~services of a physician are not tendered at the time of injury, the~~
25 ~~employee shall have the right to select a physician or chiropractor. For~~

1 purposes of this section, "corporate medical provider" means a medical
2 organization in business as a sole proprietorship, professional
3 corporation, or partnership IMMEDIATELY UPON RECEIPT OF NOTICE OF AN
4 ON-THE-JOB INJURY, BUT NOT MORE THAN SEVEN BUSINESS DAYS AFTER
5 RECEIPT OF NOTICE OF THE ON-THE-JOB INJURY, AN EMPLOYER OR INSURER
6 SHALL, IN WRITTEN VERIFIED FORM, PROVIDE AN INJURED EMPLOYEE WITH
7 NOTICE OF THE INJURED EMPLOYEE'S RIGHT TO DESIGNATE A TREATING
8 PHYSICIAN AND NOTIFY THE INJURED EMPLOYEE WHERE TO ACCESS THE
9 DIVISION'S LIST OF LEVEL I AND LEVEL II ACCREDITED PHYSICIANS. THE
10 DIRECTOR SHALL CREATE A FORM TO IMPLEMENT THE PROCEDURE TO
11 DESIGNATE A PHYSICIAN. THE EMPLOYEE MAY DESIGNATE ONLY A LEVEL
12 I OR LEVEL II ACCREDITED PHYSICIAN LICENSED UNDER THE "COLORADO
13 MEDICAL PRACTICE ACT", ARTICLE 240 OF TITLE 12, AS THE EMPLOYEE'S
14 AUTHORIZED TREATING PHYSICIAN. THE EMPLOYEE MUST DESIGNATE THE
15 TREATING PHYSICIAN IN WRITING ON THE FORM PRESCRIBED BY THE
16 DIRECTOR. THE EMPLOYEE MAY MAKE ONE TREATING PHYSICIAN
17 DESIGNATION ON THE FORM PRESCRIBED BY THE DIRECTOR ANY TIME
18 AFTER THE ON-THE-JOB INJURY BUT BEFORE BEING PLACED AT MAXIMUM
19 MEDICAL IMPROVEMENT. IF THE EMPLOYEE DECLINES TO DESIGNATE A
20 PHYSICIAN WITHIN SEVEN BUSINESS DAYS AFTER RECEIPT OF NOTICE OF
21 THE RIGHT TO DESIGNATE IN WRITTEN VERIFIED FORM, AN EMPLOYER OR
22 INSURER MAY DESIGNATE ONLY A LEVEL I OR LEVEL II ACCREDITED
23 PHYSICIAN LICENSED UNDER THE "COLORADO MEDICAL PRACTICE ACT",
24 ARTICLE 240 OF TITLE 12, AS THE EMPLOYEE'S AUTHORIZED TREATING
25 PHYSICIAN. THE EMPLOYEE MAY SUBSEQUENTLY DESIGNATE A PHYSICIAN
26 CONSISTENT WITH THIS SUBSECTION (5)(a)(I)(A) WITHIN ONE HUNDRED
27 EIGHTY DAYS AFTER THE DATE OF INJURY. THE PHYSICIAN DESIGNATED BY

1 THE EMPLOYER OR INSURER AND THE PHYSICIAN DESIGNATED BY
2 EMPLOYEE SHALL COMPLY WITH SUBSECTION (5)(a)(III)(A) OF THIS
3 SECTION.

4 (B) ~~If there are fewer than four physicians or corporate medical~~
5 ~~providers within thirty miles of the employer's place of business who are~~
6 ~~willing to treat an injured employee, the employer or insurer may instead~~
7 ~~designate one physician or one corporate medical provider, and~~
8 ~~subparagraphs (III) and (IV) of this paragraph (a) shall not apply. A~~
9 ~~physician is presumed willing to treat injured workers unless he or she~~
10 indicates to the employer or insurer to the contrary IN AN EMERGENCY
11 SITUATION, THE INJURED EMPLOYEE SHALL BE TAKEN TO ANY PHYSICIAN
12 OR HEALTH-CARE FACILITY THAT IS ABLE TO PROVIDE THE NECESSARY
13 CARE. WHEN EMERGENCY CARE IS NO LONGER REQUIRED, SUBSECTION
14 (5)(a)(I)(A) OF THIS SECTION APPLIES. IMMEDIATELY UPON RECEIPT OF
15 NOTICE THAT EMERGENCY CARE IS NO LONGER REQUIRED, BUT NOT MORE
16 THAN SEVEN BUSINESS DAYS AFTER RECEIPT OF NOTICE THAT EMERGENCY
17 CARE IS NO LONGER REQUIRED, AN EMPLOYER OR INSURER SHALL, IN
18 WRITTEN VERIFIED FORM, NOTIFY THE INJURED EMPLOYEE OF THE INJURED
19 EMPLOYEE'S RIGHT TO DESIGNATE A TREATING PHYSICIAN AND NOTIFY THE
20 INJURED EMPLOYEE ABOUT HOW TO ACCESS THE DIVISION'S LIST OF LEVEL
21 I AND LEVEL II ACCREDITED PHYSICIANS. ___

22 (C) ~~If there are more than three physicians or corporate medical~~
23 ~~providers, but fewer than nine physicians or corporate medical providers~~
24 ~~within thirty miles of the employer's place of business who are willing to~~
25 ~~treat an injured employee, the employer or insurer may instead designate~~
26 ~~two physicians or two corporate medical providers or any combination~~
27 ~~thereof. The two designated providers shall be at two distinct locations~~

1 without common ownership. If there are not two providers at two distinct
2 locations without common ownership within thirty miles of the
3 employer's place of business, then an employer may designate two
4 providers at the same location or with shared ownership interests. Upon
5 request by an interested party to the workers' compensation claim, a
6 designated provider on the employer's list shall provide a list of
7 ownership interests and employment relationships, if any, to the
8 requesting party within five days of the receipt of the request.

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

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

25 (H) (A) If the employer is a health-care provider or a
26 governmental entity that currently has its own occupational health-care
27 provider system, the employer may designate health-care providers from

1 within its own system and is not required to provide an alternative
2 physician or corporate medical provider from outside its own system.

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

9 ~~=====~~
10 (HH) (II) An employee may obtain a one-time change in the
11 designated authorized treating physician under this section by providing
12 notice that meets the following requirements:

13 (A) The notice is provided within ninety days after the date of the
14 injury EMPLOYEE'S FIRST PHYSICIAN DESIGNATION, but before the injured
15 worker EMPLOYEE reaches maximum medical improvement;

16 (B) The notice is in writing and submitted on a form designated
17 by the director. The notice provided in this subparagraph (HH) shall
18 SUBSECTION (5)(a)(II) MUST also simultaneously serve as a request and
19 authorization to the initially authorized treating physician to release all
20 relevant medical records to the newly authorized treating physician.

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

27 (D) The new physician is on the employer's designated list or

1 provides medical services for a designated corporate medical provider on
2 the list A LEVEL I OR LEVEL II ACCREDITED PHYSICIAN LICENSED UNDER
3 THE "COLORADO MEDICAL PRACTICE ACT", ARTICLE 240 OF TITLE 12;

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

6 (F) An insurance carrier INSURER, or an employer's authorized
7 representative if the employer is self-insured, shall track how often
8 injured employees change their authorized treating physician pursuant to
9 this subparagraph (HH) SUBSECTION (5)(a)(II) and shall report such
10 information to the division upon request.

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

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

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

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

1 physician.

2 (E) The newly authorized treating physician shall be presumed to
3 have consented to treat the injured employee unless the newly authorized
4 treating physician expressly refuses in writing within five days after the
5 date of the notice to change authorized treating physicians. If the newly
6 authorized treating physician refuses to treat the injured employee, the
7 employee may return to the employer to request an alternative authorized
8 treating physician If the employer does not provide an alternative
9 authorized treating physician within five days after the employee's
10 request, rules established by the division shall control WHO IS A LEVEL I
11 OR LEVEL II ACCREDITED PHYSICIAN LICENSED UNDER THE "COLORADO
12 MEDICAL PRACTICE ACT", ARTICLE 240 OF TITLE 12.

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

20 (VI) (V) (A) In addition to the one-time change of physician
21 allowed in subparagraph (III) of this paragraph (a) SUBSECTION (5)(a)(II)
22 OF THIS SECTION, upon written request to the insurance carrier INSURER or
23 to the employer's authorized representative if THE EMPLOYER IS
24 self-insured, an injured employee may procure written permission to have
25 a personal physician or chiropractor treat the employee. The EMPLOYEE
26 MUST COMPLETE THE written request must be completed on a form that is
27 prescribed by the director. If permission is neither granted nor refused

1 THE EMPLOYER OR INSURER NEITHER GRANTS NOR REFUSES THE
2 PERMISSION REQUEST within twenty days after the date of the certificate
3 of service of the request form, the employer or ~~insurance carrier shall be~~
4 INSURER IS deemed to have waived any objection to the employee's
5 request. IF THE EMPLOYER OR INSURER OBJECTS TO THE REQUEST, THE
6 EMPLOYER OR INSURER SHALL MAKE THE objection ~~shall be~~ in writing on
7 a form prescribed by the director and shall ~~be served~~ SERVE THE WRITTEN
8 OBJECTION on the employee or, if represented, the employee's authorized
9 representative within twenty days after the date of the certificate of
10 service of the request form. An ~~insurance carrier~~ INSURER, or an
11 employer's authorized representative if THE EMPLOYER IS self-insured,
12 shall track how often an injured employee requests to change ~~his or her~~
13 THE EMPLOYEE'S physician and how often such change is granted or
14 denied and shall report such information to the division upon request.
15 Upon the proper showing to the division, the employee may procure the
16 division's permission at any time to have a physician of the employee's
17 selection treat the employee, and in any nonsurgical case the employee,
18 with such permission, in lieu of medical aid, may procure any nonmedical
19 treatment recognized by the laws of this state as legal. The practitioner
20 administering the treatment shall receive fees under the medical
21 provisions of articles 40 to 47 of this ~~title~~ TITLE 8 as specified by the
22 division.

23 (B) If an injured employee is permitted to change physicians
24 under ~~sub-subparagraph (A) of this subparagraph (VI)~~ SUBSECTION
25 (5)(a)(V)(A) OF THIS SECTION resulting in a new authorized treating
26 physician who will provide primary care for the injury, then the
27 previously authorized treating physician providing primary care shall

1 continue as the authorized treating physician providing primary care for
2 the injured employee until the injured employee's initial visit with the
3 newly authorized treating physician, at which time the treatment
4 relationship with the previously authorized treating physician providing
5 primary care is terminated.

6 (C) Nothing in this ~~subparagraph (VI)~~ SUBSECTION (5)(a)(V)
7 precludes any former authorized treating physician from performing an
8 examination under subsection (1) of this section.

9 (D) If an injured employee is permitted to change physicians
10 pursuant to ~~sub-subparagraph (A) of this subparagraph (VI)~~ SUBSECTION
11 (5)(a)(V)(A) OF THIS SECTION resulting in a new authorized treating
12 physician who will provide primary care for the injury, then the opinion
13 of the previously authorized treating physician providing primary care
14 regarding work restrictions and return to work controls unless that
15 opinion is expressly modified by the newly authorized treating physician.

16 (10) (b) If the insurer or self-insured employer receives written
17 notice pursuant to ~~paragraph (a) of this subsection (10)~~ SUBSECTION
18 (10)(a) OF THIS SECTION, or if the insurer or self-insured employer and the
19 authorized treating physician receive written notice by certified mail,
20 return receipt requested, from the injured employee or the injured
21 employee's legal representative that an authorized physician refused to
22 provide medical treatment to the injured employee or discharged the
23 injured employee from medical care for nonmedical reasons when ~~such~~
24 THE injured employee requires medical treatment to cure or relieve the
25 effects of the work injury, and there is no other authorized physician
26 willing to provide medical treatment, then the insurer or self-insured
27 employer shall, within fifteen calendar days ~~from~~ AFTER receiving the

1 written notice, ~~designate a new authorized physician willing to provide~~
2 ~~medical treatment. If the insurer or self-insured employer fails to~~
3 ~~designate a new physician pursuant to this paragraph (b), then the injured~~
4 ~~employee may select the physician who attends to the injured employee~~
5 ADVISE THE INJURED EMPLOYEE IN WRITING THAT THE INJURED EMPLOYEE
6 MAY DESIGNATE A NEW LEVEL I OR LEVEL II ACCREDITED PHYSICIAN
7 LICENSED UNDER THE "COLORADO MEDICAL PRACTICE ACT", ARTICLE 240
8 OF TITLE 12, AS THE EMPLOYEE'S NEW AUTHORIZED TREATING PHYSICIAN.
9 THE EMPLOYEE MUST DESIGNATE THE NEW TREATING PHYSICIAN IN
10 WRITING ON THE FORM PRESCRIBED BY THE DIRECTOR.

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