

CHAPTER 302

LABOR AND INDUSTRY

SENATE BILL 10-011

BY SENATOR(S) Carroll M., Hodge, Tochtrop;
also REPRESENTATIVE(S) Miklosi, Pace, Ryden, Frangas, Labuda, Vigil.

AN ACT

CONCERNING MEASURES TO REDUCE CONFLICTS OF INTEREST IN WORKERS' COMPENSATION CASES.

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

SECTION 1. 8-42-107.2, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

8-42-107.2. Selection of independent medical examiner - procedure - time - disclosures regarding physician relationships with insurers, self-insured employers, or claimants - rules - applicability. (3.5) (a) PRIOR TO MAKING A DETERMINATION TO STRIKE A PHYSICIAN FROM THE LIST OF IME PHYSICIANS PROVIDED BY THE DIVISION IN ACCORDANCE WITH PARAGRAPH (a) OF SUBSECTION (3) OF THIS SECTION, A PARTY MAY REQUEST AND SHALL BE ENTITLED TO OBTAIN AND REVIEW A SUMMARY DISCLOSURE PERTAINING TO ANY BUSINESS, FINANCIAL, EMPLOYMENT, OR ADVISORY RELATIONSHIP BETWEEN A LISTED PHYSICIAN, OR ANY ENTITY AFFILIATED WITH THE PHYSICIAN, AND THE INSURER, SELF-INSURED EMPLOYER, OR CLAIMANT WHO IS A PARTY TO THE CLAIM. THE PARTY SHALL NOT BE REQUIRED TO MAKE ITS DETERMINATION TO STRIKE A PHYSICIAN FROM THE LIST UNTIL HE OR SHE HAS RECEIVED AND HAS HAD A REASONABLE OPPORTUNITY TO REVIEW THE SUMMARY DISCLOSURE.

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

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

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

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

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

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

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

8-43-401.5. Financial incentives to deny or delay claim or medical care - prohibition - bad faith - penalties. (1) NO INSURER, EMPLOYEE OR CONTRACTOR OF AN INSURER, SELF-INSURED EMPLOYER, EMPLOYEE OR CONTRACTOR OF A SELF-INSURED EMPLOYER, HEALTH CARE PROVIDER, OR EMPLOYEE OR CONTRACTOR OF A HEALTH CARE PROVIDER TREATING AN INJURED WORKER UNDER THE PROVISIONS OF ARTICLES 40 TO 47 OF THIS TITLE SHALL PAY OR RECEIVE ANY FORM OF FINANCIAL REMUNERATION THAT IS BASED ON ANY OF THE FOLLOWING:

(a) THE NUMBER OF DAYS TO MAXIMUM MEDICAL IMPROVEMENT;

(b) THE RATE OF CLAIMS APPROVAL OR DENIAL;

(c) THE NUMBER OF MEDICAL PROCEDURES, DIAGNOSTIC PROCEDURES, OR TREATMENT APPOINTMENTS APPROVED; OR

(d) ANY OTHER CRITERIA DESIGNED OR INTENDED TO ENCOURAGE A VIOLATION OF ANY PROVISION OF ARTICLES 40 TO 47 OF THIS TITLE.

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

(b) IN ADDITION TO, OR AS AN ALTERNATIVE TO, ANY PENALTIES IMPOSED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (2), AN INSURER OR SELF-INSURED EMPLOYER WHO IS FOUND TO HAVE VIOLATED SUBSECTION (1) OF THIS SECTION MAY BE SUBJECT TO FINES AS DETERMINED BY THE DIRECTOR PURSUANT TO SECTION 8-43-304 (1.5).

(3) NOTHING IN THIS SECTION:

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

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

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

8-43-404. Examination - refusal - personal responsibility - physicians to testify and furnish results - injured worker right to select treating physicians - injured worker right to third-party communications - definitions - rules.

(5) (c) A TREATING PHYSICIAN SHALL NOT COMMUNICATE WITH THE EMPLOYER OR INSURER OF AN INJURED WORKER REGARDING THAT INJURED WORKER UNLESS:

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

(II) THE TREATING PHYSICIAN MAKES AN ACCURATE WRITTEN RECORD OF THE COMMUNICATION, CONTAINING ALL RELEVANT AND MATERIAL INFORMATION THAT WAS COMMUNICATED, AND PROVIDES THE INJURED WORKER ACCESS TO THE WRITING IN THE SAME MANNER AS MEDICAL RECORDS DISCLOSURES AS REQUIRED BY DIRECTOR RULES.

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

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

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

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

(ii) VIOLATION OF SECTION 8-43-401.5, C.R.S.

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

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

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

Approved: May 27, 2010