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0591 Interim Committee to Study Issues Related to Pinnacol Assurance



**Report to the
Colorado General Assembly**

**Interim Committee to Study
Issues Related to
Pinnacol Assurance**

Prepared by

*The Colorado Legislative Council
Research Publication No. 591
December 2009*

Interim Committee to Study Issues Related to Pinnacol Assurance

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Representative Sal Pace, Vice-Chair

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Representative Joe Miklosi
Representative Su Ryden

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December 2009

To Members of the Sixty-seventh General Assembly:

Submitted herewith is the final report of the Interim Committee to Study Issues Related to Pinnacol Assurance. The committee was created in Senate Bill 09-281. The act requires the committee to study, make recommendations, and report findings on all matters relating to the operation of Pinnacol Assurance.

At its meeting on November 10, 2009, the Legislative Council reviewed the report of this committee. A motion to forward this report and the bills therein for consideration in the 2010 session was approved.

Respectfully submitted,

/s/ Senator Brandon Shaffer
Chair

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This report is also available on line at:

<http://www.colorado.gov/lcs/PinnacolAssuranceInterim>

Executive Summary

Committee Charge

The Interim Committee to Study Issues Related to Pinnacol Assurance was created in Senate Bill 09-281. The act requires the committee to study, make recommendations, and report findings on all matters relating to the operation of Pinnacol Assurance including, but not limited to:

- the feasibility of the continued operation and the public policy implications of Pinnacol Assurance as a division of state government; or
- the feasibility and public policy implications of selling Pinnacol Assurance to a willing third-party buyer.

The committee continues until July 1, 2011.

Committee Activities

The Interim Committee to Study Issues Related to Pinnacol Assurance met six times during the 2009 interim. Each meeting focused on a variety of workers' compensation-related topics. The interim committee heard testimony from injured workers, workers' compensation insurance carriers, health care providers, policyholders, and state regulators. It also received over two thousand pages of documents related to Pinnacol's financial situation and business operations. Members of the public were invited to testify at each of the committee's six meetings.

Workers' compensation and residual market overview. At its early meetings, the committee received testimony from a variety of witnesses about the workers' compensation system in Colorado. The Department of Labor and Employment, Division of Workers' Compensation, described the system, including its history, the department's role, the role of physicians, types of claims paid through the system, and the appeals process. The committee also heard from the Department of Regulatory Agencies, Division of Insurance, about how rates are set in Colorado. In addition to the departments, the committee was given an overview of the workers' compensation process from a claimant attorney, a defense attorney, the Workers' Compensation Coalition, and the Workers' Compensation Education Association.

The National Council of Compensation Insurance (NCCI) testified about the various types of residual market mechanisms used by other states. A residual market mechanism is the insurance market of last resort established in each state to ensure that all eligible employers have some means of complying with their statutory obligations to carry workers' compensation insurance. NCCI talked about state funds, joint underwriting associations, and assigned risk plans and pools.

In response to testimony about the failure of some employers to provide workers' compensation coverage, the committee recommends Bill E to increase the maximum penalty for violating workers' compensation laws. Bill F is recommended to address concerns about potential conflicts of interest that may exist among parties involved in workers' compensation cases.



Pinnacol Assurance. The committee considered virtually all aspects of Pinnacol Assurance including its statutory authority, history, business practices, and finances. Under state law, Pinnacol is a political subdivision of the state charged with providing workers' compensation insurance coverage to Colorado companies that can not otherwise obtain such coverage. It is governed by a nine-member board appointed by the Governor and confirmed by the state Senate. Pinnacol is not subject to federal, state, or local government taxes or fees and its employees are members of the Public Employees' Retirement Association. State law requires that Pinnacol operate like a mutual insurance company. Any debts or liabilities it incurs are obligations of Pinnacol and not the state.

In 2008, Pinnacol earned \$521 million in premiums from its 58,000 policyholders and paid \$274 million in claims to injured workers. It reported \$2.2 billion in assets and \$1.4 billion in liabilities, with net assets totaling \$773 million. Its board paid \$55 million in general dividends to policyholders. By some measures, Pinnacol represents almost 60 percent of the workers' compensation insurance market, excluding self-insured entities like the state and certain other large employers.

Responding to concerns about Pinnacol retaining more in surplus funds than necessary, the committee recommends Bill B to require that Pinnacol return to policyholders any funds in excess of a certain amount. The committee also recommends Bill D to modify and expand Pinnacol's board of directors.

Injured workers. The committee heard testimony from a number of individuals about their experiences dealing with workplace injuries and the handling of claims through the workers' compensation system. Most of the individuals who had been injured on the job worked for employers insured by Pinnacol Assurance or by Pinnacol's predecessor, the Colorado Compensation Insurance Authority. Others worked for self-insured employers or employers insured by a company other than Pinnacol, and still others were uninsured. Most appeared at the August 31 hearing, but the committee also heard from injured workers during public testimony at other meetings.

Some injured workers and their families raised concerns about the delay and denial of medical care after their injuries as well as the quality of care received. Several noted that they were placed under surveillance during the adjustment of their claims. Some raised issues with the physicians who conducted the independent medical exams stating they felt the physicians were not independent of the insurer, or not qualified to judge a particular type of injury. A number of the injured workers testified that they had hired lawyers to assist them in resolving their claims. Other injured workers and their families testified about their positive experiences with Pinnacol and the assistance of the Pinnacol Foundation in providing scholarships for their children.

The committee recommends three bills to address the concerns raised through testimony from injured workers: Bill A requires workers' compensation insurance carriers to survey injured workers; Bill C limits the use of surveillance of employees who have submitted a workers' compensation claim; and Bill G expands the availability of information that must be made available to workers injured on the job.

Structural options for Pinnacol Assurance. Several witnesses testified to the committee about restructuring Pinnacol Assurance. Through the committee's discussion, three main structural options became apparent. The first option was to restore Pinnacol Assurance as a state agency. The second option was to maintain the current status as a quasi-governmental entity. The third option was to make Pinnacol Assurance a completely private enterprise. Representatives of the



Employers Insurance Company of Nevada testified about the experience of privatizing Nevada's state workers' compensation insurance fund. The committee also heard testimony from various industry representatives and consumers about the potential impacts of each option. In particular, the committee heard from the American Insurance Association, the Property Casualty Insurers of America, the Colorado Insurance Guaranty Association, and the National Conference of Insurance Guaranty Funds. The committee also heard about potential impacts to employers from the Workers' Compensation Coalition, and potential impacts to employees from the Workers' Compensation Education Association.

Committee Recommendations

As a result of the interim committee's discussion and deliberation, the committee recommends seven bills for consideration in the 2010 legislative session.

Bill A — Accountability for Workers' Compensation Insurers. Bill A requires all workers' compensation insurers to conduct a satisfaction survey of injured workers at the close of each claim. Only injured workers whose claims are reported to the Division of Workers' Compensation are required to be surveyed. The bill includes protections against retaliation for responding to the survey. Insurers will submit survey results to the Division of Workers' Compensation to be posted on the agency's website. The division will also post the procedure for an injured worker to follow to file a complaint. Bill A reenacts a section of statute that was repealed in 1997 requiring Pinnacol Assurance to submit an annual report to the Governor and the General Assembly on specified statistics including claims, policies, losses, income, and expenses.

Bill B — Workers' Compensation Policyholder Protection Act of 2010. Bill B establishes a limit of 800 percent on Pinnacol Assurance's risk-based capital percentage. If the limit is exceeded, Pinnacol Assurance must distribute any excess surplus funds to its policyholders. Bill B also directs the Commissioner of Insurance to select the lowest rate recommended when setting the pure premium rates for workers' compensation insurance. The commissioner is to post rate recommendations and supporting materials on the Division of Insurance website prior to a public rate hearing.

Bill C — Limitations on the Use of Surveillance of Employees Who Have Submitted a Workers' Compensation Claim. Bill C requires that surveillance can only be conducted when the insurer or employer has a reasonable basis to suspect an employee has committed fraud or made a material misstatement concerning a claim. The bill allows for an injured worker who discovers he or she is under surveillance to request an expedited hearing before a prehearing administrative law judge who may issue an injunction against the surveillance. The insurer or employer is required to provide all materials collected during surveillance to the injured worker, and to destroy all materials collected after the applicable statute of limitations has expired. A person conducting surveillance must answer truthfully if asked on whose behalf the person is acting by the person under surveillance. Bill C allows the identity of a witness or whistleblower who provides evidence in good faith to be withheld or limited to an in camera review. Violations of Bill C are subject to a fine of \$1,000 per day of unauthorized surveillance.

Bill D — Change to Pinnacol Board of Directors. Bill D increases the size of the board of directors of Pinnacol Assurance from 9 to 11. The bill adds to the board the Executive Director of the Department of Labor and Employment (or a designee) and a previously injured worker. It also requires that at least two of the three employee members be non-management level employees. The bill increases the per diem for board members from \$140 to \$250. Bill D requires



that the date, time, and location of each board meeting be posted on the Pinnacol Assurance website at least seven calendar days prior to the meeting and that each board meeting include time for public comment.

Bill E — Workers' Compensation Penalties. Bill E increases the maximum penalty for violating workers' compensation laws from \$500 to \$1,000 per day of violation. Bill E changes the mental state from "willfully" to "knowingly" in the statute that penalizes the wrongful withholding of benefits. Penalties are to be apportioned at the discretion of the Director of the Division of Workers' Compensation or an administrative law judge among the aggrieved party, the medical services provider, and the Workers' Compensation Cash Fund.

Bill F — Reducing Conflicts of Interest in Workers' Compensation Cases. Bill F includes a number of changes to workers' compensation law. The bill requires physicians who provide independent medical examinations to disclose any business, financial, employment, or advisory relationships with an insurer or self-insured employer upon request. Bill F prohibits the payment or receipt of remuneration to encourage the delay or denial of a workers' compensation claim. The bill prohibits third-party communications between a treating physician and the employer or insurer of an injured worker. The communication may only occur if the injured worker is present, or it must be conducted in writing and provided to the injured worker. Finally, Bill F prohibits the inclusion of reversionary interests in indemnity benefits in a workers' compensation insurance contract. Such a provision, including in an existing contract, is void and unenforceable as against public policy.

Bill G — Workers' Compensation Claims Process Brochure. Bill G requires a self-insured employer or an employer's insurer to provide a claimant with a brochure describing the claims process and explaining the rights under workers' compensation laws and rules. The bill lists the minimum information to be contained in the brochure which includes: contact information, the claimant's right to medical care and indemnity benefits, and the claimant's right to address disputes with the claimant's employer or employer's insurer. The form of the brochure must be approved by the Director of the Division of Workers' Compensation. The brochure is in addition to any other notice currently required.



Committee Charge

The Interim Committee to Study Issues Related to Pinnacol Assurance was created in Senate Bill 09-281. The act requires the committee to study, make recommendations, and report findings on all matters relating to the operation of Pinnacol Assurance including, but not limited to:

- both the feasibility of the continued operation and the public policy implications of Pinnacol Assurance as a division of state government; or
- the feasibility and public policy implications of selling Pinnacol Assurance to a willing third-party buyer.

The committee continues until July 1, 2011.

Committee Activities

The committee met six times during the 2009 interim. Each meeting focused on a variety of workers' compensation-related topics. Initial meetings focused on an overview of the workers compensation insurance system and the setting of rates. The third meeting was focused almost entirely on injured workers. Later meetings focused on the possible options for restructuring Pinnacol Assurance.

At these hearings, the committee heard testimony from a variety of people representing all aspects of the workers compensation insurance field, with particular emphasis on Pinnacol Assurance. Specifically, the committee heard testimony from Pinnacol's senior management, other workers' compensation insurance carriers, injured workers, policyholders, health care providers, and state regulators. It also received over two thousand pages of documents related to Pinnacol's financial situation and business operations. Members of the public were invited to testify at each of the committee's six meetings.

Workers' Compensation Overview

The interim committee heard from a variety of witnesses about the workers' compensation system in Colorado. The witnesses included representatives from the Department of Labor and Employment, Division of Workers' Compensation, Department of Regulatory Agencies, Division of Insurance, the Workers' Compensation Coalition, and the Workers' Compensation Education Association, the National Council of Compensation Insurance (NCCI), a workers' compensation claimant attorney, and a workers' compensation defense attorney.

Workers' compensation system overview. Representatives from the Department of Labor and Employment, Division of Workers' Compensation, gave the committee an overview of the workers' compensation system in Colorado. This included a discussion about the department's role, types of claims paid through the system, and the appeals process. The Colorado Division of Workers' Compensation is responsible for administering and enforcing the workers' compensation law in this state. The division establishes rules, procedures, and programs to enforce the law and to resolve disputes that may arise between an employer and an injured worker. The division explained that workers' compensation is the exclusive remedy for employees to receive benefits from employers for on-the-job injuries. State law requires all employers with one or more full- or part-time employees to provide workers' compensation benefits for on-the-job injuries and



work-related diseases. Benefits are provided regardless of whether the injury was caused by the employer, the employee, the equipment, or a third party. Employees are entitled to specific benefits, which are outlined in state law, without going to court.

The division discussed the two types of claims that are made under workers' compensation: medical only (when an injured worker is only given medical payments and misses less than three days of work) and lost-time (when an injured worker receives payments for missing more than three days of work in addition to medical payments). The division walked the committee through the types of benefits that are provided to injured workers:

- medical benefits which include reasonable and necessary expenses;
- temporary disability benefits which includes compensation for immediate wage loss, temporary total disability, and temporary partial disability; and
- permanent disability benefits which includes permanent partial disability and permanent total disability.

The department discussed the following resources for appealing decisions relating to workers' compensation claims:

- Office of Administrative Courts;
- Industrial Claim Appeals Office;
- Colorado Court of Appeals; and
- Colorado Supreme Court.

Insurance rate setting. The committee also heard from the Department of Regulatory Agencies, Division of Insurance, about how insurance rates are set in Colorado. The committee heard from the Financial Affairs Section of the division about the role it has in insurance rates and the required financial statements insurance companies must file. The witness explained that the section looks for proper ratios between various factors; trends in investments, assets, costs, and profitability; and whether minimum capital and surplus requirements have been met. The division discussed the minimum capital and surplus requirements for all insurers and noted that Colorado does not require prior approval of rates except for loss cost filings; instead, insurers simply file their rates with the division, a system known as “file and use.”

The committee heard from the Rates and Forms Section about its process in reviewing workers compensation filings and was walked through the filing process. Unlike rate filings, workers' compensation form filings are subject to prior approval by the division. The NCCI files forms on behalf of all workers' compensation insurance companies writing in the state and the division reviews the forms for compliance and approval.

Lastly, the committee listened to testimony from a division actuary who is responsible for reviewing property and casualty rate filings and participating in financial examinations of property and casualty companies. The actuary talked about loss costs and loss cost multipliers, the two main components to workers' compensation premiums. Although there are other factors used to calculate the workers compensation premium charged to an employer, the premium is primarily calculated by multiplying the salary of the employees, the final loss costs that have been approved by the Commissioner of Insurance for each classification of employees, and the loss cost multiplier filed by the insurer. The loss cost is the estimated amount needed to pay for losses and loss adjustment expenses. Loss adjustment expenses are costs incurred by the company to pay and manage claims, such as fees for claims adjusters, attorney defense fees, and the costs associated



with the insurer's claim cost containment programs. Loss costs are calculated by the NCCI and filed for approval with the division. Each fall the division holds a hearing to discuss the NCCI's loss cost filing.

Loss cost multipliers includes other fees and expenses that are included in the premium. These include commissions, other acquisition expenses, general expenses, and taxes, licenses and fees. The actuary explained that the insurance companies file loss cost multipliers with the division that are multiplied by the approved loss costs to determine the final rate charged to policyholders. A company's profit is included in its loss cost multiplier. The division reviews the profit provision to ensure that it will not result in long run profit that is unreasonably high for the insurance provided. The division stated that in general, the profit provision in workers compensation loss cost multiplier filings is between 5 percent and 7percent.

When the division reviews an insurer's lost cost multipliers, it first determines if the expense provisions used to calculate the loss cost multiplier are appropriate by analyzing each company's workers compensation expenses from their annual statement, as well as each company's Colorado-specific workers compensation expenses included in the loss cost multiplier filing. In addition, loss and premium data is reviewed to ensure that the filed loss cost multiplier will result in rates that are not excessive, inadequate, or unfairly discriminatory, and that the filed loss cost multiplier will result in the company's target loss ratio. The actuary discussed companies' surpluses and noted that they are not considered in the review of the NCCI's loss cost filing or a company's loss cost multiplier filing.

Attorney perspective. In addition to hearing from state agencies, the committee received testimony about the workers' compensation process from a claimant attorney and a defense attorney. These attorneys talked about workers' compensation being a no-fault system and what constitutes a compensable injury. They also talked about the types of benefits clients can receive. Each attorney talked about the ways the current workers' compensation system could be improved from their respective view points. The claimant attorney described the need for more oversight of physicians conducting independent medical examinations. The defense attorney dismissed the need to eliminate incentives to claim more than is warranted.

Residual market mechanisms. Among other topics, the NCCI testified about the various types of residual market mechanisms used by other states. A residual market mechanism is the insurance market of last resort established in each state to ensure that all eligible employers have some means of complying with their statutory obligations to hold workers' compensation insurance. NCCI explained rate tiers and the following types of residual market mechanisms:

- **State funds** — a guaranteed market that may have different rate levels and can be operated as a state agency, quasi-public agency, mutual-type insurer, or a monopolistic operation.
- **Joint underwriting association** — is designed to be self-supporting, has three rating tiers, and assembles policies for largest firms (only used by Florida).
- **Alternative residual market** — a single carrier selected by the state that issues all policies, retains all premiums, and pays all claims to a predetermined loss ratio (only used by three states).
- **Traditional residual market plan**— the servicing carrier is generally selected by a bid process; carriers are compensated by retaining a predetermined percentage of assigned premium; carriers service employers, issue polices, pay claims, etc. as they would in voluntary market, and any incurred overall deficit is paid by voluntary market carriers based on a percentage of market share (i.e. carrier has a 15 percent market share, it is responsible for 15 percent of operating loss) (used by 21 states).



Committee recommendations. In response to testimony the committee received regarding some employers failing to provide workers' compensation coverage for their employees, the committee recommended Bill E to increase the maximum penalty for violating workers' compensation laws. Bill F is recommended to address the potential conflicts of interest that may exist between parties involved in workers' compensation cases, another issue discussed by the committee. Among other things, it requires physicians who provide independent medical examinations to disclose, upon request, any business, financial, employment, or advisory relationships they have with insurers.

Pinnacol Assurance Overview

The committee examined virtually all aspects of Pinnacol Assurance including its statutory authority and responsibilities, history, business practices, and finances.

History. Since the adoption of the Workers' Compensation Act in 1915, Colorado has designated a public entity to serve as the insurer of last resort for employers that can not obtain workers' compensation coverage elsewhere. The first such entity was the State Compensation Insurance Fund. In 1987, the state established a more autonomous entity, the State Compensation Insurance Authority, later renamed the Colorado Compensation Insurance Authority, to serve as the insurer of last resort. Finally, in 2002, state law was amended to formally recognize Pinnacol Assurance as the insurer of last resort for workers' compensation coverage in Colorado.

Current status. State law establishes Pinnacol as a political subdivision of the state and requires that it operate as a domestic mutual insurance company to provide workers' compensation insurance to Colorado employers. Pinnacol serves as the state's insurer of last resort, covering the insurance needs of employers who cannot find insurance elsewhere, but it also competes with private sector insurance companies to provide workers compensation coverage to employers that are not in high-risk industries. By some measures, Pinnacol Assurance represents almost 60 percent of the workers' compensation insurance market, excluding self-insured entities like the state and certain other large employers. The position of Pinnacol's business that reflects the residual market is unknown. By law, Pinnacol is prohibited from refusing insurance coverage to any Colorado employer or canceling any insurance policy due risk of loss or amount of premium. It is also prohibited from providing any other type of insurance or from providing insurance to employers outside of Colorado.

Pinnacol is not subject to administrative direction by any state agency, but is instead governed by a nine-member board of directors appointed by the Governor and confirmed by the state Senate. It is subject to annual review by the State Auditor, the Colorado Division of Insurance every three years, and the Colorado Division of Workers' Compensation periodically. It must submit an annual report to the Division of Insurance. Pinnacol is exempt from federal, state, or local government taxes and fees and its employees are members of the Public Employees' Retirement Association.

The committee examined Pinnacol's finances from a variety of perspectives, including premiums paid by employers, claims paid to injured workers, and surplus moneys held in reserve to meet future liabilities. In 2008, Pinnacol Assurance reported the following:

- \$521 million in premiums earned from its 58,000 policyholders;
- \$274 million in claims paid to injured workers;



- \$2.2 billion in assets and \$1.4 billion in liabilities, with net assets totaling \$773 million; and
- \$55 million in general dividends paid to policyholders.

The committee heard testimony that Pinnacol's board of directors each year determines how much should be held in reserve. The committee also heard testimony about Pinnacol's deficit position in the 1990's and the statutory requirement imposed on the entity at that time to build a sufficient surplus within a specified deadline. Both Pinnacol and the Division of Insurance, which oversaw Pinnacol's financial recovery, reported on their success in meeting the surplus requirements earlier than expected. The committee discussed Pinnacol's executive compensation, including the salary range of top Pinnacol employees. It learned that Pinnacol's compensation package includes a base salary, annual short-term bonuses, and long-term cash incentives, along with retirement and health benefits.

Several people testified about Pinnacol's workplace safety programs, industry-specific accident prevention programs, and return to work programs. The committee also heard about its fraud prevention efforts and community volunteer and foundation programs.

Committee recommendations. Responding to concerns that Pinnacol was retaining more in surplus funds than necessary, the committee recommends Bill B to require that Pinnacol return to policyholders any funds in excess of a certain amount. The committee also recommends Bill D to modify and expand Pinnacol's board of directors.

Injured Workers

The committee heard testimony from a number of individuals who had filed workplace injury claims. Witnesses shared their experiences with the workers' compensation system over a number of years. Some witnesses were covered by Pinnacol Assurance or by its predecessor, the Colorado Compensation Insurance Authority. Other witnesses worked for self-insured employers or employers insured by a company other than Pinnacol, or were uninsured.

Among the injured workers and their families who testified, a number raised concerns about the delay and denial of medical care after their injuries as well as the quality of care received. Some witnesses complained about the involvement of a nurse-case manager in the handling of their claims. They reported that the nurse-case managers were consulting with their doctors and attending their medical appointments without the consent of the injured worker.

Workplace safety issues were raised by injured workers who had been injured multiple times while at the same job. Several witnesses testified that they and their families had been under surveillance during the adjustment of their claims. They noted that the individuals conducting surveillance were not truthful when asked if they were watching an injured worker on behalf of an insurer. Concerns were presented about conflicts of interest by the physicians who conduct independent medical exams. Witnesses questioned that these physicians were not independent of the insurer. Some testimony addressed the qualifications of these physicians to evaluate a particular type of injury. A number of the injured workers testified that they had hired lawyers to assist in resolving their claims.



Several injured workers and their families testified about their positive experiences with Pinnacol. One witness had received a state of the art wheelchair that has enabled him to return to work. The wife of a man who was killed on the job, testified that the Pinnacol Foundation provided college scholarships for their children.

Committee recommendations. In response to the testimony received by injured workers about their experiences, the committee recommends Bill A to require that all workers' compensation insurers conduct a satisfaction survey of injured workers at the close of each claim. Bill C is recommended to address the concern raised by several people who testified about their discomfort in being subject to surveillance after filing a claim. Bill C sets limits on the use of such surveillance. Finally, Bill G responds to the concern raised by several people about the difficulty they found in navigating the workers' compensation process. Bill G requires employers or insurers to provide claimants with a brochure describing the claims process and explaining the rights of injured workers.

Structural Options for Pinnacol Assurance

The commission heard from the Office of Legislative Legal Services on the three main structural models of organization for Pinnacol Assurance: the state agency; the quasi-governmental option; and the private option.

The state agency. Under the state agency option, the state creates an agency that offers workers' compensation insurance to employers in the state. Colorado used this structure from 1915 until the late 1980s. Under this arrangement, state government employees operate the insurance company under the umbrella of state government. The state agency is the insurer of last resort and must write policies of insurance for all businesses within the state. Because the entity is a state agency, it is exempt from federal and state taxes and in many cases, is exempt from having to collect premium taxes collected by private insurance companies.

The quasi-governmental option. Colorado currently uses this model, where the state creates a governmental entity separate from the state. Pinnacol Assurance is a political subdivision of the state, created by state statute, and operates as the insurer of last resort. As with the state agency, the quasi-governmental entity is usually tax-exempt at the federal and state level. However, this type of organization has more flexibility with the types of employees it can hire. Pinnacol employees are not part of the state personnel system; however, they are still public employees and are eligible for inclusion in the Public Employees Retirement Association.

The private option. Under the private option, a private company offers workers' compensation insurance to employers. Since it is not a public entity, it is not exempt from federal and state taxes. In addition, the entity collects premium taxes based on the total amount of premium dollars collected. Not all private workers' compensation insurance companies are insurers of last resort, although some states that privatize state-run workers' compensation insurance entities mandate they remain an insurer of last resort.

The commission heard from representatives from the Employers Insurance Company of Nevada who provided information and a time-line of events that occurred when Nevada converted from a public to a private entity. In the Nevada case, all assets and liabilities of the state fund were transferred to a mutual company. All policy holders became members at that time. Public employees had two years to consider whether they wanted to remain with the company as a public employee or as a private employee.



A panel of individuals representing private insurers testified about industry-related impacts that could arise from making changes to Pinnacol Assurance. The details that should be explored, problems that could arise, taxation issues, and the benefits of privatizing were addressed by the panel members.

The committee took testimony from representatives of the business community regarding the possible impacts from changing the status of Pinnacol Assurance. They proposed leaving Pinnacol unchanged, suggesting costs would increase if it were converted to a state fund, and the state would lose oversight if privatized. A suggestion was made to tax Pinnacol, like all other insurance companies, in addition to subjecting other insurance companies to the same scrutiny as Pinnacol has recently endured. Finally, the committee heard from a person representing workers who agreed that Pinnacol Assurance should remain a quasi-governmental entity.





Summary of Recommendations

As a result of the committee's activities, the committee recommends seven bills for consideration by the General Assembly during the 2010 legislative session.

Bill A — Accountability for Workers' Compensation Insurers

Bill A requires all workers' compensation insurers to conduct a satisfaction survey of injured workers at the close of each claim. Only injured workers whose claims are reported to the Division of Workers' Compensation are required to be surveyed. The bill includes protections against retaliation for responding to the survey. Insurers will submit survey results to the Division of Workers' Compensation to be posted on the agency website. The division will also post the procedure for an injured worker to follow to file a complaint. Bill A reenacts a section of statute that was repealed in 1997 requiring the CEO of Pinnacol Assurance to submit an annual report to the governor and the General Assembly on specified statistics including claims, policies, losses, income, and expenses.

Bill B — Workers' Compensation Policyholder Protection Act of 2010

Bill B establishes a limit of 800 percent on Pinnacol Assurance's risk based capital percentage. If the limit is exceeded, Bill B requires Pinnacol Assurance to distribute excess surplus funds to its policyholders. Bill B also directs the Commissioner of Insurance to select the lowest rate recommended when setting the pure premium rates for workers' compensation insurance. The commissioner is to post rate recommendations and supporting materials on the Division of Insurance website prior to a public rate hearing.

Bill C — Limitations on the Use of Surveillance of Employees Who Have Submitted a Workers' Compensation Claim

Bill C requires that surveillance can only be conducted when the insurer or employer has a reasonable basis to suspect an employee has committed fraud or made a material misstatement concerning a claim. The bill allows for an injured worker who discovers he or she is under surveillance, to request an expedited hearing before a prehearing administrative law judge who may issue an injunction against the surveillance. The insurer or employer is required to provide all materials collected during surveillance to the injured worker, and to destroy all materials collected after the applicable statute of limitations has expired. A person conducting surveillance must answer truthfully if asked on whose behalf the person is acting by the person under surveillance. Bill C allows the identity of a witness or whistleblower who provides evidence in good faith, to be withheld or limited to an in camera review. Violations of Bill C are subject to a fine of \$1,000 per day of unauthorized surveillance.



Bill D — Change to Pinnacol Board of Directors

Bill D increases the size of the board of directors of Pinnacol Assurance from 9 to 11. The bill adds the executive director of the Department of Labor and Employment or his/her designee and a previously injured worker. It requires that at least 2 of the 3 employee members be non-management level employees. The bill increases the per diem for board members from \$140 to \$250. Bill D requires that the date, time and location of each board meeting be posted on the Pinnacol Assurance website at least seven calendar days prior to the meeting and that each board meeting include time for public comment.

Bill E — Workers' Compensation Penalties

Bill E increases the maximum penalty for violating workers' compensation laws from \$500 to \$1,000 per day of violation. Bill E changes the mental state from "willfully" to "knowingly" in the statute that penalizes the wrongful withholding of benefits. Penalties are to be apportioned at the discretion of the Director of the Division of Workers' Compensation or an administrative law judge, among the aggrieved party, the medical services provider, and the Workers' Compensation Cash Fund.

Bill F — Reducing Conflicts of Interest in Workers' Compensation Cases

Bill F includes a number of changes to workers' compensation law. The bill requires physicians who provide independent medical examinations to disclose any business, financial, employment, or advisory relationships with an insurer or self-insured employer upon request. Bill F prohibits the payment or receipt of remuneration to encourage the delay or denial of a Workers' Compensation claim. The bill prohibits third-party communications between a treating physician and the employer or insurer of an injured worker. The communication may only occur if the injured worker is present, or must be conducted in writing and provided to the injured worker. Finally, Bill F prohibits the inclusion of reversionary interests in indemnity benefits in a workers' compensation insurance contract. Such a provision, including in an existing contract, is void and unenforceable as against public policy.

Bill G — Workers' Compensation Claims Process Brochure

Bill G requires a self-insured employer or an employer's insurer to provide a claimant with a brochure describing the claims process and explaining the rights under Workers' Compensation laws and rules. The bill lists the minimum information to be contained in the brochure which includes: contact information, the claimant's right to medical care and indemnity benefits, and the claimant's right to address disputes with the claimant's employer or employer's insurer. The form of the brochure must be approved by the Direction of the Division of Workers' Compensation. The brochure is in addition to any other notice currently required.



Resource Materials

Meeting summaries are prepared for each meeting of the committee and contain all handouts provided to the committee. The summaries of meetings and attachments are available at the Division of Archives, 1313 Sherman Street, Denver (303-866-4900). The listing below contains the dates of committee meetings and the topics discussed at those meetings. Meeting summaries are also available on our website at:

<http://www.colorado.gov/lcs/PinnacolAssuranceInterim>

Meeting Date and Topics Discussed

August 4, 2009

- ◆ Overview of Colorado's workers' compensation system
- ◆ Overview of workers' compensation process
- ◆ Residual market mechanisms
- ◆ Overview of Pinnacol Assurance

August 14, 2009

- ◆ Colorado workers' compensation insurance market
- ◆ Rate setting, a review by the Division of Insurance
- ◆ A discussion of Pinnacol Assurance's loss-cost multiplier and rate setting
- ◆ Business ethics and best practices
- ◆ Pinnacol Assurance expenses and compensation
- ◆ Pinnacol Assurance policyholder perspectives

August 31, 2009

- ◆ Medical providers
- ◆ Transparency for pharmacy benefit managers
- ◆ Claimant attorney
- ◆ Workers' Compensation Education Association
- ◆ Injured worker testimony

September 4, 2009

- ◆ Introduction to structural options for Pinnacol Assurance
- ◆ A case study in privatizing a state fund
- ◆ Impact of possible changes to Pinnacol on the Colorado workers' compensation market and industry perspectives



- ◆ Consumer perspectives of impact of possible changes to Pinnacol on the Colorado workers' compensation market
- ◆ Pinnacol Panel to address remaining committee questions

September 18, 2009

- ◆ Discussion of findings and recommendations for draft legislation



Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

BILL A

LLS NO. 10-0206.01 Kristen Forrestal

SENATE BILL

SENATE SPONSORSHIP

Hodge, Carroll M., Tochtrop

HOUSE SPONSORSHIP

Ryden, Miklosi, Pace

Senate Committees

House Committees

A BILL FOR AN ACT

101 **CONCERNING ACCOUNTABILITY FOR WORKERS' COMPENSATION**
102 **INSURERS.**

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 1 of the bill requires workers' compensation insurers to survey a limited number of injured workers at the close of each claim. **Section 1** also requires the insurers to report the results of the surveys to the division of workers' compensation (division) in the department of labor and employment, and requires the division to post the survey results on the division's web site. Finally, **section 1** prohibits an employer or

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

insurer from taking disciplinary action or otherwise retaliating against an injured worker or his or her dependents for completing a survey.

Section 2 of the bill requires the chief executive officer of Pinnacol Assurance to submit an annual report to the governor and committees of the general assembly reporting on the business operations, resources, and liabilities of the Pinnacol Assurance fund.

Section 3 of the bill requires the division to post on the division's web site the procedure for an injured worker to follow to file a complaint with the division regarding any issue over which the director or his or her designee has authority to pursue, settle, or enforce.

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

SECTION 1. Part 2 of article 43 of title 8, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

8-43-220. Injured worker exit survey. (1) UPON CLOSURE OF A CLAIM, EACH INSURER SHALL SURVEY THE CLAIMANT OR, IF DECEASED, THE DECEDENT'S DEPENDENTS REGARDING THE CLAIMANT'S SATISFACTION WITH THE INSURER FOR CLAIMS THAT ARE REPORTED TO THE DIVISION PURSUANT TO SECTION 8-43-203. THE SURVEY SHALL BE CONDUCTED IN A FORM AND MANNER AS PRESCRIBED BY THE DIRECTOR. THE SURVEY SHALL INCLUDE QUESTIONS REGARDING COURTESY, PROMPTNESS OF MEDICAL CARE, PROMPTNESS OF HANDLING THE CLAIM, PROMPTNESS OF RESOLVING THE CLAIM, AND OVERALL SATISFACTION WITH THE EXPERIENCE WITH THE INSURER. AN EMPLOYER OR AN INSURER SHALL NOT TAKE DISCIPLINARY ACTION OR OTHERWISE RETALIATE AGAINST A CLAIMANT OR HIS OR HER DEPENDENTS FOR COMPLETING THE SURVEY.

(2) THE INSURER SHALL REPORT THE SURVEY RESULTS ANNUALLY TO THE DIVISION. THE DIRECTOR SHALL POST THE RESULTS OF THE SURVEYS ON THE DIVISION'S WEB SITE.

SECTION 2. 8-45-122, Colorado Revised Statutes, is

1 RECREATED AND REENACTED, WITH AMENDMENTS, to read:

2 **8-45-122. Annual report.** (1) THE CHIEF EXECUTIVE OFFICER OF
3 PINNACOL ASSURANCE SHALL SUBMIT AN ANNUAL REPORT TO THE
4 GOVERNOR; THE BUSINESS AFFAIRS AND LABOR COMMITTEE OF THE HOUSE
5 OF REPRESENTATIVES; THE BUSINESS, LABOR AND TECHNOLOGY
6 COMMITTEE OF THE SENATE; AND THE HEALTH AND HUMAN SERVICES
7 COMMITTEES OF THE HOUSE OF REPRESENTATIVES AND THE SENATE, OR
8 THEIR SUCCESSOR COMMITTEES, REPORTING ON THE BUSINESS
9 OPERATIONS, RESOURCES, AND LIABILITIES OF THE PINNACOL ASSURANCE
10 FUND.

11 (2) THE REPORT REQUIRED IN SUBSECTION (1) OF THIS SECTION
12 SHALL INCLUDE THE FOLLOWING INFORMATION FOR THE PREVIOUS
13 CALENDAR YEAR:

- 14 (a) THE NUMBER OF POLICIES HELD BY PINNACOL ASSURANCE;
- 15 (b) THE TOTAL ASSETS OF PINNACOL ASSURANCE;
- 16 (c) THE AMOUNT OF RESERVES;
- 17 (d) THE AMOUNT OF SURPLUS;
- 18 (e) THE NUMBER OF CLAIMS FILED;
- 19 (f) THE NUMBER OF CLAIMS ADMITTED OR CONTESTED WITHIN THE
20 TWENTY-DAY PERIOD PURSUANT TO SECTION 8-43-203, SPECIFYING THE
21 NUMBER OF CONTESTED CLAIMS THAT ARE MEDICAL ONLY AND THOSE
22 THAT ARE INDEMNITY CLAIMS;
- 23 (g) THE NUMBER OF MEDICAL PROCEDURES DENIED;
- 24 (h) THE AMOUNT OF TOTAL COMPENSATION EACH EXECUTIVE
25 OFFICER OR STAFF MEMBER RECEIVES, INCLUDING BONUSES OR DEFERRED
26 COMPENSATION;
- 27 (i) THE AMOUNT SPENT ON COMMISSIONS;
- 28 (j) THE AMOUNT PAID TO TRADE ASSOCIATIONS FOR MARKETING

1 FEES;

2 (k) ALL INFORMATION RELATING TO BONUS PROGRAMS; AND

3 (l) ANY OTHER INFORMATION THE CHIEF EXECUTIVE OFFICER
4 DEEMS RELEVANT TO THE REPORT.

5 **SECTION 3.** Part 1 of article 47 of title 8, Colorado Revised
6 Statutes, is amended BY THE ADDITION OF A NEW SECTION to
7 read:

8 **8-47-112. Division web site - procedures to file complaints.**

9 THE DIRECTOR SHALL CLEARLY POST ON THE DIVISION'S WEB SITE THE
10 PROCEDURE FOR AN INJURED WORKER TO FOLLOW TO FILE A COMPLAINT
11 WITH THE DIVISION REGARDING ANY ISSUE OVER WHICH THE DIRECTOR OR
12 HIS OR HER DESIGNEE HAS AUTHORITY TO PURSUE, SETTLE, OR ENFORCE
13 PURSUANT TO ARTICLES 40 TO 47 OF THIS TITLE.

14 **SECTION 4. Effective date.** This act shall take effect July 1,
15 2010.

16 **SECTION 5. Safety clause.** The general assembly hereby finds,
17 determines, and declares that this act is necessary for the immediate
18 preservation of the public peace, health, and safety.

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

BILL B

LLS NO. 10-0211.01 Bart Miller

HOUSE BILL

HOUSE SPONSORSHIP

Ryden, Miklosi, Pace

SENATE SPONSORSHIP

Tochtrop, Carroll M., Hodge

House Committees

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING ENACTMENT OF THE "WORKERS' COMPENSATION**
102 **POLICYHOLDER PROTECTION ACT OF 2010", AND, IN**
103 **CONNECTION THEREWITH, REQUIRING THE DISTRIBUTION OF**
104 **EXCESS SURPLUS FUNDS HELD BY PINNACOL ASSURANCE TO**
105 **PINNACOL ASSURANCE POLICYHOLDERS AND LIMITING THE**
106 **INSURANCE COMMISSIONER'S DISCRETION WITH RESPECT TO**
107 **THE PRIOR APPROVAL OF WORKERS' COMPENSATION PURE**
108 **PREMIUM RATES FILED BY A RATING ORGANIZATION.**

Bill Summary

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

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

Interim Committee to Study Issues Related to Pinnacol Assurance. If the surplus of Pinnacol Assurance is greater than 800% of risk based capital, this bill requires the board of directors of Pinnacol Assurance to credit to the accounts of Pinnacol Assurance policyholders a dividend to bring the surplus of Pinnacol Assurance to less than 800% of risk based capital.

For the prior approval of a pure premium rate filed by a workers' compensation insurance rating agency, this bill would require the insurance commissioner to approve the lowest rate recommended either by the rating organization or by the independent actuary employed by the division of insurance, unless the commissioner explains the rationale or justification for a different rate in the final agency order. The bill requires background material related to a workers' compensation pure premium rate filing to be posted on the division of insurance web site prior to any public hearing.

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

2 **SECTION 1. Short title.** This act shall be known and may be
3 cited as the "Workers' Compensation Policyholder Protection Act of
4 2010".

5 **SECTION 2.** 8-45-106 (1), Colorado Revised Statutes, is
6 amended to read:

7 **8-45-106. Insurance at cost - board may impose surcharges.**

8 (1) It is the duty of the board, in the exercise of the powers and discretion
9 conferred upon it by articles 40 to 47 of this title, ultimately to fix and
10 maintain, for each class of occupation, the lowest possible rates of
11 premium consistent with the maintenance of a solvent Pinnacol
12 Assurance fund, and the creation and maintenance of a reasonable
13 surplus, SUBJECT TO SECTION 8-45-112 (2), after the payment of legitimate
14 claims for injury and death, that may be authorized to be paid from the
15 Pinnacol Assurance fund for the benefit of injured EMPLOYEES and
16 dependents of killed employees.

1 **SECTION 3.** 8-45-112, Colorado Revised Statutes, is amended
2 to read:

3 **8-45-112. Amendment of rates - distribution to policyholders.**

4 (1) The board may amend at any time the rates for any class. No contract
5 of insurance between Pinnacol Assurance and any employer shall be in
6 effect until a policy or binder has been actually issued by the board and
7 the premium ~~therefor~~ HAS BEEN paid as ~~and when~~ required by this article.
8 ~~Not less often than~~ AT LEAST once a PER year, the chief executive officer
9 shall tabulate the earned premiums paid by policyholders of Pinnacol
10 Assurance. ~~Should~~ IF the experience of the Pinnacol Assurance fund
11 ~~show~~ SHOWS a credit balance, and after payment of all amounts that have
12 fallen due because of operating expenses, injury, or death, and after
13 setting aside proper reserves, the board shall distribute such credit balance
14 to the policyholders who have a balance to their credit in proportion to the
15 premium paid and losses incurred by each such policyholder during the
16 preceding insurance period. In the event any such policyholder fails to
17 renew a policy with Pinnacol Assurance for the period following the
18 period in which ~~said~~ THE dividends were earned, ~~said~~ THE policyholder
19 shall be entitled to ~~said~~ THE credit dividend if such policy is terminated
20 in good standing. ~~In the event~~ IF an employer actually discontinues
21 business, ~~said~~ THE employer's policy shall be cancelled, and the dividend,
22 if any, when ascertained, shall be returned to the employer.

23 (2) NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, IF THE
24 SURPLUS OF PINNACOL ASSURANCE EXCEEDS EIGHT HUNDRED PERCENT OF
25 RISK BASED CAPITAL, THE BOARD SHALL DISTRIBUTE A CREDIT BALANCE
26 OR DIVIDEND TO POLICYHOLDERS WHO HAVE A BALANCE TO THEIR CREDIT
27 IN ORDER TO BRING THE SURPLUS OF PINNACOL ASSURANCE TO LESS THAN
28 EIGHT HUNDRED PERCENT OF RISK BASED CAPITAL.

1 **SECTION 4.** 10-4-401 (3) (a) (I), Colorado Revised Statutes, is
2 amended to read:

3 **10-4-401. Purpose - applicability.** (3) The kinds of insurance subject
4 to this part 4 shall be divided into two classes, as follows:

5 (a) Type I kinds of insurance, regulated by prior filing and approval of
6 rating information, which shall be subject to all provisions of this part 4
7 unless specifically excluded by the terms of a section. The following
8 kinds of insurance shall be classified as type I:

9 (I) (A) Workers' compensation and employer's liability incidental thereto
10 for any pure premium rate filed by a rating organization.

11 (B) IN APPROVING ANY PURE PREMIUM RATE FILED BY A RATING
12 ORGANIZATION, THE COMMISSIONER SHALL CHOOSE THE LOWEST RATE
13 RECOMMENDED EITHER BY A RATING ORGANIZATION OR BY THE
14 INDEPENDENT ACTUARY EMPLOYED BY THE COMMISSIONER, UNLESS THE
15 COMMISSIONER EXPLAINS THE RATIONALE OR JUSTIFICATION FOR A
16 DIFFERENT RATE IN THE FINAL AGENCY ORDER. PRIOR TO ANY PUBLIC
17 HEARING TO CONSIDER A PURE PREMIUM RATE FILED BY A RATING
18 ORGANIZATION, THE COMMISSIONER SHALL POST ON THE DIVISION OF
19 INSURANCE WEB SITE THE COMPLETE RECOMMENDATIONS AND
20 SUPPORTING MATERIALS OF ANY RATING ORGANIZATION AND THE
21 INDEPENDENT ACTUARY EMPLOYED BY THE COMMISSIONER, INCLUDING
22 ANY RATIONALE FOR RATE CHANGES.

23 **SECTION 5. Act subject to petition - effective date - applicability.**

24 (1) This act shall take effect at 12:01 a.m. on the day following the
25 expiration of the ninety-day period after final adjournment of the general
26 assembly (August 11, 2010, if adjournment sine die is on May 12, 2010);
27 except that, if a referendum petition is filed pursuant to section 1 (3) of
28 article V of the state constitution against this act or an item, section, or

1 part of this act within such period, then the act, item, section, or part shall
2 not take effect unless approved by the people at the general election to be
3 held in November 2010 and shall take effect on the date of the official
4 declaration of the vote thereon by the governor.

5 (2) The provisions of this act shall apply to the surplus held by Pinnacol
6 Assurance and to any pure premium rate for workers' compensation and
7 employers' liability incidental thereto, subject to approval of the insurance
8 commissioner on or after the applicable effective date of this act.

**Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

BILL C

LLS NO. 10-0209.01 Thomas Morris

HOUSE BILL

HOUSE SPONSORSHIP

Pace, Miklosi, Ryden

SENATE SPONSORSHIP

Carroll M., Hodge, Tochtrop

House Committees

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING LIMITATIONS ON THE USE OF SURVEILLANCE OF**
102 **EMPLOYEES WHO HAVE SUBMITTED A WORKERS'**
103 **COMPENSATION CLAIM.**

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 1 of the bill:

- Prohibits an insurer or employer from conducting surveillance of an employee who has submitted a workers' compensation claim unless the insurer or employer has a reasonable basis to suspect that the employee has

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

committed fraud or made a material misstatement concerning the claim;

- Allows the employee to request an expedited hearing before a prehearing administrative law judge;
- Requires the insurer or employer to provide all materials collected during the surveillance to the injured worker and to destroy all materials collected during the surveillance unless the materials are reasonably necessary to resolve an ongoing claim of fraud;
- Requires persons conducting surveillance to answer the employee's questions truthfully; and
- Creates a \$1,000-per-day penalty for violations.

Section 2 of the bill:

- Directs the prehearing administrative law judge to issue an injunction against the surveillance unless the insurer or employer shows that it has a reasonable basis to suspect that the employee has committed fraud or made a material misstatement concerning the claim; and
- Allows the identity of a witness or whistleblower who provides evidence in good faith to be withheld or limited to an in camera review.

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

2 **SECTION 1.** 8-43-304 (2), Colorado Revised Statutes, is
3 amended to read:

4 **8-43-304. Violations - penalty - offset for benefits obtained**
5 **through fraud - rules.** (2) (a) An insurer or self-insured employer may
6 take a credit or offset of previously paid workers' compensation benefits
7 or payments against any further workers' compensation benefits or
8 payments due a worker when the worker admits to having obtained the
9 previously paid benefits or payments through fraud, or a civil judgment
10 or criminal conviction is entered against the worker for having obtained
11 the previously paid benefits through fraud. Benefits or payments obtained
12 through fraud by a worker shall not be included in any data used for
13 rate-making or individual employer rating or dividend calculations by any

1 insurer or by Pinnacle Assurance.

2 (b) (I) NO INSURER OR EMPLOYER SHALL CONDUCT SURVEILLANCE
3 OF AN EMPLOYEE WHO HAS SUBMITTED A WORKERS' COMPENSATION CLAIM
4 UNLESS THE INSURER OR EMPLOYER HAS A REASONABLE BASIS TO SUSPECT
5 THAT THE EMPLOYEE HAS COMMITTED FRAUD OR MADE A MATERIAL
6 MISSTATEMENT CONCERNING THE CLAIM. THE EMPLOYEE MAY REQUEST
7 AN EXPEDITED HEARING BEFORE A PREHEARING ADMINISTRATIVE LAW
8 JUDGE PURSUANT TO SECTION 8-43-207.5 (1) (a) (II). THE INSURER OR
9 EMPLOYER SHALL PROVIDE ALL MATERIALS COLLECTED DURING THE
10 SURVEILLANCE TO THE INJURED WORKER, INCLUDING A STATEMENT OF THE
11 TOTAL BUDGET SPENT ON SURVEILLANCE, ALL VIDEO RECORDINGS
12 COLLECTED, AND A TRANSCRIPT OR AUDIO RECORDING OF ALL INTERVIEWS
13 CONDUCTED. ONCE THE APPLICABLE STATUTE OF LIMITATIONS HAS RUN,
14 THE INSURER OR EMPLOYER SHALL DESTROY ALL MATERIALS COLLECTED
15 DURING THE SURVEILLANCE UNLESS THE MATERIALS ARE REASONABLY
16 NECESSARY TO RESOLVE AN ONGOING CLAIM OF FRAUD. IF THE EMPLOYEE
17 ASKS A PERSON WHO IS CONDUCTING THE SURVEILLANCE WHAT THAT
18 PERSON IS DOING OR ON WHOSE BEHALF THE PERSON IS ACTING, IT SHALL
19 BE A VIOLATION OF THIS PARAGRAPH (b) IF THE PERSON FAILS TO ANSWER
20 TRUTHFULLY THAT THE PERSON IS CONDUCTING SURVEILLANCE ON THE
21 EMPLOYEE OR THAT THE PERSON IS ACTING ON BEHALF OF THE INSURER OR
22 EMPLOYER, AS APPROPRIATE.

23 (II) A VIOLATION OF THIS PARAGRAPH (b) IS PUNISHABLE BY AN
24 ADMINISTRATIVE FINE OF ONE THOUSAND DOLLARS PER DAY OF
25 UNAUTHORIZED SURVEILLANCE. INFORMATION COLLECTED BY
26 UNAUTHORIZED SURVEILLANCE SHALL NOT BE USED TO REJECT A CLAIM.
27 THE DIVISION SHALL TRANSMIT REVENUES COLLECTED PURSUANT TO THIS
28 PARAGRAPH (b) TO THE EMPLOYEE.

1 **SECTION 2.** 8-43-207.5 (1), Colorado Revised Statutes, is
2 amended to read:

3 **8-43-207.5. Prehearing conferences.** (1) (a) Notwithstanding
4 any provision of articles 40 to 47 of this title to the contrary, at any time
5 not less than ten days prior to the formal adjudication on the record of any
6 issue before the director or an administrative law judge in the office of
7 administrative courts, any party to a claim may request a prehearing
8 conference before a prehearing administrative law judge in the division
9 of workers' compensation for the speedy resolution of or simplification
10 of any issues and to determine the general readiness of remaining issues
11 for formal adjudication on the record. The issues addressed in such
12 prehearing conference shall be limited to:

13 (I) Ripeness of legal, but not factual, issues for formal
14 adjudication on the record before the director or an administrative law
15 judge in the office of administrative courts;

16 (II) A REQUEST FOR AN EXPEDITED HEARING SUBMITTED BY AN
17 EMPLOYEE PURSUANT TO SECTION 8-43-304 (2) (b) CONCERNING
18 SURVEILLANCE OF THE EMPLOYEE. THE PREHEARING ADMINISTRATIVE
19 LAW JUDGE SHALL ISSUE AN INJUNCTION AGAINST THE SURVEILLANCE
20 UNLESS THE INSURER OR EMPLOYER SHOWS THAT IT HAS A REASONABLE
21 BASIS TO SUSPECT THAT THE EMPLOYEE HAS COMMITTED FRAUD OR MADE
22 A MATERIAL MISSTATEMENT CONCERNING THE CLAIM. THE IDENTITY OF
23 A WITNESS OR WHISTLEBLOWER WHO PROVIDES EVIDENCE IN GOOD FAITH
24 MAY BE WITHHELD OR LIMITED TO AN IN CAMERA REVIEW.

25 (III) Discovery matters; and

26 (IV) Evidentiary disputes.

27 (b) The filing of an application for hearing with the office of
28 administrative courts shall not be a prerequisite to a request for a

1 prehearing conference under this section. The director and the
2 administrative law judges in the office of administrative courts may also
3 request a prehearing conference under this section.

4 **SECTION 3. Act subject to petition - effective date -**
5 **applicability.** (1) This act shall take effect at 12:01 a.m. on the day
6 following the expiration of the ninety-day period after final adjournment
7 of the general assembly (August 11, 2010, if adjournment sine die is on
8 May 12, 2010); except that, if a referendum petition is filed pursuant to
9 section 1 (3) of article V of the state constitution against this act or an
10 item, section, or part of this act within such period, then the act, item,
11 section, or part shall not take effect unless approved by the people at the
12 general election to be held in November 2010 and shall take effect on the
13 date of the official declaration of the vote thereon by the governor.

14 (2) The provisions of this act shall apply to surveillance conducted
15 on or after the applicable effective date of this act.

**Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO**

BILL D

LLS NO. 10-0207.01 Kristen Forrestal

HOUSE BILL

HOUSE SPONSORSHIP

Miklosi, Pace, Ryden

SENATE SPONSORSHIP

Hodge, Carroll M., Tochtrop

House Committees

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE BOARD OF DIRECTORS OF PINNACOL ASSURANCE.**

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. The bill requires 2 employee members of the board of directors of Pinnacol Assurance (board) to be nonmanagement employees. Adds 2 additional members to the board: An injured worker and the executive director of the Colorado department of labor and employment or his or her representative.

The bill increases the per diem for the board members from \$140 to \$250.

The bill requires the board to post the date, time, and location of

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Dashes through the words indicate deletions from existing statute.

board meetings on the Pinnacol Assurance web site at least 7 calendar days prior to a meeting. Requires the board to allow reasonable time for public comment at all board meetings.

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

2 **SECTION 1.** 8-45-101 (2) (a) and (3), Colorado Revised Statutes,
3 are amended to read:

4 **8-45-101. Pinnacol Assurance - creation - powers and duties.**

5 (2) (a) The powers of Pinnacol Assurance shall be vested in the board of
6 directors of Pinnacol Assurance, which shall have ~~nine~~ ELEVEN members.

7 ONE OF THE ELEVEN MEMBERS OF THE BOARD SHALL BE THE EXECUTIVE
8 DIRECTOR OF THE COLORADO DEPARTMENT OF LABOR AND EMPLOYMENT
9 OR HIS OR HER REPRESENTATIVE. The REMAINING TEN members of the
10 board shall be appointed by the governor with the consent of the senate.

11 Of the ~~nine~~ ELEVEN members, four shall be employers whose liability
12 under articles 40 to 47 of this title is insured by Pinnacol Assurance, with
13 one of such employers to be a farmer or rancher. Three of the ~~nine~~
14 ELEVEN members shall be employees of employers whose liability under
15 articles 40 to 47 of this title is insured by Pinnacol Assurance, WITH AT
16 LEAST TWO OF THE EMPLOYEE MEMBERS TO BE NONMANAGEMENT-LEVEL
17 EMPLOYEES. ONE OF THE ELEVEN MEMBERS SHALL BE A PREVIOUSLY
18 INJURED WORKER. One of the ~~nine~~ ELEVEN members shall be experienced
19 in the management and operation of insurance companies as defined in
20 section 10-1-102 (6), C.R.S., ~~Such member~~ BUT shall not concurrently
21 serve as an owner, a shareholder, an officer, an employee, an agent of, or
22 in any other capacity with any business ~~which~~ THAT competes with
23 Pinnacol Assurance. One of the ~~nine~~ ELEVEN members shall be
24 experienced in finance or investments, but shall not be an employer

1 whose liability under articles 40 to 47 of this title is insured by Pinnacol
2 Assurance. The term of office for each ~~such~~ member shall be five years.
3 The appointees may serve on a temporary basis if the senate is not in
4 session when they are appointed until the senate is in session and is able
5 to confirm such appointments. Vacancies on the board shall be filled by
6 appointment of the governor for the remainder of any unexpired terms.
7 The board shall elect a ~~chairman~~ CHAIR annually from its membership.

8 (3) EXCEPT FOR THE EXECUTIVE DIRECTOR OF THE DEPARTMENT
9 OF LABOR AND EMPLOYMENT OR HIS OR HER REPRESENTATIVE, members
10 of the board shall be compensated ~~one hundred forty~~ TWO HUNDRED FIFTY
11 dollars per diem plus their actual and necessary expenses. Per diem
12 compensation, not to exceed thirty days in any calendar year, shall be paid
13 only when the board is transacting official business.

14 **SECTION 2.** 8-45-101 (5), Colorado Revised Statutes, is
15 amended BY THE ADDITION OF THE FOLLOWING NEW
16 PARAGRAPHS to read:

17 **8-45-101. Pinnacol Assurance - creation - powers and duties.**

18 (5) The board shall:

19 (m) POST THE DATE, TIME, AND LOCATION OF EACH BOARD
20 MEETING ON THE PINNACOL ASSURANCE WEB SITE AT LEAST SEVEN
21 CALENDAR DAYS PRIOR TO THE SCHEDULED MEETING;

22 (n) ALLOW REASONABLE TIME FOR PUBLIC COMMENT AT EACH
23 BOARD MEETING.

24 **SECTION 3. Effective date.** This act shall take effect July 1,
25 2010.

26 **SECTION 4. Safety clause.** The general assembly hereby finds,

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

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

BILL E

LLS NO. 10-0208.01 Thomas Morris

SENATE BILL

SENATE SPONSORSHIP

Tochtrop, Carroll M., Hodge

HOUSE SPONSORSHIP

Pace, Miklosi, Ryden

Senate Committees

House Committees

A BILL FOR AN ACT

101 **CONCERNING INCREASED PENALTIES FOR VIOLATIONS OF THE**
102 **WORKERS' COMPENSATION LAWS.**

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. Increases the penalty for violating the workers' compensation laws from up to \$500 to up to \$1,000. Changes the mental state from "willfully" to "knowingly" in the statute that penalizes denying workers' compensation medical benefits, delaying payment of medical benefits for more than 30 days, or stopping payments. Allows the director of the division of workers' compensation or an administrative law judge to

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

apportion the penalties, in whole or part, among the aggrieved party, the medical services provider, and the workers' compensation cash fund.

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

2 **SECTION 1.** 8-43-304 (1), Colorado Revised Statutes, is
3 amended to read:

4 **8-43-304. Violations - penalty - offset for benefits obtained**
5 **through fraud - rules.** (1) Any employer or insurer, or any officer or
6 agent of either, or any employee, or any other person who violates any
7 provision of articles 40 to 47 of this title, or does any act prohibited
8 thereby, or fails or refuses to perform any duty lawfully enjoined within
9 the time prescribed by the director or panel, for which no penalty has been
10 specifically provided, or fails, neglects, or refuses to obey any lawful
11 order made by the director or panel or any judgment or decree made by
12 any court as provided by said articles shall be subject to such order being
13 reduced to judgment by a court of competent jurisdiction and shall also
14 be punished by a fine of not more than ~~five hundred~~ ONE THOUSAND
15 dollars per day for each such offense, ~~seventy-five percent payable to~~ BE
16 APPORTIONED, IN WHOLE OR PART, AT THE DISCRETION OF THE DIRECTOR
17 OR ADMINISTRATIVE LAW JUDGE, AMONG the aggrieved party, ~~and~~
18 ~~twenty-five percent to the subsequent injury fund created in section~~
19 ~~8-46-101~~ THE MEDICAL SERVICES PROVIDER, AND THE WORKERS'
20 COMPENSATION CASH FUND CREATED IN SECTION 8-44-112 (7) (a).

21 **SECTION 2.** 8-43-401 (2) (a), Colorado Revised Statutes, is
22 amended to read:

23 **8-43-401. Attorney general, district attorney, or attorney of**
24 **division to act for director or office - penalties for failure of insurer**
25 **to pay benefits.** (2) (a) After all appeals have been exhausted or in cases

1 where there have been no appeals, all insurers and self-insured employers
2 shall pay benefits within thirty days ~~of when~~ AFTER any benefits are due.
3 If any insurer or self-insured employer ~~willfully~~ KNOWINGLY delays
4 payment of medical benefits for more than thirty days or ~~willfully~~
5 KNOWINGLY stops payments, such insurer or self-insured employer shall
6 pay a penalty ~~to the division~~ of eight percent of the amount of wrongfully
7 withheld benefits. If any insurer or self-insured employer willfully
8 withholds permanent partial disability benefits within thirty days of when
9 due, the insurer or self-insured employer shall pay a penalty to the
10 division of ten percent of the amount of such benefits due. THE
11 PENALTIES SHALL BE APPORTIONED, IN WHOLE OR PART, AT THE
12 DISCRETION OF THE DIRECTOR OR ADMINISTRATIVE LAW JUDGE, AMONG
13 THE AGGRIEVED PARTY, THE MEDICAL SERVICES PROVIDER, AND THE
14 WORKERS' COMPENSATION CASH FUND CREATED IN SECTION 8-44-112 (7)
15 (a).

16 **SECTION 3. Act subject to petition - effective date -**
17 **applicability.** (1) This act shall take effect at 12:01 a.m. on the day
18 following the expiration of the ninety-day period after final adjournment
19 of the general assembly (August 11, 2010, if adjournment sine die is on
20 May 12, 2010); except that, if a referendum petition is filed pursuant to
21 section 1 (3) of article V of the state constitution against this act or an
22 item, section, or part of this act within such period, then the act, item,
23 section, or part shall not take effect unless approved by the people at the
24 general election to be held in November, 2010, and shall take effect on
25 the date of the official declaration of the vote thereon by the governor.
26 (2) The provisions of this act shall apply to conduct occurring on
27 or after the applicable effective date of this act.

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

BILL F

LLS NO. 10-0215.01 Christy Chase

SENATE BILL

SENATE SPONSORSHIP

Carroll M., Hodge, Tochtrop

HOUSE SPONSORSHIP

Miklosi, Pace, Ryden

Senate Committees

House Committees

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 1** 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 1** gives

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

Section 3 prohibits a treating physician from communicating with the insurer or employer of an injured worker unless the injured worker is present or the communication is in writing and is provided to the injured worker.

Section 4 specifies that contractual provisions that establish a reversionary interest in an insurer for indemnity benefits 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

1 BETWEEN A LISTED PHYSICIAN, OR ANY ENTITY AFFILIATED WITH THE
2 PHYSICIAN, AND AN INSURER OR SELF-INSURED EMPLOYER. THE PARTY
3 SHALL NOT BE REQUIRED TO MAKE ITS DETERMINATION TO STRIKE A
4 PHYSICIAN FROM THE LIST UNTIL HE OR SHE HAS RECEIVED AND HAS HAD
5 A REASONABLE OPPORTUNITY TO REVIEW THE INFORMATION.

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

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

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

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

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

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

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

1 TO BE DENIED OR DELAYED, OR TO DENY OR DELAY MEDICAL CARE OR
2 PAYMENT FOR MEDICAL TREATMENT FOR ANY SUCH CLAIM.

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

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

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

14 **8-43-404. Examination - refusal - personal responsibility -**
15 **physicians to testify and furnish results - injured worker right to**
16 **select treating physicians - injured worker right to third-party**
17 **communications - definitions - rules.** (5) (c) A TREATING PHYSICIAN
18 SHALL NOT COMMUNICATE WITH THE EMPLOYER OR INSURER OF AN
19 INJURED WORKER REGARDING THAT INJURED WORKER UNLESS:

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

22 (II) THE COMMUNICATION IS CONDUCTED IN WRITING, IN WHICH
23 CASE THE INJURED WORKER HAS THE RIGHT TO OBTAIN A COPY OF THE
24 WRITTEN COMMUNICATION. THE PERSON SENDING THE WRITTEN
25 COMMUNICATION SHALL EITHER SEND A COPY OF THE COMMUNICATION TO
26 THE INJURED WORKER WHEN HE OR SHE SENDS THE WRITTEN
27 COMMUNICATION TO THE PERSON TO WHOM IT IS ADDRESSED OR SHALL
28 PROVIDE A COPY AS PART OF MEDICAL RECORDS DISCLOSURES REQUIRED

1 BY DIRECTOR RULES.

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

5 **8-44-116. Reversionary interests in indemnity benefits**
6 **prohibited.** NO PROVISION IN A CONTRACT FOR INSURANCE REGULATED
7 BY THIS ARTICLE OR ANY CONTRACT ANCILLARY TO SUCH A CONTRACT,
8 INCLUDING SPECIFICALLY A CONTRACT SETTING UP AN ANNUITY FOR
9 INDEMNITY BENEFITS, SHALL ESTABLISH A REVERSIONARY INTEREST IN
10 THE INSURER FOR THE INDEMNITY BENEFITS. ANY SUCH PROVISION,
11 INCLUDING ONE IN AN EXISTING CONTRACT, IS VOID AND UNENFORCEABLE
12 AS AGAINST PUBLIC POLICY.

13 **SECTION 5. Effective date - applicability.** (1) Section 1 of
14 this act shall take effect July 1, 2010, and shall apply to requests for
15 independent medical examinations made on or after said date.

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

19 **SECTION 6. Safety clause.** The general assembly hereby finds,
20 determines, and declares that this act is necessary for the immediate
21 preservation of the public peace, health, and safety.

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

BILL G

LLS NO. 10-0213.01 Jerry Barry

HOUSE BILL

HOUSE SPONSORSHIP

Miklosi, Pace, Ryden

SENATE SPONSORSHIP

Carroll M., Hodge, Tochtrop

House Committees

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING A BROCHURE TO DESCRIBE THE PROCESS FOR WORKERS'**
102 **COMPENSATION CLAIMS.**

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. The bill requires the employer or the employer's insurance carrier to provide a brochure to a workers' compensation claimant, in a form approved by the director of the division of workers' compensation, that describes the entities the claimant may contact for information, the claimant's rights related to his or her medical treatment and rights to receive benefit payments, and the claims process.

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

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

2 **SECTION 1.** 8-43-203, Colorado Revised Statutes, is amended
3 BY THE ADDITION OF A NEW SUBSECTION to read:

4 **8-43-203. Notice concerning liability - notice to claimants -**
5 **notice of rights and claims process - rules.** (3) IN ADDITION TO ANY
6 OTHER NOTICE REQUIRED BY THIS SECTION, AT THE TIME THAT THE
7 EMPLOYER OR, IF INSURED, THE EMPLOYER'S INSURANCE CARRIER
8 PROVIDES THE NOTICE REQUIRED BY SUBSECTION (1) OF THIS SECTION, THE
9 EMPLOYER OR INSURANCE CARRIER SHALL PROVIDE TO THE CLAIMANT A
10 BROCHURE WRITTEN IN EASILY UNDERSTOOD LANGUAGE, IN A FORM
11 APPROVED BY THE DIRECTOR, DESCRIBING THE CLAIMS PROCESS AND
12 INFORMING THE CLAIMANT OF HIS OR HER RIGHTS. THE BROCHURE SHALL,
13 AT A MINIMUM, CONTAIN THE FOLLOWING INFORMATION:

14 (a) WHO THE CLAIMANT MAY CONTACT WITH QUESTIONS
15 CONCERNING THE CLAIM, THE CLAIM'S PROCESS, AND ASSISTANCE WITH
16 THE CLAIM, INCLUDING:

17 (I) THE INSURANCE CARRIER OR EMPLOYER;

18 (II) THE DIVISION AND THE WEB SITE FOR THE DIVISION;

19 (III) THE OFFICE OF ADMINISTRATIVE COURTS AND THE WEB SITE
20 FOR THE OFFICE; AND

21 (IV) AN ATTORNEY HIRED AT THE EXPENSE OF THE CLAIMANT.

22 (b) THE CLAIMANT'S RIGHT TO RECEIVE MEDICAL CARE FOR WORK
23 RELATED INJURIES OR OCCUPATIONAL DISEASES PAID FOR BY THE
24 EMPLOYER OR THE EMPLOYER'S INSURANCE CARRIER INCLUDING:

25 (I) THE CLAIMANT'S RIGHT TO CHOOSE FROM A LIST OF AT LEAST
26 TWO DIFFERENT DOCTORS;

1 (II) THE CLAIMANT'S RIGHT TO CHANGE DOCTORS ONE TIME WITHIN
2 NINETY DAYS AFTER THE INJURY AND TO REQUEST A CHANGE OF DOCTOR
3 AT OTHER TIMES UNDER CERTAIN OTHER CIRCUMSTANCES;

4 (III) THE CLAIMANT'S DOCTOR'S RIGHT TO REFER THE CLAIMANT
5 TO OTHER MEDICAL PROVIDERS AND SPECIALISTS TO PROVIDE THE
6 REASONABLE AND NECESSARY MEDICAL CARE THAT THE CLAIMANT'S
7 WORK-RELATED INJURIES OR ILLNESS REQUIRE;

8 (IV) THE CLAIMANT'S RIGHT TO SPECIFY WHO MAY BE PRESENT
9 DURING A CLAIMANT'S MEDICAL APPOINTMENT AND WHO MAY HAVE
10 ACCESS TO THE CLAIMANT'S MEDICAL RECORDS, INCLUDING THE RIGHT TO
11 REFUSE TO HAVE A NURSE CASE MANAGER EMPLOYED ON THE CLAIMANT'S
12 CLAIM;

13 (V) THE CLAIMANT'S RIGHT TO SEE AND HAVE COPIES OF ALL OF
14 THE CLAIMANT'S MEDICAL RECORDS RELATED TO THE MEDICAL CARE THE
15 CLAIMANT RECEIVED FOR HIS OR HER WORK-RELATED INJURY OR ILLNESS;

16 (VI) THE CLAIMANT'S RIGHT TO SEEK MEDICAL CARE AND MEDICAL
17 OPINIONS ABOUT THE CLAIMANT'S WORK-RELATED INJURY AT THE
18 CLAIMANT'S OWN EXPENSE; AND

19 (VII) THE CLAIMANT'S RIGHT TO A MEDICAL EXAMINATION BY A
20 DOCTOR SELECTED BY THE DIVISION AT THE CLAIMANT'S EXPENSE, OR, IF
21 AN ADMINISTRATIVE LAW JUDGE FINDS THAT THE CLAIMANT CANNOT PAY
22 FOR ONE, AT THE INITIAL EXPENSE OF THE CLAIMANT'S EMPLOYER OR THE
23 EMPLOYER'S INSURANCE COMPANY;

24 (VIII) THE CLAIMANT'S RIGHT TO A PERMANENT IMPAIRMENT
25 EVALUATION AFTER THE CLAIMANT'S TREATING DOCTORS DETERMINE
26 THAT THE CLAIMANT HAS REACHED MAXIMUM MEDICAL IMPROVEMENT;
27 AND

28 (IX) THE CLAIMANT'S RIGHT TO CONTINUED NECESSARY MEDICAL

1 CARE AFTER MAXIMUM MEDICAL IMPROVEMENT AT THE EXPENSE OF THE
2 EMPLOYER OR THE EMPLOYER'S INSURANCE CARRIER.

3 (c) A DESCRIPTION OF THE CLAIMANT'S RIGHT TO RECEIVE BENEFIT
4 PAYMENTS, INCLUDING THE CLAIMANT'S RIGHT TO RECEIVE:

5 (I) WAGE REPLACEMENT PAYMENTS IN THE FORM OF TEMPORARY
6 TOTAL DISABILITY PAYMENTS OR TEMPORARY PARTIAL DISABILITY
7 PAYMENTS;

8 (II) PERMANENT IMPAIRMENT BENEFITS IF THE CLAIMANT IS LEFT
9 WITH A PERMANENT IMPAIRMENT AS A RESULT OF A WORK-RELATED
10 INJURY OR DISEASE;

11 (III) DISFIGUREMENT PAYMENTS FOR PERMANENT SCARRING OR
12 DISFIGUREMENT CAUSED BY THE CLAIMANT'S WORK-RELATED INJURY OR
13 SURGERY REQUIRED BECAUSE OF THE CLAIMANT'S WORK-RELATED INJURY;
14 AND

15 (IV) MILEAGE EXPENSES FOR TRAVEL TO AND FROM
16 WORK-RELATED MEDICAL CARE AND TO AND FROM PHARMACIES TO
17 OBTAIN MEDICAL PRESCRIPTIONS FOR WORK-RELATED MEDICAL CARE.

18 (d) A DESCRIPTION OF HOW THE CLAIMS PROCESS WORKS,
19 INCLUDING:

20 (I) THE CLAIMANT'S RIGHT TO FILE A CLAIM FOR WORKERS'
21 COMPENSATION WITH THE DIVISION WITHIN TWO YEARS AFTER THE DATE
22 OF THE CLAIMANT'S INJURY OR OCCUPATIONAL DISEASE;

23 (II) THE CLAIMANT'S RIGHT TO RECEIVE A GENERAL ADMISSION OF
24 LIABILITY OR NOTICE OF CONTEST ONCE THE CLAIM HAS BEEN PROPERLY
25 REPORTED TO THE DIVISION;

26 (III) THE CLAIMANT'S RIGHT TO VERIFY THAT THE CLAIMANT'S
27 AVERAGE WEEKLY WAGE PAYMENTS FOR TEMPORARY TOTAL DISABILITY
28 HAVE BEEN PROPERLY CALCULATED BY THE CLAIMANT'S EMPLOYER OR

1 THE EMPLOYER'S INSURANCE CARRIER;

2 (IV) THE CLAIMANT'S RIGHT TO PREHEARINGS AND HEARINGS ON
3 DISPUTED ISSUES;

4 (V) THE CLAIMANT'S RIGHT TO PRESENT EVIDENCE, TESTIFY,
5 INTRODUCE MEDICAL AND OTHER RECORDS, PRESENT WITNESSES, AND
6 MAKE ARGUMENTS AT ANY HEARING;

7 (VI) THE CLAIMANT'S RIGHT TO OBJECT TO AND REQUEST A
8 HEARING ON ANY FINAL ADMISSION OF LIABILITY WITHIN THIRTY DAYS
9 AFTER THE MAILING OF THE ADMISSION IN ORDER TO RETAIN CERTAIN
10 RIGHTS;

11 (VII) THE CLAIMANT'S RIGHT TO CHALLENGE A FINDING OF AN
12 IMPAIRMENT RATING OR MAXIMUM MEDICAL IMPROVEMENT IN A FINAL
13 ADMISSION OF LIABILITY WITHIN THIRTY DAYS AFTER THE MAILING OF THE
14 ADMISSION IN ORDER TO RETAIN CERTAIN RIGHTS;

15 (VIII) THE CLAIMANT'S RIGHT TO PURSUE PENALTIES FOR
16 VIOLATIONS OF THE LAW INCLUDING LATE PAYMENT OF BENEFITS OR
17 IMPROPER REFUSAL TO PAY BENEFITS;

18 (IX) THE CLAIMANT'S RIGHT, SUBJECT TO CERTAIN REQUIREMENTS,
19 TO REOPEN A CLAIM WITHIN SIX YEARS AFTER THE DATE OF THE INJURY OR
20 ILLNESS OR WITHIN TWO YEARS AFTER THE DATE OF THE LAST RECEIPT OF
21 MEDICAL OR WAGE BENEFITS; AND

22 (X) A DESCRIPTION OF OTHER RIGHTS CONFERRED UPON A
23 CLAIMANT PURSUANT TO LAW OR RULE.

24 **SECTION 2. Safety clause.** The general assembly hereby finds,
25 determines, and declares that this act is necessary for the immediate
26 preservation of the public peace, health, and safety.