

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

INTRODUCED

LLS NO. 21-0757.01 Yelana Love x2295

SENATE BILL 21-197

SENATE SPONSORSHIP

Rodriguez,

HOUSE SPONSORSHIP

Woodrow,

Senate Committees

Business, Labor, & Technology

House Committees

A BILL FOR AN ACT

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

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

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

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

is unable or unwilling to select the treating physician.

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

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

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

1 ~~purposes of this section, "corporate medical provider" means a medical~~
2 ~~organization in business as a sole proprietorship, professional~~
3 ~~corporation, or partnership~~ WITHIN SEVEN BUSINESS DAYS FOLLOWING
4 NOTICE OF AN ON-THE-JOB INJURY, AN EMPLOYER OR INSURER SHALL
5 PROVIDE THE INJURED EMPLOYEE WITH AN AUTHORIZED TREATING
6 PHYSICIAN DESIGNATION FORM PRESCRIBED BY THE DIRECTOR. THE
7 EMPLOYEE MAY DESIGNATE A LEVEL I OR LEVEL II ACCREDITED PHYSICIAN
8 LICENSED UNDER THE "COLORADO MEDICAL PRACTICE ACT", ARTICLE 240
9 OF TITLE 12, AS THE EMPLOYEE'S AUTHORIZED TREATING PHYSICIAN. THE
10 EMPLOYEE MUST DESIGNATE THE TREATING PHYSICIAN IN WRITING ON THE
11 FORM PRESCRIBED BY THE DIRECTOR. THE EMPLOYEE MAY MAKE ONE
12 TREATING PHYSICIAN DESIGNATION ON THE FORM PRESCRIBED BY THE
13 DIRECTOR ANY TIME AFTER THE ON-THE-JOB INJURY BUT BEFORE BEING
14 PLACED AT MAXIMUM MEDICAL IMPROVEMENT.

15 (B) ~~If there are fewer than four physicians or corporate medical~~
16 ~~providers within thirty miles of the employer's place of business who are~~
17 ~~willing to treat an injured employee, the employer or insurer may instead~~
18 ~~designate one physician or one corporate medical provider, and~~
19 ~~subparagraphs (III) and (IV) of this paragraph (a) shall not apply. A~~
20 ~~physician is presumed willing to treat injured workers unless he or she~~
21 ~~indicates to the employer or insurer to the contrary~~ IF THE INJURED
22 EMPLOYEE IS UNABLE TO DESIGNATE A TREATING PHYSICIAN AND THE
23 EMERGENCY NATURE OF THE INJURY REQUIRES IMMEDIATE MEDICAL CARE,
24 OR IF THE INJURED EMPLOYEE DOES NOT DESIRE TO DESIGNATE A
25 TREATING PHYSICIAN AND SO ADVISES THE EMPLOYER OR INSURER, THE
26 EMPLOYER OR INSURER SHALL DESIGNATE A LEVEL I OR LEVEL II
27 ACCREDITED PHYSICIAN LICENSED UNDER THE "COLORADO MEDICAL

1 PRACTICE ACT", ARTICLE 240 OF TITLE 12, AS THE EMPLOYEE'S TREATING
2 PHYSICIAN. DESIGNATION BY AN EMPLOYER OR INSURER UNDER THIS
3 SUBSECTION (5)(a)(I)(B) DOES NOT PREVENT THE EMPLOYEE FROM
4 SUBSEQUENTLY DESIGNATING A TREATING PHYSICIAN AS PROVIDED IN
5 SUBSECTION (5)(a)(I)(A) OF THIS SECTION FOR CONTINUANCE OF
6 REQUIRED MEDICAL CARE. THE EMPLOYEE'S SUBSEQUENT DESIGNATION OF
7 A TREATING PHYSICIAN RENDERS THE EMPLOYER- OR
8 INSURER-DESIGNATED TREATING PHYSICIAN UNAUTHORIZED.

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

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

1 employer:

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

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

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

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

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

1 improvement;

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

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

12 ~~(D) The new physician is on the employer's designated list or~~
13 ~~provides medical services for a designated corporate medical provider on~~
14 ~~the list;~~

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

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

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

26 ~~(B) The originally authorized treating physician shall send all~~
27 ~~medical records in his or her possession pertaining to the injured~~

1 ~~employee to the newly authorized treating physician within seven~~
2 ~~calendar days after receiving a request for medical records from the newly~~
3 ~~authorized treating physician.~~

4 ~~(C) The originally authorized treating physician shall continue as~~
5 ~~the authorized treating physician for the injured employee until the~~
6 ~~injured employee's initial visit with the newly authorized treating~~
7 ~~physician, at which time the treatment relationship with the initially~~
8 ~~authorized treating physician shall terminate.~~

9 ~~(D) The opinion of the originally authorized treating physician~~
10 ~~regarding work restrictions and return to work shall control unless and~~
11 ~~until such opinion is expressly modified by the newly authorized treating~~
12 ~~physician.~~

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

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

1 authorized treating physician.

2 ~~(VI) (II) (A) In addition to the one-time change of physician~~
3 ~~allowed in subparagraph (III) of this paragraph (a),~~ Upon written request
4 to the ~~insurance carrier~~ INSURER or to the employer's authorized
5 representative if THE EMPLOYER IS self-insured, an injured employee may
6 procure written permission to have a personal physician or chiropractor
7 treat the employee. The EMPLOYEE MUST COMPLETE THE written request
8 ~~must be completed~~ on a form that is prescribed by the director. If
9 ~~permission is neither granted nor refused~~ THE EMPLOYER OR INSURER
10 NEITHER GRANTS NOR REFUSES THE PERMISSION REQUEST within twenty
11 days after the date of the certificate of service of the request form, the
12 employer or ~~insurance carrier shall be~~ INSURER IS deemed to have waived
13 any objection to the employee's request. IF THE EMPLOYER OR INSURER
14 OBJECTS TO THE REQUEST, THE EMPLOYER OR INSURER SHALL MAKE THE
15 objection ~~shall be~~ in writing on a form prescribed by the director and shall
16 ~~be served~~ SERVE THE WRITTEN OBJECTION on the employee or, if
17 represented, the employee's authorized representative within twenty days
18 after the date of the certificate of service of the request form. An
19 ~~insurance carrier~~ INSURER, or an employer's authorized representative if
20 THE EMPLOYER IS self-insured, shall track how often an injured employee
21 requests to change ~~his or her~~ THE EMPLOYEE'S physician and how often
22 such change is granted or denied and shall report such information to the
23 division upon request. Upon the proper showing to the division, the
24 employee may procure the division's permission at any time to have a
25 physician of the employee's selection treat the employee, and in any
26 nonsurgical case the employee, with such permission, in lieu of medical
27 aid, may procure any nonmedical treatment recognized by the laws of this

1 state as legal. The practitioner administering the treatment shall receive
2 fees under the medical provisions of articles 40 to 47 of this ~~title~~ TITLE 8
3 as specified by the division.

4 (B) If an injured employee is permitted to change physicians
5 under ~~sub-subparagraph (A) of this subparagraph (VI)~~ SUBSECTION
6 (5)(a)(II)(A) OF THIS SECTION resulting in a new authorized treating
7 physician who will provide primary care for the injury, then the
8 previously authorized treating physician providing primary care shall
9 continue as the authorized treating physician providing primary care for
10 the injured employee until the injured employee's initial visit with the
11 newly authorized treating physician, at which time the treatment
12 relationship with the previously authorized treating physician providing
13 primary care is terminated.

14 (C) Nothing in this ~~subparagraph (VI)~~ SUBSECTION (5)(a)(II)
15 precludes any former authorized treating physician from performing an
16 examination under subsection (1) of this section.

17 (D) If an injured employee is permitted to change physicians
18 pursuant to ~~sub-subparagraph (A) of this subparagraph (VI)~~ SUBSECTION
19 (5)(a)(II)(A) OF THIS SECTION resulting in a new authorized treating
20 physician who will provide primary care for the injury, then the opinion
21 of the previously authorized treating physician providing primary care
22 regarding work restrictions and return to work controls unless that
23 opinion is expressly modified by the newly authorized treating physician.

24 (10) (b) If the insurer or self-insured employer receives written
25 notice pursuant to ~~paragraph (a) of this subsection (10)~~ SUBSECTION
26 (10)(a) OF THIS SECTION, or if the insurer or self-insured employer and the
27 authorized treating physician receive written notice by certified mail,

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

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