

Summary of Workers' Compensation Bills, 2010 Session (as of July 16, 2010)

Signed into Law

Bill Number: **Senate Bill 10-011**

Short Title: **Workers' Compensation Conflicts of Interest**

Sponsors: *Senator M. Carroll*
Representative Miklosi

Status: Signed into Law

The act, which was recommended by the Interim Committee to Study Issues Related to Pinnacol Assurance, makes several changes to workers' compensation law concerning conflicts of interest by physicians, insurers, and employers. The bill requires physicians who provide independent medical examinations to provide a summary disclosure of any business, financial, employment, or advisory relationships with an insurer or self-insured employer upon request.

Appropriations:

The bill does not require an appropriation.

The bill prohibits the payment or receipt of a financial incentive to encourage the delay or denial of a workers' compensation claim. The bill makes the payment or receipt of such an incentive an unfair method of competition and an unfair or deceptive act or practice in the business of insurance. The bill allows for penalties to be levied by the Commissioner of Insurance in the Department of Regulatory Agencies and by the director of the Division of Workers' Compensation in the Department of Labor and Employment. In addition, the bill requires that if an injured worker is not present for communications between a treating physician and the employer or insurer, the treating physician will provide a written record of the communications to the injured worker.

Finally, the bill prohibits the inclusion of reversionary interests in indemnity benefits in a workers' compensation insurance contract. This would prevent an insurer from receiving the remaining value of an annuity upon the death of an injured worker. Such a provision, including one in an existing contract, is void and unenforceable.

Summary of Workers' Compensation Bills, 2010 Session (as of July 16, 2010) (Cont.)

Signed into Law (Cont.)	
<p>Bill Number: Senate Bill 10-012</p> <p>Sponsors: <i>Senator Tochtrop</i> <i>Representative Pace</i></p> <p>The act, which was recommended by the Interim Committee to Study Issues Related to Pinnacol Assurance, increases the maximum penalty for violating workers' compensation laws from \$500 to \$1,000 per day of violation. It lowers the standard for determining when benefits are wrongfully withheld by an insurer or self-insured employer from acting "willfully" to "knowingly." Under current law, 75 percent of a penalty is paid to the injured worker and 25 percent to the Subsequent Injury Fund. Under this bill, penalties will be apportioned at the discretion of the director of the Division of Workers' Compensation in the Department of Labor and Employment or an administrative law judge. The injured worker will receive a minimum of 50 percent, with the remainder going to the Workers' Compensation Cash Fund.</p>	<p>Short Title: Workers' Compensation Benefits Knowing Penalty</p> <p>Status: Signed into Law</p> <p>Appropriations:</p> <p>No increases in expenditures are expected from this bill. The director of the Division of Workers' Compensation and administrative law judges will be responsible for the apportionment of penalties, but these are not expected to significantly alter their workloads. As a self-insured employer, the state has not been penalized for violations of workers' compensation law and no future penalties are anticipated. Hence, no additional expenditures are expected from the increased penalty provisions.</p>
<p>Bill Number: Senate Bill 10-013</p> <p>Sponsors: <i>Senator Hodge</i> <i>Representative Ryden</i></p> <p>The act, which was recommended by the Interim Committee to Study Issues Related to Pinnacol Assurance, requires workers' compensation insurers to survey a limited number of injured workers and to report survey findings annually to the Division of Workers' Compensation in the Department of Labor and Employment. The division director will develop the survey with input from insurers. The division must post the survey results on its website and must also post the procedures for an injured worker to file a complaint with the division. In addition, the bill requires Pinnacol Assurance to submit an annual report to the Governor and to the General Assembly on its business operations, resources, and liabilities.</p>	<p>Short Title: Workers' Compensation Accountability</p> <p>Status: Signed into Law</p> <p>Appropriations:</p> <p>The director of the Division of Workers' Compensation in the Department of Labor and Employment will determine the form and manner in which injured workers will be surveyed by insurers. Division staff will collect and post the survey responses on the division's website annually. For FY 2010-11, the Department of Labor and Employment requires an appropriation of \$3,756 and 0.1 FTE from the Workers' Compensation Cash Fund in order to annually process the surveys.</p>

Summary of Workers' Compensation Bills, 2010 Session (as of July 16, 2010) (Cont.)

Signed into Law (Cont.)	
<p>Bill Number: Senate Bill 10-112</p> <p>Sponsors: <i>Senator Kopp</i> <i>Representative Swalm</i></p> <p>The act changes two areas of workers' compensation law that affect the premiums paid by employers. First, it specifies that for the purposes of experience modifiers, medical-only claims are to be calculated in the same manner as claims with indemnity payments. Second, it requires the Commissioner of Insurance to make public aggregate loss and payroll data used in workers' compensation ratemaking and specifies that such data not be used for any commercial purpose.</p>	<p>Short Title: Workers' Compensation Insurance Rate Setting</p> <p>Status: Signed into Law</p> <p>Appropriations:</p> <p>The bill is assessed as having no fiscal impact. The actions required of the commissioner are within the normal course of business for the division and will not require additional resources to accomplish.</p>
<p>Bill Number: Senate Bill 10-163</p> <p>Sponsors: <i>Senator Tochtrop</i> <i>Representative A. Kerr</i></p> <p>The act clarifies that Senate Bill 09-168, which amended various procedures in the Workers' Compensation Act, was intended to apply to all workers' compensation claims, regardless of when the claim was filed. The bill requires the director of the Division of Workers' Compensation in the Department of Labor and Employment to establish a life expectancy table based on mortality tables issued by the federal government or private industry on July 1 in even-numbered years. Lump sum settlements are required to be paid to a claimant within 15 days after an executed settlement order is received by the insurer. Finally, documents required under the Workers' Compensation Act must be delivered in the same medium to all required recipients.</p>	<p>Short Title: Workers' Compensation Procedures</p> <p>Status: Signed into Law</p> <p>Appropriations:</p> <p>The bill is assessed as having no fiscal impact. Changing the effective date for claims filed under Senate Bill 09-168 does not affect the workload of any state agency because the bill was procedural in nature and did not drive a fiscal impact. The requirement to establish a life expectancy table will be addressed as part of the regular rulemaking activity of the Division of Workers' Compensation and no additional resources are required.</p>

Summary of Workers' Compensation Bills, 2010 Session (as of July 16, 2010) (Cont.)

Signed into Law (Cont.)

Bill Number: **Senate Bill 10-178**

Short Title: **Fair Workers' Compensation Provider Reviews**

Sponsors: *Senator Hodge and Senator Mitchell*
Representative Gerou and Representative Miklosi

Status: Signed into Law

The act creates the Provider Review and Disclosure Act for workers' compensation insurers and health care providers. The bill specifies minimum standards for insurer performance programs that measure a provider's care. Insurers are required to file detailed descriptions of performance programs with the director of the Division of Workers' Compensation in the Department of Labor and Employment at least 30 days before implementation. Insurers must give written notice to a provider at least 45 days before disclosing the result of a performance program. If a provider appeals a result, an insurer is required to disclose the data and the process used to arrive at the provider's individual result. The provider has an opportunity to submit or to have considered corrected data or other relevant information. A violation of the bill's provisions is considered an unfair or deceptive act or practice and may be enforced in an administrative hearing or in a civil action against an insurer.

Appropriations:

The bill does not require an appropriation. The bill requires insurers to submit performance programs to the director of the Division of Workers' Compensation but does not specify that the director review these submissions. It also allows a health care provider to seek to enforce the requirements through a hearing by the director, an administrative law judge, or in state court. Any increase in workload to the division, the Office of Administrative Courts, or the Judicial Branch is expected to be minimal and can be accomplished within existing appropriations.

Summary of Workers' Compensation Bills, 2010 Session (as of July 16, 2010) (Cont.)

Signed into Law (Cont.)

Bill Number: **Senate Bill 10-187**

Short Title: **Workers' Compensation Act Various Provisions**

Sponsors: *Senator Tochtrop*
Representative Riesberg

Status: Signed into Law

The act changes the Workers' Compensation Act of Colorado as follows:

- clarifies that Medicaid and other indigent health care programs are not considered wages for purposes of workers' compensation;
- allows an injured worker to recover costs other than attorneys' fees to pursue an order requiring an insurer to pay for a prescribed treatment plan;
- clarifies that for determining an injured worker's average weekly wage the phrase "at the time of injury" refers to the date of the accident;
- eliminates permanent partial disability from the types of disabilities that require a social security offset;
- establishes standards for an injured worker to refuse an offer of modified employment and not be responsible for his or her termination of employment;
- adds the loss of a tooth and removes the loss of an eye to the list of scheduled injuries;
- requires the director of the Division of Workers' Compensation in the Department of Labor and Employment to adjust the caps on combined disability payments by the same percentage as the adjustment to the state average weekly wage beginning July 1, 2011; and
- prohibits the director or an administrative law judge from conditioning a lump sum payment on the injured workers' waiver of his or her right to pursue permanent total disability payments.

Appropriations:

State expenditures for workers' compensation claims are expected to increase by \$721,644 in FY 2012-13 due to the increase in the caps on benefits. Because the caps are not increased until July 1, 2011, and apply to injuries on or after January 1, 2012, no change in state expenditures is expected in FY 2010-11. Depending on the number of injuries and the duration of disability benefits provided, an increase in expenditures is possible in FY 2011-12 but cannot be determined. Workers' compensation costs are allocated to state agencies based on claims experience, so funding for any increase will vary by agency and funding source.

Summary of Workers' Compensation Bills, 2010 Session (as of July 16, 2010) (Cont.)

Signed into Law (Cont.)	
<p>Bill Number: House Bill 10-1009</p> <p>Sponsors: <i>Representative Miklosi</i> <i>Senator Hodge</i></p> <p>The act, which was recommended by the Interim Committee to Study Issues Related to Pinnacol Assurance, requires public notice at least seven days prior to a scheduled meeting of the board of directors of Pinnacol Assurance.</p>	<p>Short Title: Pinnacol Assurance Board of Directors</p> <p>Status: Signed into Law</p> <p>Appropriations:</p> <p style="padding-left: 40px;">The bill is assessed as having no fiscal impact.</p>
<p>Bill Number: House Bill 10-1038</p> <p>Sponsors: <i>Representative Miklosi</i> <i>Senator M. Carroll</i></p> <p>The act, which was recommended by the Interim Committee to Study Issues Related to Pinnacol Assurance, requires an employer or the employer's insurance carrier to provide a brochure, developed by director of the Division of Workers' Compensation in the Department of Labor and Employment, to each workers' compensation claimant. The brochure will include contact information, a description of the claims process, and a claimant's rights to medical treatment and benefit payments under workers' compensation law. If authorized by the claimant, the brochure may be provided electronically.</p>	<p>Short Title: Workers' Compensation Claims Process Brochure</p> <p>Status: Signed into Law</p> <p>Appropriations:</p> <p style="padding-left: 40px;">The bill is expected to reduce expenditures in the Division of Workers' Compensation in the Department of Labor and Employment by \$18,000 per year, beginning in FY 2010-11. To increase awareness of the claims process, the division currently sends informational letters to claimants. The fiscal note for the bill assumes that the mandatory brochure will make these letters unnecessary, resulting in a savings in mailing costs. The state self-insures for workers' compensation and its administrator currently sends information to claimants, so no other state fiscal impact is expected.</p> <p style="padding-left: 40px;">An increase in expenditures to local government entities and to statutory public entities that self-insure for workers' compensation is expected under the bill. The amount of the increase depends on the current practice of each entity for providing information to workers' compensation claimants.</p>

Summary of Workers' Compensation Bills, 2010 Session (as of July 16, 2010) (Cont.)

Signed into Law (Cont.)	
<p>Bill Number: House Bill 10-1109</p> <p>Sponsors: <i>Representative McCann</i> <i>Senator Mitchell</i></p> <p>The act clarifies that the term "employee," for workers' compensation purposes, includes an inmate of Department of Corrections facility or a city, county, or city and county jail who is working, performing services, or participating in a training, rehabilitation, or work release program that is certified by the federal Prison Industry Enhancement Certification Program (PIECP). Under the PIECP, the federal Bureau of Justice Assistance certifies that local or state prison industry programs meet all the necessary requirements to be exempt from federal restrictions on prisoner-made goods in interstate commerce. As a condition of participating in the PIECP, prison industry programs are required to carry workers' compensation insurance for any inmates working in such a program.</p> <p>Public entities are authorized to select one workers' compensation insurance method in order to satisfy the requirements of the PIECP. The bill specifies that workers' compensation benefits for an injury or occupational disease arising from an inmate's participation in a PIECP-certified program will not be suspended for the period of time during which the inmate is incarcerated.</p>	<p>Short Title: Inmate Work Program Workers' Compensation</p> <p>Status: Signed into Law</p> <p>Appropriations:</p> <p>The bill is assessed as having no fiscal impact. Participation in the PIECP is limited to a total of 50 jurisdictions nationwide. Currently, 37 state and 4 county-based certified correctional industry programs (including the state of Colorado) operate in the United States. Only nine additional programs may be certified by the Bureau of Justice Assistance and it is unlikely that any of those will be housed in Colorado city or county jails. If that were to happen, the city or county where the program was housed would be required to provide workers' compensation coverage for all inmates employed by the program. Such coverage would increase costs for the local government, depending on the total number of jail inmates employed.</p>
<p>Bill Number: House Bill 10-1247</p> <p>Sponsors: <i>Representative Gagliardi</i> <i>Senator M. Carroll</i></p> <p>The act continues the Workers' Compensation Classification Appeals Board until July 1, 2021, as recommended by the 2009 Sunset Review. Under current law, the board will sunset on July 1, 2010. The six-member board hears appeals from employers regarding either their classifications or experience modification factors, both of which assist in determining the premium employers pay for workers' compensation insurance coverage. Board decisions are considered final actions for administrative purposes and may only be appealed to the Commissioner of Insurance. Administrative functions related to the board are performed by staff from the National Council on Compensation Insurance.</p>	<p>Short Title: Sunset Workers' Compensation Classification Appeals Board</p> <p>Status: Signed into Law</p> <p>Appropriations:</p> <p>The bill is assessed as having no fiscal impact. Because staff from the National Council on Compensation Insurance serve as the administrative liaison to the board, the state has no expenditures or staffing associated with the board.</p>

Summary of Workers' Compensation Bills, 2010 Session (as of July 16, 2010) (Cont.)

Postponed Indefinitely			
<p>Bill Number: House Bill 10-1012</p> <p>Sponsors: <i>Representative Pace</i> <i>Senator M. Carroll</i></p>	<p>Short Title: Limit Surveillance Workers' Compensation Claims</p> <p>Status: Postponed Indefinitely</p>	<p>The bill, which was recommended by the Interim Committee to Study Issues Related to Pinnacol Assurance, would have allowed an insurer or employer to introduce evidence that was obtained through surveillance on an injured employee concerning the presence or absence of a medical condition only if certain conditions had been met. Those conditions included:</p> <ul style="list-style-type: none"> • the insurer or employer submitted the evidence to the treating physician prior to the hearing; • a reasonable basis to suspect fraud or misstatements concerning the claim had been made by the injured employee prior to surveillance; • the surveillance was not intrusive, intimidating, or harassing; and • the person who was conducting the surveillance did not misrepresent the insurer or employer when questioned by the employee. <p>The bill also instructed the insurer or employer to destroy all materials collected during surveillance no later than five years after the resolution of the claim, unless the materials were needed to resolve an ongoing claim of fraud.</p>	<p>Appropriations:</p> <p>The bill was assessed as having no fiscal impact. The Division of Workers' Compensation in the Department of Labor and Employment conducts administrative hearings on claims-related issues. Issues regarding surveillance are already discussed within the scope of the administrative hearings or upon meeting or submitting information to the appropriate parties prior to the administrative hearings. The provisions of the bill were not expected to significantly affect the number or length of hearings.</p>
<p>Bill Number: House Bill 10-1356</p> <p>Sponsors: <i>Representative Ryden</i> <i>Senator Tochtrop</i></p>	<p>Short Title: Workers' Compensation Policyholder Protection Act of 2010</p> <p>Status: Postponed Indefinitely</p>	<p>The bill, which was recommended by the Interim Committee to Study Issues Related to Pinnacol Assurance, would have required Pinnacol Assurance to distribute surplus holdings in excess of 800 percent of risk based capital (RBC) to policyholders. RBC is the amount of required capital that an insurance company must maintain based on the inherent risks in the insurer's operations and is how the Commissioner of Insurance measures solvency.</p> <p>The bill also would have directed the commissioner to choose the lowest workers' compensation pure premium rate recommended either by a rating organization or by the independent actuary employed by the commissioner. The commissioner would have been permitted to choose a different rate, but would have had to justify the decision in the final agency order. Prior to a public hearing on rates, the commissioner would have posted the recommendations and supporting materials on the Division of Insurance website.</p>	<p>Appropriations:</p> <p>Although no state fiscal impact was anticipated, the bill might have increased dividends distributed by Pinnacol Assurance to its policyholders. The board of Pinnacol Assurance has directed that \$347 million in dividends be distributed to policyholders over the past 5 years. The amount distributed under this bill would have depended on the company's risk based capital (RBC) calculation, which is based on a number of factors including investments, loss reserves, and premiums. Because the RBC cannot be determined in advance, neither can the amount in excess of 800 percent. The fiscal note for the bill assumed that the amount above 800 percent that would have automatically been distributed was more than the amount that the board would authorize under current law.</p>