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Colorado
Workers' Compensation Act

COLORADO
Department of
Labor and Employment

Division of Workers' Compensation

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TITLE 8
LABOR AND INDUSTRY

ARTICLE 14.5
Cost Containment

8-14.5-101. Short title. This article shall be known and may be cited as the "Workers' Compensation Cost Containment Act".

8-14.5-102. Legislative declaration. The general assembly hereby finds and declares that any adjustments to premiums for workers' compensation insurance be granted on the basis of equity, rate adequacy, fairness, and insurer compliance with Colorado insurance rating laws. The general assembly further finds and declares that notwithstanding the granting of different rates to insureds for their experience modification, participation in return-to-work programs, and premium volume discounts not exceeding fifteen percent, any other premium adjustments should be principally weighted in a manner primarily encouraging the adoption and successful implementation by insureds of effective workplace safety programs mainly encompassing risk management and medical cost containment procedures.

8-14.5-103. Definitions. As used in this article, unless the context otherwise requires:

(1) "Approved program" means a cost containment or risk management program approved by the board.

(2) "Board" means the workers' compensation cost containment board established pursuant to section 8-14.5-104.

(3) "Certified program" means a cost containment or risk management program which has been implemented for a period of at least one year and certified by the board.

(3.5) "Commissioner" means the insurance commissioner, appointed pursuant to section 10-1-104, C.R.S.

(4) "Department" means the department of labor and employment.

(5) "Director" means the director of the division.

(6) "Division" means the division of workers' compensation in the department of labor and employment.

(7) "High risk employer" means any employer classified in the upper ten percent of the insurance rate schedule in the Colorado workers' compensation insurance system.

(8) "Managed care" shall have the meaning set forth in section 8-42-101 (3.6) (p) (I) (B).

(9) "Workplace safety program" means those programs offered by insurance carriers authorized to do business in this state for purposes of workers' compensation insurance policies and implemented by employers to promote cost containment and risk management of workplace safety hazards.

8-14.5-104. Creation of board. (1) There is hereby created in the division the workers' compensation cost containment board, to be composed of seven members: The commissioner of insurance, the chief executive officer of Pinnacol Assurance, and five members appointed by the governor and confirmed by the senate. Appointed members of the board shall be chosen among the following: Employers or their designated representatives engaged in businesses having workers' compensation insurance rates in the upper five percent of the rate schedule, actuaries or executives with risk management experience in the insurance industry, or employers who have demonstrated good risk management experience with respect to their workers' compensation insurance.

(2) The board shall exercise its powers and perform its functions under the department and the director of the division as if the same were transferred to the department by a **type 2** transfer, as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S.

(3) The appointed members of the board shall serve for terms of three years and may be reappointed; except that, of the members first appointed, two shall serve for terms of three years; two shall serve for terms of two years, and one shall serve for a term of one year. The chief executive officer of Pinnacol Assurance and the commissioner of insurance shall serve continuously.

(4) Members of the board shall receive no compensation but shall be reimbursed for actual and necessary traveling and subsistence expenses incurred in the performance of their official duties as members of the board.

8-14.5-105. Powers and duties of board. (1) The board shall have the following powers and duties:

(a) To establish model cost containment and risk management programs for selected classifications in the upper ten percent of the insurance rate schedule under the Colorado workers' compensation insurance program;

(b) To adopt standards for the approval of particular cost containment and risk management programs submitted by community, technical, or junior colleges or by employers in those selected high risk classifications;

(c) To receive, evaluate, and certify cost containment and risk management programs implemented by community, technical, or junior colleges or by employers in those selected high risk classifications for a period of at least one year;

(d) To promote cost containment and risk management training by community, technical, or junior colleges, employers, groups of employers, or trade associations;

(e) To review annually the classifications in the upper ten percent of the insurance rate schedule under the Colorado workers' compensation insurance program for inclusion in the cost containment program;

(f) To set the qualifications for technical personnel to assist community, technical, and junior colleges and employers in establishing risk management and cost containment programs;

(g) To disseminate information regarding the types of workers' compensation insurance policies available;

(h) To adopt such rules and regulations as may be necessary to carry out the purposes of this article.

8-14.5-106. Duties of director. (1) The director shall have the following powers and duties:

(a) To provide technical advice to the board;

(b) To provide technical advice and assistance to community, technical, or junior colleges, employers, groups of employers, or trade associations with respect to the development and implementation of cost containment and risk management programs;

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(c) To publish, as may be appropriate, documents relating to the development and implementation of cost containment and risk management programs;

(d) To maintain records of all proceedings of the board, including the evaluation of proposals for cost containment and risk management programs submitted by employers and by community, technical, or junior colleges;

(e) To maintain records of all employers and community, technical, or junior colleges with certified programs.

8-14.5-107. Cost containment certification. Any employer complying with an approved program for at least one year may present evidence of such compliance to the board and petition the board to certify its program. The names of such certified employers shall be made available on a periodic basis to bona fide insurance carriers on file with the division.

8-14.5-107.5. Workplace safety programs - study by commissioner. (1) The commissioner shall undertake a full study of current workplace safety, risk management, and cost containment programs offered by insurers, including Pinnacol Assurance, a review and analysis of the various incentives used by insurers to obtain policyholder participation, including any premium adjustment programs in use, and shall evaluate other possible programs and incentives that could be used by insurers to expand workplace safety programs and reward policyholder participation. The commissioner shall consult with the Colorado department of labor and employment in conducting the study. Such study, review and analysis, and evaluation shall include but not be limited to the following:

(a) Whether or not by a date certain, all insurers including Pinnacol Assurance issuing workers' compensation insurance policies in this state shall offer all insureds in the ten most populous counties a managed care plan featuring a designated medical provider;

(b) Whether or not by a date certain, if it is in the best interest of employers and employees, all insurers including Pinnacol Assurance issuing workers' compensation insurance policies in this state shall offer to all or some selected classes of insureds some type of basic workplace safety program;

(c) Whether or not the board or the commissioner should continue providing certification of workplace safety programs or whether such certification should be provided by insurers for insureds;

(d) Whether or not by July 1, 1995, the commissioner should promulgate regulations concerning the granting of premium adjustments for an insured's participation and implementation of a basic workplace safety program or managed care program;

(e) The participation by insureds in existing workplace safety programs offered by insurers and the methods by which insurers offer such programs;

(f) Insurer compliance with deductible provisions;

(g) Insurer compliance with the provisions of part 4 of article 4 of title 10, C.R.S., regarding the current design and use of any premium adjustment, rate deviation, premium discount, retro-rate, scheduled adjustment, or other type of financial plan and their effect on the fairness and reasonableness of rates for those insureds not qualifying for experience or schedule rating;

(h) The efficacy of reducing the premium dollar volume needed for an insured to become experience rated;

(i) A cost benefit analysis of implementation of workplace safety programs.

(2) (a) Repealed.

(b) Insurers shall make all necessary information and records pertaining to workplace safety programs of such insurers available to the commissioner in carrying out the study required by subsection (1) of this section. The reasonable costs of such study shall be borne by insurers, including Pinnacol Assurance, as determined by the commissioner based on the total cost of such study.

8-14.5-108. Cost containment fund - creation. All moneys collected for cost containment pursuant to section 8-14.5-109 or 8-44-112 (1) (b) (III) shall be transmitted to the state treasurer who shall credit the same to the cost containment fund, which fund is hereby created. All moneys credited to said fund and all interest earned thereon shall be subject to appropriation by the general assembly to pay the direct and indirect costs of the cost containment program, and said moneys shall remain in such fund for such purposes and shall not revert to the general fund or any other fund.

8-14.5-109. Grants-in-aid - cooperative agreements. The division may receive grants-in-aid from any agency of the United States and may cooperate and enter into agreements with any agency of the United States, any agency of any other state, and any other agency of this state or its political subdivisions, for the purpose of carrying out the provisions of this article.

8-14.5-110. Repeal of article. (Repealed)

ARTICLE 40
General Provisions

PART 1
SHORT TITLE - LEGISLATIVE DECLARATION

8-40-101. Short title. Articles 40 to 47 of this title shall be known and may be cited as the "Workers' Compensation Act of Colorado".

8-40-102. Legislative declaration. (1) It is the intent of the general assembly that the "Workers' Compensation Act of Colorado" be interpreted so as to assure the quick and efficient delivery of disability and medical benefits to injured workers at a reasonable cost to employers, without the necessity of any litigation, recognizing that the workers' compensation system in Colorado is based on a mutual renunciation of common law rights and defenses by employers and employees alike.

(2) The general assembly hereby finds that the determination of whether an individual is an employee for purposes of the "Workers' Compensation Act of Colorado" is subject to a great deal of speculation and litigation. It is the intent of the general assembly to provide an easily ascertainable standard for determining whether an individual is an employee. In order to further this objective, the test for determining whether an individual is an employee for the purposes of the "Workers' Compensation Act of Colorado" shall be based on the nine criteria found in section 8-40-202 (2) (b) (II) which shall supersede the common law. The fact

that an individual performs services exclusively or primarily for another shall not be conclusive evidence that the individual is an employee.

PART 2
DEFINITIONS

8-40-201. Definitions. As used in articles 40 to 47 of this title, unless the context otherwise requires:

(1) "Accident" means an unforeseen event occurring without the will or design of the person whose mere act causes it; an unexpected, unusual, or undesigned occurrence; or the effect of an unknown cause or, the cause, being known, an unprecedented consequence of it.

(2) "Accident", "injury", or "injuries" includes disability or death resulting from accident or occupational disease as defined in subsection (14) of this section.

(2.5) Repealed.

(3) "Board" means the board of directors of Pinnacol Assurance.

(3.4) "Chief executive officer" means the chief executive officer of Pinnacol Assurance.

(3.5) Repealed.

(3.6) "Claimant" means a person who either:

(a) Receives benefits under articles 40 to 47 of this title; or

(b) Has or asserts, in any administrative or judicial forum or in any communication with the director, the division, or an employer, insurer, or self-insured employer, a right to receive such benefits.

(4) "Division" means the division of workers' compensation in the department of labor and employment.

(5) "Director" means the director of the division of workers' compensation.

(6) "Employee" has the meaning set forth in section 8-40-202 and the scope of such term is set forth in section 8-40-301.

(7) "Employer" has the meaning set forth in section 8-40-203 and the scope of such term is set forth in section 8-40-302.

(8) "Employment" means any trade, occupation, job, position, or process of manufacture or any method of carrying on any trade, occupation, job, position, or process of manufacture in which any person may be engaged; except that it shall not include participation in a ridesharing arrangement, as defined in section 39-22-509 (1) (a) (II), C.R.S., and participation in such a ridesharing arrangement shall not affect the wages paid to or hours or conditions of employment of an employee; nor shall it include the employee's participation in a voluntary recreational activity or program, regardless of whether the employer promoted, sponsored, or supported the recreational activity or program.

(9) "Examiner" means one of the industrial claim appeals examiners appointed to the industrial claim appeals panel in the industrial claim appeals office.

(10) "Executive director" means the executive director of the department of labor and employment.

(11) (Deleted by amendment, L. 2002, p. 1882, § 27, effective July 1, 2002.)

(11.5) "Maximum medical improvement" means a point in time when any medically determinable physical or mental impairment as a result of injury has become stable and when no further treatment is reasonably expected to improve the condition. The requirement for future medical maintenance which will not significantly improve the condition or the possibility of improvement or deterioration resulting from the passage of time shall not affect a finding of maximum medical improvement. The possibility of improvement or deterioration resulting from the passage of time alone shall not affect a finding of maximum medical improvement.

(12) "Mediation" means a process through which parties involved in a dispute concerning matters arising under articles 40 to 47 of this title meet with a mediator to discuss such matter or matters, defining and articulating the issues and their positions on such issues, with a goal of resolving such dispute or disputes.

(13) "Mediator" means an individual who is trained to assist disputants in reaching a mutually acceptable resolution of their disputes through the identification and evaluation of alternatives.

(13.5) Repealed.

(14) "Occupational disease" means a disease which results directly from the employment or the conditions under which work was performed, which can be seen to have followed as a natural incident of the work and as a result of the exposure occasioned by the nature of the employment, and which can be fairly traced to the employment as a proximate cause and which does not come from a hazard to which the worker would have been equally exposed outside of the employment.

(15) "Order" means and includes any decision, finding and award, direction, rule, regulation, or other determination arrived at by the director or an administrative law judge.

(15.5) "Overpayment" means money received by a claimant that exceeds the amount that should have been paid, or which the claimant was not entitled to receive, or which results in duplicate benefits because of offsets that reduce disability or death benefits payable under said articles. For an overpayment to result, it is not necessary that the overpayment exist at the time the claimant received disability or death benefits under said articles.

(16) "Panel" means the industrial claim appeals panel that conducts administrative appellate review pursuant to articles 40 to 47 of this title.

(16.5) (a) "Permanent total disability" means the employee is unable to earn any wages in the same or other employment. Except as provided in paragraph (b) of this subsection (16.5), the burden of proof shall be on the employee to prove that the employee is unable to earn any wages in the same or other employment.

(b) Total loss of or total loss of use of both hands, or both arms, or both feet, or both legs, or both eyes, or any two thereof shall create a rebuttable presumption of permanent total disability. "Total loss of use" shall be a medical determination, based upon objective findings, made by an independent medical examiner who is a level II accredited physician in the appropriate field.

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(17) "Place of employment" means every place whether indoors, outdoors, or underground and the premises, workplaces, works, and plants appertaining thereto or used in connection therewith where either temporarily or permanently any industry, trade, or business is carried on; or where any process or operation directly or indirectly relating to any industry, trade, or business is carried on; or where any person is directly or indirectly employed by another for direct or indirect gain or profit.

(18) "State" includes any state or territory of the United States, the District of Columbia, and any province of Canada.

(18.5) "Temporary help contracting firm" means any person who is in the business of employing individuals and, for compensation from a third party, providing those individuals to perform work for the third party, under the supervision of the third party.

(19) (a) "Wages" shall be construed to mean the money rate at which the services rendered are recompensed under the contract of hire in force at the time of the injury, either express or implied.

(b) The term "wages" includes the amount of the employee's cost of continuing the employer's group health insurance plan and, upon termination of the continuation, the employee's cost of conversion to a similar or lesser insurance plan, and gratuities reported to the federal internal revenue service by or for the worker for purposes of filing federal income tax returns and the reasonable value of board, rent, housing, and lodging received from the employer, the reasonable value of which shall be fixed and determined from the facts by the division in each particular case, but does not include any similar advantage or fringe benefit not specifically enumerated in this subsection (19). If, after the injury, the employer continues to pay any advantage or fringe benefit specifically enumerated in this subsection (19), including the cost of health insurance coverage or the cost of the conversion of health insurance coverage, that advantage or benefit shall not be included in the determination of the employee's wages so long as the employer continues to make payment. Medicaid and other indigent health care programs are not health insurance plans for the purposes of this section.

(c) No per diem payment shall be considered wages under this subsection (19) unless it is also considered wages for federal income tax purposes.

8-40-202. Employee. (1) "Employee" means:

(a) (I) (A) Every person in the service of the state, or of any county, city, town, or irrigation, drainage, or school district or any other taxing district therein, or of any public institution or administrative board thereof under any appointment or contract of hire, express or implied; and every elective official of the state, or of any county, city, town, or irrigation, drainage, or school district or any other taxing district therein, or of any public institution or administrative board thereof; and every member of the military forces of the state of Colorado while engaged in active service on behalf of the state under orders from competent authority. Police officers and firefighters who are regularly employed shall be deemed employees within the meaning of this paragraph (a), as shall also sheriffs and deputy sheriffs, regularly employed, and all persons called to serve upon any posse in pursuance of the provisions of section 30-10-516, C.R.S., during the period of their service upon such posse, and all members of volunteer fire departments, including any person receiving a retirement pension under section 31-30-1122, C.R.S., who serves as an active volunteer firefighter of a fire department subsequent to retirement pursuant to section 31-30-1132, C.R.S., or any person ordered by the chief or a designee of the chief's at the scene of an emergency or during the period of an emergency to become a member of that department for the duration of an emergency, and to perform the duties of a firefighter, and only if the person who is so ordered reports any claim within ten days of the cessation of the emergency, volunteer rescue teams or groups, volunteer disaster teams, volunteer ambulance teams or groups, and volunteer search teams in any county, city, town, municipality, or legally organized fire protection district or ambulance district in the state of Colorado, and all members of the civil air patrol, Colorado wing, while said persons are actually performing duties as volunteer firefighters or as members of such volunteer rescue teams or groups, volunteer disaster teams, volunteer ambulance teams or groups, or volunteer search teams or as members of the civil air patrol, Colorado wing, and while engaged in organized drills, practice, or training necessary or proper for the performance of such duties. Members of volunteer police departments, volunteer police reserves, and volunteer police teams or groups in any county, city, town, or municipality, while actually performing duties as volunteer police officers, may be deemed employees within the meaning of this paragraph (a) at the option of the governing body of such county or municipality.

(B) Notwithstanding the provisions of sub-subparagraph (A) of this subparagraph (I), any elected or appointed official of any county, city, town, or irrigation, drainage, or school district or taxing district who receives no compensation for service rendered as such an official, other than reimbursement of actual expenses, may be deemed not to be an employee within the meaning of this paragraph (a) at the option of the governing body of such county, city, town, or district. The option to exclude such officials as employees within the meaning of this paragraph (a) may be exercised as to any category of officials or as to any combination of categories of officials. Any such option may be exercised for any policy year by the filing of a statement with the division not less than forty-five days before the start of the policy year for which the option is to be exercised. If such a statement is in effect as to any category of such uncompensated officials, no official in said category shall be deemed an employee within the meaning of this paragraph (a). The governing body shall notify each official of such action promptly at the time such election to exclude is exercised.

(II) The rate of compensation of such persons accidentally injured, or, if killed, the rate of compensation for their dependents, while serving upon such posse or as volunteer firefighters or as members of such volunteer police departments, volunteer police reserves, or volunteer police teams or groups or as members of such volunteer rescue teams or groups, volunteer disaster teams, volunteer ambulance teams or groups, or volunteer search teams or as members of the civil air patrol, Colorado wing, and of every nonsalaried person in the service of the state, or of any county, city, town,

or irrigation, drainage, or school district therein, or of any public institution or administrative board thereof under any appointment or contract of hire, express or implied, including nonsalaried elective officials of the state, and of all members of the military forces of the state of Colorado shall be at the maximum rate provided by articles 40 to 47 of this title; except that this subparagraph (II) shall apply to an official described in sub-subparagraph (B) of subparagraph (I) of this paragraph (a) only if no statement exercising the option to exclude such official as an employee within the meaning of this paragraph (a) is in effect.

(III) Any person who, as part of a rehabilitation program of the social services department of any county or city and county, is placed with a private employer for the purpose of training or learning trades or occupations shall be deemed while so engaged to be an employee of such private employer. Any person who receives a work experience assignment to a position in any department or agency of any county or municipality, in any school district, in the office of any state agency or political subdivision thereof, or in any private for profit or any nonprofit agency pursuant to the provisions of part 7 of article 2 of title 26, C.R.S., shall be deemed while so assigned to be an employee of the respective department, agency, office, political subdivision, private for profit or nonprofit agency, or school district to which said person is assigned or, if so negotiated between the county and the entity to which the person is assigned, of the county arranging the work experience assignment. Any person who receives a work experience assignment to a position in any federal office or agency pursuant to part 7 of article 2 of title 26, C.R.S., shall be deemed while so assigned to be an employee of the county arranging the work experience assignment. The rate of compensation for such persons if accidentally injured or, if killed, for their dependents shall be based upon the wages normally paid in the community in which they reside for the type of work in which they are engaged at the time of such injury or death; except that, if any such person is a minor, compensation to such minor for permanent disability, if any, or death benefits to such minor's dependents shall be paid at the maximum rate of compensation payable under articles 40 to 47 of this title at the time of the determination of such disability or of such death.

(IV) Except as provided in section 8-40-301 (3) and section 8-40-302 (7) (a), any person who may at any time be receiving training under any work or job training or rehabilitation program sponsored by any department, board, commission, or institution of the state of Colorado or of any county, city and county, city, town, school district, or private or parochial school or college and who, as part of any such work or job training or rehabilitation program of any department, board, commission, or institution of the state of Colorado or of any county, city and county, city, town, school district, or private or parochial school or college, is placed with any employer for the purpose of training or learning trades or occupations shall be deemed while so engaged to be an employee of the respective department, board, commission, or institution of the state of Colorado or of the county, city and county, city, town, school district, or private or parochial school or college sponsoring such training or rehabilitation program unless the following conditions are met, in which case the placed person shall be deemed an employee of the employer with whom he or she is placed:

(A) The sponsoring entity and the employer agree that the employer shall cover the placed person under the employer's workers' compensation insurance;

(B) The employer does in fact insure and keep insured its liability for workers' compensation as provided in articles 40 to 47 of this title and does in fact cover the placed person under such insurance; and

(C) With respect to agreements between sponsoring entities and employers entered into after April 1, 1991, the employer has been provided with notice of the provisions of this subparagraph (IV) and of subparagraphs (V) and (VI) of this paragraph (a).

(V) In the event a person placed with an employer is deemed an employee of the employer pursuant to subparagraph (IV) of this paragraph (a), the sponsoring entity shall not be subject to any liability for or on account of the death of or personal injury to the person so placed. In the event such person is deemed an employee of the sponsoring entity pursuant to the said subparagraph (IV), the employer shall not be subject to any liability for or on account of the death of or personal injury to the person and shall not be required to carry workers' compensation insurance or to pay premiums for workers' compensation insurance with respect to the person.

(VI) The rate of compensation for a person placed pursuant to subparagraph (IV) of this paragraph (a) if accidentally injured or, if killed, for dependents of such person shall be based upon the wages normally paid in the community in which such person resides or in the community where said work or job training or rehabilitation program is being conducted for the type of work in which the person is engaged at the time of such injury or death, as determined by the director; except that, if any such person is a minor, compensation for such minor for permanent disability, if any, or death benefits to such minor's dependents shall be paid at the maximum rate of compensation payable under articles 40 to 47 of this title at the time of the determination of such disability or death.

(b) Every person in the service of any person, association of persons, firm, or private corporation, including any public service corporation, personal representative, assignee, trustee, or receiver, under any contract of hire, express or implied, including aliens and also including minors, whether lawfully or unlawfully employed, who for the purpose of articles 40 to 47 of this title are considered the same and have the same power of contracting with respect to their employment as adult employees, but not including any persons who are expressly excluded from articles 40 to 47 of this title or whose employment is but casual and not in the usual course of the trade, business, profession, or occupation of the employer. The following persons shall also be deemed employees and entitled to benefits at the maximum rate provided by said articles, and, in the event of injury or death, their dependents shall likewise be entitled to such maximum benefits, if and when the association, team, group, or organization to which they belong has elected to become subject to articles 40 to 47 of this title and has insured its liability under said articles: All members of privately organized volunteer fire departments, volunteer rescue teams

or groups, volunteer disaster teams, volunteer ambulance teams or groups, and volunteer search teams and organizations while performing their respective duties as members of such privately organized volunteer fire departments, volunteer rescue teams or groups, volunteer disaster teams, volunteer ambulance teams or groups, and volunteer search teams and organizations and while engaged in organized drills, practice, or training necessary or proper for the performance of their respective duties.

(2) (a) Notwithstanding any other provision of this section, any individual who performs services for pay for another shall be deemed to be an employee, irrespective of whether the common-law relationship of master and servant exists, unless such individual is free from control and direction in the performance of the service, both under the contract for performance of service and in fact and such individual is customarily engaged in an independent trade, occupation, profession, or business related to the service performed. For purposes of this section, the degree of control exercised by the person for whom the service is performed over the performance of the service or over the individual performing the service shall not be considered if such control is exercised pursuant to the requirements of any state or federal statute or regulation.

(b) (I) To prove that an individual is engaged in an independent trade, occupation, profession, or business and is free from control and direction in the performance of the service, the individual and the person for whom services are performed may show by a preponderance of the evidence that the conditions set forth in paragraph (a) of this subsection (2) have been satisfied. The parties may also prove independence through a written document.

(II) To prove independence it must be shown that the person for whom services are performed does not:

(A) Require the individual to work exclusively for the person for whom services are performed; except that the individual may choose to work exclusively for such person for a finite period of time specified in the document;

(B) Establish a quality standard for the individual; except that the person may provide plans and specifications regarding the work but cannot oversee the actual work or instruct the individual as to how the work will be performed;

(C) Pay a salary or at an hourly rate instead of at a fixed or contract rate;

(D) Terminate the work of the service provider during the contract period unless such service provider violates the terms of the contract or fails to produce a result that meets the specifications of the contract;

(E) Provide more than minimal training for the individual;

(F) Provide tools or benefits to the individual; except that materials and equipment may be supplied;

(G) Dictate the time of performance; except that a completion schedule and a range of negotiated and mutually agreeable work hours may be established;

(H) Pay the service provider personally instead of making checks payable to the trade or business name of such service provider; and

(I) Combine the business operations of the person for whom service is provided in any way with the business operations of the service provider instead of maintaining all such operations separately and distinctly.

(III) A document may satisfy the requirements of this paragraph (b) if such document demonstrates by a preponderance of the evidence the existence of the factors listed in subparagraph (II) of this paragraph (b) as are appropriate to the parties' situation. The existence of any one of these factors is not conclusive evidence that the individual is an employee.

(IV) If the parties use a written document pursuant to this paragraph (b), such document must be signed by both parties and may be the contract for performance of service or a separate document. Such document shall create a rebuttable presumption of an independent contractor relationship between the parties where such document contains a disclosure, in type which is larger than the other provisions in the document or in bold-faced or underlined type, that the independent contractor is not entitled to workers' compensation benefits and that the independent contractor is obligated to pay federal and state income tax on any moneys earned pursuant to the contract relationship. All signatures on any such document must be duly notarized.

(V) If the parties use a written document pursuant to this paragraph (b) and one of the parties is a professional whose license to practice a particular occupation under the laws of the state of Colorado requires such professional to exercise a supervisory function with regard to an entire project such supervisory role shall not affect such professional's status as part of the independent contractor relationship.

(c) Nothing in this section shall be construed to conflict with section 8-40-301 or to relieve any obligations imposed pursuant thereto.

(d) Nothing in this section shall be construed to remove the claimant's burden of proving the existence of an employer-employee relationship for purposes of receiving benefits pursuant to articles 40 to 47 of this title.

(e) (I) Notwithstanding any other provision of this section, a written agreement between a nonprofit youth sports organization and a coach, specifying that the coach is an independent contractor and not an employee of the nonprofit youth sports organization and otherwise satisfying the requirements of this paragraph (e), shall be conclusive evidence that the relationship between the nonprofit youth sports organization and the coach is an independent contractor relationship rather than an employment relationship and that the nonprofit youth sports organization is not obligated to secure compensation for the coach in accordance with the "Workers' Compensation Act of Colorado".

(II) The written agreement shall contain a disclosure, in bold-faced, underlined, or large type, in a conspicuous location, and acknowledged by the parties by signature, initials, or other means demonstrating that the parties have read and understand the disclosure, indicating that the coach:

(A) Is an independent contractor and not an employee of the nonprofit youth sports organization;

(B) Is not entitled to workers' compensation benefits in connection with his or her contract with the nonprofit youth sports organization; and

(C) Is obligated to pay federal and state income tax on any moneys paid pursuant to the contract for coaching services and that the nonprofit youth sports organization will not withhold any amounts from the coach for purposes of satisfying the coach's income tax liability.

(III) A written agreement between a nonprofit youth sports organization and a coach in accordance with this paragraph (e) shall not be conclusive evidence of an independent contractor relationship for purposes of any civil action instituted by a third party.

(IV) As used in this paragraph (e), "nonprofit youth sports organization" means an organization that is exempt from federal taxation under section 501 (c) (3) of the federal "Internal Revenue Code of 1986", as amended, and is primarily engaged in conducting organized sports programs for persons under twenty-one years of age.

(3) Notwithstanding any other provision of this section, "employee" includes a person who participates in a property tax work-off program established pursuant to article 3.7 of title 39, C.R.S.

8-40-203. Employer. (1) "Employer" means:

(a) The state, and every county, city, town, and irrigation, drainage, and school district and all other taxing districts therein, and all public institutions and administrative boards thereof without regard to the number of persons in the service of any such public employer. All such public employers shall be at all times subject to the compensation provisions of articles 40 to 47 of this title.

(b) Every person, association of persons, firm, and private corporation, including any public service corporation, personal representative, assignee, trustee, or receiver, who has one or more persons engaged in the same business or employment, except as otherwise expressly provided in articles 40 to 47 of this title, in service under any contract of hire, express or implied.

(c) Repealed.

PART 3
SCOPE AND APPLICABILITY

8-40-301. Scope of term "employee". (1) "Employee" excludes any person employed by a passenger tramway area operator, as defined in section 25-5-702 (1), C.R.S., or other employer, while participating in recreational activity, who at such time is relieved of and is not performing any duties of employment, regardless of whether such person is utilizing, by discount or otherwise, a pass, ticket, license, permit, or other device as an emolument of employment.

(2) "Employee" excludes any person who is a licensed real estate sales agent or a licensed real estate broker associated with another real estate broker if:

(a) Substantially all of the sales agent's or associated broker's remuneration from real estate brokerage is derived from real estate commissions; and

(b) The services of the sales agent or associated broker are performed under a written contract specifying that the sales agent or associated broker is an independent contractor; and

(c) Such contract provides that the sales agent or associated broker shall not be treated as an employee for federal income tax purposes.

(3) (a) Notwithstanding the provisions of section 8-40-202 (1) (a) (IV), "employee" excludes any person who is confined to a city or county jail or any department of corrections facility as an inmate and who, as a part of such confinement, is working, performing services, or participating in a training or rehabilitation or work release program; except that "employee" includes an inmate of a 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 has been certified by the federal prison industry enhancement certification program pursuant to the federal "Justice System Improvement Act of 1979", 18 U.S.C. sec. 1761 (c). For the purposes of articles 40 to 47 of this title, an inmate participating in a program certified by the federal prison industry enhancement certification program is an employee of that certified program, which certified program shall carry workers' compensation insurance pursuant to articles 40 to 47 of this title. No inmate participating in a certified program shall be deemed to be an employee of the state, city, county, or city and county that owns, operates, or contracts for the operation of the facility or jail in which the inmate is incarcerated.

(b) The provisions of paragraph (a) of this subsection (3) do not apply to an inmate who is working for a private employer under a contract of hire wherein the private employer is required to maintain workers' compensation insurance for its employees pursuant to articles 40 to 47 of this title. Such inmate shall be an employee of such private employer for purposes of articles 40 to 47 of this title.

(c) The provisions of paragraph (a) of this subsection (3) do not apply to an inmate working for a joint venture established pursuant to the provisions of section 17-24-119 or 17-24-121, C.R.S. Such inmate shall be an employee of such joint venture for purposes of articles 40 to 47 of this title.

(d) The provisions of paragraph (a) of this subsection (3) do not apply to an inmate working for a private person or entity pursuant to the provisions of section 17-24-122, C.R.S. Such inmate shall be an employee of such private person or entity for purposes of articles 40 to 47 of this title.

(4) "Employee" excludes any person who volunteers time or services for a ski area operator, as defined in section 33-44-103 (7), C.R.S., or for a ski area sponsored program or activity, notwithstanding the fact that such person may receive noncash remuneration for such person or such person's designee in conjunction with such person's status as a volunteer. No contract of hire, express or implied, is created between any volunteer pursuant to this section and a ski area operator. Notice shall be given to such volunteer in writing that the volunteering of time or services under this subsection (4) does not constitute employment for purposes of the "Workers' Compensation Act of Colorado" and that such person is not entitled to benefits pursuant to said act.

(5) "Employee" excludes any person who is working as a driver under a lease agreement pursuant to section 40-11.5-102, C.R.S., with a common carrier or contract carrier.

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(6) Any person working as a driver with a common carrier or contract carrier as described in this section shall be eligible for and shall be offered workers' compensation insurance coverage by Pinnacol Assurance or similar coverage consistent with the requirements set forth in section 40-11.5-102 (5), C.R.S.

(7) Persons who provide host home services as part of residential services and supports, as described in section 25.5-10-206 (1) (e), C.R.S., for an eligible person, as defined in section 25.5-6-403 (2) (a), C.R.S., pursuant to the "Home- and Community-based Services for Persons with Developmental Disabilities Act", part 4 of article 6 of title 25.5, C.R.S., and pursuant to a contract with a community-centered board designated pursuant to section 25.5-10-209, C.R.S., or a contract with a service agency as defined in section 25.5-10-202, C.R.S., shall not be considered employees of the community-centered board or the service agency.

(8) For the purposes of articles 40 to 47 of this title, "employee" excludes any person who performs services for more than one employer at a race meet as defined by section 12-60-102 (22), C.R.S., or at a horse track as defined by section 12-60-102 (11), C.R.S.

(9) Notwithstanding any other provision of this section, "employee" includes a person who participates in a property tax work-off program established pursuant to article 3.7 of title 39, C.R.S.

8-40-302. Scope of term "employer".

(1) Repealed.

(2) Articles 40 to 47 of this title are not intended to apply to employees of eleemosynary, charitable, fraternal, religious, or social employers who are elected or appointed to serve in an advisory capacity and receive an annual salary or an amount not in excess of seven hundred fifty dollars and are not otherwise subject to the "Workers' Compensation Act of Colorado".

(3) Articles 40 to 47 of this title are not intended to apply to employers of casual farm and ranch labor or employers of persons who do casual maintenance, repair, remodeling, yard, lawn, tree, or shrub planting or trimming, or similar work about the place of business, trade, or profession of the employer if such employers have no other employees subject to said articles 40 to 47, if such employments are casual and are not within the course of the trade, business, or profession of said employers, if the amounts expended for wages paid by the employers to casual persons employed to do maintenance, repair, remodeling, yard, lawn, tree, or shrub planting or trimming, or similar work about the place of business, trade, or profession of the employer do not exceed the sum of two thousand dollars for any calendar year, and if the amounts expended for wages by the employer of casual farm and ranch labor do not exceed the sum of two thousand dollars for any calendar year.

(4) Articles 40 to 47 of this title are not intended to apply to employers of persons who do domestic work or maintenance, repair, remodeling, yard, lawn, tree, or shrub planting or trimming, or similar work about the private home of the employer if such employers have no other employees subject to said articles 40 to 47 and if such employments are not within the course of the trade, business, or profession of said employers. This exemption shall not apply to such employers if the persons who perform the work are regularly employed by such employers on a full-time basis. For purposes of this subsection (4), "full-time" means work performed for forty hours or more a week or on five days or more a week.

(5) (a) Any employer excluded under this section may elect to accept the provisions of articles 40 to 47 of this title by purchasing and keeping in force a policy of workers' compensation insurance covering said employees.

(b) Notwithstanding any other provision of articles 40 to 47 of this title, any working general partner or sole proprietor actively engaged in the business may elect to be included by endorsement as an employee of the insured and shall be entitled to elect coverage regardless of whether such working general partner or sole proprietor employs any other person under any contract of hire.

(6) Articles 40 to 47 of this title are intended to apply to officers of agricultural corporations; but effective July 1, 1977, any such agricultural corporation may elect to reject the provisions of articles 40 to 47 of this title for any or all of said officers.

(7) (a) Any employer, as defined in section 8-40-203, who enters into a bona fide cooperative education or student internship program sponsored by an educational institution for the purpose of providing on-the-job training for students shall be deemed an employer of such students for the purposes of workers' compensation and liability insurance pursuant to articles 40 to 47 of this title.

(b) If the student placed in an on-the-job training program does not receive any pay or remuneration from the employer, the educational institution sponsoring the student in the cooperative education or student internship program shall insure the student through the institution's workers' compensation and liability insurance or enter into negotiations with the employer for the purpose of arriving at a reasonable level of compensation to the employer for the employer's expense of providing workers' compensation and liability insurance while such student is participating in on-the-job training with said employer. This paragraph (b) shall not apply to a student teacher participating in a program authorized pursuant to article 62 of title 22, C.R.S.

(c) As used in this subsection (7), "cooperative education or student internship program" means a program sponsored by an educational institution in which a student is taught through a coordinated combination of specialized in-the-school instruction provided through an educational institution by qualified teachers and on-the-job training provided through a local business, agency, or organization or any governmental agency in cooperation with the educational institution.

ARTICLE 41
Coverage and Liability

PART 1
ABROGATION OF DEFENSE

8-41-101. Assumption of risk - negligence of employee or fellow servant. (1) In an action to recover damages for a personal injury sustained by an employee while engaged in the line of duty, or for death resulting from personal injuries so sustained, in which recovery is sought upon the ground of want of ordinary care of the employer, or of the officer, agent, or servant of the employer, it shall not be a defense:

(a) That the employee, either expressly or impliedly, assumed the risk of the hazard complained of as due to the employer's negligence;

(b) That the injury or death was caused, in whole or in part, by the want of ordinary care of a fellow servant;

(c) That the injury or death was caused, in whole or in part, by the want of ordinary care of the injured employee where such want of care was not willful.

8-41-102. Liability of employer complying. An employer who has complied with the provisions of articles 40 to 47 of this title, including the provisions relating to insurance, shall not be subject to the provisions of section 8-41-101; nor shall such employer or the insurance carrier, if any, insuring the employer's liability under said articles be subject to any other liability for the death of or personal injury to any employee, except as provided in said articles; and all causes of action, actions at law, suits in equity, proceedings, and statutory and common law rights and remedies for and on account of such death of or personal injury to any such employee and accruing to any person are abolished except as provided in said articles.

8-41-103. Availability of common-law defenses. If an employer has complied with the provisions of articles 40 to 47 of this title, including the provisions thereof relating to insurance, and an action is brought against such employer or such employer's insurance carrier to recover damages for personal injuries or death sustained by an employee who has elected not to come under said articles, such employer and such employer's insurance carrier shall have all the defenses to the action which they would have had if said articles and part 2 of article 2 of this title had not been enacted.

8-41-104. Acceptance as surrender of other remedies. An election under the provisions of section 8-40-302 (5) and in compliance with the provisions of articles 40 to 47 of this title, including the provisions for insurance, shall be construed to be a surrender by the employer, such employer's insurance carrier, and the employee of their rights to any method, form, or amount of compensation or determination thereof or to any cause of action, action at law, suit in equity, or statutory or common-law right, remedy, or proceeding for or on account of such personal injuries or death of such employee other than as provided in said articles, and shall be an acceptance of all the provisions of said articles, and shall bind the employee personally, and, for compensation for such employee's death, the employee's personal representatives, surviving spouse, and next of kin, as well as the employer, such employer's insurance carrier, and those conducting their business during bankruptcy or insolvency.

PART 2
COVERAGE

8-41-201. Not applicable to common carriers. The provisions of articles 40 to 47 of this title shall not apply to common carriers by railroad but shall apply to all other employers as defined in said articles engaged in intrastate or interstate commerce, or both, except those employers, other than the Colorado division of civil air patrol, for whom a rule of liability is established by the laws of the United States.

8-41-202. Rejection of coverage by corporate officers and others. (1) Notwithstanding any provisions of articles 40 to 47 of this title to the contrary, a corporate officer of a corporation or a member of a limited liability company may elect to reject the provisions of articles 40 to 47 of this title. If so elected, said corporate officer or member shall provide written notice on a form approved by the division through a rule promulgated by the director of such election to the worker's compensation insurer of the employing corporation or company, if any, by certified mail. If there is no workers' compensation insurance company, the notice shall be provided to the division by certified mail. Such notice shall become effective the day following receipt of said notice by the insurer or the division.

(2) A corporate officer's or member's election to reject the provisions of articles 40 to 47 of this title shall continue in effect so long as the corporation's or company's insurance policy is in effect or until said officer or member, by written notice to the insurer, revokes the election to reject said provisions.

(3) Nothing in this section shall be construed to limit the responsibility of corporations or limited liability companies to provide coverage for their employees as required under articles 40 to 47 of this title. An election to reject coverage pursuant to this section may not be made a condition of employment.

(4) For the purposes of this section:

(a) "Corporate officer" means the chairperson of the board, president, vice-president, secretary, or treasurer who is an owner of at least ten percent of the stock of the corporation and who controls, supervises, or manages the business affairs of the corporation, as attested to by the secretary of the corporation at the time of the election.

(b) "Member" means an owner of at least ten percent of the membership interest of the limited liability company at all times and who controls, supervises, or manages the business affairs of the limited liability company.

8-41-203. Negligence of stranger - remedies - subrogation - actions - compromise. (1) (a) If any employee entitled to compensation under articles 40 to 47 of this title is injured or killed by the negligence or wrong of another not in the same employ, such injured employee or, in case of death, such employee's dependents, may take compensation under said articles and may also pursue a remedy against the other person to recover any damages in excess of the compensation available under said articles.

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(b) The payment of compensation pursuant to articles 40 to 47 of this title shall operate as and be an assignment of the cause of action against such other person to Pinnacol Assurance, the medical disaster insurance fund, the major medical insurance fund, or the subsequent injury fund, if compensation is payable from said funds, and otherwise to the person, association, corporation, or insurance carrier liable for the payment of such compensation. Said insurance carrier shall not be entitled to recover any sum in excess of the amount of compensation for which said carrier is liable under said articles to the injured employee, but to that extent said carrier shall be subrogated to the rights of the injured employee against said third party causing the injury. If the injured employee proceeds against such other person, then Pinnacol Assurance, the medical disaster insurance fund, the major medical insurance fund, the subsequent injury fund, or such other person, association, corporation, or insurance carrier, as the case may be, shall contribute only the deficiency, if any, between the amount of the recovery against such other person actually collected and the compensation provided by said articles in such case.

(c) The right of subrogation provided by this section shall apply to and include all compensation and all medical, hospital, dental, funeral, and other benefits and expenses to which the employee or, if the employee is deceased, the employee's dependents are entitled under the provisions of said articles, including parts 2 and 3 of article 46 of this title, or for which the employee's employer or insurance carrier is liable or has assumed liability.

(d) The assigned and subrogated cause of action provided by this section, together with the right to recover future benefits:

(I) Shall extend to all moneys collected from the third party causing the injury for all:

(A) Economic damages; and

(B) Physical impairment and disfigurement damages; except that, to the extent the trier of fact makes a separate award for disfigurement damages, the right of the beneficiary of the assigned interest to recover from such disfigurement damages shall be limited to the amount the beneficiary of the assigned interest paid, or is obligated to pay, in disfigurement damages pursuant to articles 40 to 47 of this title; and

(II) Shall not extend to moneys collected for noneconomic damages awarded for pain and suffering, inconvenience, emotional stress, or impairment of quality of life.

(e) (I) Except as otherwise provided in subparagraph (II) of this paragraph (e), the amount of the assigned and subrogated cause of action shall be reduced by an amount equal to the reasonable attorney fees and costs paid by the injured employee or, if the employee is deceased, the employee's dependents, in pursuing the recovery of the assigned and subrogated cause of action and the collection of such recovery.

(II) If the beneficiary of the assigned and subrogated cause of action elects to independently pursue such assigned cause of action, any recovery by such beneficiary shall not be reduced by any attorney fees and costs incurred by the employee. If the beneficiary of the assigned and subrogated cause of action elects to intervene within ninety days after receiving the notice required by paragraph (c) of subsection (4) of this section, any recovery by such beneficiary shall not be reduced by any attorney fees and costs incurred by the employee. If such beneficiary elects to intervene after the expiration of such ninety-day period, the court may reduce the beneficiary's recovery by a reasonable amount for any attorney fees and costs incurred by the employee after the end of such ninety-day period and before receiving notice that the beneficiary intends to intervene.

(f) Nothing in this section shall be construed as limiting in any way the right of the injured employee to take compensation under articles 40 to 47 of this title and also proceed against the third party causing the injury to recover any damages in excess of the subrogation rights described in this section.

(2) Such a cause of action assigned to Pinnacol Assurance may be prosecuted or compromised by it. A compromise of any such cause of action by the employee or, if the employee is deceased, the employee's dependents at an amount less than the compensation provided for by articles 40 to 47 of this title shall be made only with the written approval of the chief executive officer of Pinnacol Assurance, if the deficiency of compensation would be payable from the Pinnacol Assurance fund, and otherwise with the written approval of the person, association, corporation, or insurance carrier liable to pay the same. Such written approval shall not be unreasonably withheld. Failure to obtain such written approval shall entitle the party responsible for paying workers' compensation benefits to be reimbursed for all benefits paid from, and offset any future liability under articles 40 to 47 of this title against, the entire proceeds recovered without any credit for reasonable attorney fees and costs as provided in paragraph (e) of subsection (1) of this section. If such approval is not obtained, the employee or, if the employee is deceased, the employee's dependents shall not be liable for any plaintiff's attorney fees for the third-party recovery on that portion of any recovery equal to the assigned and subrogated interest and are not subject to any action for refusal to pay such plaintiff's attorney fees resulting from the third-party case.

(3) If an employee is killed by the negligence or wrong of another not in the same employ and the dependents of such employee who are entitled to compensation under articles 40 to 47 of this title are minors, the decision to pursue or compromise any claim against a third party shall be made by such minor or shall be made on the minor's behalf by a parent of such minor or by the minor's next friend or duly appointed guardian, as the director of the division of workers' compensation may determine by rule in each case. Once such decision is made, the person who made the decision shall also bear the responsibility to provide all notices required by this section.

(4) (a) (I) If the employee or, if the employee is deceased, the employee's dependents make a demand upon or a request of a person or entity not in the same employ as the employee to seek recovery for damages arising from actions of such other person or entity, the employee or dependents shall also give written notice, within ten days, to the division of workers' compensation and to all parties who may be

responsible for paying benefits to the employee or dependents under articles 40 to 47 of this title.

(II) If the party responsible for paying workers' compensation benefits under articles 40 to 47 of this title to the employee or, if the employee is deceased, the employee's dependents, makes a demand upon or a request of a person or entity not in the same employ as the employee to seek recovery for damages arising from actions of the other person or entity, the party responsible for paying the workers' compensation benefits shall also give written notice, within ten days, to the division of workers' compensation and to the employee or, if the employee is deceased, to the employee's dependents.

(III) The notice requirements of this paragraph (a) shall not apply to demands or requests seeking the recovery of medical payments only, and not seeking the recovery of any other type of damage or loss.

(b) The notice required by this subsection (4) shall contain the following:

(I) A description of the claim;

(II) The names and addresses of any and all other persons believed to be negligent;

(III) The name and address of any attorney representing the employee or dependents;

(IV) The name and address of any attorney representing other persons believed to be negligent; and

(V) The name, address, and telephone number of the insurance company or third-party administrator.

(c) (I) Except as provided in subparagraph (II) of this paragraph (c), at least twenty days before commencing a lawsuit or arbitration proceeding to recover damages arising from actions of another person or entity, the party initiating such lawsuit or arbitration shall give written notice to all parties who may be responsible for paying benefits to the employee or dependents under articles 40 to 47 of this title and to the employee or, if the employee is deceased, the employee's dependents. Such notice shall contain all of the information set out in paragraph (b) of this subsection (4) and shall be accompanied by a draft copy of the complaint.

(II) If any applicable statutory limitation period would expire before such twenty days have passed, the party initiating such lawsuit or arbitration may file or serve the complaint, or otherwise act to toll the running of such limitation period, before such twenty days have passed. The party initiating the lawsuit or arbitration shall provide the notice required by subparagraph (I) of this paragraph (c) within twenty days after commencing such action.

(d) If the employee or dependents fail to provide the written notice required pursuant to subparagraph (I) of paragraph (a) of this subsection (4):

(I) The party responsible for paying workers' compensation benefits shall be entitled to reimbursement from all moneys collected from the third party for all economic damages and for all physical impairment and disfigurement damages, without any credit for reasonable attorney fees as provided in paragraph (e) of subsection (1) of this section. If the trier of fact makes a separate award for disfigurement damages, reimbursement from such disfigurement damage award shall be limited to the amount the party paying workers' compensation benefits paid, or is obligated to pay, in disfigurement damages pursuant to articles 40 to 47 of this title. Such rights shall not extend to moneys collected for noneconomic damages awarded for pain and suffering, inconvenience, emotional stress, or impairment of quality of life.

(II) The employee or dependents shall not be liable for any plaintiff's attorney fees for the third-party recovery on that portion of any recovery equal to the assigned and subrogated interest and are not subject to any action for refusal to pay such plaintiff's attorney fees resulting from the third-party case.

(e) If the party responsible for paying workers' compensation benefits under articles 40 to 47 of this title fails to provide the written notice required pursuant to subparagraph (II) of paragraph (a) of this subsection (4), the amount of the claim shall be reduced by fifty dollars for each day such notice was not given to the employee or, if the employee is deceased, the employee's dependents, in an amount not to exceed twenty percent of the amount of the total assigned interest at the time such notice should have been given. The failure to provide such notice shall be a reassignment of a portion of the claim to the employee or, if the employee is deceased, the employee's dependents, in an amount equal to the penalty.

8-41-204. Injury outside of state - benefits in accordance with state law. If an employee who has been hired or is regularly employed in this state receives personal injuries in an accident or an occupational disease arising out of and in the course of such employment outside of this state, the employee, or such employee's dependents in case of death, shall be entitled to compensation according to the law of this state. This provision shall apply only to those injuries received by the employee within six months after leaving this state, unless, prior to the expiration of such six-month period, the employer has filed with the division notice that the employer has elected to extend such coverage for a greater period of time.

8-41-205. Waiver of compensation by employee - approval required - exception. No waiver of compensation or medical benefits by an employee for aggravation of any preexisting condition or disease shall be allowed under articles 40 to 47 of this title. This section, however, shall not invalidate any such waiver so filed and approved prior to March 1, 1977, under the provisions of the "Colorado Occupational Disease Disability Act", which was repealed effective September 1, 1975.

8-41-206. Disability beginning five years after injury. Any disability beginning more than five years after the date of injury shall be conclusively presumed not to be due to the injury, except in cases of disability or death resulting from exposure to radioactive materials, substances, or machines or to fissionable materials, or any type of malignancy caused thereby, or from poisoning by uranium or its compounds, or from asbestosis, silicosis, or anthracosis.

8-41-207. Death after two years. In case death occurs more than two years after the date of receiving any injury, such death shall be prima facie presumed not to be due to such injury; such presumption shall not apply in cases of silicosis, asbestosis, anthracosis, or disability or death resulting from exposure to radioactive materials, substances, or machines or to fissionable materials, or any type of malignancy

caused thereby, or from poisoning by uranium or its compounds. In all other cases, such presumption may be rebutted by competent evidence.

8-41-208. Coverage for job-related exposure to or contraction of hepatitis C. (1) The exposure to or contraction of hepatitis C by a firefighter, emergency services provider, or peace officer, as described in section 16-2.5-101, C.R.S., shall be presumed to be within the course and scope of employment if the following conditions are satisfied:

(a) A baseline test shall be provided by the employer, or if insured, by the insurer, to be performed within five days after the employee reports the on-the-job exposure. The employee must report the exposure within two days after the employee knew or reasonably should have known of the exposure;

(b) The baseline test establishes that the employee was not infected with hepatitis C at the time of the on-the-job exposure;

(c) The employee complies with reasonable and necessary medical procedures set forth in section 8-42-101 (1) (c);

(d) The employee is determined to have hepatitis C within twenty-four months after the on-the-job exposure to the known or possible source.

(2) The exposure to or contraction of hepatitis C by a firefighter, emergency services provider, or peace officer, as described in section 16-2.5-101, C.R.S., shall not be deemed to be within the course and scope of employment if an employer or insurer shows by a preponderance of the evidence that such exposure or contraction did not occur on the job.

8-41-209. Coverage for occupational diseases contracted by firefighters. (1) Death, disability, or impairment of health of a firefighter of any political subdivision who has completed five or more years of employment as a firefighter, caused by cancer of the brain, skin, digestive system, hematological system, or genitourinary system and resulting from his or her employment as a firefighter, shall be considered an occupational disease.

(2) Any condition or impairment of health described in subsection (1) of this section:

(a) Shall be presumed to result from a firefighter's employment if, at the time of becoming a firefighter or thereafter, the firefighter underwent a physical examination that failed to reveal substantial evidence of such condition or impairment of health that preexisted his or her employment as a firefighter; and

(b) Shall not be deemed to result from the firefighter's employment if the firefighter's employer or insurer shows by a preponderance of the medical evidence that such condition or impairment did not occur on the job.

(3) Repealed.

8-41-210. Coverage for property tax work-off program participants. Notwithstanding any provision of law to the contrary, a governmental entity or private nonprofit or for-profit entity that has a contract with a governmental entity that is self-insured under articles 40 to 47 of this title may purchase workers' compensation insurance from any insurer authorized to transact the business of workers' compensation insurance in this state for the express purpose of covering participants in the property tax work-off program established pursuant to article 3.7 of title 39, C.R.S.

8-41-211. Transportation network company drivers - rules. On June 5, 2014, the director, upon consideration of existing Colorado statutory and case law, may by rule determine whether or not transportation network companies have an obligation under existing Colorado law to provide or offer for purchase workers' compensation insurance coverage to transportation network company drivers.

PART 3
LIABILITY

8-41-301. Conditions of recovery. (1) The right to the compensation provided for in articles 40 to 47 of this title, in lieu of any other liability to any person for any personal injury or death resulting therefrom, shall obtain in all cases where the following conditions occur:

(a) Where, at the time of the injury, both employer and employee are subject to the provisions of said articles and where the employer has complied with the provisions thereof regarding insurance;

(b) Where, at the time of the injury, the employee is performing service arising out of and in the course of the employee's employment;

(c) Where the injury or death is proximately caused by an injury or occupational disease arising out of and in the course of the employee's employment and is not intentionally self-inflicted.

(2) (a) A claim of mental impairment must be proven by evidence supported by the testimony of a licensed physician or psychologist. For purposes of this subsection (2), "mental impairment" means a recognized, permanent disability arising from an accidental injury arising out of and in the course of employment when the accidental injury involves no physical injury and consists of a psychologically traumatic event that is generally outside of a worker's usual experience and would evoke significant symptoms of distress in a worker in similar circumstances. A mental impairment shall not be considered to arise out of and in the course of employment if it results from a disciplinary action, work evaluation, job transfer, lay-off, demotion, promotion, termination, retirement, or similar action taken in good faith by the employer. The mental impairment that is the basis of the claim shall have arisen primarily from the claimant's then occupation and place of employment in order to be compensable.

(a.5) For purposes of this subsection (2), "mental impairment" also includes a disability arising from an accidental physical injury that leads to a recognized permanent psychological disability.

(b) Notwithstanding any other provision of articles 40 to 47 of this title, where a claim is by reason of mental impairment, the claimant shall be limited to twelve weeks of medical impairment benefits, which shall be in an amount not less than one hundred fifty dollars per week and not more than fifty percent of the state average weekly wage, inclusive of any temporary disability benefits; except that this limitation shall not apply to any victim of a crime of violence, without regard to the intent of the perpetrator of the crime, nor to the victim of a physical injury or occupational disease that causes

neurological brain damage; and nothing in this section shall limit the determination of the percentage of impairment pursuant to section 8-42-107 (8) for the purposes of establishing the applicable cap on benefits pursuant to section 8-42-107.5.

(c) The claim of mental impairment cannot be based, in whole or in part, upon facts and circumstances that are common to all fields of employment.

(d) The mental impairment which is the basis of the claim must be, in and of itself, either sufficient to render the employee temporarily or permanently disabled from pursuing the occupation from which the claim arose or to require medical or psychological treatment.

8-41-302. Scope of terms - "accident" - "injury" - "occupational disease". (1) "Accident", "injury", and "occupational disease" shall not be construed to include disability or death caused by or resulting from mental or emotional stress unless it is shown by competent evidence that such mental or emotional stress is proximately caused solely by hazards to which the worker would not have been equally exposed outside the employment.

(2) "Accident", "injury", and "occupational disease" shall not be construed to include disability or death caused by heart attack unless it is shown by competent evidence that such heart attack was proximately caused by an unusual exertion arising out of and within the course of the employment.

8-41-303. Loaning employer liable for compensation. Where an employer, who has accepted the provisions of articles 40 to 47 of this title and has complied therewith, loans the service of any of the employer's employees who have accepted the provisions of said articles to any third person, the employer shall be liable for any compensation thereafter for any injuries or death of said employee as provided in said articles, unless it appears from the evidence in said case that said loaning constitutes a new contract of hire, express or implied, between the employee whose services were loaned and the person to whom the employee was loaned.

8-41-304. Last employer liable - exception. (1) Where compensation is payable for an occupational disease, the employer in whose employment the employee was last injuriously exposed to the hazards of such disease and suffered a substantial permanent aggravation thereof and the insurance carrier, if any, on the risk when such employee was last so exposed under such employer shall alone be liable therefor, without right to contribution from any prior employer or insurance carrier. In the case of silicosis, asbestosis, or anthracosis, the only employer and insurance carrier liable shall be the last employer in whose employment the employee was last exposed to harmful quantities of silicon dioxide (SiO_2) dust, asbestos dust, or coal dust on each of at least sixty days or more and the insurance carrier, if any, on the risk when the employee was last so exposed under such employer.

(2) In any case where an employee of an employer becomes disabled from silicosis, asbestosis, anthracosis, or poisoning or disease caused by exposure to radioactive materials, substances, or machines or to fissionable materials, or any type of malignancy caused thereby, or in the event death results from silicosis, asbestosis, anthracosis, or poisoning or disease caused by exposure to radioactive materials, substances, or machines or to fissionable materials, or any type of malignancy caused thereby, and, if such employee has been injuriously exposed to such diseases while in the employ of another employer during the employee's lifetime, the last employer or that employer's insurance carrier, if any, shall be liable for compensation and medical benefits as provided by articles 40 to 47 of this title, including funeral expenses and death benefits.

PART 4
CONTRACTORS AND LESSEES

8-41-401. Lessor contractor-out deemed employer - liability - recovery. (1) (a) (I) Any person, company, or corporation operating or engaged in or conducting any business by leasing or contracting out any part or all of the work thereof to any lessee, sublessee, contractor, or subcontractor, irrespective of the number of employees engaged in such work, shall be construed to be an employer as defined in articles 40 to 47 of this title and shall be liable as provided in said articles to pay compensation for injury or death resulting therefrom to said lessees, sublessees, contractors, and subcontractors and their employees or employees' dependents, except as otherwise provided in subsection (3) of this section.

(II) Notwithstanding subparagraph (I) of this paragraph (a) and any other provision of law to the contrary, it is presumed that a buyer of goods is not liable as a statutory employer when a lessee, sublessee, contractor, or subcontractor, or their employee who is delivering the goods to the buyer injures himself or herself while not on the buyer's premises. The presumption may be overcome by a showing that the lessee, sublessee, contractor, or subcontractor, or their employee was performing a job function that would normally be performed by an employee of the buyer of the goods being delivered. Nothing in this subparagraph (II) creates a presumption of a statutory employer-employee relationship when an injury occurs on the buyer's premises.

(III) For the purposes of this section, a "statutory employer" is an employer who is responsible to pay workers' compensation benefits pursuant to subparagraph (I) of this paragraph (a).

(a.5) The general assembly hereby finds and determines that the decision of the Colorado court of appeals in the case of *Newsom v. Frank M. Hall & Co.*, No. 02CA1375 (February 26, 2004), in which the court held that an independent contractor may be an entity other than a natural person, did not accurately reflect the intent of the general assembly when it passed Senate Bill 93-132 and Senate Bill 95-072. The general assembly hereby declares that the term "individual", as used in this section and in section 8-40-202, means a natural person.

(b) The employer, before commencing said work, shall insure and keep insured against all liability as provided in said articles, and such lessee, sublessee, contractor, or subcontractor, as well as any employee thereof, shall be deemed employees as defined in said articles. The employer shall be entitled to recover the cost of such insurance from said lessee, sublessee, contractor, or subcontractor and may withhold and deduct the same from the contract price or any

royalties or other money due, owing, or to become due said lessee, sublessee, contractor, or subcontractor.

(2) If said lessee, sublessee, contractor, or subcontractor is also an employer in the doing of such work and, before commencing such work, insures and keeps insured its liability for compensation as provided in articles 40 to 47 of this title, neither said lessee, sublessee, contractor, or subcontractor, its employees, or its insurer shall have any right of contribution or action of any kind, including actions under section 8-41-203, against the person, company, or corporation operating or engaged in or conducting any business by leasing or contracting out any part or all of the work thereof, or against its employees, servants, or agents.

(3) Notwithstanding any provision of this section or section 8-41-402 to the contrary, any individual who is excluded from the definition of employee pursuant to section 8-40-202 (2), or a working general partner or sole proprietor who is not covered under a policy of workers' compensation insurance, or a corporate officer or member of a limited liability company who executes and files an election to reject coverage under section 8-41-202 (1) shall not have any cause of action of any kind under articles 40 to 47 of this title. Nothing in this section shall be construed to restrict the right of any such individual to elect to proceed against a third party in accordance with the provisions of section 8-41-203. The total amount of damages recoverable pursuant to any cause of action resulting from a work-related injury brought by such individual that would otherwise have been compensable under articles 40 to 47 of this title shall not exceed fifteen thousand dollars, except in any cause of action brought against another not in the same employ.

(4) (a) Notwithstanding any provision of this section to the contrary, any person, company, or corporation who contracts with a landowner or lessee of a farm or ranch to perform a specified farming or ranching operation shall, prior to entering into such contract, provide for and maintain, for the period of such contract, workers' compensation coverage pursuant to articles 40 to 47 of this title covering all the employees and laborers to be utilized under such contract. Proof of such coverage on forms or certificates issued by the insurer shall be provided to the person, company, or corporation contracting for the labor prior to performing such contract.

(b) Any person, company, or corporation contracting with a landowner or lessee of a farm or ranch to provide a specified farming or ranching operation who fails to provide coverage pursuant to subsection (1) of this section or who fails to maintain such coverage for the term of the contract is guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in the county jail for not more than sixty days, or by a fine of not more than five hundred dollars, or by both such fine and imprisonment.

(c) Notwithstanding any provision of this section to the contrary, no person, company, or corporation contracting with a landowner or lessee of a farm or ranch operation to perform a specified farming or ranching operation nor any employee of such person, company, or corporation required to be covered by workers' compensation pursuant to this subsection (4) shall have any right of contribution from, or any action of any kind, including actions under section 8-41-203, against, the person, company, or corporation contracting to have such agricultural labor performed.

(d) (I) If any person, company, or corporation contracting to provide labor to perform specified farming or ranching operations and required to provide workers' compensation coverage pursuant to articles 40 to 47 of this title fails to provide such coverage and the person, company, or corporation for whom the labor is provided incurs any liability thereby, the person, company, or corporation providing the labor shall be subject to a cause of action for said liability and for reasonable attorney fees.

(II) If the person, company, or corporation for whom the labor for the performance of a specified farming or ranching operation is provided is sued by the injured employee, said person, company, or corporation may join the person, company, or corporation providing the labor as a third-party defendant in lieu of filing an independent action.

(5) The provisions of this section shall not apply to licensed real estate brokers and licensed real estate sales agents, as regulated in article 61 of title 12, C.R.S., who are excluded from the definition of employee pursuant to section 8-40-301 (2).

(6) Notwithstanding any provision of this section to the contrary, any person, company, or corporation operating a commercial vehicle as defined in section 42-4-235 (1) (a), C.R.S., who holds oneself or itself out as an independent contractor only to perform for-hire transportation, including loading and unloading, and who contracts to perform a specific transportation job, transportation task, or transportation delivery for another person, company, or corporation is not entering into an employee and employer relationship for purposes of workers' compensation coverage pursuant to articles 40 to 47 of this title. Nothing in this subsection (6) shall be construed to prohibit a determination that an individual is excluded from the definition of employee pursuant to section 8-40-202 (2) if such individual is operating a commercial vehicle as defined in section 42-4-235 (1) (a), C.R.S.

(7) This section shall not apply to any person excluded from the definition of "employee" pursuant to section 8-40-301 (5) or (7).

8-41-402. Repairs to real property - exception for liability of occupant of residential real property. (1) Every person, company, or corporation owning any real property or improvements thereon and contracting out any work done on and to said property to any contractor, subcontractor, or person who hires or uses employees in the doing of such work shall be deemed to be an employer under the terms of articles 40 to 47 of this title. Every such contractor, subcontractor, or person, as well as such contractor's, subcontractor's, and person's employees, shall be deemed to be an employee, and such employer shall be liable as provided in said articles to pay compensation for injury or death resulting therefrom to said contractor, subcontractor, or person and said employees or employees' dependents and, before commencing said work, shall insure and keep insured all liability as provided in said articles. Such employer shall be entitled to recover the cost of such insurance from said contractor, subcontractor, or person and may withhold and deduct the same from the contract price or any royalties or other money due, owing, or to become due to said contractor, subcontractor, or person. Articles 40 to 47

of this title shall not apply to the owner or occupant, or both, of residential real property which meets the definition of a "qualified residence" under section 163 (h) (4) (A) of the federal "Internal Revenue Code of 1986", as amended, who contracts out any work done to the property, unless the person performing the work is otherwise an employee of the owner or occupant, or both, of the property.

(2) If said contractor, subcontractor, or person doing or undertaking to do any work for an owner of property, as provided in subsection (1) of this section, is also an employer in the doing of such work and, before commencing such work, insures and keeps insured all liability for compensation as provided in articles 40 to 47 of this title, neither said contractor, subcontractor, or person nor any employees or insurers thereof shall have any right of contribution or action of any kind, including actions under section 8-41-203, against the person, company, or corporation owning real property and improvements thereon which contracts out work done on said property, or against its employees, servants, or agents.

(3) (Deleted by amendment, L. 91, p. 1295, § 9, effective July 1, 1991.)

8-41-403. Exemption of certain lessors of real property. (1) The provisions of this part 4 shall not apply to any lessor or sublessor of real property who rents or leases real property to any lessee or sublessee for the purpose of conducting the business of such lessee or sublessee, whether as a franchise holder, independent agent, or consignee or in any other separate capacity and whether or not such person is an employer, as defined in section 8-40-203, but in no event where such lessee or sublessee is an employee, as defined in section 8-40-202.

(2) No such lessee or sublessee, or any employee or insurer thereof, shall have any right of contribution from or action against such lessor or sublessor under articles 40 to 47 of this title.

(3) The provisions of this part 4 shall not apply to any lessor or sublessor of real property who leases or rents real property to any lessee or sublessee for the purpose of conducting any agricultural production business of such lessee or sublessee, and no such lessee or sublessee, or any employee or insurer thereof, shall have any right of contribution from or action against such lessor or sublessor under articles 40 to 47 of this title.

8-41-404. Construction work - proof of coverage required - violation - penalty - definitions. (1) (a) Except as otherwise provided in subsection (4) of this section, every person performing construction work on a construction site shall be covered by workers' compensation insurance, and a person who contracts for the performance of construction work on a construction site shall either provide, pursuant to articles 40 to 47 of this title, workers' compensation coverage for, or require proof of workers' compensation coverage from, every person with whom he or she has a direct contract to perform construction work on the construction site.

(b) A site owner, general contractor, or other person who is not a direct party to a contract for construction work shall not be held liable under subsection (3) of this section solely as a result of the person's ownership interest or general supervisory role in a construction project.

(c) Any person who contracts for the performance of construction work on a construction site and who exercises due diligence by either providing workers' compensation coverage as required by this section or requiring proof of workers' compensation coverage as required by this section from every person with whom he or she has a direct contract to perform construction work on the construction site shall not be liable under subsection (3) of this section.

(2) If the parties to a contract that includes construction work agree that part of the contract price shall be withheld to cover workers' compensation premiums for coverage required under this section, the premiums shall be calculated based only on that portion of the contract price that represents the labor portion of the contract.

(3) A violation of subsection (1) of this section is punishable by an administrative fine imposed pursuant to section 8-43-409 (1) (b). The division shall transmit revenues collected through the imposition of fines pursuant to this section to the state treasurer, who shall credit them to the workers' compensation cash fund created in section 8-44-112 (7). Such revenues shall be appropriated to the division for the purpose of enforcing this section.

(4) (a) This section shall not apply to:

(I) An owner or occupant, or both, of residential real property that meets the definition of a "qualified residence" under section 163 (h) (4) (A) of the federal "Internal Revenue Code of 1986", as amended, who contracts out any work done to the real property, unless the person performing the work is otherwise an employee of the owner or occupant, or both, of the real property;

(II) An owner or occupant of real property who hires a person or persons specifically to do routine repair and maintenance on the real property of such owner or occupant;

(III) An independent contractor, who is a natural person, who has formed a corporation pursuant to section 7-102-103, C.R.S., or a limited liability company pursuant to section 7-80-203, C.R.S., and who has rejected workers' compensation coverage pursuant to section 8-41-202;

(IV) Corporate officers and members of a limited liability company who have rejected workers' compensation coverage pursuant to section 8-41-202;

(V) A partner in a partnership who has filed a certificate of limited partnership pursuant to section 7-62-201, C.R.S., a partnership registration statement pursuant to section 7-60-144 or 7-64-1002, C.R.S., or a statement of trade name pursuant to section 7-71-103, C.R.S., and has filed with the division a form, approved by the director, rejecting workers' compensation; or

(VI) A sole proprietor who has filed a statement of trade name pursuant to section 7-71-103, C.R.S., and has filed with the division a form, approved by the director, rejecting workers' compensation.

(b) Nothing in this section shall be construed to limit the responsibility of corporations, limited liability companies, partnerships, or sole proprietorships to provide coverage for their employees as required under articles 40 to 47 of this title.

(5) As used in this section:

(a) "Construction site" means a location where a structure that is attached or will be attached to real property is constructed, altered, or remodeled.

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(b) "Construction work" includes all or any part of the construction, alteration, or remodeling of a structure. "Construction work" does not include surveying, engineering, examination, or inspection of a construction site or the delivery of materials to a construction site.

(c) "Proof of workers' compensation coverage" includes a certificate or other written confirmation, issued by the insurer or authorized agent of the insurer, of the existence of workers' compensation coverage in force during the period of the performance of construction work on the construction site.

PART 5
DEPENDENCY

8-41-501. Persons presumed wholly dependent. (1) For the purposes of articles 40 to 47 of this title, the following described persons shall be presumed to be wholly dependent (however, such presumption may be rebutted by competent evidence):

(a) Widow or widower, unless it is shown that she or he was voluntarily separated and living apart from the spouse at the time of the injury or death or was not dependent in whole or in part on the deceased for support;

(a.5) A person who is designated in a designated beneficiary agreement for purposes of receiving workers' compensation benefits in accordance with the provisions of article 22 of title 15, C.R.S., unless it is shown that the designated beneficiary was voluntarily separated and living apart from the other designated beneficiary at the time of the injury or death or was not dependent in whole or in part on the deceased for support;

(b) Minor children of the deceased under the age of eighteen years, including posthumous or legally adopted children;

(c) Minor children of the deceased who are eighteen years or over and under the age of twenty-one years if it is shown that:

(I) At the time of the decedent's death they were actually dependent upon the deceased for support; and

(II) Either at the time of the decedent's death or at the time they attained the age of eighteen years they were engaged in courses of study as full-time students at any accredited school. The period of presumed dependency of such persons shall continue until they attain the age of twenty-one years or until they cease to be engaged in courses of study as full-time students at an accredited school, whichever occurs first.

8-41-502. Other dependents - temporary dependency. Except as otherwise provided in section 8-41-501 (1) (c), a child eighteen years of age or over and a mother, father, grandmother, grandfather, sister, brother, or grandchild who was wholly or partially supported by the deceased employee at the time of death and for a reasonable period of time immediately prior thereto is considered an actual dependent. To be entitled to compensation, such dependents, except as provided in section 8-41-501 (1) (c), must prove that they were incapable of or actually disabled from earning their own living. If said incapacity or disability is temporary only, compensation shall be paid only during the period of such temporary incapacity or disability.

8-41-503. Dependency and extent determined - how. (1) Dependents and the extent of their dependency shall be determined as of the date of the injury to the injured employee, and the right to death benefits shall become fixed as of said date irrespective of any subsequent change in conditions except as provided in section 8-41-501 (1) (c). Death benefits shall be directly payable to the dependents entitled thereto or to such person legally entitled thereto as the director may designate.

(2) In case an employee or claimant entitled to compensation dies leaving dependents, any accrued and unpaid portion of the compensation or benefits up to the time of the death of such employee or claimant shall be paid to such dependents as may be ordered by the director and not to the legal representative as such of said decedent. In case the injured employee or claimant leaves no dependents, the director may order the application of any accrued and unpaid benefits up to the time of the death of such employee or claimant paid upon the expenses of the last sickness or funeral of such decedent, the preference in such payment to be to funeral expenses.

(3) In case an injured employee or dependent of a deceased employee entitled to benefits under articles 40 to 47 of this title is declared incompetent or insane, any benefits accrued or to accrue may be paid to the conservator of the estate, if any, or to any dependents, or to the party or institution having custody of the person of such injured employee or dependent of a deceased employee as may be ordered by the director in the director's discretion.

8-41-504. Action by injured employee - dependents not parties in interest. No dependent of an injured employee, during the life of the employee, shall be deemed a party in interest to any proceeding by said employee for the enforcement of any claim for compensation nor with respect to any settlement thereof by said employee.

8-41-505. Illegitimate minor children. Illegitimate minor children of a deceased putative father shall be entitled to compensation in the same respect as a legitimate minor child of said decedent when it is proved to the satisfaction of the director that the father, during his lifetime, has acknowledged said children to be his and has regularly contributed to their support and maintenance for a reasonable period of time prior to his death.

ARTICLE 42
Benefits

8-42-101. Employer must furnish medical aid - approval of plan - fee schedule - contracting for treatment - no recovery from employee - medical treatment guidelines - accreditation of physicians and other medical providers - rules - repeal. (1) (a) Every employer, regardless of said employer's method of insurance, shall furnish such medical, surgical, dental, nursing, and hospital treatment, medical, hospital, and surgical supplies, crutches, and apparatus as may reasonably be needed at the time of the injury or occupational disease and thereafter during the disability to cure and relieve the employee from the effects of the injury.

(b) In all cases where the injury results in the loss of a member or part of the employee's body, loss of teeth, loss of vision or hearing, or damage to an existing prosthetic device, the employer shall furnish within the limits of the medical benefits provided in paragraph (a) of this subsection (1) artificial members, glasses, hearing aids, braces, and other external prosthetic devices, including dentures, which are reasonably required to replace or improve the function of each member or part of the body or prosthetic device so affected or to improve the employee's vision or hearing. The employee may petition the division for a replacement of any artificial member, glasses, hearing aid, brace, or other external prosthetic device, including dentures, upon grounds that the employee has undergone an anatomical change since the previous device was furnished or for other good cause shown, that the anatomical change or good cause is directly related to and caused by the injury, and that the replacement is necessary to improve the function of each member or part of the body so affected or to relieve pain and discomfort. Implants or devices necessary to regulate the operation of, or to replace, with implantable devices, internal organs or structures of the body may be replaced when the authorized treating physician deems it necessary. Every employer subject to the terms and provisions of articles 40 to 47 of this title must insure against liability for the medical, surgical, and hospital expenses provided for in this article, unless permission is given by the director to such employer to operate under a medical plan, as set forth in subsection (2) of this section.

(c) In any case in which a firefighter, emergency medical services provider, or peace officer, as described in section 16-2.5-101, C.R.S., is exposed during the course and within the scope of employment to a known or possible source of hepatitis C, the employer, or if insured, the insurer, shall, at their expense, provide for baseline testing within the period of time specified in section 8-41-208 (1) (a) to determine whether the employee was free of hepatitis C at the time of the on-the-job exposure. The employer, or if insured, the insurer, shall pay for all reasonable and necessary medical procedures and treatment for exposure to hepatitis C during the period of time set forth in section 8-41-208 (1) (d).

(2) Every such plan, which is agreed to between the employer and employee, for the furnishing of medical, surgical, and hospital treatment, whether or not the employee is to pay any part of the expense of such treatment, before being put into effect, shall receive the approval of the director. The director has full power to formulate the terms and conditions under which any such plan may operate and the essentials thereof, and at any time the director may order modifications or changes in any such plan or withdraw prior approval thereof. No plan shall be approved by the director which relieves the employer from the burden of assuming and paying for any part of the medical, surgical, and hospital services and supplies required.

(3) (a) (I) The director shall establish a schedule fixing the fees for which all surgical, hospital, dental, nursing, vocational rehabilitation, and medical services, whether related to treatment or not, pertaining to injured employees under this section shall be compensated. It is unlawful, void, and unenforceable as a debt for any physician, chiropractor, hospital, person, expert witness, reviewer, evaluator, or institution to contract with, bill, or charge any party for services, rendered in connection with injuries coming within the purview of this article or an applicable fee schedule, which are or may be in excess of said fee schedule unless such charges are approved by the director. Fee schedules shall be reviewed on or before July 1 of each year by the director, and appropriate health care practitioners shall be given a reasonable opportunity to be heard as required pursuant to section 24-4-103, C.R.S., prior to fixing the fees, impairment rating guidelines, which shall be based on the revised third edition of the "American Medical Association Guides to the Evaluation of Permanent Impairment", in effect as of July 1, 1991, and medical treatment guidelines and utilization standards. Fee schedules established pursuant to this subparagraph (I) shall take effect on January 1. The director shall promulgate rules concerning reporting requirements, penalties for failure to report correctly or in a timely manner, utilization control requirements for services provided under this section, and the accreditation process in subsection (3.6) of this section. The fee schedule shall apply to all surgical, hospital, dental, nursing, vocational rehabilitation, and medical services and to expert witness, expert reviewer, or expert evaluator services, whether related to treatment or not, provided after any final order, final admission, or full or partial settlement of the claim.

(II) Notwithstanding the provisions of subparagraph (I) of this paragraph (a) the fees set forth in the schedule established pursuant to subparagraph (I) of this paragraph (a) shall be those fees in effect immediately prior to July 1, 1991, and such fees shall remain in effect until July 1, 1995.

(III) Notwithstanding the provisions of subparagraph (I) of this paragraph (a), until the impairment rating guidelines and medical treatment guidelines and utilization standards required by subparagraph (I) of this paragraph (a) and subsection (3.5) of this section are adopted and level I accreditation is received, compensation for fees for chiropractic treatments shall not be made more than ninety days after the first of such treatments nor after the twelfth such treatment, whichever first occurs, unless the chiropractor has received level I accreditation.

(b) Medical treatment guidelines and utilization standards, developed by the director, shall be used by health care practitioners for compliance with this section.

(3.5) (a) (I) (A) "Physician" means, for the purposes of the level I and level II accreditation programs, a physician licensed under the "Colorado Medical Practice Act". For the purposes of level I accreditation only and not level II accreditation, "physician" means a dentist licensed under the "Dental Practice Act", article 35 of title 12, C.R.S.; a podiatrist licensed under article 32 of title 12, C.R.S.; and a chiropractor licensed under article 33 of title 12, C.R.S.

(B) A physician assistant licensed under the "Colorado Medical Practice Act", article 36 of title 12, C.R.S., may receive level I accreditation. In order for a level I accredited physician assistant to perform medical services requiring level I accreditation, a level I accredited physician must delegate the performance of those medical services to the level I accredited physician assistant.

(C) A physician shall not be deemed accredited under either level I or level II solely by reason of being licensed.

(II) The director shall promulgate rules establishing a system for the determination of medical treatment guidelines and utilization standards and medical impairment rating guidelines for impairment ratings as a percent of the whole person or affected body part based on the revised third edition of the "American Medical Association Guides to the Evaluation of Permanent Impairment", in effect as of July 1, 1991.

(b) A medical impairment rating system shall be maintained by the director.

(c) (I) This subsection (3.5) is repealed, effective September 1, 2025.

(II) Prior to such repeal the accreditation process created by this subsection (3.5) and subsection (3.6) of this section shall be reviewed as provided for in section 24-34-104, C.R.S.

(3.6) The two-tier accreditation system shall comprise the following programs:

(a) (I) A program establishing the accreditation requirements for physicians providing primary care to patients who have, as a result of their injury, been unable to return to work for more than three working days, referred to in this section as "time-loss injuries", which program shall be voluntary except in the case of chiropractors, for whom it shall be mandatory, and which shall be known as level I accreditation; and

(II) A program establishing the accreditation requirements for physicians providing impairment evaluation of injured workers, which program shall be known as level II accreditation.

(b) A physician who provides impairment evaluation of injured workers shall complete and must have received accreditation under the level II accreditation program. However, the authorized treating physician providing primary care need not be level II accredited to determine that no permanent medical impairment has resulted from the injury. Specialists who do not render primary care to injured workers and who do not perform impairment evaluations do not require accreditation. The facility where a physician provides such services cannot be accredited.

(c) Both the level I and level II accreditation programs shall be implemented and available to physicians. All physicians who are required to be accredited shall complete the level II accreditation program or programs.

(d) The level I and level II accreditation programs shall operate in such a manner that the costs of the program are fully met by registration fees paid by the physicians. The registration fee for each program must cover the cost of all accreditation course work and materials.

(e) The accreditation system shall be established so as to provide physicians with an understanding of the administrative, legal, and medical roles and in such a manner that accreditation is accessible to every licensed physician, with consideration of specialty and geographic diversity.

(f) Initial accreditation shall be for a three-year period and may be renewed for successive three-year periods. The director by regulation may determine any additional training program required prior to accreditation renewal.

(g) The director shall, upon good cause shown, revoke the accreditation of any physician who violates the provisions of this subsection (3.6) or any rule promulgated by the director pursuant to this subsection (3.6), following a hearing on the merits before an administrative law judge, subject to review by the industrial claim appeals office and the court of appeals, in accordance with all applicable provisions of article 43 of this title.

(h) If a physician whose accreditation has been revoked submits a claim for payment for services rendered subsequent to such revocation, the physician shall be considered in violation of section 10-1-128, C.R.S., and neither an insurance carrier nor a self-insured employer shall be under any obligation to pay such claim.

(i) A physician who provides treatment for nontime loss injuries need not be accredited to be reimbursed for the costs of such treatment pursuant to the provisions of the "Workers' Compensation Act of Colorado".

(j) (Deleted by amendment, L. 96, p. 151, § 2, effective July 1, 1996.)

(k) The division shall make available to insurers, claimants, and employers a list of all accredited physicians and a list of all physicians whose accreditation has been revoked. Such lists shall be updated on a monthly basis.

(l) The registration fees collected pursuant to paragraph (d) of this subsection (3.6) shall be transmitted to the state treasurer, who shall credit the same to the physicians accreditation program cash fund, which is hereby created in the state treasury. Moneys in the physicians accreditation program cash fund are hereby continuously appropriated for the payment of the direct costs of providing the level I and level II accreditation courses and materials.

(m) All administrative costs associated with the level I and level II accreditation programs shall be paid out of the workers' compensation cash fund in accordance with appropriations made pursuant to section 8-44-112 (7).

(n) The director shall contract with the medical school of the university of Colorado for the services of a medical director to advise the director on issues of accreditation, impairment rating guidelines, medical treatment guidelines and utilization standards, and case management and to consult with the director on peer review activities as specified in this subsection (3.6) and section 8-43-501. Such medical director shall be a medical doctor licensed to practice in this state with experience in occupational medicine. The director may contract with an appropriate private organization which meets the definition of a utilization and quality control peer review organization as set forth in 42 U.S.C. sec. 1320c-1 (1) (A) or (1) (B), to conduct peer review activities under this subsection (3.6) and section 8-43-501 and to recommend whether or not adverse action is warranted.

(o) Except as provided in this subsection (3.6), neither an insurance carrier nor a self-insured employer or injured worker shall be liable for costs incurred for an impairment evaluation rendered by a physician where there is a determination of permanent medical impairment if such physician is not level II accredited pursuant to the provisions of this subsection (3.6).

(p) (I) For purposes of this paragraph (p):

(A) "Case management" means a system developed by the insurance carrier in which the carrier shall assign a person knowledgeable in workers' compensation health care to communicate with the employer, employee, and treating physician to assure that appropriate and timely medical care is being provided.

(B) "Managed care" means the provision of medical services through a recognized organization authorized under the provisions of parts 1, 3, and 4 of article 16 of title 10, C.R.S., or a network of medical providers accredited to practice workers' compensation under this subsection (3.6).

(II) Every employer or its insurance carrier shall offer at least managed care or medical case management in the counties of Denver, Adams, Jefferson, Arapahoe, Douglas, Boulder, Larimer, Weld, El Paso, Pueblo, and Mesa and shall offer medical case management in all other counties of the state.

(q) The division is authorized to accept moneys from any governmental unit as well as grants, gifts, and donations from individuals, private organizations, and foundations; except that no grant, gift, or donation may be accepted by the division if it is subject to conditions which are inconsistent with this article or any other laws of this state or which require expenditures from the workers' compensation cash fund which have not been approved by the general assembly. All moneys accepted by the division shall be transmitted to the state treasurer for credit to the workers' compensation cash fund.

(r) (I) This subsection (3.6) is repealed, effective September 1, 2025.

(II) Prior to such repeal the accreditation process created by subsection (3.5) of this section and this subsection (3.6) shall be reviewed as provided for in section 24-34-104, C.R.S.

(3.7) On and after July 1, 1991, all physical impairment ratings used under articles 40 to 47 of this title shall be based on the revised third edition of the "American Medical Association Guides to the Evaluation of Permanent Impairment", in effect as of July 1, 1991. For purposes of determining levels of medical impairment pursuant to articles 40 to 47 of this title a physician shall not render a medical impairment rating based on chronic pain without anatomic or physiologic correlation. Anatomic correlation must be based on objective findings.

(4) Once there has been an admission of liability or the entry of a final order finding that an employer or insurance carrier is liable for the payment of an employee's medical costs or fees, a medical provider shall under no circumstances seek to recover such costs or fees from the employee.

(5) If any party files an application for hearing on whether the claimant is entitled to medical maintenance benefits recommended by an authorized treating physician that are unpaid and contested, and any requested medical maintenance benefit is admitted fewer than twenty days before the hearing or ordered after application for hearing is filed, the court shall award the claimant all reasonable costs incurred in pursuing the medical benefit. Such costs do not include attorney fees.

(6) (a) If an employer receives notice of injury and the employer or, if insured, the employer's insurance carrier, after notice of the injury, fails to furnish reasonable and necessary medical treatment to the injured worker for a claim that is admitted or found to be compensable, the employer or carrier shall reimburse the claimant, or any insurer or governmental program that pays for related medical treatment, for the costs of reasonable and necessary treatment that was provided. An employer, insurer, carrier, or provider may not recover the cost of care from a claimant where the employer or carrier has furnished medical treatment except in the case of fraud.

(b) If a claimant has paid for medical treatment that is admitted or found to be compensable and that costs more than the amount specified in the workers' compensation fee schedule, the employer or, if insured, the employer's insurance carrier, shall reimburse the claimant for the full amount paid. The employer or carrier is entitled to reimbursement from the medical providers for the amount in excess of the amount specified in the worker's compensation fee schedule.

8-42-102. Basis of compensation - "wages" defined - average weekly wage - "at the time of injury" clarified. (1) The average weekly wage of an injured employee shall be taken as the basis upon which to compute compensation payments.

(2) Average weekly wages for the purpose of computing benefits provided in articles 40 to 47 of this title, except as provided in this section, shall be calculated upon the monthly, weekly, daily, hourly, or other remuneration which the injured or deceased employee was receiving at the time of the injury, and in the following manner; except that any portion of such remuneration representing a per diem payment shall be excluded from the calculation unless such payment is considered wages for federal income tax purposes:

(a) Where the employee is being paid by the month for services under a contract of hire, the weekly wage shall be determined by multiplying the monthly wage or salary at the time of the accident by twelve and dividing by fifty-two.

(b) Where the employee is being paid by the week for services under a contract of hire, said weekly remuneration at the time of the injury shall be deemed to be the weekly wage for the purposes of articles 40 to 47 of this title.

(c) Where the employee is rendering service on a per diem basis, the weekly wage shall be determined by multiplying the daily wage by the number of days and fractions of days in the week during which the employee under a contract of hire was working at the time of the injury or would have worked if the injury had not intervened.

(d) Where the employee is being paid by the hour, the weekly wage shall be determined by multiplying the hourly rate by the number of hours in a day during which the employee was working at the time of the injury or would have worked if the injury had not intervened, to determine the daily wage; then the weekly wage shall be determined from said daily wage in the manner set forth in paragraph (c) of this subsection (2).

(e) Where the employee is paid on a piecework, tonnage, commission, or basis other than a monthly, weekly, daily, or hourly wage and where the employment is but casual and in the usual course of the trade, business, profession, or

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occupation of his employer, the total amount earned by the injured or killed employee in the twelve months preceding the injury shall be computed, which sum shall be divided by the number of pay periods the injured person was employed during the twelve months immediately preceding the injury, and the result thus ascertained shall be considered the average wage of said employee per pay period.

(f) Where the employee is being paid by the mile, the weekly wage shall be determined by multiplying the rate per mile by the average number of miles per day the employee drove in the service of the employer in the sixty working days immediately preceding the date of the injury, to arrive at a daily wage; then the weekly wage shall be determined from the said daily wage in the manner set forth in paragraph (c) of this subsection (2). If, on the date of the injury, the employee has worked for the employer less than sixty days, the average daily wage shall be based on the average miles driven per working day during such period.

(3) Where the foregoing methods of computing the average weekly wage of the employee, by reason of the nature of the employment or the fact that the injured employee has not worked a sufficient length of time to enable earnings to be fairly computed thereunder or has been ill or has been self-employed or for any other reason, will not fairly compute the average weekly wage, the division, in each particular case, may compute the average weekly wage of said employee in such other manner and by such other method as will, in the opinion of the director based upon the facts presented, fairly determine such employee's average weekly wage.

(4) Where an employee is a minor and the disability is temporary, the average weekly wage of such minor shall be determined by the division as in cases of disability of adults. Where the disability of such minor is permanent or if benefits under articles 40 to 47 of this title accrue because of the death of such minor, compensation to said minor or death benefits to said minor's dependents shall be paid at the maximum rate of compensation payable under said articles at the time of the determination of such permanency or of such death.

(5) (a) The general assembly hereby finds that the phrase "at the time of injury" in subsection (2) of this section refers to the date of the employee's accident. When subsection (2) of this section is used to determine a worker's average weekly wage, the wage on the date of the accident shall be used.

(b) Nothing in this subsection (5) alters the discretion of the division or the director to fairly determine a worker's average weekly wage in accordance with subsection (3) of this section.

8-42-103. Disability indemnity payable as wages - period of disability. (1) If the injury or occupational disease causes disability, a disability indemnity shall be payable as wages pursuant to section 8-42-105 (2) (a) subject to the following limitations:

(a) If the period of disability does not last longer than three days from the day the employee leaves work as a result of the injury, no disability indemnity shall be recoverable except the disbursement provided in articles 40 to 47 of this title for medical, surgical, nursing, and hospital services, apparatus, and supplies, nor in any case unless the division has actual knowledge of the injury or is notified thereof within the period specified in said articles.

(b) If the period of disability lasts longer than two weeks from the day the injured employee leaves work as the result of the injury, disability indemnity shall be recoverable from the day the injured employee leaves work.

(c) (I) In cases where it is determined that periodic disability benefits granted by the federal "Old-Age, Survivors, and Disability Insurance Amendments of 1965", Pub.L. 89-97, are payable to an individual and the individual's dependents, the aggregate benefits payable for temporary total disability, temporary partial disability, and permanent total disability pursuant to this section shall be reduced, but not below zero, by an amount equal as nearly as practical to one-half the federal periodic benefits; but, if the federal "Old-Age, Survivors, and Disability Insurance Amendments of 1965", Pub.L. 89-97, is amended to provide for a reduction of an individual's disability benefits thereunder because of compensation benefits payable under articles 40 to 47 of this title, the reduction of compensation benefits provided in said articles shall be decreased by an amount equal to the federal reduction. Upon request of the insurer or employer, the employee shall apply for such federal periodic disability benefits and respond to requests from the insurer or employer as to the status of such application. Failure to comply with this section constitutes cause for suspension of benefits.

(II) In cases where it is determined that periodic benefits granted by the federal old-age, survivors, and disability insurance act or employer-paid retirement benefits are payable to an individual and the individual's dependents, the aggregate benefits payable for permanent total disability pursuant to this section shall be reduced, but not below zero:

(A) By an amount equal as nearly as practical to one-half such federal benefits; except that this reduction for the periodic benefits granted by the federal old-age, survivors, and disability insurance act shall not exceed the reduction specified in subparagraph (I) of this paragraph (c) for the periodic disability benefits payable to an individual;

(B) By an amount determined as a percentage of the employer-paid retirement benefits, said percentage to be determined by a weighted average of the employer's contributions during the period of covered employment divided by the total contributions during the period of covered employment; except that in permanent total disability cases all contributions made by the employer pursuant to a collective bargaining agreement with the employee's representative shall be considered to have been made by the employee.

(II.5) In cases where an employer does not participate in federal old-age, survivors, and disability insurance, and it is determined that employer-paid retirement benefits are payable to an individual and the individual's dependents, the aggregate benefits payable for permanent total disability pursuant to this section shall be reduced, but not below zero by an amount determined as a percentage of the employer-paid retirement benefits, said percentage to be determined by a weighted average of the employer's contributions during the period of covered employment divided by the total contributions during the period of covered employment.

(III) Notwithstanding sub-subparagraph (A) of subparagraph (II) of this paragraph (c), if the federal "Old-Age, Survivors, and Disability Insurance Amendments of 1965", Pub.L. 89-97, is amended to provide for a reduction of an individual's periodic benefits thereunder because of compensation benefits payable under articles 40 to 47 of this title, the reduction of compensation benefits provided in said articles shall be decreased by an amount equal to the federal reduction.

(IV) The provisions of subparagraphs (II) and (III) of this paragraph (c) shall apply only if the injury on which the award for permanent total disability was based occurred after the claimant reached forty-five years of age.

(d) (I) In cases where it is determined that periodic disability benefits are payable to an employee under a pension or disability plan financed in whole or in part by the employer, hereinafter called "employer pension or disability plan", the aggregate benefits payable for temporary total disability, temporary partial disability, and permanent total disability pursuant to this section shall be reduced, but not below zero, by an amount equal as nearly as practical to the employer pension or disability plan benefits, with the following limitations:

(A) Where the employee has contributed to the employer pension or disability plan, benefits shall be reduced under this section only in an amount proportional to the employer's percentage of total contributions to the employer pension or disability plan.

(B) Where the employer pension or disability plan provides by its terms that benefits are precluded thereunder in whole or in part if benefits are awarded under articles 40 to 47 of this title, the reduction provided in this paragraph (d) shall not be applicable to the extent of the amount so precluded.

(II) Upon request of the insurer or employer, the employee shall apply for such periodic disability benefits and respond to requests from the insurer or employer as to the status of such application. Failure to comply with this section shall be cause for suspension of benefits.

(III) The provisions of this paragraph (d) shall apply to a disability pension paid pursuant to article 30.5 or 31 of title 31, C.R.S.; except that said reduction shall not reduce the combined weekly disability benefits below a sum equal to one hundred percent of the state average weekly wage as defined in section 8-47-106 and applicable to the year in which the weekly disability benefits are being paid.

(IV) If the disability benefits awarded pursuant to articles 40 to 47 of this title are paid in a lump sum pursuant to section 8-43-406, the weekly benefit attributed to such workers' compensation benefits, for the purpose of calculating the combined weekly disability benefit specified in subparagraph (III) of this paragraph (d), shall be calculated by assuming that the employee is receiving the weekly disability benefits payments such employee would have received had such weekly disability payments not been reduced and paid as a lump sum.

(e) In cases where it is determined that periodic disability benefits are payable to an individual and said individual's dependents pursuant to a workers' compensation act of another state or of the federal government, the aggregate benefits payable for temporary total disability, temporary partial disability, permanent partial disability, and permanent total disability pursuant to this section shall be reduced, but not below zero, by an amount equal to the benefits payable pursuant to such other workers' compensation act.

(f) In cases where it is determined that unemployment compensation benefits are payable to an employee, the aggregate benefits payable for permanent total disability pursuant to this section shall be reduced, but not below zero, by an amount equal as nearly as practical to such unemployment compensation benefits. In cases where it is determined that unemployment insurance benefits are payable to an employee, compensation for temporary disability shall be reduced, but not below zero, by the amount of unemployment insurance benefits received, unless the unemployment insurance amount has already been reduced by the temporary disability benefit amount and except that temporary total disability shall not be reduced by unemployment insurance benefits received pursuant to section 8-73-112.

(g) In cases where it is determined that a temporarily disabled employee is responsible for termination of employment, the resulting wage loss shall not be attributable to the on-the-job injury.

(2) Within fifteen days after receipt of written notice by the employer or, if insured, the employer's workers' compensation insurance carrier or third-party administrator of the termination of a fringe benefit or advantage enumerated in section 8-40-201 (19) (b), and the effective date of the termination and cost of conversion, the employer or, if insured, the employer's workers' compensation insurance carrier or third-party administrator shall recalculate the applicable average weekly wage and begin payment of benefits in accordance with the recalculation with interest beginning on the date the benefit was terminated.

8-42-104. Effect of previous injury or compensation. (1) The fact that an employee has suffered a previous disability or impairment or received compensation therefor shall not preclude compensation for a later injury or for death, but, in determining compensation benefits payable for the later injury or death, the employee's average weekly earnings at the time of the later injury shall be used in determining the compensation payable to the employee or such employee's dependents. Notwithstanding any other provision of articles 40 to 47 of this title, no claimant may receive concurrent permanent total disability awards from injuries occurring in this state or any other state.

(2) (Deleted by amendment, L. 2008, p. 1676, § 2, effective July 1, 2008.)

(3) An employee's temporary total disability, temporary partial disability, or medical benefits shall not be reduced based on a previous injury.

(4) An employee's recovery of permanent total disability shall not be reduced when the disability is the result of work-related injury or work-related injury combined with genetic, congenital, or similar conditions; except that this subsection (4) shall not apply to reductions in recovery or apportionments allowed pursuant to the Colorado supreme court's decision in the case denominated Anderson v. Brinkhoff, 859 P.2d 819 (Colo. 1993).

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(5) In cases of permanent medical impairment, the employee's award or settlement shall be reduced:

(a) When an employee has suffered more than one permanent medical impairment to the same body part and has received an award or settlement under the "Workers' Compensation Act of Colorado" or a similar act from another state. The permanent medical impairment rating applicable to the previous injury to the same body part, established by award or settlement, shall be deducted from the permanent medical impairment rating for the subsequent injury to the same body part.

(b) When an employee has a nonwork-related previous permanent medical impairment to the same body part that has been identified, treated, and, at the time of the subsequent compensable injury, is independently disabling. The percentage of the nonwork-related permanent medical impairment existing at the time of the subsequent injury to the same body part shall be deducted from the permanent medical impairment rating for the subsequent compensable injury.

(6) Nothing in this section shall be construed to preclude employers or insurers from seeking contribution or reimbursement, as permitted by law, from other employers or insurers for benefits paid to or for an injured employee as long as the employee's benefits are not reduced or otherwise affected by such contribution or reimbursement.

8-42-105. Temporary total disability. (1) In case of temporary total disability of more than three regular working days' duration, the employee shall receive sixty-six and two-thirds percent of said employee's average weekly wages so long as such disability is total, not to exceed a maximum of ninety-one percent of the state average weekly wage per week. Except where vocational rehabilitation is offered and accepted as provided in section 8-42-111 (3), temporary total disability payments shall cease upon the occurrence of any of the events enumerated in subsection (3) of this section. If vocational rehabilitation is offered and accepted, any party may at any time terminate vocational rehabilitation upon fourteen days' written notice to the other parties and the director. For purposes of this section, termination of vocational rehabilitation shall be the same as if vocational rehabilitation had never been offered and accepted, and the employer or insurance carrier shall not be entitled to recover any temporary total disability benefits paid during the period that vocational rehabilitation was provided.

(2) (a) The first installment of compensation shall be paid no later than the date that liability for the claim is admitted by the insurance carrier or self-insured employer. If the insurance carrier or self-insured employer denies liability for the claim, the claimant may request an expedited hearing on the issue of compensability if the application is filed within forty-five days after the date of mailing of the notice of contest. The director shall set any such expedited matter for hearing within forty days after the date of the application, when the issue is liability for the disease or injury. The time schedule for such an expedited hearing is subject to the extensions set forth in section 8-43-209. If a claimant elects not to request an expedited hearing pursuant to this paragraph (a), the time schedule for hearing the matter shall be as set forth in section 8-43-209. Compensation shall be paid at least once every two weeks, except where the director determines that payment in installments should be made at some other interval. The director may by rule convert monthly benefit schedules to weekly or other periodic schedules.

(b) Temporary disability compensation is not due and payable for any period of time for which the insurer or self-insured employer has requested from the employee's attending physician verification of the employee's inability to work resulting from the claimed injury or disease and the physician cannot verify the employee's inability to work, unless the employee has been unable to receive treatment for reasons beyond the employee's control. Failure of the physician to submit such verification, through no fault of the employee, shall not affect the payment of temporary disability compensation under this section.

(c) If an employee fails to appear at an appointment with the employee's attending physician, the insurer or self-insured employer shall notify the employee by certified mail that temporary disability benefits may be suspended after the employee fails to appear at a rescheduled appointment. If the employee fails to appear at a rescheduled appointment, the insurer or self-insured employer may, without a prior hearing, suspend payment of temporary disability benefits to the employee until the employee appears at a subsequent rescheduled appointment.

(d) If the insurer or self-insured employer has requested and failed to receive from the employee's attending physician verification of the employee's inability to work resulting from the claimed injury or disease, medical services provided by the attending physician are not compensable until the attending physician submits such verification.

(3) Temporary total disability benefits shall continue until the first occurrence of any one of the following:

(a) The employee reaches maximum medical improvement;

(b) The employee returns to regular or modified employment;

(c) The attending physician gives the employee a written release to return to regular employment; or

(d) (I) The attending physician gives the employee a written release to return to modified employment, such employment is offered to the employee in writing, and the employee fails to begin such employment.

(II) In the case of employment by a temporary help contracting firm, once the employee has received one written offer of modified employment meeting the requirements of subparagraph (III) of this paragraph (d), the employee shall be deemed to be on notice that modified employment is available. Subsequent offers of modified employment need not be in writing so long as the job requirements of such modified employment are within the restrictions given the employee by the employee's attending physician and the employee is allowed a period of at least twenty-four hours, not including any part of a Saturday, Sunday, or legal holiday, within which to respond to any such offer.

(III) A written offer of modified employment under subparagraph (II) of this paragraph (d) shall clearly state:

(A) That future offers of employment need not be in writing;

(B) The policy of the temporary help contracting firm regarding how and when employees are expected to learn of such future offers; and

(C) That benefits under this section will be terminated if an employee fails to respond to an offer of modified employment.

(4) (a) In cases where it is determined that a temporarily disabled employee is responsible for termination of employment, the resulting wage loss shall not be attributable to the on-the-job injury.

(b) The claimant's refusal to accept an offer of modified employment under either of the following conditions does not constitute responsibility for termination:

(I) The offer of modified employment would require the claimant to travel a distance of greater than fifty miles one way more than the claimant's preinjury commute; or

(II) An administrative law judge determines that the claimant's rejection of the offer of modified employment was reasonable considering the totality of the claimant's circumstances, including accounting for:

(A) The consequences of the industrial injury;

(B) The financial hardship that would be imposed on the claimant in order to accept the offer of modified employment; or

(C) Any other reasons that would, in the opinion of the administrative law judge, make it impracticable for the claimant to accept the offer of modified employment.

(c) The circumstances described in paragraph (b) of this subsection (4) are not exhaustive.

8-42-106. Temporary partial disability. (1) In case of temporary partial disability, the employee shall receive sixty-six and two-thirds percent of the difference between the employee's average weekly wage at the time of the injury and the employee's average weekly wage during the continuance of the temporary partial disability, not to exceed a maximum of ninety-one percent of the state average weekly wage per week. Temporary partial disability shall be paid at least once every two weeks.

(2) Temporary partial disability payments shall continue until the first occurrence of either one of the following:

(a) The employee reaches maximum medical improvement; or

(b) (I) The attending physician gives the employee a written release to return to modified employment, such employment is offered to the employee in writing, and the employee fails to begin such employment.

(II) In the case of employment by a temporary help contracting firm, once the employee has received one written offer of modified employment meeting the requirements of subparagraph (III) of this paragraph (b), the employee shall be deemed to be on notice that modified employment is available. Subsequent offers of modified employment need not be in writing so long as the job requirements of such modified employment are within the restrictions given the employee by the employee's attending physician and the employee is allowed a period of at least twenty-four hours, not including any part of a Saturday, Sunday, or legal holiday, within which to respond to any such offer.

(III) A written offer of modified employment under subparagraph (II) of this paragraph (b) shall clearly state:

(A) That future offers of employment need not be in writing;

(B) The policy of the temporary help contracting firm regarding how and when employees are expected to learn of such future offers; and

(C) That benefits under this section will be terminated if an employee fails to respond to an offer of modified employment.

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8-42-107. Permanent partial disability benefits - schedule - medical impairment benefits - how determined. (1) **Benefits available.** (a) When an injury results in permanent medical impairment, and the employee has an injury or injuries enumerated in the schedule set forth in subsection (2) of this section, the employee shall be limited to medical impairment benefits as specified in subsection (2) of this section.

(b) When an injury results in permanent medical impairment and the employee has an injury or injuries not on the schedule specified in subsection (2) of this section, the employee shall be limited to medical impairment benefits as specified in subsection (8) of this section.

(2) **Scheduled injuries.** In case an injury results in a loss set forth in the following schedule, the injured employee, in addition to compensation to be paid for temporary disability, shall receive compensation for the period as specified:

(a) The loss of an arm at the shoulder	208 weeks
(a.5) The loss of an arm above the hand including the wrist	208 weeks
(b) (Deleted by amendment, L. 94, p. 2002, § 4, effective July 1, 1994.)	
(c) The loss of a hand below the wrist	104 weeks
(d) The loss of a thumb and the metacarpal bone thereof	50 weeks
(e) The loss of a thumb at the proximal joint	35 weeks
(f) The loss of a thumb at the second or distal joint	18 weeks
(g) The loss of an index finger and the metacarpal bone thereof	26 weeks
(h) The loss of an index finger at the proximal joint	18 weeks
(i) Loss of an index finger at the second joint	13 weeks
(j) Loss of an index finger at the distal joint	9 weeks
(k) Loss of a second finger and the metacarpal bone thereof	18 weeks
(l) Loss of a middle finger at the proximal joint	13 weeks
(m) Loss of a middle finger at the second joint	9 weeks
(n) Loss of a middle finger at the distal joint	5 weeks
(o) Loss of a third or ring finger and the metacarpal bone thereof	11 weeks
(p) Loss of a ring finger at the proximal joint	7 weeks
(q) Loss of a ring finger at the second joint	7 weeks
(r) Loss of a ring finger at the distal joint	4 weeks
(s) Loss of a little finger and the metacarpal bone thereof	13 weeks
(t) Loss of a little finger at the proximal joint	9 weeks
(u) Loss of a little finger at the second joint	9 weeks
(v) Loss of a little finger at the distal joint	4 weeks
(w) Loss of a leg at the hip joint or so near thereto as to preclude the use of an artificial limb	208 weeks
(w.5) The loss of a leg above the foot including the ankle	208 weeks
(x) (Deleted by amendment, L. 94, p. 2002, § 4, effective July 1, 1994.)	
(y) The loss of a foot below the ankle	104 weeks
(z) The loss of a great toe with the metatarsal bone thereof	26 weeks
(aa) The loss of a great toe at the proximal joint	18 weeks
(bb) The loss of a great toe at the second or distal joint	9 weeks
(cc) The loss of any other toe with the metatarsal bone thereof	11 weeks
(dd) The loss of any other toe at the proximal joint	4 weeks
(ee) The loss of any other toe at the second or distal joint	4 weeks
(ff) The loss of a tooth	6 weeks
(gg) Total blindness of one eye	104 weeks
(hh) Total deafness of both ears	139 weeks
(ii) Total deafness of one ear	35 weeks
(jj) Where worker prior to injury has suffered a total loss of hearing in one ear, and as a result of the accident loses total hearing in remaining ear	139 weeks

(3) Temporary disability terminates as to injuries coming under any provision of this section upon the occurrence of any of the events enumerated in section 8-42-105 (3).

(4) For the purpose of this schedule, permanent and complete paralysis of any member as the proximate result of accidental injury shall be deemed equivalent to the loss thereof.

(5) If amputation is made between any two joints mentioned in this schedule, except amputation between the knee and the hip joint, the resulting loss shall be estimated as if the amputation had been made at the joint nearest thereto. If any portion of the bone of the distal joint of any finger, thumb, or toe is amputated, the amount paid therefor shall be the amount allowed for amputation at said distal joint.

(6) (a) The amounts specified in subsections (1) to (5) of this section shall be at the compensation rate of one hundred seventy-six dollars per week.

(b) On July 1, 2000, and on each succeeding July 1 thereafter, the compensation rate established in this subsection (6) shall be modified for claims arising on and after such date by the same percentage increase or decrease as the state average weekly wage as determined by the director when the director establishes the state average weekly wage pursuant to section 8-47-106.

(7) (a) When an injured employee sustains two or more injuries coming under this schedule, the disabilities specified in subsections (1) to (5) of this section shall be added, and the injured employee shall receive the sum total thereof; except that, where the injury results in the loss or partial loss of use of the index finger and thumb of the same hand or of more than two digits of any one hand or foot, the disability, in the discretion of the director, may be compensated on the basis of the partial loss of use of said hand or foot, measured respectively from the wrist or ankle.

(b) (I) The general assembly finds, determines, and declares that the rating organization that studied the impact of the changes in Senate Bill 91-218, enacted at the first regular session of the fifty-eighth general assembly, assumed that scheduled injuries would remain on the schedule and nonscheduled injuries would be compensated as medical impairment benefits. Therefore, the general assembly finds, determines, and declares that the purpose of changing the provisions of subparagraph (II) of this paragraph (b), as amended by House Bill 99-1157, enacted at the first regular session of the sixty-second general assembly, is to clarify that scheduled injuries shall be compensated as provided on the schedule and nonscheduled injuries shall be compensated as medical impairment benefits, and that, when an injured worker sustains both scheduled and nonscheduled injuries, the losses shall be compensated on the schedule for scheduled injuries and the nonscheduled injuries shall be compensated as medical impairment benefits. The general assembly further determines and declares that mental or emotional stress shall be compensated pursuant to section 8-41-301 (2) and shall not be combined with a scheduled or a nonscheduled injury.

(II) Except as provided in subsection (8) of this section, where an injury causes the loss of, loss of use of, or partial loss of use of any member specified in the foregoing schedule, the amount of permanent partial disability shall be the proportionate share of the amount stated in the above schedule for the total loss of a member, and such amount shall be in addition to compensation for temporary disability. Where an injury causes a loss set forth in the schedule in subsection (2) of this section and a loss set forth for medical impairment benefits in subsection (8) of this section, the loss set forth in the schedule found in said subsection (2) shall be compensated solely on the basis of such schedule and the loss set forth in said subsection (8) shall be compensated solely on the basis for such medical impairment benefits specified in said subsection (8).

(III) Mental or emotional stress shall be compensated pursuant to section 8-41-301 (2) and shall not be combined with a scheduled or a nonscheduled injury, except for the purposes of calculating a claimant's impairment rating to determine the applicable cap for benefits pursuant to section 8-42-107.5.

(8) **Medical impairment benefits - determination of MMI for scheduled and nonscheduled injuries.** (a) When an injury results in permanent medical impairment not set forth in the schedule in subsection (2) of this section, the employee shall be limited to medical impairment benefits calculated as provided in this subsection (8). The procedures for determination of maximum medical improvement set forth in paragraph (b) of this subsection (8) shall be available in cases of injuries set forth in the schedule in subsection (2) of this section and also in cases of injuries that are not set forth in said schedule.

(b) (I) An authorized treating physician shall make a determination as to when the injured employee reaches maximum medical improvement as defined in section 8-40-201 (11.5).

(II) If either party disputes a determination by an authorized treating physician on the question of whether the injured worker has or has not reached maximum medical improvement, an independent medical examiner may be selected in accordance with section 8-42-107.2; except that, if an authorized treating physician has not determined that the employee has reached maximum medical improvement, the employer or insurer may only request the selection of an independent medical examiner if all of the following conditions are met:

(A) At least twenty-four months have passed since the date of injury;

(B) A party has requested in writing that an authorized treating physician determine whether the employee has reached maximum medical improvement;

(C) Such authorized treating physician has not determined that the employee has reached maximum medical improvement; and

(D) A physician other than such authorized treating physician has determined that the employee has reached maximum medical improvement.

(III) Notwithstanding paragraph (c) of this subsection (8), if the independent medical examiner selected pursuant to subparagraph (II) of this paragraph (b) finds that the injured worker has reached maximum medical improvement, the independent medical examiner shall also determine the injured worker's permanent medical impairment rating. The finding regarding maximum medical improvement and permanent medical impairment of an independent medical examiner in a dispute arising under subparagraph (II) of this paragraph (b) may be overcome only by clear and convincing evidence. A hearing on this matter shall not take place until the finding of the independent medical examiner has been filed with the division.

(b.5) When an authorized treating physician providing primary care who is not accredited under the level II accreditation program pursuant to section 8-42-101 (3.5) makes a determination that an employee has reached maximum medical improvement, the following procedures shall apply:

(I) (A) If the employee is not a state resident upon reaching maximum medical improvement, such physician shall, within twenty days after the determination of maximum medical improvement, determine whether the employee has sustained any permanent impairment. If the employee has sustained any permanent impairment, such physician shall conduct such tests as are required by the revised third edition of the "American Medical Association Guides to the Evaluation of Permanent Impairment" to determine such employee's medical impairment rating and shall transmit to the self-insured employer or insurer all test results and all relevant medical information.

(B) However, if the employee chooses not to have the authorized treating physician perform such tests, or if the information is not transmitted in a timely manner, the self-insured employer or insurer shall arrange and pay for the employee to return to Colorado for examination, testing, and rating, at the expense of the self-insured employer or insurer. If the employee refuses to return to Colorado for examination, no permanent disability benefits shall be awarded.

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(C) The self-insured employer or insurer shall, within twenty days after receipt of the medical information described in sub-subparagraph (A) of this subparagraph (I), appoint a level II accredited physician to determine the employee's medical impairment rating. If the employee was treated by an authorized level II accredited physician in Colorado for the same injury for which a medical impairment rating is being sought, the self-insured employer or insurer shall request such physician to determine the claimant's medical impairment rating. At the same time as such rating is transmitted to the self-insured employer or insurer, the level II physician shall transmit a copy of the same to the authorized treating physician and the employee.

(D) If the employee, insurer, or self-insured employer disputes a medical impairment rating, including a finding that there is no medical impairment, made pursuant to sub-subparagraph (A) of this subparagraph (I), the parties to the dispute may select an independent medical examiner in accordance with section 8-42-107.2 to review the rating. The cost of such independent medical examination shall be borne by the requesting party. The finding of such independent medical examiner shall be overcome only by clear and convincing evidence. Any review by an independent medical examiner shall be based on the employee's written medical records only, without further examination, unless a party to the dispute requests that such review include a physical examination by the independent medical examiner. Except when the provisions of section 8-42-107.2 (5) (b) apply, the party requesting a physical examination shall pay all additional costs, including, if applicable, the reasonable cost of returning the employee to Colorado.

(II) If the employee is a state resident, such physician shall, within twenty days after the determination of maximum medical improvement, determine whether the employee has sustained any permanent impairment. If the employee has sustained any permanent impairment, such physician shall refer such employee to a level II accredited physician for a medical impairment rating, which shall be based on the revised third edition of the "American Medical Association Guides to the Evaluation of Permanent Impairment". If the referral is not timely made by the authorized treating physician, the insurer or self-insured employer shall refer the employee to a level II accredited physician within forty days after the determination of maximum medical improvement. If the employee, insurer, or self-insured employer disputes the finding regarding permanent medical impairment, including a finding that there is no permanent medical impairment, the parties to the dispute may select an independent medical examiner in accordance with section 8-42-107.2. The finding of any such independent medical examiner shall be overcome only by clear and convincing evidence.

(c) When the injured employee's date of maximum medical improvement has been determined pursuant to subparagraph (I) of paragraph (b) of this subsection (8), and there is a determination that permanent medical impairment has resulted from the injury, the authorized treating physician shall determine a medical impairment rating as a percentage of the whole person based on the revised third edition of the "American Medical Association Guides to the Evaluation of Permanent Impairment", in effect as of July 1, 1991. Except for a determination by the authorized treating physician providing primary care that no permanent medical impairment has resulted from the injury, any physician who determines a medical impairment rating shall have received accreditation under the level II accreditation program pursuant to section 8-42-101. For purposes of determining levels of medical impairment, the physician shall not render a medical impairment rating based on chronic pain without anatomic or physiologic correlation. Anatomic correlation must be based on objective findings. If either party disputes the authorized treating physician's finding of medical impairment, including a finding that there is no permanent medical impairment, the parties may select an independent medical examiner in accordance with section 8-42-107.2. The finding of the independent medical examiner may be overcome only by clear and convincing evidence. A hearing on this matter shall not take place until the finding of the independent medical examiner has been filed with the division.

(c.5) When an injury results in the total loss or total loss of use of an arm at the shoulder, a forearm at the elbow, a hand at the wrist, a leg at the hip or so near thereto as to preclude the use of an artificial limb, the loss of a leg at or above the knee where the stump remains sufficient to permit the use of an artificial limb, a foot at the ankle, an eye, or a combination of any such losses, the benefits for such loss shall be determined pursuant to this subsection (8).

(d) Medical impairment benefits shall be determined by multiplying the medical impairment rating determined pursuant to paragraph (c) of this subsection (8) by the age factor determined pursuant to paragraph (e) of this subsection (8) and by four hundred weeks and shall be calculated at the temporary total disability rate specified in section 8-42-105. Up to ten thousand dollars of the total amount of any such award or scheduled award shall be automatically paid in a lump sum less the discount as calculated in section 8-43-406 upon the injured employee's written request to the employer or, if insured, to the employer's insurance carrier. The remaining periodic payments of any such award, after subtracting the total amount of the lump sum requested by the employee without subtracting the discount calculated in section 8-43-406, shall be paid at the temporary total disability rate but not less than one hundred fifty dollars per week and not more than fifty percent of the state average weekly wage, beginning on the date of maximum medical improvement.

(e) The age factor for use in calculating medical impairment benefits pursuant to this subsection (8) is as follows:

AGE	FACTOR	AGE	FACTOR
20 or younger	1.80	40	1.40
21	1.78	41	1.38
22	1.76	42	1.36
23	1.74	43	1.34
24	1.72	44	1.32
25	1.70	45	1.30
26	1.68	46	1.28
27	1.66	47	1.26
28	1.64	48	1.24
29	1.62	49	1.22
30	1.60	50	1.20
31	1.58	51	1.18
32	1.56	52	1.16
33	1.54	53	1.14
34	1.52	54	1.12
35	1.50	55	1.10
36	1.48	56	1.08
37	1.46	57	1.06
38	1.44	58	1.04
39	1.42	59	1.02
		60 or older	1.00

(f) In all claims in which an authorized treating physician recommends medical benefits after maximum medical improvement, and there is no contrary medical opinion in the record, the employer shall, in a final admission of liability, admit liability for related reasonable and necessary medical benefits by an authorized treating physician.

8-42-107.2. Selection of independent medical examiner - procedure - time - disclosures regarding physician relationships with insurers, self-insured employers, or claimants - rules - applicability. (1) This section governs the selection of an independent medical examiner, also referred to in this section as an "IME", to resolve disputes arising under section 8-42-107.

(2) (a) (I) Except as otherwise provided in subparagraph (II) of this paragraph (a), the time for selection of an IME commences as follows, depending on which party initiates the dispute:

(A) For the claimant, the time for selection of an IME commences with the date of mailing of a final admission of liability by the insurer or self-insured employer that includes an impairment rating issued in accordance with section 8-42-107.

(B) For the insurer or self-insured employer, the time for selection of an IME commences with the date on which the disputed finding or determination is mailed or physically delivered to the insurer or self-insured employer.

(II) If, as of the date on which the time for selection of an IME would otherwise commence, a medical condition is not yet ratable because of a provision in the medical treatment guidelines or in the revised third edition of the "American Medical Association Guides to the Evaluation of Permanent Impairment", the time for selection of an IME shall commence on the date on which an impairment rating is mailed or physically delivered.

(b) If any party disputes a finding or determination of the authorized treating physician, such party shall request the selection of an IME. The requesting party shall notify all other parties in writing of the request, on a form prescribed by the division by rule, and shall propose one or more acceptable candidates for the purpose of entering into negotiations for the selection of an IME. Such notice and proposal is effective upon mailing via United States mail, first-class postage paid, addressed to the division and to the last-known address of each of the other parties. Unless such notice and proposal are given within thirty days after the date of mailing of the final admission of liability or the date of mailing or delivery of the disputed finding or determination, as applicable pursuant to paragraph (a) of this subsection (2), the authorized treating physician's findings and determinations shall be binding on all parties and on the division.

(c) If the insurer or self-insured employer requests an IME and the examination is conducted before the insurer or self-insured employer admits liability pursuant to section 8-43-203 (2) (b), the claimant may not request a second independent medical examination on that issue but may appeal the IME's decision, as set forth in section 8-43-203 (2) (b) (II).

(3) (a) Upon receiving the requesting party's notice and proposal pursuant to subsection (2) of this section, the other parties have until the end of the thirtieth day after the date of mailing of such notice and proposal within which to negotiate and select an IME. If the parties agree on an IME on or before such thirtieth day, the requesting party shall promptly notify the IME in writing that he or she has been selected. If, within such time, the parties are unable to agree or the requesting party receives no response to the notice and proposal, the insurer or self-insured employer shall give written notice of such fact to the division within thirty days via United States mail, first-class postage paid. The division shall then, within ten days after receiving such written notice, select three physicians by a revolving selection process established by the division from the list of physicians maintained by the division. The division shall administer the list in such fashion as to ensure that the names of candidates to serve as IME in each pending case remain confidential until the IME is selected. The director of the division shall promulgate rules to implement the process of selecting a panel of three physicians from which the parties may select a physician to conduct a division independent medical examination. The selection of a physician panel shall be based on various factors, including, but not limited to, the designation by rule of the fields of specialization authorized to perform independent medical examinations for conditions listed under each medical treatment guideline and measures to prevent the over-utilization of physicians or specialists. The requesting party shall have the opportunity to strike one of the three physicians from the list, followed by the opposing party who shall then be given the opportunity to strike one physician from the list. The remaining IME physician shall be designated by the division to conduct the IME. If one or neither party strikes a physician from the list, the division shall select the physician to conduct the IME from the remaining physicians on the list.

(b) Upon selection of the IME, the insurance carrier shall provide to the IME and all other parties a complete copy of all medical records in its possession pertaining to the subject injury, postmarked or hand-delivered within fourteen days prior to the independent medical examination. If the insurance carrier or its representative fails to timely submit such medical records, the claimant may request that the division cancel the independent medical examination or the claimant may submit all the medical records he or she has available within ten days prior to the independent medical examination, or as otherwise arranged by the division with the IME. If the claimant submits medical records, the defaulting party may supplement such records pursuant to rules of the division. This paragraph (b) shall not be construed to prohibit an independent medical examination from being rescheduled.

(c) Any supplemental medical records shall be prepared according to the rules of the division and shall be submitted to the IME and all other parties no later than seven days prior to the independent medical examination.

(d) (I) The IME shall neither contact any of the authorized treating physicians or any examining or reviewing physician nor request a claimant to undergo repeat testing when the testing results were valid and the IME has resolved any disparity in testing results.

(II) Subparagraph (I) of this paragraph (d), as enacted by Senate Bill 09-168, enacted in 2009, is declared to be procedural and was intended to and shall apply to all workers' compensation claims, regardless of the date the claim was filed.

(3.5) (a) Prior to making a determination to strike a physician from the list of IME physicians provided by the division in accordance with paragraph (a) of subsection (3) of this section, a party may request and shall be entitled to obtain and review a summary disclosure pertaining to any business, financial, employment, or advisory relationship between a listed physician, or any entity affiliated with the physician, and the insurer, self-insured employer, or claimant who is a party to the claim. The party shall not be required to make its determination to strike a physician from the list until he or she has received and has had a reasonable opportunity to review the summary disclosure.

(b) The director shall adopt rules as necessary to implement this subsection (3.5). At a minimum, the rules shall:

(I) Require physicians to disclose the requested business, financial, employment, or advisory relationship information in a summarized format;

(II) Detail the form and manner in which the summary disclosure is to be provided;

(III) Set parameters regarding the period within which a requesting party is allowed to review the summary disclosure prior to making a determination to strike a physician from the list; and

(IV) Prohibit a physician who fails to disclose the requested summarized information from conducting an independent medical examination until he or she complies with the request.

(4) (a) Upon receipt of the IME's report, the division has five business days to review the report and either:

(I) Issue a notice to all parties that the division has received the IME's report; or

(II) Notify the IME of any deficiencies in the report by letter and send copies to all parties.

(b) Upon notification of any deficiencies identified in the IME's report, the IME has twenty days to remedy the deficiencies and resubmit the report. After the report has been resubmitted, the division shall comply with paragraph (a) of this subsection (4). If the IME fails to timely respond to the notification of deficiencies, the division shall issue a notice that it has received the IME's report and the insurer or self-insured employer shall comply with paragraph (c) of this subsection (4).

(c) Within twenty days after the date of the mailing of the division's notice that it has received the IME's report, the insurer or self-insured employer shall either file its admission of liability pursuant to section 8-43-203 or request a hearing before the division contesting one or more of the IME's findings or determinations contained in such report.

(5) (a) Except as provided in paragraph (b) of this subsection (5), the requesting party shall advance the full cost of the independent medical examination to the IME at least ten days before the appointed time for the examination.

(b) A claimant who has established that he or she is indigent shall receive an independent medical examination without having to advance the cost to the independent medical examiner. The director of the division of workers' compensation shall promulgate rules to establish a procedure to determine indigence.

(6) This section was enacted by House Bill 98-1062, as enacted at the second regular session of the sixty-first general assembly, as a remedial statute and is procedural in nature. The purpose of this section is to improve and simplify remedies already existing for the enforcement of rights and the redress of injuries under the workers' compensation laws of Colorado. This section effected procedures related to the selection of an IME and shall be applicable to all open cases with a date of injury on or after July 1, 1991, for which a division IME has not been requested, pursuant to section 8-42-107.

8-42-107.5. Limits on temporary disability payments and permanent partial disability payments. No claimant whose impairment rating is twenty-five percent or less may receive more than seventy-five thousand dollars from combined temporary disability payments and permanent partial disability payments. No claimant whose impairment rating is greater than twenty-five percent may receive more than one hundred fifty thousand dollars from combined temporary disability payments and permanent partial disability payments. For the purposes of this section, any mental impairment rating shall be combined with the physical impairment rating to establish a claimant's impairment rating for determining the applicable cap. For injuries sustained on and after January 1, 2012, the director shall adjust these limits on the amount of compensation for combined temporary disability payments and permanent partial disability payments on July 1, 2011, and each July 1 thereafter, by the percentage of adjustment made by the director to the state average weekly wage pursuant to section 8-47-106.

8-42-107.6. Premium dividend for employing injured employees. The commissioner of insurance shall include within the premium dividends specified in rules and regulations promulgated pursuant to section 10-4-408 (5), C.R.S., a premium dividend of up to ten percent if an employer reemploys injured employees at their preinjury wages including any wage increases to which such employees would have been entitled had the employee not been injured. The total amount of the premium dividend shall be determined on a pro rata basis, taking into account the total number of employees injured during the period of time the insurance policy was in effect and the total number of injured employees who have sustained permanent partial disability as a result of their injuries and who have been rehired by such employer.

8-42-108. Disfigurement - additional compensation. (1) If an employee is seriously, permanently disfigured about the head, face, or parts of the body normally exposed to public view, in addition to all other compensation benefits provided in this article and except as provided in subsection (2) of this section, the director may allow compensation not to exceed four thousand dollars to the employee who suffers such disfigurement.

(2) If an employee sustains any of the following disfigurements, the director may allow up to eight thousand dollars as compensation to the employee in addition to all other compensation benefits provided in this article other than compensation allowed under subsection (1) of this section:

(a) Extensive facial scars or facial burn scars;

(b) Extensive body scars or burn scars; or

(c) Stumps due to loss or partial loss of limbs.

(3) The director shall adjust the limits on the amount of compensation for disfigurement specified in this section on July 1, 2008, and each July 1 thereafter by the percentage of adjustment made by the director to the state average weekly wage pursuant to section 8-47-106.

8-42-109. Added compensation for additional injuries. Where an injured employee sustains an injury covered by sections 8-42-107, 8-42-108, and 8-46-101 but in addition thereto receives other injuries which are sufficient in their nature to alone cause temporary total disability, said employee shall receive, in addition to the amounts specified in said schedule, compensation for temporary total disability as long as said disability is found to exist as a result of said other injuries.

8-42-110. Permanent partial disability - how determined. (Repealed)

8-42-111. Award for permanent total disability. (1) In cases of permanent total disability, the award shall be sixty-six and two-thirds percent of the average weekly wages of the injured employee and shall continue until death of such person so totally disabled but not in excess of the weekly maximum benefits specified in this article for injuries causing temporary total disability.

(2) (Deleted by amendment, L. 91, p. 1313, § 19, effective July 1, 1991.)

(3) A disabled employee capable of rehabilitation which would enable the employee to earn any wages in the same or other employment, who refuses an offer of employment by the same or other employer or an offer of vocational rehabilitation paid for by the employer shall not be awarded permanent total disability.

(4) For injuries occurring on and after July 1, 1991, and before July 1, 1994, the average weekly wage of injured employees used for computing compensation paid for awards pursuant to subsection (1) of this section shall be increased by two percent per year effective July 1 of each year, and such increased compensation shall be payable for the subsequent twelve months.

(5) Repealed.

8-42-112. Acts of employees reducing compensation. (1) The compensation provided for in articles 40 to 47 of this title shall be reduced fifty percent:

(a) Where injury is caused by the willful failure of the employee to use safety devices provided by the employer;

(b) Where injury results from the employee's willful failure to obey any reasonable rule adopted by the employer for the safety of the employee; or

(c) (Deleted by amendment, L. 99, p. 581, § 2, effective July 1, 1999.)

(d) Where the employee willfully misleads an employer concerning the employee's physical ability to perform the job, and the employee is subsequently injured on the job as a result of the physical ability about which the employee willfully misled the employer. Notwithstanding any other provisions of articles 40 to 47 of this title, the provisions of this paragraph (d) shall apply in addition to any other penalty that may be imposed under section 8-43-402.

(2) In the event the claimant or dependent is receiving periodic disability benefits for which a reduction in Colorado workers' compensation benefits has been made pursuant to section 8-42-103, the fifty percent reduction provided for in subsection (1) of this section shall be computed according to the rate of benefits received by the claimant or dependent after, and not before, such other reduction has been made.

(3) An admission of liability reducing compensation under this section must include a statement by a representative of the employer listing the specific facts on which the reduction is based.

(4) If the insurer or self-insured employer admits liability for the claim, any party may request an expedited hearing on the issue of whether the employer or insurer may reduce compensation under this section if the application for hearing is filed within forty-five days after the date of the admission reducing compensation under this section. The director shall set any expedited matter for hearing within sixty days after the date of the application. The time schedule for an expedited hearing is subject to the extensions set forth in section 8-43-209. If the party elects not to request an expedited hearing under this subsection (4), the time schedule for hearing the matter is as set forth in section 8-43-209.

(5) Nothing in this section limits the right of a party to submit evidence at a hearing scheduled under this section or section 8-43-209.

(6) Nothing in this section precludes a party from requesting a hearing pursuant to the time schedule set forth in section 8-43-209.

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8-42-112.5. Limitation on payments - use of controlled substances. (1) Nonmedical benefits otherwise payable to an injured worker are reduced fifty percent where the injury results from the presence in the worker's system, during working hours, of controlled substances, as defined in section 18-18-102 (5), C.R.S., that are not medically prescribed or of a blood alcohol level at or above 0.10 percent, or at or above an applicable lower level as set forth by federal statute or regulation, as evidenced by a forensic drug or alcohol test conducted by a medical facility or laboratory licensed or certified to conduct such tests. A duplicate sample from any test conducted must be preserved and made available to the worker for purposes of a second test to be conducted at the worker's expense. If the test indicates the presence of such substances or of alcohol at such level, it is presumed that the employee was intoxicated and that the injury was due to the intoxication. This presumption may be overcome by clear and convincing evidence.

(2) As used in this section, "nonmedical benefits" means all benefits provided for in articles 40 to 47 of this title other than disbursements for medical, surgical, nursing, and hospital services, apparatus, and supplies.

8-42-113. Limitations on payments to prisoners - incentives to sheriffs and department of corrections. (1) Notwithstanding any other provision of law to the contrary except as provided in subsection (4) of this section, any individual who is otherwise entitled to benefits under articles 40 to 47 of this title shall neither receive nor be entitled to such benefits for any week following conviction during which such individual is confined in a jail, prison, or any department of corrections facility.

(1.5) (a) In the event the identifying information transmitted to the department of labor and employment pursuant to section 17-26-118.5 (2), C.R.S., results in the termination of workers' compensation benefits pursuant to subsection (1) of this section, the employer or the insurance carrier, if any, shall pay to the sheriff a reward equal to ten percent of one week's benefit to which the ineligible individual would otherwise be eligible to receive.

(b) An individual who is ineligible pursuant to subsection (1) of this section shall repay to the employer or the insurance carrier, if any, any amounts received while not eligible.

(2) After such individual's release from confinement, the individual shall be restored to the same position with respect to entitlement to benefits under articles 40 to 47 of this title as said individual would otherwise have enjoyed at the point in time of such release from confinement. However, except as provided in subsection (3) of this section, said individual shall not be able to recover, recoup, or otherwise be retroactively entitled to any of the benefits to which the individual would have been entitled without the limitation specified in subsection (1) of this section.

(3) If upon appeal such conviction is overturned, such individual shall be entitled to recover the benefits to which such individual would have been entitled except for the operation of subsection (1) of this section.

(4) This section shall not apply to benefits under articles 40 to 47 of this title to which an inmate of a department of corrections facility or a city, county, or city and county jail is entitled for injury or occupational disease arising out of and in the course of the inmate working, performing services, or participating in a training, rehabilitation, or work release program that has been certified by the federal prison industry enhancement certification program pursuant to the federal "Justice System Improvement Act of 1979", 18 U.S.C. sec. 1761 (c). The inmate shall be entitled to benefits in accordance with section 8-40-301 (3) (a).

8-42-113.5. Recovery of overpayments - notice required. (1) If a claimant has received an award for the payment of disability benefits or a death benefit under articles 40 to 47 of this title and also receives any payment, award, or entitlement to benefits under the federal old-age, survivors, and disability insurance act, an employer-paid retirement benefit plan, or any other plan, program, or source for which the original disability benefits or death benefit is required to be reduced pursuant to said articles, but which were not reflected in the calculation of such disability benefits or death benefit:

(a) Within twenty calendar days after learning of such payment, award, or entitlement, the claimant, or the legal representative of a claimant who is a minor, shall give written notice of the payment, award, or entitlement to the employer or, if the employer is insured, to the employer's insurer. If the claimant or legal representative gives such notice, any overpayment that resulted from the failure to make the appropriate reduction in the original calculation of such disability benefits or death benefit shall be recovered by the employer or insurer in installments at the same rate as, or a lower rate than, the rate at which the overpayments were made. Such recovery shall reduce the disability benefits or death benefit payable after all other applicable reductions have been made.

(b) If the claimant or legal representative of a claimant who is a minor was receiving benefits in excess of the amounts that should have been paid under articles 40 to 47 of this title and failed to give the notice required by paragraph (a) of this subsection (1), the employer or insurer is authorized to cease all disability or death benefit payments immediately until the overpayments have been recovered in full.

(b.5) (I) After the filing of a final admission of liability, except in cases of fraud, any attempt to recover an overpayment shall be asserted within one year after the time the requester knew of the existence of the overpayment.

(II) Subparagraph (I) of this paragraph (b.5), as enacted by Senate Bill 09-168, enacted in 2009, is declared to be procedural and was intended to and shall apply to all workers' compensation claims, regardless of the date the claim was filed.

(c) If for any reason recovery of overpayments as contemplated in paragraph (a) or (b) of this subsection (1) is not practicable, the employer or insurer is authorized to seek an order for repayment.

(d) When an overpayment is repaid to the insurer, the insurer shall credit the losses on the claim and report the corrected losses to the insurance rating organization on the next scheduled report for purposes of the employer's experience modification.

8-42-114. Death benefits. In case of death, the dependents of the deceased entitled thereto shall receive as compensation or death benefits sixty-six and two-thirds

percent of the deceased employee's average weekly wages, not to exceed a maximum of ninety-one percent of the state average weekly wage per week for accidents occurring on or after July 1, 1989, and not less than a minimum of twenty-five percent of the applicable maximum per week. In cases where it is determined that periodic death benefits granted by the federal old age, survivors, and disability insurance act or a workers' compensation act of another state or of the federal government are payable to an individual and the individual's dependents, the aggregate benefits payable for death pursuant to this section shall be reduced, but not below zero, by an amount equal to fifty percent of such periodic benefits.

8-42-115. Death from injury - benefits. (1) In case death proximately results from the injury, the benefits shall be in the amount and to the persons following:

(a) If there are no dependents, compensation shall be limited to the expenses provided for medical, hospital, and funeral expense of the deceased, together with such sums as may have accrued or been paid to the deceased during the deceased's lifetime for disability, and any amount or payment which is due under section 8-46-101.

(b) If there are wholly dependent persons at the time of death, the payment shall be in accordance with the provisions of section 8-42-114.

(c) If there are partially dependent persons at the time of death, the payment shall not exceed sixty-six and two-thirds percent of the average weekly wages, subject to the limitations of articles 40 to 47 of this title as to maximum and minimum weekly amounts, to continue for such period after the date of death as is required to pay, at the weekly rate, the total amount awarded by the director to be paid to such partially dependent persons.

8-42-116. When death not proximate result - benefits. (1) If death occurs to an injured employee, other than as a proximate result of any injury, before disability indemnity ceases and the deceased leaves persons wholly dependent upon the deceased for support, death benefits shall be as follows:

(a) Where the injury proximately caused permanent total disability, the death benefit shall consist of the unpaid and unaccrued portion of the permanent total disability benefit which the employee would have received had the employee lived until receiving compensation at the employee's regular rate for a period of six years.

(b) Where the injury proximately caused permanent partial disability, the death benefit shall consist of the unpaid and unaccrued portion of the permanent partial disability benefit which the employee would have received had he lived.

8-42-117. Benefits to partial dependents. (1) If death occurs to an injured employee, other than as a proximate result of the injury, before disability indemnity ceases and the deceased leaves persons partially dependent upon the deceased for support, death benefits shall be as follows:

(a) Where the injury proximately caused permanent total disability, the death benefit shall consist of that proportion of the unpaid and unaccrued portion of the permanent total disability benefit which the employee would have received had the employee lived until said employee had received compensation at the employee's regular rate for a period of six years as the amount devoted by the deceased to the support of such persons for the year immediately prior to the injury bears to the total income of the persons during said year.

(b) Where the injury caused permanent partial disability, the death benefit shall consist of that proportion of the unpaid and unaccrued portion of the permanent partial disability benefit which the employee would have received if the employee had lived as the amount devoted by the deceased to the support of such persons for the year immediately prior to the injury bears to the total income of the persons during said year.

8-42-118. Applicability of repeal of death benefits to nonresident dependents. The repeal of section 8-50-114, as said section existed prior to July 1, 1983, shall not affect the payments of death benefits which are being paid before July 1, 1983.

8-42-119. Partial dependents - compensation. Partial dependents shall be entitled to receive only that portion of the benefits provided for those wholly dependent which the average amount of the wages regularly contributed by the deceased to such partial dependents at and for a reasonable time immediately prior to the injury bore to the total income of the dependents during the same time. The director has power and discretion to determine the proper elements to be considered as income of said dependents in each particular case. Where there are persons both wholly dependent and partially dependent, only those wholly dependent shall be entitled to compensation.

8-42-120. Termination of right to benefits. Death benefits shall be paid to a dependent widow or widower for life or until remarriage, and, if there are no dependent children, as defined in section 8-41-501 (1) (b) and (1) (c), at the time of remarriage, a two-year lump-sum benefit without discount, less any lump sums previously paid, shall be paid to such widow or widower. Death benefits shall terminate upon the happening of any of the following contingencies and shall thereupon survive to the remaining dependents, if any: Upon the death of any dependent; when a child or brother or sister of the deceased reaches the age of eighteen years, except as otherwise provided in sections 8-41-501 (1) (b) and (1) (c) and 8-41-502; and upon the expiration of six years from the date of the death of the injured employee in the case of partial dependents.

8-42-121. Director to determine and apportion benefits. Death benefits shall be paid to such one or more of the dependents of the decedent, for the benefit of all the dependents entitled to such compensation, as may be determined by the director, who may apportion the benefits among such dependents in such manner as the director may deem just and equitable. Payment to a dependent subsequent in right may be made, if the director deems it proper, which payment shall operate to discharge all other claims therefor. The dependents or persons to whom benefits are paid shall apply the same to the use of the several beneficiaries thereof according to their respective claims upon the decedent for support in compliance with the finding and direction of the director.

8-42-122. Minor dependents - safeguarding payments. In all cases of death where the dependents are minor children, it shall be sufficient for the surviving spouse or a friend to make application and claim on behalf of the

minor children. The director, for the purpose of protecting the rights and interests of any dependents whom the director deems incapable of fully protecting their own interests, may deposit the payments in any type of account in state or national banks insured by the federal deposit insurance corporation or its successor, savings and loan associations that are insured by the federal deposit insurance corporation or its successor, or credit unions that are insured by the national credit union share insurance fund and may otherwise provide for the manner and method of safeguarding the payments due such dependents in such manner as the director sees fit.

8-42-123. Burial expenses. When, as a proximate result of an injury, death occurs to an injured employee, there shall be paid in one lump sum within thirty days after death a sum not to exceed seven thousand dollars for reasonable funeral and burial expenses. Said sum may be paid to the undertaker, cemetery, or any other person who has paid the funeral and burial costs, if the director so orders. If the employee leaves no dependents, compensation shall be limited to said sum and the compensation, if any, which has accrued to date of death and the medical, surgical, and hospital expenses provided in articles 40 to 47 of this title. If the deceased employee leaves dependents, said sum shall be paid in addition to all other sums of compensation provided for in this article.

8-42-124. Assignability and exemption of claims - payment to employers - when. (1) Except for amounts due under court-ordered support or for a judgment for a debt for fraudulently obtained public assistance, fraudulently obtained overpayments of public assistance, or excess public assistance paid for which the recipient was ineligible, claims for compensation or benefits due, or any proceeds thereof, under articles 40 to 47 of this title shall not be assigned, released, or commuted except as provided in said articles and shall be exempt from all claims of creditors and from levy, execution, and attachment or other remedy or recovery or collection of a debt, which exemption may not be waived.

(2) The power given in any power of attorney or other authority from any injured employee or the dependents of any killed employee purporting to authorize any other person to receive, be paid, or receipt for any compensation benefits awarded any such claimant shall be wholly void and illegal and of no force and effect; except that:

(a) Any employer who is subject to the provisions of articles 40 to 47 of this title and who, by separate agreement, working agreement, contract of hire, or any other procedure, continues to pay a sum in excess of the temporary total disability benefits prescribed by articles 40 to 47 of this title to any employee temporarily disabled as a result of any injury arising out of and in the course of such employee's employment and has not charged the employee with any earned vacation leave, sick leave, or other similar benefits shall be reimbursed if insured by an insurance carrier or shall take credit if self-insured to the extent of all moneys that such employee may be eligible to receive as compensation or benefits for temporary partial or temporary total disability under the provisions of said articles, subject to the approval of the director. If the employee is injured while under a fixed duration contract of employment, all salary and wages paid pursuant to that contract shall be prorated over the duration of the contract in determining whether in any given week the employer paid a sum in excess of the temporary total disability benefit.

(b) This subsection (2) shall not apply to an attorney licensed to practice law in this state and acting in accordance with a power of attorney given by the claimant solely for the purpose of distributing funds pursuant to an admission of liability or an order of the division.

(3) Such payments shall be paid directly to the employer during the period of time that such employer continues to pay a sum in excess of the temporary total disability benefits prescribed by articles 40 to 47 of this title and has not charged any earned vacation leave, sick leave, or other similar benefits to any employee so disabled and for so long as such employee is eligible for temporary disability benefits under the provisions of articles 40 to 47 of this title. The payment of such moneys to an employer shall constitute the payment of compensation or benefits to the employee in accordance with the provisions of section 8-42-103.

(4) When the payment by an employer to any such disabled employee is reduced to a sum equal to or less than the temporary total disability benefits prescribed by articles 40 to 47 of this title, or when the employer has charged the employee with any earned vacation leave, sick leave, or other similar benefits for any reason, the rights of the employee to receive direct payment of any award for temporary partial or temporary total disability that said employee may be entitled to on and after the effective date of such reduction shall be reinstated in accordance with the provisions of articles 40 to 47 of this title.

(5) Any employer subject to the provisions of articles 40 to 47 of this title and otherwise qualifying for direct payment of employee benefits as provided in this section shall notify the division and the insurance carrier of such employer's eligibility to receive such moneys. The director shall approve such direct payment after the filing of such information by the employer as the director may require.

(6) Nothing in this section shall be construed to limit in any way the right of any employee to full payment of any award which may be granted to said employee for permanent partial or permanent total disability under the provisions of articles 40 to 47 of this title; except that benefits for permanent total disability and permanent partial disability shall be subject to wage assignment or income assignment as wages pursuant to section 14-14-102 (9), C.R.S., and subject to garnishment as earnings pursuant to section 13-54.5-101 (2) (b), C.R.S., and subject to administrative lien and attachment pursuant to section 26-13-122, C.R.S., for purposes of enforcement of court-ordered child support and subject to garnishment as earnings pursuant to sections 13-54-104 (1) (b) (IV) and 13-54.5-101 (2) (d), C.R.S., for purposes of enforcement of a judgment for a debt for fraudulently obtained public assistance, fraudulently obtained overpayments of public assistance, or excess public assistance paid for which the recipient was ineligible.

(7) Following an injury, any injured employee may authorize in writing the continuation of any payroll deduction which the employee had authorized or could have authorized before the injury, which authorization shall be legal and may be honored by the employer to the extent that proceeds of

compensation of claims are available to the employer or are made available to the employer by the employer's insurance carrier for this purpose until the authorization is revoked in writing by the injured employee.

(8) If any employer who pays to an injured employee a sum in excess of the temporary total disability benefits prescribed by articles 40 to 47 of this title and who has not charged the employee with any earned vacation leave, sick leave, or other similar benefits seeks to have assigned the compensation benefits otherwise due the injured employee as provided in this section, the employer shall notify the employee of said request at the same time the employer makes the request of the director or insurance carrier or both.

8-42-125. Data gathering on workers' compensation system. The governor and the leader of the opposing party in the house of representatives and the leader of the opposing party in the senate shall contract with a person or entity for obtaining information on the workers' compensation system. The person or entity gathering the information shall work solely at the unanimous direction of the governor and the opposition leadership. Issues or topics that will be subject to the information gathering process shall be determined by unanimous decision of the governor and the opposition leadership. The contractor for the gathering of the information shall have complete access to all records of and files in the division of workers' compensation and the office of administrative courts. Such contractor shall guarantee that any information gathered on any individual shall be kept confidential.

ARTICLE 43
Procedure

PART 1
NOTICES AND REPORTS

8-43-101. Record of injuries - occupational disease - reported to division - rules. (1) Every employer shall keep a record of all injuries that result in fatality to, or permanent physical impairment of, or lost time from work for the injured employee in excess of three shifts or calendar days and the contraction by an employee of an occupational disease that has been listed by the director by rule. Within ten days after notice or knowledge that an employee has contracted such an occupational disease, or the occurrence of a permanently physically impairing injury, or lost-time injury to an employee, or immediately in the case of a fatality, the employer shall, upon forms prescribed by the division for that purpose, report said occupational disease, permanently physically impairing injury, lost-time injury, or fatality to the division. The report shall contain such information as shall be required by the director.

(2) Unless exempted by the director pursuant to rule because of a small number of filings or a showing of financial hardship, beginning July 1, 2006, reports submitted pursuant to this section shall be submitted in an electronic format as determined by the director. Exposure to an injurious substance as defined by the director by rule and injuries to employees that result in no more than three days' or three shifts' loss of time from work, or no permanent physical impairment, or no fatality to the employee shall be reported by the employer only to the insurer of said employer's workers' compensation insurance liability, which injuries and exposure the insurer shall report only by monthly summary form to or as otherwise requested by the division.

8-43-102. Notice to employer of injury - notice to employees of requirement - failure to report. (1) (a) Every employee who sustains an injury resulting from an accident shall notify said employee's employer in writing of the injury within four days of the occurrence of the injury. If the employee is physically or mentally unable to provide said notice, the employee's foreman, superintendent, manager, or any other person in charge who has notice of said injury shall submit such written notice to the employer. Any other person who has notice of said injury may submit a written notice to the said person in charge or to the employer, and in that event the injured employee shall be relieved of the obligation to give such notice. Otherwise, if said employee fails to report said injury in writing, said employee may lose up to one day's compensation for each day's failure to so report. If, at the time of said injury, the employer has failed to display the notice specified in paragraph (b) of this subsection (1), the time period allotted to the employee shall be tolled for the duration of such failure.

(b) Every employer shall display at all times in a prominent place on the workplace premises a printed card with a minimum height of fourteen inches and a width of eleven inches with each letter to be a minimum of one-half inch in height, which shall read as follows:

WARNING

IF YOU ARE INJURED ON THE JOB, WRITTEN NOTICE OF YOUR INJURY MUST BE GIVEN TO YOUR EMPLOYER WITHIN FOUR WORKING DAYS AFTER THE ACCIDENT, PURSUANT TO SECTION 8-43-102 (1), COLORADO REVISED STATUTES.

IF THE INJURY RESULTS FROM YOUR USE OF ALCOHOL OR CONTROLLED SUBSTANCES, YOUR WORKERS' COMPENSATION DISABILITY BENEFITS MAY BE REDUCED BY ONE-HALF IN ACCORDANCE WITH SECTION 8-42-112.5, COLORADO REVISED STATUTES.

(1.5) (a) Every employee of an employer who has permission to be its own insurance carrier pursuant to section 8-44-201 or of an employer who participates in a public entity self-insurance pool pursuant to section 8-44-204 who sustains an injury resulting from an accident shall notify his employer in writing of said injury within four working days of the occurrence of the injury, unless the employer, or the employee's foreman, superintendent, or manager has written notice of said injury. If the employee is physically or mentally

unable to provide said notice, the employee's foreman, superintendent, or manager, or any other person in charge who has written notice of said injury, shall submit such written notice to the employer. If said employee fails to report said injury in writing, such employee may lose up to one day's compensation for each day's failure to so report. Any other person who has notice of said injury may submit a written notice to the employer which report shall relieve the injured employee from reporting the accident. Any employer receiving written notice of an injury pursuant to this subsection (1.5) shall affix thereon the date and time of receipt of such notice and shall make a copy of such notice available to the injured employee within two working days following receipt of such notice.

(b) Every employer who has permission to be its own insurance carrier pursuant to section 8-44-201 or who participates in a public entity self-insurance pool pursuant to section 8-44-204 shall display at all times in a prominent place on the workplace premises a printed card with a minimum height of fourteen inches and a width of eleven inches with each letter to be a minimum of one-half inch in height, which shall read as follows:

WARNING

IF YOU ARE INJURED ON THE JOB, WRITTEN NOTICE OF YOUR INJURY MUST BE GIVEN TO YOUR EMPLOYER WITHIN FOUR WORKING DAYS AFTER THE ACCIDENT, PURSUANT TO SECTION 8-43-102 (1.5), COLORADO REVISED STATUTES.

IF THE INJURY RESULTS FROM YOUR USE OF ALCOHOL OR CONTROLLED SUBSTANCES, YOUR WORKERS' COMPENSATION DISABILITY BENEFITS MAY BE REDUCED BY ONE-HALF IN ACCORDANCE WITH SECTION 8-42-112.5, COLORADO REVISED STATUTES.

(2) Written notice of the contraction of an occupational disease shall be given to the employer by the affected employee or by someone on behalf of the affected employee within thirty days after the first distinct manifestation thereof. In the event of death from such occupational disease, written notice thereof shall be given to the employer within thirty days after such death. Failure to give either of such notices shall be deemed waived unless objection is made at a hearing on the claim prior to any award or decision thereon. Actual knowledge by an employer in whose employment an employee was last injuriously exposed to an occupational disease of the contraction of such disease by such employee and of exposure to the conditions causing it shall be deemed notice of its contraction. If the notice required in this section is not given as provided and within the time fixed, the director may reduce the compensation that would otherwise have been payable in such manner and to such extent as the director deems just, reasonable, and proper under the existing circumstances.

8-43-103. Notice of injury - time limit. (1) Notice of an injury, for which compensation and benefits are payable, shall be given by the employer to the division and insurance carrier, unless the employer is self-insured, within ten days after the injury, and, in case of the death of any employee resulting from any such injury or any accident in which three or more employees are injured, the employer shall give immediate notice thereof to the director. If no such notice is given by the employer, as required by articles 40 to 47 of this title, such notice may be given by any person. Any notice required to be filed by an injured employee or, if deceased, by said employee's dependents may be made and filed by anyone on behalf of such claimant and shall be considered as done by such claimant if not specifically disclaimed or objected to by such claimant in writing filed with the division within a reasonable time. Such notice shall be in writing and upon forms prescribed by the division for that purpose and served upon the division by delivering to, or by mailing by registered mail two copies thereof addressed to, the division at its office in Denver, Colorado. Upon receipt of such notice from a claimant, the division shall immediately mail one copy thereof to said employer or said employer's agent or insurance carrier.

(2) The director and administrative law judges employed by the office of administrative courts shall have jurisdiction at all times to hear and determine and make findings and awards on all cases of injury for which compensation or benefits are provided by articles 40 to 47 of this title. Except in cases of disability or death resulting from exposure to radioactive materials, substances, or machines or to fissionable materials, or any type of malignancy caused thereby, or from poisoning by uranium or its compounds, or from asbestosis, silicosis, and anthracosis, the right to compensation and benefits provided by said articles shall be barred unless, within two years after the injury or after death resulting therefrom, a notice claiming compensation is filed with the division. This limitation shall not apply to any claimant to whom compensation has been paid or if it is established to the satisfaction of the director within three years after the injury or death that a reasonable excuse exists for the failure to file such notice claiming compensation and if the employer's rights have not been prejudiced thereby, and the furnishing of medical, surgical, or hospital treatment by the employer shall not be considered payment of compensation or benefits within the meaning of this section; but, in all cases in which the employer has been given notice of an injury and fails, neglects, or refuses to report said injury to the division as required by the provisions of said articles, this statute of limitations shall not begin to run against the claim of the injured employee or said employee's dependents in the event of death until the required report has been filed with the division.

(3) In cases of disability or death resulting from exposure to radioactive materials, substances, or machines or to fissionable materials, or any type of malignancy caused thereby, or from poisoning by uranium or its compounds, or from asbestosis, silicosis, or anthracosis, the right to

compensation and benefits shall be barred unless, within five years after the commencement of disability or death, a notice claiming compensation is filed with the division.

8-43-104. Electronic filings - rules. (1) The rejection for technical errors by the division of any document, form, or notice that is filed electronically shall not affect the validity of the notice to the claimant or any other party.

(2) The director may promulgate rules concerning electronic filing of documents, forms, or notices in accordance with article 4 of title 24, C.R.S. Such rules shall be consistent with any policies, standards, and guidelines set forth by the office of information technology, created in section 24-37.5-103, C.R.S.

PART 2
SETTLEMENT AND HEARING PROCEDURES

8-43-201. Disputes arising under "Workers' Compensation Act of Colorado". (1) The director and administrative law judges employed by the office of administrative courts in the department of personnel shall have original jurisdiction to hear and decide all matters arising under articles 40 to 47 of this title; except that the following principles shall apply: A claimant in a workers' compensation claim shall have the burden of proving entitlement to benefits by a preponderance of the evidence; the facts in a workers' compensation case shall not be interpreted liberally in favor of either the rights of the injured worker or the rights of the employer; a workers' compensation case shall be decided on its merits; and a party seeking to modify an issue determined by a general or final admission, a summary order, or a full order shall bear the burden of proof for any such modification.

(2) The amendments made to subsection (1) of this section by Senate Bill 09-168, enacted in 2009, are declared to be procedural and were intended to and shall apply to all workers' compensation claims, regardless of the date the claim was filed.

(3) It is appropriate for the director or an administrative law judge to consider the medical treatment guidelines adopted under section 8-42-101 (3) in determining whether certain medical treatment is reasonable, necessary, and related to an industrial injury or occupational disease. The director or administrative law judge is not required to utilize the medical treatment guidelines as the sole basis for such determinations.

8-43-202. Director may refer taking of evidence in cases to appropriate officials of other states. The director, after notice to the parties in interest, may refer the taking of any evidence to any commission, court, or board administering in another state the compensation laws thereof, and such commission, court, or board of such other state, after notifying the parties in interest of the time and place of holding such hearing, shall hold hearings and take such evidence in the same manner and by the officers as authorized by the laws of such state, and all such proceedings shall be certified and return thereof made as prescribed by the director.

8-43-203. Notice concerning liability - notice to claimants - notice of rights and claims process - rules. (1)(a) The employer or, if insured, the employer's insurance carrier shall notify in writing the division and the injured employee or, if deceased, the decedent's dependents within twenty days after a report is, or should have been, filed with the division pursuant to section 8-43-101, whether liability is admitted or contested; except that, for the purpose of this section, any knowledge on the part of the employer, if insured, is not knowledge on the part of the insurance carrier. The employer or the employer's insurance carrier may notify the division electronically. Unless exempted by the director pursuant to rule because of a small number of filings or a showing of financial hardship, beginning July 1, 2006, all notices of contest shall be filed electronically. The rejection of an electronically filed notice by the division for a technical error shall not affect the validity of the notice to the claimant. If the insurance carrier or self-insured employer denies liability for the claim, the claimant may request an expedited hearing on the issue of compensability if the application therefor is filed within forty-five days after the date of mailing of the notice of contest. The director shall set any such expedited matter for hearing within sixty days after the date of the application, when the issue is liability for the disease or injury. The time schedule for such an expedited hearing is subject to the extensions set forth in section 8-43-209. If a claimant elects not to request an expedited hearing pursuant to this subsection (1), the time schedule for hearing the matter shall be as set forth in section 8-43-209.

(b) The written notice given pursuant to this subsection (1) shall include a specific reference to the claimant's obligations under section 8-42-113.5.

(1.5) (Deleted by amendment, L. 92, p. 1825, § 4, effective April 29, 1992.)

(2) (a) If such notice is not filed as provided in subsection (1) of this section, the employer or, if insured, the employer's insurance carrier, as the case may be, may become liable to the claimant, if the claimant is successful on the claim for compensation, for up to one day's compensation for each day's failure to so notify; except that the employer or, if insured, the employer's insurance carrier shall not be liable for more than the aggregate amount of three hundred sixty-five days' compensation for failure to timely admit or deny liability. Fifty percent of any penalty paid pursuant to this subsection (2) shall be paid to the subsequent injury fund, created in section 8-46-101, and fifty percent to the claimant.

(b) (I) If the employer or, if insured, the employer's insurance carrier admits liability, such notice shall specify the amount of compensation to be paid, to whom compensation will be paid, the period for which compensation will be paid, and the disability for which compensation will be paid, and payment thereon shall be made immediately.

(II) (A) An admission of liability for final payment of compensation must include a statement that this is the final admission by the workers' compensation insurance carrier in the case, that the claimant may contest this admission if the claimant feels entitled to more compensation, to whom the claimant should provide written objection, and notice to the claimant that the case will be automatically closed as to the issues admitted in the final admission if the claimant does not, within thirty days after the date of the final admission, contest the final admission in writing and request a hearing on any disputed issues that are ripe for hearing, including the selection of an independent medical examiner pursuant to section 8-42-

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107.2 if an independent medical examination has not already been conducted. If an independent medical examination is requested pursuant to section 8-42-107.2, the claimant is not required to file a request for hearing on disputed issues that are ripe for hearing until the division's independent medical examination process is terminated for any reason. Any issue for which a hearing or an application for a hearing is pending at the time that the final admission of liability is filed shall proceed to the hearing without the need for the applicant to refile an application for hearing on the issue. This information must also be included in the admission of liability for final payment of compensation. The respondents have twenty days after the date of mailing of the notice from the division of the receipt of the IME's report to file an admission or to file an application for hearing. The claimant has thirty days after the date respondents file the admission or application for hearing to file an application for hearing, or a response to the respondents' application for hearing, as applicable, on any disputed issues that are ripe for hearing. The revised final admission, if any, must contain the statement required by this subparagraph (II), and the provisions relating to contesting the revised final admission apply. When the final admission is predicated upon medical reports, the reports must accompany the final admission.

(B) The amendments made to sub-subparagraph (A) of this subparagraph (II) by Senate Bill 09-168, enacted in 2009, are declared to be procedural and were intended to and shall apply to all workers' compensation claims, regardless of the date the claim was filed.

(c) No penalty may be assessed under this subsection (2) for failure to timely admit or deny liability if a request for such penalty is filed more than seven years after the alleged violation. The division shall retain original claim records filed with the division for at least seven years after closure of the case. Seven years after a case is closed, the records may only be used for reopening a settlement on the grounds of fraud or mutual mistake of material fact.

(d) Once a case is closed pursuant to this subsection (2), the issues closed may only be reopened pursuant to section 8-43-303. Upon proper showing in writing made within said times fixed therefor, the director may extend the time for filing such admission of liability or notice of contest, but not exceeding ten days at any one time. Hearings may be set to determine any matter, but, if any liability is admitted, payments shall continue according to admitted liability.

(3) In addition to any other notice required by this section, at the time that the employer or, if insured, the employer's insurance carrier provides the notice required by subsection (1) of this section, the employer or insurance carrier shall provide to the claimant a brochure written in easily understood language, in a form developed by the director after consultation with employers, insurance carriers, and representatives of injured workers, describing the claims process and informing the claimant of his or her rights. If the claimant has previously authorized the employer or, if insured, the employer's insurance carrier to communicate with the claimant through electronic transmission, the brochure may be sent to the claimant electronically. The brochure shall, at a minimum, contain the following information:

(a) Who the claimant may contact with questions concerning the claim, the claims process, and assistance with the claim, including:

(I) The insurance carrier or employer;

(II) The division and the website for the division;

(III) The office of administrative courts and the website for the office; and

(IV) An attorney hired at the expense of the claimant;

(b) The claimant's right to receive medical care for work-related injuries or occupational diseases paid for by the employer or the employer's insurance carrier including:

(I) That most claimants have a right to choose from a list of at least two different doctors;

(II) That most claimants have a right to change doctors one time within ninety days after the injury and all claimants have the right to request a change of doctor at other times under certain other circumstances;

(III) The claimant's doctor's right to refer the claimant to other medical providers and specialists to provide the reasonable and necessary medical care that the claimant's work-related injuries or illness require;

(IV) The claimant's right to discuss with his or her doctor who should be present during a claimant's medical appointment, and the right to refuse to have a nurse case manager employed on the claimant's claim present at the claimant's medical appointment;

(V) The claimant's right to see and have copies of all of the claimant's medical records related to the medical care the claimant received for his or her work-related injury or illness;

(VI) The claimant's right to seek medical care and medical opinions about the claimant's work-related injury at the claimant's own expense;

(VII) The claimant's right to a medical examination by a doctor chosen by the claimant or by the division at the claimant's expense;

(VIII) The claimant's right to a permanent impairment evaluation after the claimant's treating doctors determine that the claimant has reached maximum medical improvement; and

(IX) The claimant's right to be informed whether medical care after maximum medical improvement will be provided and to receive reasonable continued medical care if it is necessary to maintain maximum medical improvement;

(c) A description of the claimant's right to receive benefit payments, including the claimant's right to receive:

(I) Wage replacement payments in the form of temporary total disability payments or temporary partial disability payments;

(II) Permanent impairment benefits if the claimant is left with a permanent impairment as a result of a work-related injury or disease;

(III) Disfigurement payments for permanent scarring or disfigurement caused by the claimant's work-related injury or surgery required because of the claimant's work-related injury; and

(IV) Mileage expenses for travel to and from work-related medical care and to and from pharmacies to obtain medical prescriptions for work-related medical care;

(d) A description of how the claims process works, including:

(I) The claimant's right to file a claim for workers' compensation with the division within two years after the date of the claimant's injury or occupational disease;

(II) The claimant's right to receive a general admission of liability or notice of contest once the claim has been properly reported to the division;

(III) The claimant's right to verify that the claimant's average weekly wage payments for temporary total disability have been properly calculated by the claimant's employer or the employer's insurance carrier;

(IV) The claimant's right to prehearings and hearings on disputed issues;

(V) The claimant's right to present evidence, testify, introduce medical and other records, present witnesses, and make arguments at any hearing;

(VI) The claimant's right to object to and request a hearing on any final admission of liability within thirty days after the mailing of the admission in order to retain certain rights;

(VII) The claimant's right to challenge a finding of an impairment rating or maximum medical improvement in a final admission of liability within thirty days after the mailing of the admission in order to retain certain rights;

(VIII) The claimant's right to pursue penalties for violations of the law including late payment of benefits or improper refusal to pay benefits;

(IX) The claimant's right, subject to certain requirements, to reopen a claim within six years after the date of the injury or illness or within two years after the date of the last receipt of medical or wage benefits; and

(X) A description of other rights conferred upon a claimant pursuant to law or rule.

(4) Within fifteen days after the mailing of a written request for a copy of the claim file, the employer or, if insured, the employer's insurance carrier or third-party administrator shall provide to the claimant or his or her representative a complete copy of the claim file that includes all medical records, pleadings, correspondence, investigation files, investigation reports, witness statements, information addressing designation of the authorized treating physician, and wage and fringe benefit information for the twelve months leading up to the date of injury and thereafter, regardless of the format. If a privilege or other protection is claimed for any materials, the materials must be detailed in an accompanying privilege log.

8-43-204. Settlements - rules. (1) An injured employee may settle all or part of any claim for compensation, benefits, penalties, or interest. If such settlement provides by its terms that the employee's claim or award shall not be reopened, such settlement shall not be subject to being reopened under any provisions of articles 40 to 47 of this title other than on the ground of fraud or mutual mistake of material fact.

(2) Such a settlement shall be in writing and shall be signed by a representative of the employer or insurer and signed and sworn to by the injured employee. For claims that have a settlement amount of seventy-five thousand dollars or more, a written notice of the settlement agreement shall be provided to the employer.

(3) The settlement shall be reviewed in person with the injured employee and approved in writing by an administrative law judge or the director of the division prior to the finalization of such settlement. The settlement shall be filed with the division as a part of the injured employee's permanent record.

(4) If an employee owes child support and a garnishment has been filed pursuant to section 13-54.5-101, C.R.S., or the state child support enforcement agency has filed a notice of administrative lien and attachment pursuant to section 26-13-122, C.R.S., with the insurer or self-insured employer, all proceeds of any award, lump sum settlement, and the indemnity portion of any structured settlement shall be subject to said garnishment or administrative lien and attachment. Proceeds up to the amount of the garnishment or administrative lien and attachment shall be paid as directed on the notice to the obligee or to the state child support enforcement agency on behalf of the obligee to whom support is owed.

(5) If an employee owes a debt for which a writ is issued as a result of a judgment for fraudulently obtained public assistance, fraudulently obtained overpayments of public assistance, or excess public assistance paid for which the recipient was ineligible and a garnishment has been filed pursuant to section 13-54-104 or 13-54.5-101, C.R.S., with the insurer or self-insured employer, all proceeds of any award, lump sum settlement, and the indemnity portion of any structured settlement shall be subject to the garnishment. Proceeds up to the amount of the garnishment shall be paid as directed by the county department of social services responsible for administering the state public assistance programs.

(6) To aid in settlement, the director shall review mortality tables from the United States government and private industry and issue rules establishing a single life expectancy table on July 1 in every even-numbered year, commencing July 1, 2010. The director may adopt current mortality tables used by medicare. Nothing in this subsection (6) shall be construed to limit the use of rated ages.

(7) Any lump sum payable as a full or partial settlement shall be paid to the claimant or the claimant's attorney within fifteen calendar days after the date the executed settlement order is received by the carrier or the noninsured or self-insured employer.

(8) The director shall adopt rules as necessary to implement the procedure to review and approve settlement documents. At a minimum, the rules must:

(a) Allow a represented claimant to submit settlement documents for approval by electronic mail;

(b) Provide for the approval of settlement documents if the claimant's signature is not an original but is notarized; and

(c) Require the division to electronically mail to counsel of record, or to the insurance carrier or self-insured employer if not represented, a copy of the division's order approving the settlement agreement of the parties.

8-43-205. Mediation. (1) Any party involved in a claim arising under articles 40 to 47 of this title may request mediation services by filing a request for mediation services with the division. However, mediation shall be entirely voluntary and shall not be conducted without the consent of all parties to the claim. If a request for mediation services is made after an application for a hearing has been filed, the administrative law judge hearing the dispute shall approve, on motion of the parties, the submission of the dispute to mediation prior to hearing the matter. An application for mediation services shall be filed on a form prescribed by the director. Upon receiving the application for mediation services, the director shall cause a mediation conference to occur within thirty days thereafter. At a mediation conference, the claimant may be represented by the claimant, counsel, or any other agent of the claimant's choice. Mediators need not be attorneys.

(2) Mediation proceedings conducted pursuant to this section shall be considered to be settlement negotiations and are confidential. No admission, representation, or statement made in the course of such mediation proceedings that is not otherwise subject to discovery or otherwise obtainable under the procedures established in articles 40 to 47 of this title shall be admissible as evidence or subject to discovery under said articles. No mediator who participates in mediation proceedings conducted pursuant to this section shall be compelled or permitted to testify about any matter discussed or revealed during such proceedings in any other proceeding under articles 40 to 47 of this title.

(3) The division shall develop a program to implement the provisions of this section. Such program shall be a simple, nonadversarial method for the mediation of disputes arising under articles 40 to 47 of this title. Such program shall provide for the use of neutral mediators and the conduct of proceedings in an informal setting. The director shall adopt rules and regulations to implement such program.

8-43-206. Settlement conference procedures. (1) Any employee, insurer, or employer, if self-insured, involved in a dispute arising under articles 40 to 47 of this title may request settlement conference services from the director or the office of administrative courts in the department of personnel. However, such settlement procedures are optional and entirely voluntary, and no such procedures shall be conducted without the consent of both parties to the dispute.

(2) Settlement conferences shall be conducted by a settlement conference officer who may be a prehearing administrative law judge or an administrative law judge in the office of administrative courts in the department of personnel appointed pursuant to section 24-30-1003, C.R.S., and assigned to hear disputes arising under articles 40 to 47 of this title. The parties may agree on the selection of a settlement conference officer; except that such officer shall not be the administrative law judge who is regularly assigned to hear the employee's case. If the parties fail to agree on the selection of such officer, they may apply to the director or to the office of administrative courts for the designation of a settlement conference officer who shall not be the administrative law judge who is regularly assigned to hear the employee's case.

(3) Settlement conference proceedings conducted pursuant to this section shall be considered to be settlement negotiations and are confidential. No admission, representation, or statement made in the course of such settlement conference proceedings that is not otherwise subject to discovery or otherwise obtainable under the procedures established in articles 40 to 47 of this title shall be admissible as evidence or subject to discovery under said articles. No settlement conference officer who participates in settlement conference proceedings conducted pursuant to this section shall be compelled or permitted to testify about any matter discussed or revealed during such proceedings in any other proceeding under articles 40 to 47 of this title.

(4) The executive director of the department of personnel shall adopt rules and regulations to implement the provisions of this section. Such rules and regulations shall be consistent with the provisions of section 8-43-204.

(5) The director of the division of workers' compensation shall adopt rules and regulations to implement the provisions of this section. Such rules and regulations shall be consistent with the provisions of section 8-43-204.

8-43-206.5. Right to binding arbitration for resolution of disputes under articles 40 to 47. At any time prior to a hearing, the parties may agree to submit any dispute under articles 40 to 47 of this title to binding arbitration. Said arbitration shall be by an administrative law judge of the parties' choice or pursuant to arbitration procedures as provided by the Colorado rules of civil procedure. Any arbitration award pursuant to the provisions of this section shall be binding upon the parties, and no other procedure contained in this article shall be available to the parties for the further review of such award.

8-43-207. Hearings. (1) Hearings shall be held to determine any controversy concerning any issue arising under articles 40 to 47 of this title. In connection with hearings, the director and administrative law judges are empowered to:

(a) In the name of the division, issue subpoenas for witnesses and documentary evidence which shall be served in the same manner as subpoenas in the district court;

(b) Administer oaths;

(c) Make evidentiary rulings;

(d) Limit or exclude cumulative or repetitive proof or examination;

(e) Upon written motion and for good cause shown, permit parties to engage in discovery; except that permission need not be sought if each party is represented by an attorney. The director or administrative law judge may rule on discovery matters and impose the sanctions provided in the rules of civil procedure in the district courts for willful failure to comply with permitted discovery.

(f) Upon written motion and for good cause shown, conduct prehearing conferences for the settlement or simplification of issues;

(g) Dispose of procedural requests upon written motion or on written briefs or oral arguments as determined appropriate;

(h) Control the course of the hearing and the conduct of persons in the hearing room;

(i) Upon written motion and for good cause shown, grant reasonable extensions of time for the taking of any action contained in this article;

(j) Upon good cause shown, adjourn any hearing to a later date for the taking of additional evidence;

(k) Issue orders;

(l) Appoint guardians ad litem, as appropriate, in matters involving dependents' claims, and assess the reasonable fees and costs, therefore, from one or more of the parties;

(m) Determine the competency of witnesses who testify in a workers' compensation hearing or proceeding and the competency of parties that have entered into settlement agreements pursuant to section 8-43-204. Such competency determinations shall only be for the purpose of the particular workers' compensation proceeding.

(n) Dismiss all issues in the case except as to resolved issues and except as to benefits already received, upon thirty days notice to all the parties, for failure to prosecute the case unless good cause is shown why such issues should not be dismissed. For purposes of this paragraph (n), it shall be deemed a failure to prosecute if there has been no activity by the parties in the case for a period of at least six months.

(o) Set aside all or any part of any fee for medical services rendered pursuant to articles 40 to 47 of this title if an administrative law judge determines after a hearing that, based upon a review of the medical necessity and appropriateness of care provided pursuant to said articles, any such fee is excessive or that the treatment rendered was not necessary or appropriate under the circumstances. If all or part of any fee for medical services is set aside pursuant to this paragraph (o), the provider of any such services shall not contract with, bill, or charge the claimant for such fees and shall not attempt in any way to collect any such charges from the claimant. No fee for medical services shall be set aside pursuant to this paragraph (o) if the treatment was authorized in writing by the insurer or employer.

(p) Impose the sanctions provided in the Colorado rules of civil procedure, except for civil contempt pursuant to rule 107 thereof, for willful failure to comply with any order of an administrative law judge issued pursuant to articles 40 to 47 of this title;

(q) Require repayment of overpayments.

8-43-207.5. Prehearing conferences. (1) Notwithstanding any provision of articles 40 to 47 of this title to the contrary, at any time not less than ten days prior to the formal adjudication on the record of any issue before the director or an administrative law judge in the office of administrative courts, any party to a claim may request a prehearing conference before a prehearing administrative law judge in the division of workers' compensation for the speedy resolution of or simplification of any issues and to determine the general readiness of remaining issues for formal adjudication on the record. The issues addressed in such prehearing conference shall be limited to: Ripeness of legal, but not factual, issues for formal adjudication on the record before the director or an administrative law judge in the office of administrative courts; discovery matters; and evidentiary disputes. The filing of an application for hearing with the office of administrative courts shall not be a prerequisite to a request for a prehearing conference under this section. The director and the administrative law judges in the office of administrative courts may also request a prehearing conference under this section.

(2) "Prehearing administrative law judge" means a qualified person appointed by the director pursuant to section 8-47-101 to preside over prehearing conferences pursuant to this section, to approve settlements pursuant to section 8-43-204, to conduct settlement conferences pursuant to section 8-43-206, and to conduct arbitrations pursuant to section 8-43-206.5. Such prehearing administrative law judges shall have authority to: Order any party to participate in a prehearing conference; issue interlocutory orders; issue subpoenas in the name of the division for production of documentary evidence which shall be served in the same manner as subpoenas in the district court; make evidentiary rulings; permit parties to cause depositions to be taken; determine the competency of any party to a claim to enter into a settlement agreement; and strike the application for hearing of a party for failure to comply with any provision of this section.

(3) An order entered by a prehearing administrative law judge shall be an order of the director and binding on the parties. Such an order shall be interlocutory. Prehearing conferences need not be held on the record; however, any party to a claim may request in advance that a record be made of the prehearing conference, either taken verbatim by a court reporter provided and paid for by the requesting party or electronically recorded by the division.

(4) The director shall adopt rules and regulations as may be necessary to implement the provisions of this section.

8-43-208. Investigations. (1) For the purpose of making any investigation with regard to any matter contemplated by the provisions of articles 40 to 47 of this title, the director shall have power to appoint, with the approval of the executive director by an order in writing, any competent person as an agent whose duties shall be prescribed in such order.

(2) (Deleted by amendment, L. 94, p. 1876, § 7, effective June 1, 1994.)

(3) The director may conduct any number of such investigations contemporaneously through different agents.

8-43-209. Time schedule for hearings - establishment. (1) Hearings must commence within one hundred twenty days from the date of the notice of setting by the director pursuant to section 8-43-211 (2) (a) or of the date shown on the certificate of service accompanying the request, notice, or application by a party or the party's attorney pursuant to section 8-43-211 (2) (b) or (2) (c). Upon agreement of the parties, an administrative law judge shall grant one extension of time, not exceeding sixty days, to commence the hearing.

(2) One extension of time to commence the hearing of no more than sixty days may be granted by an administrative law judge upon written request by any party to the case and for good cause shown, in the following cases: When pulmonary lung disease, cancer, cardiovascular disease, or stroke is alleged as the cause of the disability; when the subsequent injury fund is a party; when permanent total disability is alleged; upon agreement of the parties; or when compensability of the injury is contested. In all other cases, extensions of time to commence the hearing of no more than

twenty days may be granted by an administrative law judge upon written request by any party to the case and for good cause shown.

(3) Once the hearing is commenced, the administrative law judge may, for good cause shown, continue the hearing to a date certain to take additional testimony, to file an additional medical report, to file the transcript of a deposition, or to file a position statement. Except upon the agreement of all parties or for good cause shown, a continuance to complete a hearing shall not exceed thirty calendar days.

8-43-210. Evidence. Notwithstanding section 24-4-105, C.R.S., the Colorado rules of evidence and requirements of proof for civil nonjury cases in the district courts shall apply in all hearings; except that medical and hospital records, physicians' reports, vocational reports, and records of the employer are admissible as evidence and can be filed in the record as evidence without formal identification if relevant to any issue in the case. Depositions may be substituted for testimony upon good cause shown. Convictions for alcohol-related offenses, pursuant to titles 18 and 42, C.R.S., the transcripts of proceedings leading to such convictions, and the court files relating to such convictions may be admissible in all hearings conducted under the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, where such conviction resulted from the same occurrence, accident, or injury occurring on the job that forms the basis for the workers' compensation claim. All relevant medical records, vocational reports, expert witness reports, and employer records shall be exchanged with all other parties at least twenty days prior to the hearing date.

8-43-211. Notice - request for hearing. (1) At least thirty days before any hearing, the office of administrative courts in the department of personnel shall send written notice to all parties by regular or electronic mail or by facsimile. The notice must:

(a) Give the time, date, and place of the hearing;

(b) Inform the parties that they must be prepared to present their evidence concerning the issues to be heard;

(c) Inform the parties that they have the right to be represented by an attorney or other person of their choice at the hearing.

(2) Hearings shall be set by the office of administrative courts in the department of personnel within eighty to one hundred twenty days after any of the following occur:

(a) The director sets any issue for hearing. The director may expedite the hearing for good cause shown.

(b) Any party requests a hearing on issues ripe for adjudication by filing a written request with the office of administrative courts in the department of personnel on forms provided by the office. The request shall be mailed to all parties at the time they are filed with the office of administrative courts. After the filing of the requests, the office of administrative courts in the department of personnel shall set the matter for hearing insofar as is practicable in the order in which requests are received by the office of administrative courts.

(c) Any party or the attorney of such party sends notice to set a hearing on issues ripe for adjudication to opposing parties or their attorneys. The director of the office of administrative courts shall determine the place and time or times during which settings can be made. At such setting, the party requesting the setting shall submit a completed request for hearing form. Any notice to set shall be mailed to opposing parties at least ten days prior to the setting date.

(3) If an attorney requests a hearing or files a notice to set a hearing on an issue that is not ripe for adjudication at the time the request or filing is made, the attorney may be assessed the reasonable attorney fees and costs of the opposing party in preparing for the hearing or setting. The requesting party must prove its attempt to have an unripe issue stricken by a prehearing administrative law judge to request fees or costs. Requested fees or costs incurred after a prehearing conference may only be awarded if they are directly caused by the listing of the unripe issue.

(4) Except in claims in which compensability is contested or a hearing is requested in response to a final admission of liability or to overcome a conclusion in a division-sponsored independent medical examination, the party filing an application for a hearing shall certify on the application that the party attempted to resolve with the other parties all issues listed in the application for a hearing.

8-43-212. Compulsion of testimony. When any person upon whom a subpoena issued in the name of the division has been served fails or refuses to appear, the party who requested the subpoena may apply to the district court in the county in which the person served resides for an order compelling attendance before the division of the witness or the production of the documents subpoenaed. Violation of such an order shall be treated as contempt of the court issuing the order.

8-43-213. Transcripts. (1) All testimony and argument of all hearings held pursuant to section 8-43-207 concerning any issue arising under articles 40 to 47 of this title shall either be taken verbatim by a hearing reporter or shall be electronically recorded by the division.

(2) Any party in interest may order a transcript at any time from a hearing reporter, a court reporter provided by any party, or, if the hearing is recorded, from the division. For purposes of a petition to review, a transcript shall be all testimony taken that is relevant to the issue being appealed. In the preparation of transcripts, hearing reporters shall give preference to transcripts as part of the record in a petition to review; except that all transcripts shall be prepared and filed with the office of administrative courts within twenty-five working days after the date they were ordered. Hearing reporters shall be paid for transcripts and copies at the rate set by the supreme court for reporters in courts of record. If a court reporter is unable to meet the time limit specified in this section, any party, at its own expense, or the administrative law judge may contract with another court reporter to ensure the timely preparation of transcripts.

(3) Upon a satisfactory showing to the director in writing that a party petitioning to review is indigent and unable to pay for the preparation of the transcript, the director may order a transcript to be prepared at the division's expense, and, if the transcript was prepared by a hearing reporter, the division shall pay the hearing reporter the fee therefor.

(4) When a transcript is ordered as part of the record on a petition to review, the original of the transcript shall be filed with the division where it shall be available to all parties in interest.

8-43-214. Transcript certified - evidence. A transcribed copy of the evidence and proceedings, or any specific part thereof, of any investigation or hearing which was prepared at the direction of the director shall be certified by the hearing reporter, or the division if the hearing was recorded, to be a true and correct transcript of the testimony on the investigation or hearing of a particular witness, or a specific part thereof, carefully compared to original notes or to the original recording, and to be a correct statement of the evidence and proceedings had on such investigation or hearing. A transcribed copy which is so certified may be received as evidence by the director, the panel, and any court with the same effect as if the person who prepared the transcript were present and testified to the facts so certified.

8-43-215. Orders. (1) No more than fifteen working days after the conclusion of a hearing, the administrative law judge or director shall issue a written order allowing or denying the claim. The written order must either be a summary order or a full order. A full order must contain specific findings of fact and conclusions of law. If compensation benefits are granted, the written order must specify the amounts thereof, the disability for which compensation benefits are granted, by whom and to whom such benefits are to be paid, and the method and time of the payments. A certificate of mailing and a copy of the written order shall be served by regular or electronic mail or by facsimile to each of the parties in interest or their representatives, the original of which is a part of the records in the case. If an administrative law judge has issued a summary order, a party dissatisfied with the order may make a written request for a full order within ten working days after the date of mailing of the summary order. The request is a prerequisite to review under section 8-43-301. If a request for a full order is made, the administrative law judge has ten working days after receipt of the request to issue the order. A full order shall be entered as the final award of the administrative law judge or director subject to review as provided in this article.

(2) Repealed.

8-43-216. Frivolous claims for compensation - repeal. (Repealed)

8-43-217. Claims management - legislative declaration. The general assembly hereby finds, determines, and declares that active management of workers' compensation claims should be practiced in order to expedite and simplify the processing of claims, reduce litigation, and better serve the public.

8-43-218. Authority of director. (1) The director shall have authority to appoint claims managers to review, audit, and close cases, to educate, inform, and assist the public as to the workers' compensation system, to promote speedy and uncomplicated problem resolution of workers' compensation matters, and to otherwise manage claims.

(2) The director may require any party to a workers' compensation claim to attend, cooperate, and comply with the efforts of claims managers in managing claims or complaints received by the division.

(3) Any party willfully refusing to cooperate or comply with claims management efforts of the division shall be subject to the penalty provisions set forth in section 8-43-304 and to the denial or vacation of a hearing date.

(4) Any violation of any provision of this section shall be cause for the rejection of an application for hearing or a response thereto until such time as the violation is cured.

8-43-219. Not a limitation on rights or privileges. Nothing in section 8-43-217 or 8-43-218 shall be construed to limit any party's rights or privileges as provided by law.

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 8-43-101. The survey shall be conducted in a form and manner as prescribed by the director. The director shall develop the form and manner of the survey with input from insurers that provide workers' compensation policies pursuant to articles 40 to 55 of this title, and with the least administrative burden as possible. 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 website.

PART 3
REVIEW PROCEDURES

8-43-301. Petitions to review. (1) Any order, corrected order, or supplemental order is final unless a petition to review or appeal has been filed in accordance with this article.

(2) Any party dissatisfied with an order that requires any party to pay a penalty or benefits or denies a claimant any benefit or penalty may file a petition to review with the division, if the order was entered by the director, or at the Denver office of the office of administrative courts in the department of personnel, if the order was entered by an administrative law judge, and serve the same by mail on all the parties. The petition shall be filed within twenty days after the date of the certificate of mailing of the order, and, unless so filed, the order shall be final. The petition to review may be filed by mail, and shall be deemed filed upon the date of mailing, as determined by the certificate of mailing, if the certificate of mailing indicates that the petition to review was mailed to the division or to the Denver office of the office of administrative courts in the department of personnel, as appropriate. The petition to review shall be in writing and shall set forth in detail the particular errors and objections of the petitioner. A petitioner shall, at the same time, order any transcript relied upon for the petition to review, arrange with the hearing reporter to pay for the same, and notify opposing parties of the transcript ordered. Opposing parties shall have twenty days after the date of the certificate of mailing of the

petition to review to order any other transcript not ordered by the petitioner and arrange with the hearing reporter to pay for the same.

(3) If transcripts of hearings are ordered as part of the record in a petition to review, the director or administrative law judge cannot rule on the petition until the transcripts are lodged with the division.

(4) When the record upon which a petition to review has been filed is complete, the parties shall be notified in writing. The petitioner shall have twenty days after the date of the certificate of mailing of the notice to file a brief in support of the petition. The opposing parties shall have twenty days after the date of the certificate of mailing of the petitioner's brief to file briefs in opposition thereto. After the briefs are filed or the time for filing has run, the director or administrative law judge shall have thirty days to enter a supplemental order or transmit the file to the industrial claim appeals office for review.

(5) In ruling on a petition to review, the director or administrative law judge may issue a supplemental order labeled as such limited to the matters raised in the petition to review, and, as to those matters, the director or administrative law judge may amend or alter the original order or set the matter for further hearing. In any event, if it has not already been done, the administrative law judge or director, following a petition to review an order, shall make findings of fact and conclusions of law necessary to support such order.

(6) A party dissatisfied with a supplemental order may file a petition for review by the panel. The petition shall be filed with the division if the supplemental order was issued by the director or at the Denver office of the office of administrative courts in the department of personnel if the supplemental order was issued by an administrative law judge. The petition shall be filed within twenty days after the date of the certificate of mailing of the supplemental order. The petition shall be in writing, shall set forth in detail the particular errors and objections relied upon, and shall be accompanied by a brief in support thereof. The petition and brief shall be mailed by petitioner to all other parties at the time the petition is filed. All parties, except the petitioner, shall be deemed opposing parties and shall have twenty days after the date of the certificate of mailing of the petition and brief to file with the division or the Denver office of the office of administrative courts, as appropriate, briefs in opposition to the petition.

(7) When any petition for review by the panel is filed, the division or the Denver office of the office of administrative courts shall, when all briefs are submitted to the division or the Denver office of the office of administrative courts or within fifteen days after the date briefs were due, certify and transmit the record to the industrial claim appeals office along with the petitions and briefs. The division or the Denver office of the office of administrative courts, as appropriate, shall simultaneously send notice to the parties including the date that the record has been transmitted to the industrial claim appeals office.

(8) The industrial claim appeals office shall have sixty days after receipt of the certified record to enter its order. The panel may issue a summary order affirming the order of the administrative law judge or director. The panel may correct, set aside, or remand any order but only upon the following grounds: That the findings of fact are not sufficient to permit appellate review; that conflicts in the evidence are not resolved in the record; that the findings of fact are not supported by the evidence; that the findings of fact do not support the order; or that the award or denial of benefits is not supported by applicable law. If the findings of fact entered by the director or administrative law judge are supported by substantial evidence, they shall not be altered by the panel.

(9) The panel shall have the power to issue such procedural orders as may be necessary to carry out its appellate review under subsection (7) of this section, including but not limited to, orders concerning completion of the record and filing of briefs. In those cases where the parties file a stipulated motion requesting that consideration of the appeal be deferred pending ongoing settlement negotiations, the panel may extend the time for entry of its order up to a maximum of thirty days.

(10) The panel's order must be mailed to all parties of record. Any party dissatisfied with the panel's order has twenty-one days after the date of the certificate of mailing of such order to commence an action for judicial review in the court of appeals.

(11) If the panel has failed to enter its order within sixty days of the receipt of the certified record, the order of the director or administrative law judge is deemed the order of the panel and final unless, within thirty-five days after the end of the sixty-day period, the petitioner commences an action for judicial review in the court of appeals. If the panel has not acted on the sixtieth day, the industrial claim appeals office shall send a written notice to all parties stating that the parties have thirty-five days after the date of the certificate of mailing of the notice to commence such an action.

(12) If a petition to review is filed, a hearing may be held and orders entered on any other issue in the case during the pendency of the petition to review. If the order which is under petition to review concerns compensability, orders entered on these later issues are final and appealable when entered, but not enforceable until the review of the order on compensability is completed.

(13) If the order which is under petition to review does not concern compensability, but concerns the respective liability of two or more employers or insurance carriers, and the injury or illness was found compensable in a hearing held pursuant to section 8-43-215, the employer or insurance carrier found liable by the director or administrative law judge shall pay benefits in accordance with the order under review until the review process is completed, at which time it shall be reimbursed by the other employer or carrier if reimbursement is necessary to comply with the final order.

(14) The signature of an attorney on a petition to review or brief in support thereof constitutes a certificate by the attorney that such attorney has read the petition or brief; that, to the best of the attorney's knowledge, information, or belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass, cause delay, or unnecessarily increase the cost of litigation. If a petition or brief is signed in violation of this subsection (14), the director, the administrative law judge, or

the panel shall award reasonable attorney fees and costs to the party incurring the fees and costs as a result of the improper actions.

8-43-302. Corrected orders. (1) The director, an administrative law judge, or the panel may issue a corrected order:

(a) At any time within thirty days after the entry of an order, to correct any clerical errors in the order. Clerical errors are grammatical or computational errors.

(b) At any time within thirty days of the entry of an order, to correct any errors caused by mistake or inadvertence.

(2) Any order corrected for clerical error, mistake, or inadvertence shall be labeled "corrected order" and mailed by the division. Any corrected order may be appealed in the manner provided in this article for any other order.

8-43-303. Reopening. (1) At any time within six years after the date of injury, the director or an administrative law judge may, after notice to all parties, review and reopen any award on the ground of fraud, an overpayment, an error, a mistake, or a change in condition, except for those settlements entered into pursuant to section 8-43-204 in which the claimant waived all right to reopen an award; but a settlement may be reopened at any time on the ground of fraud or mutual mistake of material fact. Upon a prima facie showing that the claimant received overpayments, the award shall be reopened solely as to overpayments and repayment shall be ordered. In cases involving the circumstances described in section 8-42-113.5, recovery of overpayments shall be ordered in accordance with said section. If an award is reopened on grounds of an error, a mistake, or a change in condition, compensation and medical benefits previously ordered may be ended, diminished, maintained, or increased. No such reopening shall affect the earlier award as to moneys already paid except in cases of fraud or overpayment. Any order entered under this subsection (1) shall be subject to review in the same manner as other orders.

(2) (a) At any time within two years after the date the last temporary or permanent disability benefits or dependent benefits excluding medical benefits become due or payable, the director or an administrative law judge may, after notice to all parties, review and reopen an award on the ground of fraud, an overpayment, an error, a mistake, or a change in condition, except for those settlements entered into pursuant to section 8-43-204 in which the claimant waived all right to reopen an award; but a settlement may be reopened at any time on the ground of fraud or mutual mistake of material fact. Upon a prima facie showing that the claimant received overpayments, the award shall be reopened solely as to overpayments and repayment shall be ordered. In cases involving the circumstances described in section 8-42-113.5, recovery of overpayments shall be ordered in accordance with said section. If an award is reopened under this paragraph (a) on grounds of an error, a mistake, or a change in condition, compensation and medical benefits previously ordered may be ended, diminished, maintained, or increased. No such reopening shall affect the earlier award as to moneys already paid except in cases of fraud or overpayment. Any order entered under this paragraph (a) shall be subject to review in the same manner as other orders.

(b) At any time within two years after the date the last medical benefits become due and payable, the director or an administrative law judge may, after notice to all parties, review and reopen an award only as to medical benefits on the ground of an error, a mistake, or a change in condition, except for those settlements entered into pursuant to section 8-43-204 in which the claimant waived all right to reopen an award; but a settlement may be reopened at any time on the ground of fraud or mutual mistake of material fact. If an award is reopened under this paragraph (b), medical benefits previously ordered may be ended, diminished, maintained, or increased. No such reopening shall affect the earlier award as to moneys already paid. Any order entered under this paragraph (b) shall be subject to review in the same manner as other orders.

(3) In cases where a claimant is determined to be permanently totally disabled, any such case may be reopened at any time to determine if the claimant has returned to employment. If the claimant has returned to employment and is earning in excess of four thousand dollars per year or has participated in activities which indicate that the claimant has the ability to return to employment, such claimant's permanent total disability award shall cease and the claimant shall not be entitled to further permanent total disability benefits as a result of the injury or occupational disease which led to the original permanent total disability award. Any subsequent permanent partial disability benefits awarded for the same injury or occupational disease shall be decreased by the amount of permanent total disability benefits previously received by the employee.

(4) The party attempting to reopen an issue or claim shall bear the burden of proof as to any issues sought to be reopened.

8-43-304. Violations - penalty - offset for benefits obtained through fraud - rules. (1) Any employer or insurer, or any officer or agent of either, or any employee, or any other person who violates any provision of articles 40 to 47 of this title, or does any act prohibited thereby, or fails or refuses to perform any duty lawfully enjoined within the time prescribed by the director or panel, for which no penalty has been specifically provided, or fails, neglects, or refuses to obey any lawful order made by the director or panel or any judgment or decree made by any court as provided by said articles shall be subject to such order being reduced to judgment by a court of competent jurisdiction and shall also be punished by a fine of not more than one thousand dollars per day for each such offense, to be apportioned, in whole or part, at the discretion of the director or administrative law judge, between the aggrieved party and the workers' compensation cash fund created in section 8-44-112 (7) (a); except that the amount apportioned to the aggrieved party shall be a minimum of fifty percent of any penalty assessed.

(1.5) (a) (I) An insurer who knowingly or repeatedly violates any provision of articles 40 to 47 of this title shall be subject to a fine as determined by the director. If necessary, the director may conduct a hearing or may refer the matter to the office of administrative courts for the entry of findings of fact. The director shall promulgate rules that specify, with respect to an insurer's willful or repeated violations that are subject to this subsection (1.5):

(A) The circumstances pursuant to which the director may issue an order imposing a fine; and

(B) Criteria for determining the amount of the fine.

(II) If the division determines, as part of a compliance audit of an insurer or self-insured pool, that an injury or occupational disease was not reported to the division within the time specified in sections 8-43-101 and 8-43-103 because the insurer or self-insured pool did not have notice or knowledge of the injury, occupational disease, or fatality within a period of time that would allow the information to be reported to the division within the time specified in sections 8-43-101 and 8-43-103, the director shall not impose a fine for late reporting under this subsection (1.5). The director may impose a fine under this subsection (1.5) for late reporting under sections 8-43-101 and 8-43-103 as part of findings from a compliance audit if the director finds that the late reporting constituted a knowing or repeated pattern of noncompliance with the reporting requirements of sections 8-43-101 and 8-43-103 and was not caused by the insurer or self-insured pool's lack of notice or knowledge of the injury, occupational disease, or fatality within a period of time that would allow the information to be reported to the division within the time specified in sections 8-43-101 and 8-43-103.

(b) Fines imposed pursuant to this subsection (1.5) shall be transmitted to the state treasurer, who shall credit seventy-five percent of such fines to the general fund and twenty-five percent to the workers' compensation cash fund, created in section 8-44-112.

(2) An insurer or self-insured employer may take a credit or offset of previously paid workers' compensation benefits or payments against any further workers' compensation benefits or payments due a worker when the worker admits to having obtained the previously paid benefits or payments through fraud, or a civil judgment or criminal conviction is entered against the worker for having obtained the previously paid benefits through fraud. Benefits or payments obtained through fraud by a worker shall not be included in any data used for rate-making or individual employer rating or dividend calculations by any insurer or by Pinnacol Assurance.

(3) The director and each administrative law judge shall report to the division each time a penalty is imposed pursuant to this section. Each such report shall include the amount of the penalty, the name of the administrative law judge awarding the penalty, if applicable, and the name of the offending party.

(4) In any application for hearing for any penalty pursuant to subsection (1) of this section, the applicant shall state with specificity the grounds on which the penalty is being asserted. After the date of mailing of such an application, an alleged violator shall have twenty days to cure the violation. If the violator cures the violation within such twenty-day period, and the party seeking such penalty fails to prove by clear and convincing evidence that the alleged violator knew or reasonably should have known such person was in violation, no penalty shall be assessed. The curing of the violation within the twenty-day period shall not establish that the violator knew or should have known that such person was in violation.

(5) A request for penalties shall be filed with the director or administrative law judge within one year after the date that the requesting party first knew or reasonably should have known the facts giving rise to a possible penalty.

8-43-304.5. Penalties in rate-making. For purposes of rate-making under sections 10-4-401, 10-4-402, and 10-4-403, C.R.S., insurers shall not include, nor shall the insurance commissioner consider, any penalties paid under section 8-43-304 or any damages awarded in suits founded upon breach of duty in handling a claim for compensation under section 8-41-102.

8-43-305. Each day separate offense. Every day during which any employer or insurer, or officer or agent of either, or any employee, or any other person fails to comply with any lawful order of an administrative law judge, the director, or the panel or fails to perform any duty imposed by articles 40 to 47 of this title shall constitute a separate and distinct violation thereof. In any action brought to enforce the same or to enforce any penalty provided for in said articles, such violation shall be considered cumulative and may be joined in such action.

8-43-306. Collection of fines, penalties, and overpayments. (1) A certified copy of any final order of the director or an administrative law judge ordering the payment of any penalty or repayment of overpayments pursuant to articles 40 to 47 of this title may be filed with the clerk of the district court of any county in this state at any time after the period of time provided by articles 40 to 47 of this title for appeal or seeking review of the order has passed without appeal or review being sought or, if appeal or review is sought, after the order has been finally affirmed and all appellate remedies and all opportunities for review have been exhausted. The party filing the order shall at the same time file a certificate to the effect that the time for appeal or review has passed without appeal or review being undertaken or that the order has been finally affirmed with all appellate remedies and all opportunities for review having been exhausted. The clerk of the district court shall record the order and the filing party's certificate in the judgment book of said court and entry thereof made in the judgment docket, and it shall thenceforth have all the effect of a judgment of the district court, and execution may issue thereon out of said court as in other cases. Any such order may be filed by and in the name of the director or by and in the name of the party in the worker's compensation action who was injured by the violation of any provision of articles 40 to 47 of this title or who was found to be entitled to repayment of overpayments under said articles.

(2) All such penalties when collected shall be payable to the division and transmitted through the state treasurer for credit to the subsequent injury fund, created in section 8-46-101.

8-43-307. Appeals to court of appeals. (1) The final order of the director or the panel shall constitute the final order of the division. Any person in interest, including Pinnacol Assurance, being dissatisfied with any final order of the division, may commence an action in the court of appeals against the industrial claim appeals office as defendant to modify or vacate any such order on the grounds set forth in section 8-43-308.

(2) All such actions shall have precedence over any civil cause of a different nature pending in such court, and the court of appeals shall always be deemed open for the trial thereof, and such actions shall be tried and determined by the court of appeals in the manner provided for other civil actions.

(3) (Deleted by amendment, L. 95, p. 235, § 3, effective April 17, 1995.)

(4) In any case before the court of appeals pursuant to this section, the court may apply the sanctions of rule 38 of the Colorado appellate rules if the court finds such application to be appropriate.

8-43-308. Causes for setting aside award. Upon hearing the action, the court of appeals may affirm or set aside such order, but only upon the following grounds: That the findings of fact are not sufficient to permit appellate review; that conflicts in the evidence are not resolved in the record; that the findings of fact are not supported by the evidence; that the findings of fact do not support the order; or that the award or denial of benefits is not supported by applicable law. If the findings of fact entered by the director or administrative law judge are supported by substantial evidence, they shall not be altered by the court of appeals.

8-43-309. Actions in court tried within thirty days. Any such action commenced in the court of appeals to set aside or modify any order shall be heard within thirty days after issue shall be joined, unless continued on order of the court for good cause shown. No continuance shall be for longer than thirty days at one time.

8-43-310. Error disregarded unless prejudicial. The appeal shall be upon the record returned to the court by the industrial claim appeals office. Upon the hearing of any such action, the court shall disregard any irregularity or error of the director or the panel unless it affirmatively appears that the party complaining was damaged thereby.

8-43-311. Court record transmitted to industrial claim appeals office - when. It is the duty of the clerk of the court of appeals, without order of court or application of the panel, to transmit the record in any case to the industrial claim appeals office within twenty-five days after the order or judgment of the court unless in the meantime further appellate review is granted by the supreme court. If the supreme court grants further appellate review, the clerk shall return the record immediately upon receipt of remittitur from the supreme court, unless the order of the supreme court requires further action by the court of appeals, and then within twenty-five days after such further action.

8-43-312. Court may remand case or order entry of award. Upon setting aside of any order, the court may recommit the controversy and remand the record in the case for further hearing or proceedings by the director, administrative law judge, or panel, or it may order entry of a proper award upon the findings as the nature of the case shall demand. In no event shall such order for award be for a greater amount of compensation than allowed by articles 40 to 47 of this title, or in any manner conflict with the provisions thereof.

8-43-313. Summary review by supreme court. Any affected party dissatisfied with the decision of the court of appeals may seek review by writ of certiorari in the supreme court. If the supreme court reviews the judgment of the court of appeals, such review shall be limited to a summary review of questions of law. Any such action shall be advanced upon the calendar of the supreme court, and a final decision shall be rendered within sixty days after the date the supreme court grants further appellate review. The director, an administrative law judge, the industrial claim appeals office, or any other aggrieved party shall not be required to file any undertaking or other security upon review by the supreme court.

8-43-314. Fees - costs - duty of district attorneys and attorney general. No fee shall be charged by the clerk of any court for the performance of any official service required by articles 40 to 47 of this title. On proceedings to review any order or award, costs as between the parties shall be allowed in the discretion of the court, but no costs shall be taxed against said director or industrial claim appeals office. In any action for the review of any order or award and upon any review thereof by the supreme court, it is the duty of the district attorney in the county wherein said action is pending, or of the attorney general if requested by the director or industrial claim appeals office, to appear on behalf of either or both, whether any other party defendant should have appeared or been represented in the action.

8-43-315. Witnesses and testimony - mileage - fees - costs. (1) The director or any agent, deputy, or administrative law judge may issue subpoenas to compel the attendance of witnesses or parties and the production of books, papers, or records and to administer oaths. Any person who serves a subpoena shall receive the same fee as the sheriff. Each witness who is subpoenaed on behalf of the director and who appears in obedience thereto shall receive for attendance the fees and mileage provided for witnesses in civil cases in the district court, which are audited and paid from the state treasury in the same manner as other expenses are audited and paid, upon the presentation of a proper voucher approved by the director. The director has the discretion to assess the cost of attendance and mileage of witnesses subpoenaed by either party to any proceeding against another party to the proceeding when, in the director's judgment, the necessity of subpoenaing the witnesses arises out of the raising of any incompetent, irrelevant, or sham issues by the other party.

(2) The director, an agent, deputy, or administrative law judge of the division, or an administrative law judge from the office of administrative courts, may, upon a showing of good cause, order the attendance at a hearing or deposition of any party, or of an officer, director, employee, or agent of any party, who is located in another state. A witness so ordered shall appear as indicated in the order or shall be available by telephone at the time and place set forth in the order.

(3) If a party or an officer, director, employee, or agent of a party fails, in the absence of a reasonable excuse, to obey an order issued pursuant to subsection (2) of this section, the party, officer, director, employee, or agent is liable for penalties as specified in section 8-43-304 (1).

8-43-316. Appearance by officer for closely held corporation. An officer of a closely held Colorado corporation as defined in section 13-1-127 (1) (a), C.R.S., may appear on behalf of any such corporation, which has obtained coverage as required by articles 40 to 47 of this title in proceedings authorized under the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, where the amount at issue does not exceed ten thousand dollars, except

in proceedings before the industrial claim appeals office under this part 3, appeals to the court of appeals under section 8-43-307, and summary reviews by the supreme court under section 8-43-313.

8-43-317. Service of documents. All documents that are required to be exchanged under articles 40 to 47 of this title shall be transmitted or served in the same manner or by the same means to all required recipients.

8-43-318. Remand of case or order - time limit for further proceedings consistent with ruling on appeal. If a case or order is appealed to the panel, the court of appeals, or the supreme court, and the case or order is remanded with directions, the director, administrative law judge, or panel, as the case may be, shall issue an order consistent with those directions within thirty days from receipt of the remand. The remanding tribunal has continuing jurisdiction to enforce the remand order.

PART 4
ENFORCEMENT AND PENALTIES

8-43-401. District attorney or attorney of division to act for director or office - penalties for failure of insurer to pay benefits. (1) Upon the request of the director or the industrial claim appeals office, the district attorney of any district or any attorney-at-law employed by the division shall institute and prosecute the necessary actions or proceedings for the enforcement of any of the provisions of articles 40 to 47 of this title, or any award or order of the director, an administrative law judge, or the industrial claim appeals office, or for the recovery of any money due to Pinnacol Assurance, or any penalty provided in said articles, and shall defend in like manner all suits, actions, or proceedings brought against the director, an administrative law judge, or the industrial claim appeals office.

(2) (a) After all appeals have been exhausted or in cases where there have been no appeals, all insurers and self-insured employers shall pay benefits within thirty days after any benefits are due. If any insurer or self-insured employer knowingly delays payment of medical benefits for more than thirty days or knowingly stops payments, such insurer or self-insured employer shall pay a penalty of eight percent of the amount of wrongfully withheld benefits; except that no penalty is due if the insurer or self-insured employer proves that the delay was the result of excusable neglect. If any insurer or self-insured employer willfully withholds permanent partial disability benefits within thirty days of when due, the insurer or self-insured employer shall pay a penalty to the division of ten percent of the amount of such benefits due. The penalties shall be apportioned, in whole or part, at the discretion of the director or administrative law judge, among the aggrieved party, the medical services provider, and the workers' compensation cash fund created in section 8-44-112 (7) (a).

(b) All moneys collected as penalties by the division pursuant to this subsection (2) shall be transmitted to the state treasurer who shall credit the same to the workers' compensation cash fund created in section 8-44-112.

8-43-401.5. Financial incentives to deny or delay claim or medical care - prohibition - penalties. (1) No insurer, employee or contractor of an insurer, self-insured employer, employee or contractor of a self-insured employer, health care provider, or employee or contractor of a health care provider treating an injured worker under the provisions of articles 40 to 47 of this title shall pay or receive any form of financial remuneration that is based on any of the following:

(a) The number of days to maximum medical improvement;

(b) The rate of claims approval or denial;

(c) The number of medical procedures, diagnostic procedures, or treatment appointments approved; or

(d) Any other criteria designed or intended to encourage a violation of any provision of articles 40 to 47 of this title.

(2) (a) Payment of remuneration in violation of this section constitutes an unfair act or practice in the business of insurance, and the insurer or self-insured employer who pays or directs the payment of the remuneration shall be subject to penalties in accordance with part 11 of article 3 of title 10, C.R.S.

(b) In addition to, or as an alternative to, any penalties imposed pursuant to paragraph (a) of this subsection (2), an insurer or self-insured employer who is found to have violated subsection (1) of this section may be subject to fines as determined by the director pursuant to section 8-43-304 (1.5).

(3) Nothing in this section:

(a) Restricts or limits the ability of a claims adjuster or employee or contracted claims personnel to investigate, detect, or prevent fraud; or

(b) Limits the payment or receipt of financial incentives for any other lawful purpose.

8-43-402. False statement - felony. If, for the purpose of obtaining any order, benefit, award, compensation, or payment under the provisions of articles 40 to 47 of this title, either for self-gain or for the benefit of any other person, anyone willfully makes a false statement or representation material to the claim, such person commits a class 5 felony and shall be punished as provided in section 18-1.3-401, C.R.S., and shall forfeit all right to compensation under said articles upon conviction of such offense.

8-43-403. Attorney fees. (1) No contingent fee shall be applied to any medical benefits that have been previously incurred and will be paid to the claimant or directly to the medical care provider, in a permanent disability award, either by admission or settlement. In the event that medical benefits are the only contested issue, the fee agreement shall provide for reasonable fees calculated on a per-hour basis or, subject to approval by the director, may provide for a contingent fee not to exceed the limitations imposed by this section. On unappealed contested cases, a contingent fee exceeding twenty percent of the amount of contested benefits shall be presumed to be unreasonable. At the request of either an employee or the employee's attorney, the director shall determine what portion of the benefits awarded were contested, or the reasonableness of the fee charged by such attorney, or both. At the request of the employer or its insurance carrier or the attorney for either of them, the director

shall determine the reasonableness of the fee charged by the attorney for the insurance carrier. No request for determination of the reasonableness of fees shall be considered by the director if received later than one hundred eighty days after the issuance of the final order, judgment, or opinion disposing of the last material issue in the case and the expiration of any right to review or appeal therefrom. In making this determination, the director shall consider fees normally charged by attorneys for cases requiring the same amount of time and skill and may decrease or increase the fee payable to such attorney. If the director finds that a review by the industrial claim appeals office or an appeal to the court of appeals or to the supreme court was perfected or if the director finds that such attorney reasonably devoted an extraordinary amount of time to the case, the director may award or approve a contingent fee or other fee in a percentage or amount that exceeds twenty percent of the amount of contested benefits. In determining the reasonableness of fees charged by an attorney for an employer or employer's insurance carrier, the director shall compare the fees of such attorney with the fees charged by the claimant's attorney in the same case and shall not approve an amount substantially greater than the reasonable amount charged by the said claimant's attorney or, if the claimant did not prevail, the reasonable amount the said claimant's attorney would have charged had the claimant prevailed, unless the director finds, based on a showing by the attorney for the employer or carrier, that higher fees are objectively justifiable. Legal costs not found reasonable shall not be allowed as an expense in fixing premium rates by the commissioner of insurance.

(2) Any attorney who represents any party in a workers' compensation case shall provide the party with a written fee agreement which sets forth, in full, the attorney's specific fee arrangement, including the criteria upon which the attorney bases his hourly or set fee and the circumstances in which any modifications or adjustments to such fee will be made, and specifying whether the client will be charged for the attorney's expenses or advances made by the attorney on behalf of the party, including without limitation costs of copying, research, telephone calls, postage, and any other expenses incident to the litigation which the attorney may be ethically bound to undertake on behalf of the party pursuant to law or pursuant to any court rule including the code of professional responsibility as adopted by the supreme court of Colorado. Contingent fee agreements shall be in conformity with all applicable provisions of the said code or of rules of the supreme court, and, in addition, such agreements shall set forth the provisions of this section in easy to understand language in at least ten-point bold-faced type. No such fee agreement may be enforced against any party unless it complies with the requirements of this section and is signed by both parties. Any attempt by an attorney who intentionally does not comply with this section and who seeks to enforce a fee agreement which does not comply with the requirements of this section shall be presumed to be a violation of the code of professional responsibility as adopted by the supreme court of Colorado.

(3) Repealed.

8-43-404. Examination - refusal - personal responsibility - physicians to testify and furnish results - injured worker right to select treating physicians - injured worker right to third-party communications - definitions - rules. (1) (a) If in case of injury the right to compensation under articles 40 to 47 of this title exists in favor of an employee, upon the written request of the employee's employer or the insurer carrying such risk, the employee shall from time to time submit to examination by a physician or surgeon or to a vocational evaluation, which shall be provided and paid for by the employer or insurer, and the employee shall likewise submit to examination from time to time by any regular physician selected and paid for by the division.

(b) (I) At least three business days in advance of an examination under paragraph (a) of this subsection (1), if requested by the claimant, the employer or insurer shall pay to the claimant the claimant's estimated expenses of attending the examination, including transportation, mileage, food, and hotel costs. In addition, if the claimant verifies that he or she will incur uncompensated wage losses as a result of attending the examination, the employer or insurer shall reimburse the claimant at the rate of seventy-five dollars per day. Failure to provide payment in accordance with this subparagraph (I) constitutes grounds for the claimant to refuse to attend the examination.

(II) If an employer pays estimated expenses under this paragraph (b) and the claimant does not attend the examination, the employer or insurer may recover the costs paid for the employee's expenses from future indemnity benefits.

(2) (a) The employee shall be entitled to have a physician, provided and paid for by the employee, present at any such examination. If an employee is examined by a chiropractor at the request of the employer, the employee shall be entitled to have a chiropractor provided and paid for by the employee present at any such examination. After any examination conducted under this section, the examiner shall prepare a written report giving a description of the examination performed, the written documents or any other materials reviewed, and all findings or conclusions of the examiner. The employee shall be entitled to receive from the examining physician or chiropractor a copy of any report that the physician or chiropractor makes to the employer, insurer, or division upon the examination, and the copy shall be furnished to the employee at the same time it is furnished to the employer, insurer, or division. The employee shall also be entitled to receive reports from any physician selected by the employer to treat the employee upon the same terms and conditions and at the same time the reports are furnished by the physician to the employer. All such examinations shall be recorded in audio in their entirety and retained by the examining physician until requested by any party. Prior to commencing the audio recording, the examining physician shall disclose to the employee the fact that the exam is being recorded. If requested, an exact copy of the recording shall be provided to the parties. Nothing in this subsection (2) shall be construed to prevent any party to the claim from making an audio recording of the examination. The division shall promulgate rules regarding such recordings that shall include provisions for the protection of the audio recordings and the

privacy of information contained in such recordings. The employer shall be entitled to receive reports from any physician or chiropractor selected by the employee to treat or examine the employee in connection with such injury upon the same terms and at the same time the reports are furnished by the physician or chiropractor to the employee.

(b) The amendments made to paragraph (a) of this subsection (2) by Senate Bill 09-168, enacted in 2009, are declared to be procedural and were intended to and shall apply to all workers' compensation claims, regardless of the date the claim was filed.

(3) So long as the employee, after written request by the employer or insurer, refuses to submit to medical examination or vocational evaluation or in any way obstructs the same, all right to collect, or to begin or maintain any proceeding for the collection of, compensation shall be suspended. If the employee refuses to submit to such examination after direction by the director or any agent, referee, or administrative law judge of the division appointed pursuant to section 8-43-208 (1) or in any way obstructs the same, all right to weekly indemnity which accrues and becomes payable during the period of such refusal or obstruction shall be barred. If any employee persists in any unsanitary or injurious practice which tends to imperil or retard recovery or refuses to submit to such medical or surgical treatment or vocational evaluation as is reasonably essential to promote recovery, the director shall have the discretion to reduce or suspend the compensation of any such injured employee.

(4) Any physician or chiropractor who makes or is present at any such examination may be required to testify as to the results thereof. Any physician or chiropractor having attended an employee in a professional capacity may be required to testify before the division when it so directs. A physician or chiropractor will not be required to disclose confidential communications imparted to said physician or chiropractor for the purpose of treatment and which are unnecessary to a proper understanding of the case.

(5) (a) (I) (A) In all cases of injury, the employer or insurer shall provide a list of at least four physicians or four corporate medical providers or at least two physicians and two corporate medical providers or a combination thereof where available, in the first instance, from which list an injured employee may select the physician who attends the injured employee. At least one of the four designated physicians or corporate medical providers offered must be at a distinct location from the other three designated physicians or corporate medical providers without common ownership. If there are not at least two physicians or corporate medical providers at distinct locations without common ownership within thirty miles of the employer's place of business, then an employer may designate physicians or corporate medical providers at the same location or with shared ownership interests. Upon request by an interested party to the workers' compensation claim, a designated provider on the employer's list shall provide a list of ownership interests and employment relationships, if any, to the requesting party within five days of the receipt of the request. If the services of a physician are not tendered at the time of injury, the employee shall have the right to select a physician or chiropractor. For purposes of this section, "corporate medical provider" means a medical organization in business as a sole proprietorship, professional corporation, or partnership.

(B) If there are fewer than four physicians or corporate medical providers within thirty miles of the employer's place of business who are willing to treat an injured employee, the employer or insurer may instead designate one physician or one corporate medical provider, and subparagraphs (III) and (IV) of this paragraph (a) shall not apply. A physician is presumed willing to treat injured workers unless he or she indicates to the employer or insurer to the contrary.

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

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

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

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

(B) If the employer has its own on-site health care facility, the employer may designate such on-site health care facility as the authorized treating physician, but the employer shall comply with subparagraph (III) of this paragraph (a). For purposes of this sub-subparagraph (B), "on-site health care facility" means an entity that meets all applicable state

requirements to provide health care services on the employer's premises.

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

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

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

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

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

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

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

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

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

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

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

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

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

(VI) (A) In addition to the one-time change of physician allowed in subparagraph (III) of this paragraph (a), upon written request to the insurance carrier or to the employer's authorized representative if self-insured, an injured employee may procure written permission to have a personal physician or chiropractor treat the employee. The written request must be completed on a form that is prescribed by the director. If permission is neither granted nor refused within twenty days after the date of the certificate of service of the request form, the employer or insurance carrier shall be deemed to have waived any objection to the employee's request. Objection shall be in writing on a form prescribed by the director and shall be served on the employee or, if represented, the employee's authorized representative within twenty days after the date of the certificate of service of the request form. An insurance carrier, or an employer's authorized representative if self-insured, shall track how often an injured employee requests to change his or her physician and how often such change is granted or denied and shall report such information to the division upon request. Upon the proper showing to the division, the employee may procure the division's permission at any time to have a physician of the employee's selection treat the employee, and in any nonsurgical case the employee, with such permission, in lieu of medical aid, may procure any nonmedical treatment recognized by the laws of this state as legal. The practitioner administering the treatment shall receive fees under the medical provisions of articles 40 to 47 of this title as specified by the division.

(B) If an injured employee is permitted to change physicians under sub-subparagraph (A) of this subparagraph (VI) resulting in a new authorized treating physician who will provide primary care for the injury, then the previously authorized treating physician providing primary care shall continue as the authorized treating physician providing primary care for the injured employee until the injured employee's initial visit with the newly authorized treating physician, at which time the treatment relationship with the previously authorized treating physician providing primary care is terminated.

(C) Nothing in this subparagraph (VI) precludes any former authorized treating physician from performing an examination under subsection (1) of this section.

(D) If an injured employee is permitted to change physicians pursuant to sub-subparagraph (A) of this subparagraph (VI) resulting in a new authorized treating physician who will provide primary care for the injury, then the opinion of the previously authorized treating physician

providing primary care regarding work restrictions and return to work controls unless that opinion is expressly modified by the newly authorized treating physician.

(b) Any private insurer or self-insured employer acting as its own insurance carrier as provided in section 8-44-201 providing workers' compensation coverage shall pay for chiropractic care as provided in paragraph (a) of this subsection (5).

(c) A treating physician shall not communicate with the employer or insurer of an injured worker regarding that injured worker unless:

(I) The injured worker is present for the communication; or

(II) The treating physician makes an accurate written record of the communication, containing all relevant and material information that was communicated, and provides the injured worker access to the writing in the same manner as medical records disclosures as required by director rules.

(6) Application or prosecution of a claim for benefits shall be a waiver of any privilege concerning communications relating to all medical issues raised by the claim, for the purposes of a utilization review conducted pursuant to section 8-43-501.

(7) An employer or insurer shall not be liable for treatment provided pursuant to article 41 of title 12, C.R.S., unless such treatment has been prescribed by an authorized treating physician.

(8) Upon request by an employee who has not reached maximum medical improvement and whose authorized treating physician is not level II accredited, an insurer or self-insured employer shall select a level II accredited physician as the authorized treating physician.

(9) (a) Health care services provided shall be deemed authorized if the claim is found to be compensable when:

(I) Compensability of a claim is initially denied;

(II) The services of the physician selected by the employer are not tendered at the time of the injury; and

(III) The injured worker is treated:

(A) At a public health facility in the state;

(B) At a public health facility within one hundred fifty miles of the residence of the injured worker; or

(C) Through a publicly funded program.

(b) A claimant shall not be liable for payment for treatment by the provider under this subsection (9) if the treatment is reasonably needed and related to the injury.

(10) (a) If an authorized physician refuses to provide medical treatment to an injured employee or discharges an injured employee from medical care for nonmedical reasons when the injured employee requires medical treatment to cure or relieve the effects of the work injury, then the physician shall, within three business days from the refusal or discharge, provide written notice of the refusal or discharge by certified mail, return receipt requested, to the injured employee and the insurer or self-insured employer. The notice must explain the reasons for the refusal or discharge and must offer to transfer the injured employee's medical records to any new authorized physician upon receipt of a signed authorization to do so from the injured employee. The director or any administrative law judge of the office of administrative courts has jurisdiction to resolve disputes regarding whether a refusal to provide medical treatment or a discharge from medical care was for medical or nonmedical reasons.

(b) If the insurer or self-insured employer receives written notice pursuant to paragraph (a) of this subsection (10), or if the insurer or self-insured employer and the authorized treating physician receive written notice by certified mail, return receipt requested, from the injured employee or the injured employee's legal representative that an authorized physician refused to provide medical treatment to the injured employee or discharged the injured employee from medical care for nonmedical reasons when such injured employee requires medical treatment to cure or relieve the effects of the work injury, and there is no other authorized physician willing to provide medical treatment, then the insurer or self-insured employer shall, within fifteen calendar days from receiving the written notice, designate a new authorized physician willing to provide medical treatment. If the insurer or self-insured employer fails to designate a new physician pursuant to this paragraph (b), then the injured employee may select the physician who attends to the injured employee.

8-43-405. Payment as discharge of liability - conflicting claims. Payment of death benefits to one or more dependents shall protect and discharge to that extent all compensation under articles 40 to 47 of this title unless and until any other person claiming to be a dependent has given the division notice of said person's claim and until the division has notified the employer or the employer's insurance carrier of such claim. In such case, the director or an administrative law judge shall determine the respective rights of said rival claimants, and thereafter such death benefits shall be paid to such dependents as the director or the administrative law judge may find so entitled under the provisions of said articles.

8-43-406. Compensation in lump sum. (1) At any time after six months have elapsed from the date of injury, the claimant may elect to take all or any part of the compensation awarded in a lump sum by sending written notice of the election and the amount of benefits requested to the carrier or the noninsured or self-insured employer. The carrier or self-insured employer shall file the calculation of the lump sum due and notice that the lump sum has been paid to the claimant within ten days after the election. When the claimant is unrepresented, the director shall calculate amounts to be paid based on the present worth of partial payments, considering interest at four percent per annum, and less a deduction for the contingency of death. The director shall make the method of calculation of lump sums available to all parties at all times, including posting the information on the division's website. Neither the director nor an administrative law judge shall in any way attempt to condition the lump sum payment on the claimant waiving the right to pursue permanent total disability benefits.

(2) If a claimant who has been awarded compensation is the injured worker or the sole dependent of a deceased injured worker, the aggregate of all lump sums granted to the claimant must not exceed eighty thousand eight hundred sixty-eight dollars and ten cents.

(3) If a claimant who has been awarded compensation is one of multiple dependents of a deceased injured worker, the aggregate of all lump sums granted to the

claimant must be a proportionate share, as determined by the director or administrative law judge, of an amount not to exceed one hundred sixty-one thousand seven hundred thirty-four dollars and fifteen cents.

(4) For injuries sustained on or after January 1, 2014, the director shall adjust the lump-sum limits set forth in subsections (2) and (3) of this section on July 1, 2014, and each July 1 thereafter, by the percentage of the adjustment made by the director to the state average weekly wage pursuant to section 8-47-106. A claimant who has received compensation under this section is not entitled to any further compensation under this section related to the claim as a result of an adjustment by the director pursuant to this subsection (4).

8-43-407. Election to waive vocational rehabilitation benefits and become subject to permanent partial disability provisions. In all cases arising under articles 40 to 47 of this title prior to July 1, 1987, the employee, the employer, and, if insured, the insurance carrier may elect, upon unanimous agreement, in writing to waive vocational rehabilitation which was awarded pursuant to section 8-49-101 as it existed prior to July 1, 1987, and become subject to the permanent partial disability provisions pursuant to section 8-42-110, as said section existed prior to July 1, 1991. Such election shall be made in a form prescribed by the director and shall not affect payments made prior to the filing of such agreement. Failure to agree to the options available under the provisions of this section shall not be evidence of bad faith in any future litigation by either party.

8-43-408. Default of employer - additional liability. (1) In any case where the employer is subject to the provisions of articles 40 to 47 of this title and at the time of an injury has not complied with the insurance provisions of said articles, or has allowed the required insurance to terminate, or has not effected a renewal thereof, the employee, if injured, or, if killed, the employee's dependents may claim the compensation and benefits provided in said articles, and in any such case the amounts of compensation or benefits provided in said articles shall be increased fifty percent.

(2) In all cases where compensation is awarded under the terms of this section, the director or an administrative law judge of the division shall compute and require the employer to pay to a trustee designated by the director or administrative law judge an amount equal to the present value of all unpaid compensation or benefits computed at the rate of four percent per annum; or, in lieu thereof, such employer, within ten days after the date of such order, shall file a bond with the director or administrative law judge signed by two or more responsible sureties to be approved by the director or by some surety company authorized to do business within the state of Colorado. The bond shall be in such form and amount as prescribed and fixed by the director and shall guarantee the payment of the compensation or benefits as awarded. The filing of any appeal, including a petition for review, shall not relieve the employer of the obligation under this subsection (2) to pay the designated sum to a trustee or to file a bond with the director or administrative law judge.

(3) A certified copy of any award of the director, administrative law judge, or panel ordering the payment of compensation entered in such case may be filed with the clerk of the district court of any county in this state at any time after the order of the administrative law judge awarding compensation, and the same shall be recorded by said clerk in the judgment book of said court and entry thereof made in the judgment docket, and it shall thenceforth have all the effect of a judgment of the district court, and execution may issue thereon out of said court as in other cases. Upon the reversal, setting aside, modification, or vacation of said order or award and upon payment to the trustee or furnishing of bond in accordance with the terms of this section, then, upon certification thereof by the director, administrative law judge, or panel, said record in the judgment book and the entry in the judgment docket shall be vacated, and any execution thereon shall be recalled.

(4) Any employer who fails to comply with a lawful order or judgment issued pursuant to subsection (2) or (3) of this section is liable to the employee, if injured, or, if killed, said employee's dependents, in addition to the amount in the order or judgment, for an amount equal to fifty percent of such order or judgment or one thousand dollars, whichever is greater, plus reasonable attorney fees incurred after entry of a judgment or order.

8-43-409. Defaulting employers - penalties - enjoined from continuing business - fines - procedure - definition. (1) An employer subject to the terms and provisions of articles 40 to 47 of this title who fails to insure or to keep the insurance required by such articles in force, allows the insurance to lapse, or fails to effect a renewal of the insurance shall not continue business operations while such default in effective insurance continues. Upon receiving information that an employer is in default of its insurance obligations, the director shall investigate and, if the information can be substantiated, shall notify the employer of the opportunity to request a prehearing conference on the issue of default. As part of the director's investigation, the director may verify that all employees of that employer are insured through the employer's workers' compensation plan. The director may forward any workers' compensation coverage issue to the employer's workers' compensation carrier for further investigation by the carrier. Thereafter, if necessary, the director may set the issue of the employer's default for hearing in accordance with hearing time schedule and procedures set forth in articles 40 to 47 of this title and rules promulgated by the director. Upon a finding that the employer is in default of its insurance obligations, the director shall take either or both of the following actions:

(a) Order the employer in default to cease and desist immediately from continuing its business operations during the period such default continues;

(b) For every day that the employer fails or has failed to insure or to keep the insurance required by articles 40 to 47 of this title in force, allows or has allowed the insurance to lapse, or fails or has failed to effect a renewal of such coverage, impose a fine of:

(I) Not more than two hundred fifty dollars for an initial violation; or

(II) Not less than two hundred fifty dollars or more than five hundred dollars for a second and any subsequent violation. For purposes of this subparagraph (II) only, if an employer has been fined pursuant to subparagraph (I) of this paragraph (b) and the director determines that substantially the

same people or entities were involved in forming a subsequent employer, the initial violation referred to in subparagraph (I) of this paragraph (b) shall be deemed to have already occurred with regard to violations committed by the subsequent employer.

(2) A cease-and-desist order issued or fine imposed by the director under subsection (1) of this section shall include specific findings of fact that reflect:

(a) The employer received notice of a hearing, when applicable;

(b) The employer employs employees for whom it must carry workers' compensation insurance under the provisions of articles 40 to 47 of this title;

(c) The employer does not or did not have a policy of workers' compensation insurance in effect; and

(d) The employer continues or continued to operate its business in the absence of such coverage.

(3) Notwithstanding any other provision of articles 40 to 47 of this title, after the entry of a cease and desist order and upon the request of the director, the attorney general shall immediately institute proceedings for injunctive relief against the employer in the district court of any county in this state where such employer does business. In any such district court proceeding, a certified copy of any cease and desist order entered by the director in accordance with the provisions of subsection (1) of this section based upon evidence in the record shall be prima facie evidence of the facts found in such record. Such injunctive relief may include the issuance of a temporary restraining order under rule 65 of the Colorado rules of civil procedure, which order shall enjoin the employer from continuing its business operations until it has procured the required insurance or has posted adequate security with the court pending the procurement of such insurance. The court, in its discretion, shall determine the amount that shall constitute adequate security.

(4) The issuance of an order to cease and desist, the imposition of a fine pursuant to subsection (1) of this section, or the issuance of an order for injunctive relief against an employer for failure to insure or to keep insurance in force as required by articles 40 to 47 of this title shall be the penalty for such failure within the meaning of section 8-43-304 (1) and such penalty shall be in addition to the increase in benefits that section 8-43-408 requires.

(5) The director or administrative law judge shall report to the division each time a fine is imposed pursuant to subsection (1) of this section. Each such report shall include the amount of the fine and the name of the offending party.

(6) A certified copy of any final order of the director ordering the payment of a fine imposed pursuant to subsection (1) of this section may be filed with the clerk of the district court of any county in this state at any time after the period of time provided by articles 40 to 47 of this title for appeal or seeking review of the order has passed without appeal or review being sought or, if appeal or review is sought, after the order has been finally affirmed and all appellate remedies and all opportunities for review have been exhausted. The party filing the order shall at the same time file a certificate to the effect that the time for appeal or review has passed without appeal or review being undertaken or that the order has been finally affirmed with all appellate remedies and all opportunities for review having been exhausted. The clerk of the district court shall record the order and the filing party's certificate in the judgment book of the court and entry thereof made in the judgment docket, and it shall thereafter have all the effect of and constitute a judgment of the district court, and execution may issue thereon from said court as in other cases. Any such order may be filed by and in the name of the director.

(7) Fines collected pursuant to this section shall be transmitted to the state treasurer, who shall credit twenty-five percent of such fine to the workers' compensation cash fund, created in section 8-44-112, which shall be used to offset the premium surcharge. The state treasurer shall credit the remainder of the fine to the general fund.

(8) For the purposes of this section, "construction site" means a location where a structure that is attached or will be attached to real property is constructed, altered, or remodeled.

8-43-410. Right to compensation operates as lien - interest on award. (1) The right of compensation granted by articles 40 to 47 of this title and any awards made thereunder shall have the same preference or lien without limit of amount against the assets of the employer or the employer's insurer or both as may be allowed by law for a claim for unpaid wages for labor.

(2) Every employer or insurance carrier of an employer shall pay interest at the rate of eight percent per annum upon all sums not paid upon the date fixed by the award of the director or administrative law judge for the payment thereof or the date the employer or insurance carrier became aware of an injury, whichever date is later. Upon application and satisfactory showing to the director or administrative law judge of the valid reasons therefor, said director or administrative law judge, upon such terms or conditions as the director or administrative law judge may determine, may relieve such employer or insurer from the payment of interest after the date of the order therefor; and proof that payment of the amount fixed has been offered or tendered to the person designated by the award shall be such sufficient valid reason.

PART 5
UTILIZATION REVIEW PROCESS - INDEPENDENT MEDICAL EXAMINATIONS

8-43-501. Utilization review process - legislative declaration - cash fund. (1) The general assembly hereby finds and determines that insurers and self-insured employers should be required to pay for all medical services pursuant to this article which may be reasonably needed at the time of an injury or occupational disease to cure and relieve an employee from the effects of an on-the-job injury. However, insurers and self-insured employers should not be liable to pay for care unrelated to a compensable injury or services which are not reasonably necessary or not reasonably appropriate according to accepted professional standards. The general assembly, therefore, hereby declares that the purpose of the utilization review process authorized in this section is to provide a mechanism to review and remedy services rendered pursuant to this article which may not be reasonably necessary or reasonably appropriate according to accepted professional standards.

(2) (a) An insurer, self-insured employer, or claimant may request a review of services rendered pursuant to this article by a health care provider. Requests for utilization review shall be submitted on forms promulgated by the director by rule. At the time of submission of a review request, the requester shall pay the division a fee prescribed by the director by rule. Such fee shall cover the division's administrative costs and the costs of compensating utilization review committee members. If a claimant is successful in a utilization review case brought pursuant to this section, the division shall reimburse the fee charged pursuant to this paragraph (a) and assess it against the insurer or self-insured employer. The state treasurer shall credit fees collected pursuant to this section to the utilization review cash fund, which fund is hereby created. Moneys in the utilization review cash fund are continuously appropriated to the division for the purpose of administering the utilization review program and may not revert to the general fund at the end of any fiscal year. The division shall mail to any claimant, insurer, or self-insured employer a notice that a case is to be reviewed and that the claimant may be examined as a result of such review. The claimant, insurer, or self-insured employer has thirty days from the date of mailing of such notice to examine the medical records submitted by the party who requested the review and may add medical records to the utilization review file that the party believes may be relevant to the utilization review. The division shall maintain a special file for utilization review cases. Such file shall be accessible only to interested parties in a utilization review case and shall not otherwise be open to any person.

(b) Prior to submitting a request for a utilization review pursuant to this section, an insurer, self-insured employer, or claimant shall hire a licensed medical professional to review the services rendered in the case. A report of the review shall be submitted with all necessary medical records, reports, and the request for utilization review.

(c) A claimant may request a utilization review pursuant to this section if the claimant has been refused a request pursuant to section 8-43-404 (5) to have a personal physician or chiropractor attend the claimant. A claimant requesting a utilization review pursuant to this paragraph (c) shall file the request on forms promulgated by the director by rule and shall pay the fee required by paragraph (a) of this subsection (2).

(d) For purposes of this section only, "medical records" means documents and transcripts of information obtained from a patient or his or her medical professional that are related to the patient's medical diagnosis, treatment, and care.

(e) When an insurer, self-insured employer, or claimant requests utilization review, no other party shall request a hearing pursuant to section 8-43-207 until the utilization review proceedings have become final, if such hearing request concerns issues about a change of physician or whether treatment is medically necessary and appropriate.

(f) Once a utilization review proceeding has become final and no longer subject to appeal, the final disposition of the issues in such proceeding shall be binding on the parties and preclude a contrary ruling on such issues in a subsequent hearing under section 8-43-207 unless a preponderance of evidence is shown.

(3) (a) The director, with input from the medical director serving pursuant to section 8-42-101 (3.6) (n), shall appoint members of utilization review committees for purposes of this section and section 8-42-101 (3.6). The director shall establish committees based on the different areas of health care practice for which requests for utilization review may be made. The director shall establish the qualifications for members of the different committees and the areas of health care practice in which each such committee shall conduct requested utilization reviews. Cases of requested utilization review shall be referred to committees appointed pursuant to this subsection (3) by the director based upon the areas of health care practice for which each committee is appointed.

(b) Each committee established pursuant to paragraph (a) of this subsection (3) shall be composed of three members. Committee members shall be compensated for their time by the division out of moneys in the utilization review cash fund, created in paragraph (a) of subsection (2) of this section. Any member of a committee appointed pursuant to this subsection (3) shall be immune from criminal liability and from suit in any civil action brought by any person based upon an action of such a committee, if such member acts in good faith within the scope of the function of the committee, has made reasonable effort to obtain the facts of the matter as to which action is taken, and acts in the reasonable belief that the action taken is warranted by the facts. The immunity provided by this paragraph (b) shall extend to any person participating in good faith in any investigative proceeding pursuant to this section.

(c) (I) For each case, a committee may recommend by majority vote of such committee that no change be ordered or that a change of provider be ordered.

(II) A committee may also, by unanimous vote, recommend that the director order that payment for fees charged for services in the case be retroactively denied.

(III) A committee may also, by unanimous vote, recommend that the director order that a physician's accreditation status under section 8-42-101 (3.6) be revoked.

(d) In preparing and issuing an order in any case, the director shall review and give great weight to the reports and recommendations of the committee.

(e) In appropriate cases pursuant to this section and section 8-42-101 (3.6), the director may order that an insurer, employer, or self-insured employer be permitted to deny reimbursement to a provider for any medical care or services rendered to a claimant; and such order may be effective for up to three years. Bills for services rendered during the effective period of any such order shall be unenforceable and shall not result in any debt of the claimant. In deciding whether to issue any such order, the director shall give great weight to the fact that:

(I) The provider has, within any two-year period, been the subject of two or more orders removing the provider from the role of authorized treating physician; or

(II) The provider has, within any two-year period, been the subject of two or more orders retroactively denying the payment of the provider's fees; or

(III) The provider has, within any two-year period, been the subject of two or more orders either retroactively denying the payment of the provider's fees or removing the provider from the role of authorized treating physician.

(4) If the director orders pursuant to subsection (3) of this section that a change of provider be made in a case or that the physician's accreditation status be revoked, the claimant, insurer, or self-insured employer shall have seven days from receipt of the director's order in which to agree upon a level I provider. If the claimant, insurer, or self-insured employer can not reach agreement within the seven day time period, the director shall select three providers. A new provider shall be chosen from the three providers so selected by the party who was successful in the request for review. If no appeal is filed, the successful party shall notify the division of the name of the new provider within seven days of the selection of the three potential providers. If the new health care provider is not selected within such seven days, the director shall select the provider.

(5) (a) Any party, including the health care provider, may appeal to an administrative law judge for review of an order specifying that no change occur or that a change of provider be made with respect to a case. Such review shall be limited to the record on appeal. The findings of a utilization review committee regarding the change of provider in a case shall be afforded great weight by the administrative law judge in any proceeding. A party disputing the finding of such utilization review committee shall have the burden of overcoming the finding by clear and convincing evidence.

(b) If the director has entered an order specifying that the payment of fees in the case be retroactively denied, or permitting an insurer, employer, or self-insured employer to deny payments for medical services or care rendered pursuant to subsection (3) (e) of this section, the health care provider may request a de novo hearing before an administrative law judge by filing an application for hearing within thirty days from the date of the certificate of mailing of the order. In a hearing held pursuant to this paragraph (b), the record upon which the director based the order shall be admissible in evidence. The findings of the utilization review committee regarding the retroactive denial of payment of fees in a case shall be afforded great weight by the administrative law judge in any proceeding. A party disputing the finding of such utilization review committee shall have the burden of overcoming the finding by clear and convincing evidence.

(c) Any appeal filed pursuant to this subsection (5) must be filed within forty days from the date of the certificate of mailing of the director's order.

(d) Any party dissatisfied with an order entered by an administrative law judge pursuant to paragraph (a) of this subsection (5) may file a petition to review the order pursuant to section 8-43-301.

(e) (Deleted by amendment, L. 91, p. 1326, § 43, effective July 1, 1991.)

8-43-502. Independent medical examinations. (1) The director shall maintain a list of physicians which shall be known as the medical review panel. The director shall utilize public and private resources as are available and appropriate in determining standards and qualifications for the medical review panel members. It shall be the duty of the medical review panel to perform independent medical examinations at the request of the director or an administrative law judge.

(2) Any party to a workers' compensation proceeding has the right to obtain an independent medical examination with the physician selected by the director from the medical review panel. The requesting party, when submitting a request for the independent medical evaluation, shall specify the professional specialty of the physician to be selected by the director to perform the independent medical examination. The director shall select, through a revolving selection process established by the department, the physician from the medical review panel to perform the examination. The cost of such independent medical examination shall be borne by the requesting party. In no instance shall the independent examining physician become the authorized treating physician.

(3) Whenever the director or an administrative law judge deems it necessary to assist in resolving any issue of medical fact or opinion, the director or administrative law judge shall cause the employee to be examined by a physician or physicians from the medical review panel. The director or the administrative law judge shall have the authority and discretion to charge the cost of such examination to the employer or, if insured, the employer's insurance carrier. Transportation expenses and all expenses necessary, reasonable, and incidental to such examination shall be included in the cost of such examination.

(4) Nothing in this section shall preclude any party from obtaining an independent medical examination from a physician who is not a member of the medical review panel.

(5) Upon written request of the employer, or if insured, the insurer, the employee shall submit to a reasonable number of independent medical examinations as provided for in this section. The employee shall be entitled to have a physician, provided and paid for by such employee, present at any such independent medical examination. The employee shall be entitled to receive from the independent examining physician a copy of any report which said physician makes to the employer, insurer, or the division. Said copy shall be furnished to the employee at the same time it is furnished to the employer, insurer, or division.

(6) Members of the medical review panel and any person acting as a consultant, witness, or complainant shall be immune from liability in any civil action brought against said person for acts occurring while the person was acting as a panel member, consultant, witness, or complainant, respectively, if such person was acting in good faith within the scope of the respective capacity, made a reasonable effort to obtain the facts of the matter as to which action was taken, and acted in the reasonable belief that the action taken by such person was warranted by the facts.

(7) Any physician determining an impairment rating on an injured worker pursuant to this title shall be immune from civil liability in any action brought by any person based on said impairment rating, absent the showing of malice or bad faith on the part of the rating physician.

8-43-503. Utilization review of health care providers. (1) The general assembly hereby finds and determines that health care providers that provide medical care or health care services that are not reasonably necessary or not reasonably appropriate according to accepted professional standards should not be allowed to provide such services to workers' compensation claimants. The general assembly, therefore, hereby declares that the purpose of the utilization review process authorized in this section is to provide a mechanism to review medical care or health care services rendered pursuant to this article that may not be reasonably necessary or reasonably appropriate according to accepted professional standards and to provide a mechanism to prevent such health care providers from providing medical care or health care services.

(2) The provisions relating to the procedures for utilization review found in section 8-43-501 (2), (3), (4), (5) (a), (5) (c), and (5) (d) shall apply to utilization review under this section. A unanimous vote by the committee created in section 8-43-501 (3) shall be required for a recommendation to the director that a health care provider not be allowed to provide medical care or health care services to claimants.

(3) Employers, insurers, claimants, or their representatives shall not dictate to any physician the type or duration of treatment or degree of physical impairment. Nothing in this subsection (3) shall be construed to abrogate any managed care or cost containment measures authorized in articles 40 to 47 of this title.

PART 6
PROVIDER REVIEW AND DISCLOSURE

8-43-601. Short title. This part 6 shall be known and may be cited as the "Provider Review and Disclosure Act".

8-43-602. Legislative declaration. The general assembly finds, determines, and declares that insurer performance programs are used in marketing, sales, and other efforts, and, as such, may impact an employer's selection of an authorized health care provider. To protect patients, employers, and providers, and to avoid improper profiling, all performance programs must be fair, objective, consistently applied, and accord providers due process. Consistent with these goals, performance programs should align incentives not only with efficient operations, but also with cost-effective, high-quality care. Accordingly, the general assembly finds that requiring minimum standards and full disclosure of performance program data and methodologies will help improve the quality and efficiency of health care delivered to Colorado workers.

8-43-603. Definitions. As used in this part 6, unless the context otherwise requires:

(1) "Insurer" means an entity that provides workers' compensation insurance coverage required by article 44 of this title, including any third-party insurer or self-insured employer.

(2) "Methodology" means the method by which an assessment or measurement is determined, including algorithms or studies, evaluation of data, application of guidelines, or performance measures.

(3) "Patient" means a person who qualifies for health care benefits under articles 40 to 47 of this title.

(4) "Performance program" means any program, system, or process through which an insurer rates or recognizes the cost, efficiency, quality, or other assessment or measurement of a provider's care, whether through awards, payments, assignment, or characterization or representation that is disclosed to patients, other providers, employers, or the public.

(5) "Provider" means a physician licensed under the "Colorado Medical Practice Act", article 36 of title 12, C.R.S., or a clinic that provides health care pursuant to articles 40 to 47 of this title.

8-43-604. Performance programs. (1) All performance programs shall include, at a minimum:

(a) A quality of care component that is satisfied by using standard treatment guidelines promulgated by the director pursuant to section 8-42-101 or evidence-based administrative, operational, or clinical performance measures that improve care;

(b) A clear representation of the weight given to the quality of care component in comparison with other factors, which weight shall be equal to or greater than any other factor;

(c) If a performance program includes an employer satisfaction element, a patient satisfaction element, which shall be weighted equal to or greater than the employer satisfaction element;

(d) Statistical analyses that are objective, accurate, valid, reliable, and verifiable;

(e) A period of assessment of data, pertinent to the performance program, which shall be updated at appropriate intervals;

(f) If claims data are used, accurate claims data appropriately attributed to the provider. When reasonably available, the insurer shall use aggregated data from other insurers to supplement its own claims data.

(g) The provider's responsibility for health care decisions and the financial consequences of those decisions, which shall be fairly and accurately attributed to the provider.

(2) Performance program results shall be reported to each provider reviewed in the program and shall include comparison of the provider's results to the results of the provider's peers.

(3) Any disclosure to patients, other providers, employers, or the public of the results of a performance program shall be accompanied by a conspicuous disclaimer written in bold-faced type stating that the information is intended only as a guide, should not be the sole factor in selecting a provider, has a risk of error, and should be discussed with the provider.

8-43-605. Due process. (1) At least forty-five days before disclosing the results of a performance program, an insurer shall give a provider written notice of the availability of the provider's individual result, specific instructions on how the provider can access the result, and a description of the implications to the provider. The written notice shall describe the procedures by which the provider may request:

(a) The information required to be disclosed under subsection (2) of this section; and

(b) An appeal of the result pursuant to subsection (3) of this section.

(2) (a) Within ten business days after receiving a request by or on behalf of a provider, an insurer shall disclose, in a manner that is reasonably understandable and that allows the provider to verify the data against his or her records, the methodology and all data upon which a provider's performance program result was calculated, with sufficient detail to allow the provider to determine the effect of the methodology on the data reviewed.

(b) An insurer shall not use the "Uniform Trade Secrets Act", article 74 of title 7, C.R.S., to avoid compliance with this section.

(3) Insurers shall establish procedures for providers to appeal the results of a performance program. Such procedures, in addition to the disclosures and the written notice furnished, shall provide:

(a) A reasonable method by which the provider may submit notice of the desire to appeal;

(b) The name, title, qualifications, and relationship to the insurer of any person responsible for deciding the appeal, who shall be authorized to uphold, modify, or reject results or require additional action to ensure that results are fair, reasonable, accurate, and comply with the requirements of this part 6;

(c) An opportunity for a provider to submit or have considered corrected data or other information relevant to the results or the appropriateness of the methodology used. If requested, a provider may appear at a face-to-face meeting with those responsible for the appeal decision at a location reasonably convenient to the provider or by teleconference. The provider shall submit in writing any corrected data or information in advance of the meeting.

(d) The provider's right to be assisted by a representative, including an attorney;

(e) A detailed written decision regarding the appeal that states the reasons for upholding, modifying, or rejecting the appeal;

(f) Resolution of the appeal within forty-five days after the date upon which the data and methodology are disclosed unless otherwise agreed to by the parties to the appeal; and

(g) A stay on the implementation, use, and disclosure of and action upon the individual results of the performance program until the appeal and any subsequent hearing requested pursuant to section 8-43-207 has become final.

8-43-606. Enforcement. (1) An insurer shall not limit, by contract or other means, the right of a provider to enforce this part 6.

(2) This part 6 may be enforced through a hearing pursuant to section 8-43-207 or in a civil action, and any remedies at law and in equity are available.

(3) A violation of this part 6 constitutes an unfair or deceptive act or practice under part 11 of article 3 of title 10, C.R.S.

8-43-607. Filing with director. At least thirty days before implementing any new or amended performance program, an insurer shall file a detailed description of the performance program with the director.

ARTICLE 44
Insurance

PART 1
GENERAL PROVISIONS

8-44-101. Insurance requirements. (1) Any employer subject to the provisions of articles 40 to 47 of this title shall secure compensation for all employees in one or more of the following ways, which shall be deemed to be compliance with the insurance requirements of said articles:

(a) By insuring and keeping insured the payment of such compensation in the Pinnacol Assurance fund;

(b) By insuring and keeping insured the payment of such compensation with any stock or mutual corporation authorized to transact the business of workers' compensation insurance in this state. If insurance is effected in such stock or mutual corporation, the employer or insurer shall forthwith file with the division, in form prescribed by it, a notice specifying the name of the insured and the insurer, the business and place of business of the insured, the effective and termination dates of the policy, and, when requested, a copy of the contract or policy of insurance.

(c) By procuring a self-insurance permit from the executive director as provided in section 8-44-201, except for public entity pools as described in section 8-44-204 (3), which shall procure self-insurance certificates of authority from the commissioner of insurance as provided in section 8-44-204;

(d) By procuring a self-insurance certificate of authority from the commissioner of insurance as provided in section 8-44-205.

(2) It shall be unlawful, except as provided in sections 8-41-401 and 8-41-402, for any employer, regardless of the method of insurance, to require an employee to pay all or any part of the cost of such insurance.

(3) (a) (I) Except as otherwise provided in subparagraph (II) of this paragraph (a), all public entities in the state shall insure and keep insured the payment of compensation by electing one of the methods provided in subsection (1) of this section. A public entity having an insured payroll of less than one million dollars annually shall not be eligible for self-insurance; except that public entities forming a pool pursuant to section 8-44-204 (3) shall be eligible if the total of all the payrolls of the public entities in the pool exceeds the required minimum.

(II) Any public entity in the state that is participating in the federal prison industry enhancement certification program pursuant to the federal "Justice System Improvement Act of 1979", 18 U.S.C. sec. 1761 (c), shall insure and keep insured the payment of compensation by electing one of the methods provided in subsection (1) of this section; except that the method for insuring the participants of such program need not be the same method selected by the public entity pursuant to subparagraph (I) of this paragraph (a).

(b) For purposes of this subsection (3), the department of human services, by virtue of the self-insurance program established pursuant to section 8-44-203, shall be considered a public entity of the state.

8-44-102. Contract for insurance subject to workers' compensation act. (1) Every contract for the insurance of compensation and benefits as provided in articles 40 to 47 of this title or against liability therefor is subject to articles 40 to 47 of this title, and all provisions in the contract for insurance inconsistent with those articles are void. Any contract of insurance issued under articles 40 to 47 of this title by any insurance carrier, including stock and mutual corporations and Pinnacol Assurance, may include and cover any liability of the employer on account of personal injuries sustained by or death resulting therefrom to any employee.

(2) (a) (I) Except as specified in subparagraph (III) of this paragraph (a), every carrier providing workers' compensation insurance that is authorized to conduct business in Colorado shall submit an annual report to the commissioner of insurance listing any policy forms as may be requested by the commissioner. The listing must be submitted no later than July 1 of each year and must contain a certification by an officer of the carrier that, to the best of the officer's knowledge, each policy form in use complies with Colorado law. The commissioner shall determine the necessary elements of the certification.

(II) (A) An advisory organization as defined in section 10-4-402 (1), C.R.S., or a rating organization as defined in section 10-4-402 (3), C.R.S., shall submit an annual report to the commissioner of insurance listing any policy forms as may be requested by the commissioner. The listing must be submitted no later than July 1 of each year and must contain a certification by an officer of the organization that, to the best of the officer's knowledge, each policy form listed complies with Colorado law. The commissioner shall determine the necessary elements of the certification.

(B) As used in this section, "form" may include any endorsement, rider, letter, notice, or other document affecting an insurance policy or contract issued or delivered to any policyholder in Colorado.

(III) If a carrier uses, in their entirety and without modification, forms prepared by an advisory organization as defined in section 10-4-402 (1), C.R.S., or a rating organization as defined in section 10-4-402 (3), C.R.S., the carrier shall notify the commissioner of insurance that it adopts the annual report filed by the advisory organization or rating organization under subparagraph (II) of this paragraph (a) and, if it so notifies the commissioner, it need not submit the certification required by subparagraph (I) of this paragraph (a). If a carrier uses forms that deviate from the forms listed by the advisory organization or rating organization, or if it uses forms other than those listed by the advisory organization or rating organization, the carrier shall submit the annual listing of forms and certification as required by subparagraph (I) of this paragraph (a).

(b) In addition to submitting the documentation required under paragraph (a) of this subsection (2) and except as specified in subparagraph (III) of this paragraph (b):

(I) Every carrier providing workers' compensation insurance that is authorized to conduct business in Colorado, every advisory organization as defined in section 10-4-402 (1), C.R.S., and every rating organization as defined in section 10-4-402 (3), C.R.S., shall submit to the commissioner a list of any new or revised policy forms as may be requested by the commissioner at least thirty-one days before a carrier uses the forms. Unless a carrier notifies the division of insurance otherwise, policy forms submitted on behalf of a member of an advisory organization or rating organization are deemed to be automatically adopted by the carrier without modification.

(II) The listing must also contain a certification by an officer of the carrier or an officer of the advisory or rating organization that, to the best of the officer's knowledge, each new or revised policy form, endorsement, rider, letter, notice, or other document proposed to be used complies with Colorado law. The commissioner shall determine the necessary elements of the certification.

(III) If an advisory organization or rating organization certifies a form as required by subparagraph (II) of this paragraph (b) and a carrier is a member of that organization and uses the form in its entirety, the carrier need not list that form as required by subparagraph (I) of this paragraph (b) or submit a certification for that form as required by subparagraph (II) of this paragraph (b).

(c) The commissioner may examine and investigate workers' compensation carriers authorized to conduct business in Colorado to determine whether workers' compensation policy forms, as may be requested by the commissioner, comply with the certification of the carrier and statutory mandates.

8-44-103. Insurers to file system of rating - approval. Every insurance carrier authorized to transact business in this state that insures employers against liability for compensation under the provisions of articles 40 to 47 of this title shall file with the commissioner of insurance its classification of risks, any premiums relating thereto, and any subsequent proposed classification of risks and premiums, together with all rates and any systems of rating.

8-44-104. Cutting rates - rebates - penalty. Every insurance carrier that writes compensation insurance shall write insurance at the rates filed with the commissioner of insurance. The cutting of rates, rebating, or any other method whereby, directly or indirectly, any employer is given the benefit of or obtains a rate lower than that approved by the commissioner of insurance is prohibited. The commissioner of insurance may suspend the license of any insurance carrier, agent, or broker who violates any provision of this section. Also, any insurance carrier, any employer, or any officer, agent, or employee thereof who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars for each such violation.

8-44-105. Provisions of policies - primary liability - notice of injury. Every contract insuring against liability for compensation or insurance policy evidencing the same shall contain a clause to the effect that the insurance carrier shall be directly and primarily liable to the employee and, in the event of death, to said employee's dependents to pay compensation, if any, for which the employer is liable, thereby discharging to the extent of such payment the obligations of the employer to the employee; that, as between the employee and the insurance carrier, notice or knowledge of the occurrence of the injury on the part of the employer shall be deemed notice or knowledge, as the case may be, on the part of the insurance carrier; that jurisdiction of the employer, for the purpose of articles 40 to

47 of this title, shall be jurisdiction of the insurance carrier; and that the insurance carrier, in all things, shall be bound by and subject to the orders, findings, decisions, or awards rendered against the employer under the provisions of said articles. Such policy shall also provide that the employee shall have a first lien upon any amount which becomes owing to the employer from the insurance carrier, and the insurance carrier shall pay the same directly to the employee or the employee's dependents, thereby discharging to the extent of such payment the obligation of the employer to the employee. The policy shall not contain any provisions relieving the insurance carrier from payment when the employer becomes legally incapable or insolvent or is discharged in bankruptcy or otherwise during the period that the policy is in operation or the compensation remains owing.

8-44-106. Insurer violation - suspension or revocation of license. If any insurance carrier intentionally, knowingly, or willfully violates any of the provisions of articles 40 to 47 of this title, the commissioner of insurance, on the request of the director, shall suspend or revoke the license or authority of such carrier to do a compensation business in this state.

8-44-107. Right of insurer to examine books of employer. Any insurance carrier operating under the workers' compensation act may apply to the commissioner of insurance for permission to examine any of the books, payrolls, or other documents of any employer insured by such carrier or of any contractor, subcontractor, lessee, sublessee, or person covered by the employer's compensation insurance to determine the amount of wage expenditure of such employer or of any contractor, subcontractor, lessee, sublessee, or person during any period that such insureds were insured by the insurance carrier. The commissioner of insurance may grant such carrier authority in writing to make the investigation or may appoint any agents of the division of insurance to conduct the investigation.

8-44-108. Repayments for misclassifications. (1) Every insurance carrier authorized to transact business in this state, including Pinnacol Assurance, which insures employers against liability for compensation under the provisions of articles 40 to 47 of this title, is authorized to charge and collect any amount of money that should have been included in premiums paid by an insured but were not included in such premiums as a result of job misclassification. Upon written request by the employer, the issue of whether a job misclassification occurred shall be determined in writing by the insurance company. The employer's request shall be made within thirty working days after the anniversary date of the policy or the date of receipt by the employer of notice of a change in job classification. The insurance company's determination shall be made within thirty days after receipt of the employer's written request. An employer may appeal any determination of an insurance company made pursuant to this subsection (1) to the workers' compensation classification appeals board, pursuant to section 8-55-102. If it is determined that a job misclassification occurred and that such misclassification was caused by the failure of the insured to provide accurate or complete data in order to determine the proper classification as requested by the insurance carrier, the repayment may be collected during the term of the contract for such insurance plus an additional reasonable time not to exceed twelve months.

(2) Any employer who has purchased insurance against liability for compensation under the provisions of articles 40 to 47 of this title is authorized to recover any amount of money which should not have been included in premiums paid by the employer but which were included in such premiums as a result of job misclassification. The repayment may be collected during the term of the contract for such insurance plus an additional reasonable time not to exceed twelve months.

8-44-109. Notice - change in rate by classification - policyholder's right to appeal classifications - availability of medical case management services. (1) Any insurance carrier authorized to transact business in this state, including Pinnacol Assurance, which insures employers against liability for compensation under the provisions of articles 40 to 47 of this title, shall supply information regarding a change in the rate by classification to any insured employer, if such employer has requested that such information be supplied. Such information shall be supplied within thirty days following release of such information to such insurer by the authorized rating organization and following approval of such rate change by the division of insurance. As soon as reasonably possible after the division of insurance's approval of a change in rate by classification, the authorized rating organization shall disseminate notice of such approval and change in rate.

(2) Every insurance carrier authorized to transact business in Colorado, including Pinnacol Assurance, which insures employers against liability for compensation under the provisions of articles 40 to 47 of this title, shall clearly and conspicuously inform policyholders of their rights to appeal employee classification designations, the procedures to be used for such an appeal, and the types of medical case management that the carrier has available to employees to promote medical cost containment.

8-44-110. Notice of cancellation. Every insurance carrier authorized to transact business in this state, including Pinnacol Assurance, which insures employers against liability for compensation under the provisions of articles 40 to 47 of this title, shall notify any employer insured by the carrier or Pinnacol Assurance, and any agent or representative of such employer, if applicable, by certified mail of any cancellation of such employer's insurance coverage. Such notice shall be sent at least thirty days prior to the effective date of the cancellation of the insurance. However, if the cancellation is based on one or more of the following reasons, then such notice may be sent less than thirty days prior to the effective date of the cancellation of the insurance: Fraud, material misrepresentation, nonpayment of premium, or any other reason approved by the commissioner of insurance.

8-44-111. Workers' compensation insurance - deductibles - definition. (1) (a) Any employer may agree, as a condition of any contract for the insurance of compensation and benefits as provided in articles 40 to 47 of this title or against liability therefor, to pay an amount not to exceed the split point approved by the commissioner of insurance per claim toward the total amount of any claim payable under articles 40 to 47 of this title. The amount of premium to be paid

by an employer who agrees to pay such deductible shall be reduced based upon such deductible in an amount determined by the insurance carrier.

(b) As used in this subsection (1), "split point" means the amount of each loss approved by the commissioner of insurance that an insurer may apply as the primary loss in each workers' compensation claim. The full amount of primary losses counts in each employer's experience modification calculation that determines the employer's percentage credit or surcharge on workers' compensation coverage. The loss amount above the split point is excess loss and constitutes part of each employer's experience modification calculation.

(c) Nothing in this section abrogates an employer's responsibility to pay the full amount of any compensation and benefits due under articles 40 to 47 of this title. It is a violation of this title for an employer or, if insured, the insurer to require any employee to pay any part of the compensation and benefits due under articles 40 to 47 of this title.

(d) It is a violation of this title for an employer or, if insured, the insurer to require an employee to use any other type of insurance, regardless of whether it is provided as a benefit of employment, or any other employment benefit, to pay any portion of any compensation and benefits due under articles 40 to 47 of this title.

(e) Nothing in this subsection (1) allows a carrier to stop offering no-deductible policies.

(1.5) Whenever any insurer, including Pinnacol Assurance created in section 8-45-101, issues a workers' compensation policy in this state, and annually thereafter, the insurer must issue a policy including the deductible provision if requested by the insured employer; except that the commissioner shall promulgate rules establishing criteria to allow the insurer to deny a deductible policy to an employer based on financial inability to reimburse the insurer for the deductible plan selected.

(2) The existence of an insurance contract with a deductible or the fact of payment as a result of a deductible shall not affect the requirement of an employer to report an injury or death to the division as required in section 8-43-103 (1).

(3) The deductible amounts paid by any employer under the provisions of this section shall be excluded from consideration by insurance carriers authorized to transact business in Colorado, including Pinnacol Assurance, which insures employers against liability for compensation under the provisions of articles 40 to 47 of this title, in establishing the modification factors based upon experience used by such insurance carriers to determine premiums. For purposes of experience modifications, medical only claims shall be calculated in the same manner as claims with indemnity payments.

(4) Every insurance carrier authorized to transact business in Colorado, including Pinnacol Assurance, which insures employers against liability for compensation under the provisions of articles 40 to 47 of this title, shall clearly and conspicuously inform policyholders of the availability of the deductible option specified in subsection (1) of this section.

8-44-112. Surcharge on workers' compensation insurance premiums - workers' compensation cash fund. (1) (a) Notwithstanding the provisions of sections 10-3-209 (1) (c) and 10-6-128 (3), C.R.S., for the purpose of offsetting the direct and indirect costs of the administration of the workers' compensation system, every person, partnership, association, and corporation, whether organized under the laws of this state or of any other state or country, every mutual company or association, every captive insurance company, and every other insurance carrier, including Pinnacol Assurance, insuring employers in this state against liability for personal injury to their employees or death caused thereby under the provisions of the "Workers' Compensation Act of Colorado" shall, as provided in this section, pay a surcharge upon the premiums received, whether in cash or not, in this state, or on account of business done in this state, for such insurance in this state, at a rate established by the director by rule, which surcharge shall be reviewed and adjusted annually based upon appropriations made for the direct and indirect costs of the administration of the workers' compensation system, as provided in subsection (7) of this section. Such insurance carriers shall be credited with all cancelled or returned premiums actually refunded during the year of such insurance.

(b) (I) For the purpose of funding the direct and indirect costs of the activities of the division related to the "Workers' Compensation Cost Containment Act", article 14.5 of this title, there shall be added to the surcharge imposed pursuant to paragraph (a) of this subsection (1) an increment not to exceed three-hundredths of one percent upon the premiums received, said surcharge to be reviewed and adjusted annually and paid over to the division in the same manner as specified in this section for the surcharge.

(II) Notwithstanding any other provisions of this section, no employer acting as a self-insurer under the provisions of the "Workers' Compensation Act of Colorado" shall be subject to the increment added to the surcharge pursuant to subparagraph (I) of this paragraph (b).

(III) All moneys collected pursuant to subparagraph (I) of this paragraph (b) shall be transmitted to the state treasurer, who shall credit the same to the cost containment fund, created in section 8-14.5-108.

(2) Every such insurance carrier shall, on July 1, 1987, and semiannually thereafter, make a return, verified by affidavits of its president and secretary, or other chief officers or agents, to the division of workers' compensation, stating the amount of all such premiums received and credits granted during the period covered by such return. Every insurance carrier required to make such return shall file the same with the division within thirty days after the close of the period covered thereby and shall, at the same time, pay to the division of workers' compensation a surcharge ascertained as provided in subsection (1) of this section, less return premiums on cancelled policies.

(3) Every employer acting as a self-insurer under the provisions of the "Workers' Compensation Act of Colorado" shall, under oath, report to the division of workers' compensation the business payroll in such form as may be prescribed by the director and at the times in this section provided for premium reports by insurance companies in subsection (2) of this section. The division shall assess against

such payroll a surcharge for the purposes of this section ascertained as provided in subsection (2) of this section on the basic premiums chargeable against the same or most similar industry or business taken from the manual insurance rates, including any discount or experience modification allowed, chargeable by the Pinnacol Assurance fund, and, upon receipt of notice from the division of workers' compensation of the surcharge so assessed, every such self-insurer shall, within thirty days after the receipt of such notice, pay to the division of workers' compensation the surcharge so assessed.

(4) If any such insurance carrier or self-insurer fails or refuses to make the return required by this article, the director shall assess the surcharge against such insurance carrier or self-insurer at the rate provided for in this section on such amount of premium as the director may deem just, and the proceedings thereof shall be the same as if the return had been made.

(5) If any such insurance carrier or self-insurer withdraws from business in this state before the surcharge falls due as provided in this section, or fails or neglects to pay such surcharge, the director shall at once proceed to collect the same; and the director is authorized to employ such legal processes as may be necessary for that purpose. Suit shall be brought by the director in any of the courts of this state having jurisdiction.

(6) The director, in the enforcement of this section, shall have all of the powers granted to said director in the "Workers' Compensation Act of Colorado", and any insurance carrier or self-insurer violating any of the provisions of this section, or failing to pay the surcharge imposed in this section, is guilty of violation of said act and subject to the penalties therein prescribed.

(7) (a) All moneys collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the workers' compensation cash fund, which fund is hereby created. The moneys in the workers' compensation cash fund shall be subject to annual appropriation by the general assembly for the direct and indirect costs of the administration of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title. Any interest earned on the investment or deposit of moneys in the workers' compensation cash fund shall remain in the fund and shall not revert to the general fund of the state at the end of any fiscal year.

(b) Notwithstanding any provision of paragraph (a) of this subsection (7) to the contrary, on March 5, 2003, the state treasurer shall deduct six million dollars from the workers' compensation cash fund and transfer such sum to the general fund.

(c) Notwithstanding any provision of paragraph (a) of this subsection (7) to the contrary, on March 30, 2009, the state treasurer shall deduct fifteen million seven hundred thousand dollars from the workers' compensation cash fund and transfer such sum to the general fund.

8-44-113. Data from insurance carriers and self-insured employers related to workers' compensation - studies related to workers' compensation system. (Repealed)

8-44-114. Determination of premium. The amount of the premium to be paid by an employer for a contract of insurance of compensation and benefits as provided in articles 40 to 47 of this title or against liability therefor shall be on the basis of the annual expenditure of money by said employer for the services of persons engaged in such employer's employment; except that no portion of such expenditure representing a per diem payment shall be considered unless such payment is considered wages for federal income tax purposes.

8-44-115. Calculation of premium - motor vehicle accidents. (1) The amount by which an employer's experience rating is modified, if at all, as the result of a motor vehicle accident in which an employee is injured or killed shall be reduced in accordance with this section if:

(a) The employee is entitled to benefits under articles 40 to 47 of this title; and

(b) The accident was not caused, wholly or in part, by the employee or the employer; and

(c) The use of a motor vehicle is not an integral part of the employer's business, as determined under rules promulgated by the commissioner of insurance under section 10-4-408 (5) (e), C.R.S.

(2) (a) Any modification of an employer's experience rating resulting from an accident described in subsection (1) of this section shall reflect the deduction of a loss limitation, the amount of which shall be determined by the commissioner of insurance under rules adopted pursuant to section 10-4-408 (5) (e), C.R.S.

(b) All loss experience remaining after deduction of the loss limitation referred to in paragraph (a) of this subsection (2) shall be distributed among all workers' compensation classifications in use in the state as determined by the commissioner of insurance. For purposes of such distribution, classifications of businesses of which use of a motor vehicle is an integral part may be treated differently from classifications of businesses of which use of a motor vehicle is not an integral part.

(3) This section applies to all insurers, including Pinnacol Assurance created in section 8-45-101, offering workers' compensation insurance under articles 40 to 47 of this title. The provisions of this section shall be disclosed to all policyholders annually.

8-44-116. Reversionary interests in indemnity benefits prohibited. No provision in a contract for insurance regulated by this article or any contract ancillary to such a contract, including specifically a contract setting up an annuity for indemnity benefits, shall establish a reversionary interest in the insurer for the indemnity benefits. Any such provision is void and unenforceable as against public policy.

PART 2
SELF-INSUREDS

8-44-201. Employer as own insurance carrier - revocation of permission. (1) The executive director has the discretion to grant to any employer who has accepted the provisions of articles 40 to 47 of this title permission to be its own insurance carrier for the payment of the compensation and benefits provided by said articles. Such permission may be

granted by the executive director after the filing by an employer of such statement and the giving of such information as may be required by the executive director. The executive director has the sole power to prescribe the rules, regulations, orders, terms, and conditions upon which said permit shall be granted or continued. Permission for self-insurance may be revoked at any time by the executive director, and the employer, upon notice of revocation, shall immediately insure otherwise all liability.

(2) Notwithstanding the provisions of subsection (1) of this section, the executive director shall not prescribe or apply security requirements in granting or continuing permission for the self-insurance program of the department of human services established pursuant to section 8-44-203 but shall provide instead for alternatives to such security requirements including trust funds, surety bonds, excess insurance, or other security acceptable to the executive director. The alternative security requirements provided by this subsection (2) shall apply only to claims arising on or after July 1, 1985, and before July 1, 1990. The trust fund in existence on May 24, 1990, pursuant to the trust agreement between the department of human services, a third party administrator, and the state treasurer, dated June 27, 1985, shall remain in existence through June 30, 1990.

(3) Notwithstanding the provisions of subsection (1) of this section, the executive director shall not prescribe or apply security requirements in continuing permission for an employer which is acting as its own insurance carrier on July 1, 1986, which are in excess of those security requirements in effect on July 1, 1986, unless there is a substantial change in the economic condition or potential liability of such employer.

(4) Notwithstanding the provisions of subsection (1) of this section, the executive director shall not prescribe or apply security requirements in granting or continuing permission for a self-insurance program established by the state pursuant to section 24-30-1510.7, C.R.S.

8-44-202. Workers' compensation self-insurance fund - created. (1) The executive director shall establish and collect such fees as the executive director determines are necessary to administer this section, which fees shall not supplant funding for any other function of the department of labor and employment. The fees established pursuant to this subsection (1) shall not exceed two thousand dollars for an initial application or for an annual review of any employer acting as a self-insurer under this section.

(2) The executive director shall transmit any moneys received pursuant to subsection (1) of this section to the state treasurer, who shall place such moneys in the workers' compensation self-insurance fund, which fund is hereby created. The general assembly shall make appropriations from such fund for the purposes of administering this section.

8-44-203. Department of human services - self-insurance program. The general assembly hereby finds and declares that a program shall be established by the department of human services and the department of labor and employment to provide for a self-insurance program for the department of human services, which shall apply only to claims arising on or after July 1, 1985, and before July 1, 1990.

8-44-204. Public entities - self-insurance authorized for workers' compensation - pooled insurance. (1) "Public entity", as used in this section, means and includes any county, municipality, school district, and any other type of district or authority organized pursuant to law.

(2) A public entity may, after receiving permission pursuant to section 8-44-101 (1) (c), act as its own insurance carrier for compensation and benefits. Any public entity other than a school district may establish and maintain an insurance reserve fund for self-insurance purposes and may include in the annual tax levy of the public entity such amounts as are determined by its governing body to be necessary for the uses and purposes of the insurance reserve fund, subject to the limitations imposed by section 29-1-301, C.R.S. School districts may establish and maintain an insurance reserve fund in accordance with the provisions of section 22-45-103 (1) (e), C.R.S., using moneys allocated thereto pursuant to the provisions of section 22-54-105 (2), C.R.S. In the event that a public entity has no annual tax levy, it may appropriate from any unexpended balance in the general fund such amounts as the governing body shall deem necessary for the purposes and uses of the insurance reserve fund.

(3) Public entities may cooperate with one another to form a self-insurance pool to provide the insurance coverage required by this article for the cooperating public entities. Any such insurance pool shall be formed pursuant to the provisions of part 2 of article 1 of title 29, C.R.S. The provisions of articles 10.5 and 47 of title 11, C.R.S., shall apply to moneys of such self-insurance pool.

(4) Any self-insurance pool authorized by subsection (3) of this section shall not be construed to be an insurance company nor otherwise subject to the provisions of the laws of this state regulating insurance or insurance companies; except that the pool shall comply with the applicable provisions of sections 10-1-203 and 10-1-204 (1) to (5) and (10), C.R.S.

(5) Prior to the formation of a self-insurance pool, there shall be submitted to the commissioner of insurance a complete written proposal of the pool's operation, including, but not limited to, the administration, claims adjusting, membership, plan for reinsurance, and capitalization of the pool. The commissioner shall review the proposal within thirty days after receipt to assure that proper insurance techniques and procedures are included in the proposal. After such review, the commissioner shall have the right to approve or disapprove the proposal. If the commissioner approves the proposal, the commissioner shall issue a certificate of authority. The costs of such review shall be paid by the public entities desiring to form such a pool.

(6) Each self-insurance pool for public entities created in this state shall file, with the commissioner of insurance on or before March 30 of each year, a written report in a form prescribed by the commissioner, signed and verified by its chief executive officer as to its condition.

(7) The commissioner of insurance, or any person authorized by the commissioner of insurance, shall conduct an insurance examination at least once a year to determine that proper underwriting techniques and sound funding, loss reserves, and claims procedures are being followed. This

examination shall be paid for by the self-insurance pool out of its funds at the same rate as provided for foreign insurance companies under section 10-1-204 (9), C.R.S.

(8) (a) The certificate of authority issued to a public entity under this section may be revoked or suspended by the commissioner of insurance for any of the following reasons:

(I) Insolvency or impairment;

(II) Refusal or failure to submit an annual report as required by subsection (6) of this section;

(III) Failure to comply with the provisions of its own ordinances, resolutions, contracts, or other conditions relating to the self-insurance pool;

(IV) Failure to submit to examination or any legal obligation relative thereto;

(V) Refusal to pay the cost of examination as required by subsection (7) of this section;

(VI) Use of methods which, although not otherwise specifically proscribed by law, nevertheless render the operation of the self-insurance pool hazardous, or its condition unsound, to the public;

(VII) Failure to otherwise comply with the law of this state, if such failure renders the operation of the self-insurance pool hazardous to the public.

(b) If the commissioner of insurance finds upon examination, hearing, or other evidence that any participating public entity has committed any of the acts specified in paragraph (a) of this subsection (8) or any act otherwise prohibited in this section, the commissioner may suspend or revoke such certificate of authority if the commissioner deems it in the best interest of the public. Notice of any revocation shall be published in one or more daily newspapers in Denver which have a general state circulation. Before suspending or revoking any certificate of authority of a public entity, the commissioner shall grant the public entity fifteen days in which to show cause why such action should not be taken.

(9) (a) Any self-insurance pool organized pursuant to this section may invest in securities meeting the investment requirements established in part 6 of article 75 of title 24, C.R.S., and may also invest in membership claim deductibles and in any other security or other investment authorized for such pools by the commissioner of insurance.

(b) Any public entity which is a member of a self-insurance pool which is organized pursuant to this section or any instrumentality formed by two or more of such members may invest in subordinated debentures issued by such self-insurance pool.

(10) In addition to workers' compensation coverage pursuant to subsection (3) of this section, a self-insurance pool authorized by subsection (3) of this section may provide property coverage pursuant to section 29-13-102, C.R.S., and liability coverage pursuant to section 24-10-115.5, C.R.S.

8-44-205. Employers - self-insurance pools authorized for workers' compensation. (1) "Employers", as used in this section, means a bona fide trade or professional association or two or more employers which are engaged in the same or similar type of business or are members of the same bona fide trade or professional association.

(2) Employers may cooperate with one another to form a self-insurance pool to provide the insurance coverage required by this article for cooperating employers.

(3) Any self-insurance pool authorized by subsection (2) of this section shall not be construed to be an insurance company nor otherwise subject to the provisions of the laws of this state regulating insurance or insurance companies; except that the pool shall comply with the applicable provisions of sections 10-1-203 and 10-1-204 (1) to (5) and (10), C.R.S., and shall be subject to proceedings authorized by part 5 of article 3 of title 10, C.R.S.

(4) Prior to the formation of a self-insurance pool, there shall be submitted to the commissioner of insurance a complete written proposal of the pool's operation, including, but not limited to, the administration, claims adjusting, membership, plan for reinsurance, capitalization of the pool, and risk management programs. The commissioner shall review the proposal within forty-five days after receipt to assure that proper insurance techniques and procedures are included in the proposal. After such review, the commissioner shall have the right to approve or disapprove the proposal. If the commissioner of insurance has not disapproved the proposal within ninety days of receipt of the proposal, such proposal shall be deemed approved. If the commissioner approves the proposal, the commissioner shall issue a certificate of authority. The costs of such review shall be paid by the employers desiring to form such a pool.

(5) Each self-insurance pool for employers created in this state shall file with the commissioner of insurance, on or before March 30 of each year, a written report in a form prescribed by the commissioner, signed and verified by its chief executive officer as to its condition.

(6) The commissioner of insurance, or the commissioner's designee, shall conduct an insurance examination at least once a year to determine that proper underwriting techniques and sound funding, loss reserves, and claims procedures are being followed. This examination shall be paid for by the self-insurance pool out of its funds at the same rate as provided for foreign insurance companies under section 10-1-204 (9), C.R.S.

(7) (a) The certificate of authority issued to an employer self-insurance pool under this section may be revoked or suspended by the commissioner of insurance for any of the following reasons:

(I) Insolvency or impairment;

(II) Refusal or failure to submit an annual report as required by subsection (5) of this section;

(III) Failure to comply with the provisions of its own rules, resolutions, contracts, or other conditions relating to the self-insurance pool;

(IV) Failure to submit to examination or any legal obligation relative thereto;

(V) Refusal to pay the cost of examination as required by subsection (6) of this section;

(VI) Use of methods which, although not otherwise specifically proscribed by law, nevertheless render the operation of the self-insurance pool hazardous, or its condition unsound, to the public;

(VII) Failure to otherwise comply with the law of this state, if such failure renders the operation of the self-insurance pool hazardous to the public.

(b) If the commissioner of insurance finds upon examination, hearing, or other evidence that any participating

employer self-insurance pool has committed any of the acts specified in paragraph (a) of this subsection (7) or any act otherwise prohibited in this section, the commissioner may suspend or revoke such certificate of authority if the commissioner deems it in the best interest of the public. Notice of any revocation shall be published in one or more daily newspapers in Denver which have a general state circulation. Before suspending or revoking any certificate of authority of an employer self-insurance pool, the commissioner shall grant the employer self-insurance pool fifteen days in which to show cause why such action should not be taken.

(8) The commissioner of insurance may supervise or rehabilitate an employer self-insurance pool pursuant to the provisions of parts 4 and 5 of article 3 of title 10, C.R.S., for any of the following reasons:

(a) Insolvency or impairment;

(b) Failure to comply with the provisions of its own rules, resolutions, contracts, or other conditions relating to the self-insurance pool;

(c) Failure to submit to examination or any legal obligation relative thereto;

(d) Use of methods which, although not otherwise specifically proscribed by law, nevertheless render the operation of the self-insurance pool hazardous, or its condition unsound, to the public;

(e) Failure to otherwise comply with the law of this state, if such failure renders the operation of the self-insurance pool hazardous to the public.

(9) The commissioner of insurance may promulgate reasonable rules and regulations necessary to effectuate the purposes of this section.

(10) Any self-insurance pool or any trust which provides insurance coverage for purposes of articles 40 to 47 of this title which is in existence and is operating prior to July 10, 1987, is not subject to the requirements of this section and may continue to operate such pool or trust as authorized by law.

(11) Each self-insurance pool created under this section shall establish a trust fund, on an annual basis, to provide payment of the total workers' compensation loss cost incurred by all pool members within each given year. Aggregate excess insurance shall be provided by each self-insurance pool to the statutory limit of coverage, attaching at the maximum amount of each annual trust fund balance, or, in lieu thereof, the commissioner of insurance shall set other security standards which assure payment of workers' compensation in the event that a self-insurance pool disbands or defaults.

8-44-206. Guaranty fund - immediate payment fund - special funds board - creation. (1) The general assembly hereby finds and declares that benefits awarded under articles 40 to 47 of this title to claimants employed by self-insurers may be unreasonably delayed or not paid at all if receipt of the proceeds of the bond required of the self-insurer is delayed or if the self-insurer declares bankruptcy or has insufficient reserves to cover the claim. The general assembly further finds and declares that the creation of an immediate payment fund and a guaranty fund will assure prompt and complete payment of benefits awarded to such claimants.

(2) **Creation of special funds board - duties.** (a) For the purposes of carrying out this section, there is hereby created a special funds board which shall exercise its powers and perform its duties and functions as specified in this subsection (2) under the department of labor and employment as if the same were transferred to the department by a **type 2** transfer as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of title 24, C.R.S. Said board shall be composed of five members: Four members who are managers or employees of self-insured employers in good standing, two of whom shall demonstrate knowledge of risk management and finance, and the executive director.

(b) With the exception of the executive director, the board members shall be appointed by the governor and approved by the senate. The terms of the members of the board first appointed shall be four years, three years, two years, and one year, respectively. Thereafter, the term for each appointed board member shall be four years. Members of the board may be reappointed and the executive director shall serve continuously.

(c) The members of the board shall receive no compensation but shall be reimbursed for actual and necessary traveling and subsistence expenses incurred in the performance of their duties as members of the board.

(d) (I) The board shall determine the assessments to be made pursuant to subsections (3) and (4) of this section and shall determine the qualifications and requirements for any claims administrators hired to adjust the claims of a self-insurer who fails to meet his obligations with respect to benefits awarded pursuant to articles 40 to 47 of this title.

(II) The board shall also participate, in an advisory capacity only, in matters concerning the granting or termination of self-insurance permits and the setting of security requirements.

(3) **Immediate payment fund - assessments - creation of fund.** (a) The board shall impose an assessment upon each employer self-insured under section 8-44-201. Assessments under this subsection (3) shall be based upon a ratio equal to the self-insured employer's paid workers' compensation medical and indemnity losses for the most recent self-insurance permit year divided by the aggregate sum of paid medical and indemnity losses by all self-insured employers for that year. Such losses shall be determined on July 1, 1990, for the most recently completed permit year, and on the first day of July for each year thereafter until the minimum fund balance has been reached. Contributions to the fund shall not be assets of the self-insured employer.

(b) (I) All moneys received by the executive director pursuant to this subsection (3) shall be deposited in the state treasury in the immediate payment fund, which fund is hereby created, and all moneys credited to such fund shall be used solely for the administration and payment of benefits to employees pursuant to this section. The general assembly shall make annual appropriations out of such fund for the administration of the fund. The moneys in such fund for the payment of benefits are hereby continuously appropriated to the department for payment of such benefits. Any moneys not utilized in the fund shall not revert to the general fund.

(II) The minimum fund balance shall be three hundred thousand dollars, to be assessed during the first three years at the rate of one hundred thousand dollars annually. Interest shall accrue to the fund to a maximum fund balance of one million dollars. Thereafter, the fund balance shall be maintained at one million dollars by refunding the excess funds to each self-insured employer, on a pro rata basis, based on that employer's contribution.

(4) **Guaranty fund - assessments - creation of fund.** (a) When the board determines that existing security held by an employer self-insured under section 8-44-201 is insufficient to meet its existing liability for workers' compensation benefits, the board shall impose an assessment on each self-insured employer. The assessment shall be based on a ratio which equals each self-insured employer's paid workers' compensation medical and indemnity losses for the most recent self-insurance permit year divided by the aggregate sum of paid medical and indemnity losses by all self-insured employers for that year. If necessary, the executive director may direct the board to make an annual assessment thereafter until such time as the present value of the guaranty fund, created in paragraph (b) of this subsection (4), equals the total liability for workers' compensation benefits which are in excess of the security held by the defaulting self-insured employers.

(b) (I) All moneys received by the executive director pursuant to this subsection (4) shall be deposited in the state treasury in the guaranty fund, which fund is hereby created. Such moneys credited to the fund shall be used solely for the administration and payment of benefits to employees pursuant to this section. The general assembly shall make annual appropriations out of such fund for the administration of the fund. The moneys in such fund for the payment of benefits are hereby continuously appropriated to the department for payment of such benefits. Any moneys not utilized in the fund shall not revert to the general fund.

(II) All interest shall accrue to the fund. No amounts shall be refunded until all liability in excess of security held by self-insured employers has been discharged and until the dates imposing limitations on actions, as specified in sections 8-43-103 and 8-43-303 have passed. When those conditions have been met, the remaining moneys in the fund shall be refunded to each self-insured employer, on a pro rata basis, based on that employer's contribution.

(c) Public entities self-insuring under section 8-44-201 shall be exempt from and shall not participate in this subsection (4).

(5) The department shall select any claims administrators required under this section based on the qualifications and requirements established by the board. For the purpose of contracting for such services, the department shall not be subject to articles 101 to 114 of title 24, C.R.S.

ARTICLE 45
Pinnacol Assurance

8-45-101. Pinnacol Assurance - creation - powers and duties. (1) There is hereby created Pinnacol Assurance, which shall be a political subdivision of the state and shall operate as a domestic mutual insurance company except as otherwise provided by law. Pinnacol Assurance shall not be an agency of state government, nor shall it be subject to administrative direction by any state agency except as provided in this article, and except for the purposes of the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S. Pinnacol Assurance shall not be dissolved except by the general assembly. Section 10-12-411, C.R.S., shall not apply to Pinnacol Assurance.

(2) (a) The powers of Pinnacol Assurance shall be vested in the board of directors of Pinnacol Assurance, which shall have nine members. The members of the board shall be appointed by the governor with the consent of the senate. Of the nine members, four shall be employers whose liability under articles 40 to 47 of this title is insured by Pinnacol Assurance with one of such employers to be a farmer or rancher. Three of the nine members shall be employees of employers whose liability under articles 40 to 47 of this title is insured by Pinnacol Assurance. One of the nine members shall be experienced in the management and operation of insurance companies as defined in section 10-1-102 (6), C.R.S. Such member shall not concurrently serve as an owner, a shareholder, an officer, an employee, an agent of, or in any other capacity with any business which competes with Pinnacol Assurance. One of the nine members shall be experienced in finance or investments, but shall not be an employer whose liability under articles 40 to 47 of this title is insured by Pinnacol Assurance. The term of office for each such member shall be five years. The appointees may serve on a temporary basis if the senate is not in session when they are appointed until the senate is in session and is able to confirm such appointments. Vacancies on the board shall be filled by appointment of the governor for the remainder of any unexpired terms. The board shall elect a chairman annually from its membership.

(b) The members of the board who were serving as of January 1, 2002, shall continue to serve until the completion of each member's term. New members of the board shall be appointed pursuant to paragraph (a) of this subsection (2).

(c) The board shall have the powers, rights, and duties as set forth in this article and otherwise provided by law.

(3) Members of the board shall be compensated one hundred forty dollars per diem plus their actual and necessary expenses. Per diem compensation, not to exceed thirty days in any calendar year, shall be paid only when the board is transacting official business.

(4) On and after July 1, 2002, the powers, duties, and functions formerly exercised by the Colorado compensation insurance authority may be exercised by Pinnacol Assurance.

(5) The board shall:

(a) (I) Appoint the chief executive officer of Pinnacol Assurance who shall serve under contract and appoint, hire, or delegate the authority to hire such other staff

as may be necessary to carry out the duties of Pinnacol Assurance.

(II) If an executive officer of Pinnacol Assurance is appointed pursuant to subparagraph (I) of this paragraph (a) and such executive officer appoints, hires, or delegates duties to any other staff necessary to carry out the duties of Pinnacol Assurance, and the executive officer or other staff receives total compensation, including bonuses or deferred compensation, in an amount equal to or greater than one hundred fifty thousand dollars annually, such compensation information shall be a public record.

(b) Develop and approve an annual budget;

(c) Establish general policies and procedures for the operation and administration of Pinnacol Assurance;

(d) (Deleted by amendment, L. 2002, p. 1865, § 1, effective July 1, 2002.)

(e) Promulgate policies and procedures that establish the basis by which employer premiums payable to Pinnacol Assurance are determined. The board may establish different rates for employers who meet the requirements established by the board for any classification after complying with the requirements of part 4 of article 4 of title 10, C.R.S., so long as those rates are not excessive, inadequate, or unfairly discriminatory.

(f) Offer to provide workers' compensation insurance and employer's liability insurance covering any liability of Colorado employers on account of personal injuries sustained by, or the death of, any employee. Nothing in this article shall be interpreted to permit Pinnacol Assurance to provide any other type of insurance or to provide insurance to employers that are not Colorado employers. Pinnacol Assurance shall not refuse to insure any Colorado employer or cancel any insurance policy due to the risk of loss or amount of premium, except as otherwise provided in this title.

(g) Review and streamline administrative procedures;

(h) Oversee the operations and make necessary personnel changes;

(i) Review the investigative procedures and implement changes to expedite investigations;

(j) Review and recommend legislation pertaining to workers' compensation in articles 40 to 47 of this title and to clarify legal concepts related thereto;

(k) Review the method of calculation of the experience modification factor with the object of providing maximum incentives for job safety;

(l) Establish general policies and procedures by rule and regulation concerning medical care cost containment practices under articles 40 to 47 of this title; and

(m) Post the date, time, and location of each board meeting on the Pinnacol Assurance website at least seven calendar days prior to the scheduled meeting.

(6) Article 4 of title 24, C.R.S., shall not apply to the promulgation of any policies or procedures authorized by subsection (5) of this section.

(7) Pinnacol Assurance may sell services, including but not limited to medical bill processing, that are developed pursuant to its powers under this article.

(8) Employees of Pinnacol Assurance shall be exempt from the state personnel system but shall, by acceptance of employment, be subject to the provisions of article 51 of title 24, C.R.S. Pinnacol Assurance shall provide for the deduction of employer and employee contributions from salary and for payment to the association of such deductions and for any other payments that would be due from a state employer.

(9) Notwithstanding any provision of law to the contrary, the claim files of injured employees, the policy files of employers, and all business records relating to the determination of rates that are not required to be disclosed by any other insurance company shall not be subject to the provisions of part 2 of article 72 of title 24, C.R.S.

(10) With respect to meetings of Pinnacol Assurance, matters relating to the claim files of injured employees and policy files of employers shall not be subject to the provisions of part 4 of article 6 of title 24, C.R.S.

(11) Pinnacol Assurance may enter into cooperative arrangements with any public or private entity for the purpose of carrying out its powers, duties, and functions. Nothing in this section shall require or be interpreted to require an employer to provide health insurance coverage for its employees.

(12) Notwithstanding the provisions of subsection (1) of this section, upon the attainment of a reasonable surplus as set forth in section 8-45-111, the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S., shall not apply to Pinnacol Assurance.

(13) Any member of the board who owns at least ten percent of an entity that enters into a contract with Pinnacol Assurance shall disclose the board member's ownership interest in the entity. This disclosure shall be a public record.

8-45-102. Pinnacol Assurance fund created - control of fund. (1) There is hereby created in the state treasury a fund, to be known as the Pinnacol Assurance fund, for the benefit of injured and the dependents of killed employees, which shall be administered in accordance with the provisions of this article by the board. Such administration shall be without liability on the part of the state, beyond the amount of said fund, constituted as provided in this article. The state shall have no liability for the solvency or financial condition of the fund.

(2) The chief executive officer is vested with full power and jurisdiction over the administration of Pinnacol Assurance and may appoint such subordinate officers as may be necessary for the efficient operation of Pinnacol Assurance and may do and perform all things, whether specifically designated in this article or in addition thereto, that are necessary or convenient in the exercise of any power or jurisdiction over Pinnacol Assurance in the administration thereof under the provisions of this article as fully and completely as the head of a private insurance company might or could do, subject, however, to all the provisions of this article and other applicable law.

(3) Control of all moneys in the Pinnacol Assurance fund shall be transferred to the board, which shall administer the fund and use such moneys for the purposes of this article.

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(4) The Pinnacol Assurance fund shall be a continuing fund and shall consist of all premiums received and paid into said fund for compensation insurance, all property and securities acquired by and through the use of moneys belonging to said fund, and all interest earned upon moneys belonging to said fund and deposited or invested. Said fund shall be applicable to the payment of the salaries of the employees of the fund and to its other operating expenses and to the payment of losses sustained or liabilities incurred under the contracts or policies of insurance issued by Pinnacol Assurance in accordance with the provisions of articles 40 to 47 of this title. All moneys in the fund previously known as the Colorado compensation insurance authority fund shall be transferred into the Pinnacol Assurance fund on July 1, 2002.

(5) The moneys in the Pinnacol Assurance fund shall be continuously available for the purposes of this article and shall not be transferred to or revert to the general fund of the state at the end of any fiscal year. All revenues, moneys, and assets of Pinnacol Assurance belong solely to Pinnacol Assurance. The state of Colorado has no claim to nor any interest in such revenues, moneys, and assets and shall not borrow, appropriate, or direct payments from such revenues, moneys, and assets for any purpose.

8-45-103. Board to fix rates - chief executive officer to administer rates - sue and be sued - personal liability limited. (1) The board shall have full power and it is its duty to fix and determine the rates to be charged by Pinnacol Assurance for compensation insurance.

(2) The chief executive officer shall manage and conduct all business and affairs in relation to the rates to be charged by Pinnacol Assurance for compensation insurance which shall be conducted in the name of Pinnacol Assurance, and in that name, without any other name, title, or authority, the chief executive officer may:

(a) (I) Sue and be sued in all the courts of this state, or of any other state, or of the United States, and in actions arising out of any act, deed, matter, or thing made, omitted, entered into, done, or suffered in connection with Pinnacol Assurance and the administration, management, or conduct of the business or affairs relating thereto; and the chief executive officer shall be authorized to employ counsel to represent Pinnacol Assurance in any action.

(II) Nothing in this paragraph (a) shall be construed to waive any provisions of the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S., nor shall it be construed to waive immunity of the state of Colorado from suit in federal court, guaranteed by the eleventh amendment to the constitution of the United States.

(b) The chief executive officer shall not, nor shall any officer or employee of Pinnacol Assurance, or entities or parties with whom it contracts for services, be personally liable in a private capacity for or on account of any act done or omitted or contract or other obligation entered into or undertaken in an official capacity in good faith and without intent to defraud in connection with the administration, management, or conduct of Pinnacol Assurance, its business, or other affairs relating thereto.

(c) (Deleted by amendment, L. 2002, p. 1870, § 3, effective July 1, 2002.)

8-45-104. Blanks furnished by state. (Repealed)

8-45-105. Places of employment classified - amount of premiums. (1) The board may classify the places of employment of employers insured by Pinnacol Assurance into classes in accordance with the nature of the business in which they are engaged and the probable hazard or risk of injury to their employees. It shall determine the amount of the premiums that such employers shall pay to Pinnacol Assurance, and may prescribe in what manner such premiums shall be paid, and may change the amount thereof both in respect to any or all of such employers as circumstances may require, and the condition of their respective plants, establishments, or places of work in respect to the safety of their employees may justify. All such premiums shall be levied on a basis that shall be fair, equitable, and just as among such employers.

(2) (Deleted by amendment, L. 2002, p. 1871, § 5, effective July 1, 2002.)

8-45-106. Insurance at cost - board may impose surcharges. (1) It is the duty of the board, in the exercise of the powers and discretion conferred upon it by articles 40 to 47 of this title, ultimately to fix and maintain, for each class of occupation, the lowest possible rates of premium consistent with the maintenance of a solvent Pinnacol Assurance fund, and the creation and maintenance of a reasonable surplus after the payment of legitimate claims for injury and death, that may be authorized to be paid from the Pinnacol Assurance fund for the benefit of injured and dependents of killed employees.

(2) The board may impose a premium surcharge, not to exceed an additional fifty percent, for up to twelve continuous months, as a condition precedent to insure or reinsure an employer whose policy was canceled or terminated by any insurer for reasons of fraud or intentional misrepresentation of a material fact; except that, if an employer disputes the imposition of such surcharge, the employer may make a complaint to the commissioner of insurance. If the commissioner of insurance determines that the board, in imposing a premium surcharge, has engaged in any conduct in violation of part 11 of article 3 of title 10, C.R.S., the commissioner may take any action the commissioner deems appropriate and authorized by law.

8-45-107. Basis of rates - reserve - surplus. (1) The rates shall be the percentage of the payroll of any employer that, on the average, shall produce a sufficient sum to:

(a) Carry all claims to maturity such that the rates shall be based upon the reserve and not upon the assessment plan;

(b) Produce a reasonable surplus as provided in articles 40 to 47 of this title, cover the catastrophe hazard, and ensure the payment to employees and their dependents of the compensation provided in said articles.

(2) In determining the amount of reserve to be laid aside to meet deferred payments according to awards, such reserve may be ascertained by finding the present worth of such deferred medical and indemnity payments calculated at a rate of interest not higher than six percent per annum, and such calculations of disability indemnity benefits shall be made according to a table of mortality not lower than the American

experience table of mortality and, in the discretion of the board, by such other and further methods as will result in the establishment of adequate reserves.

(3) The amounts raised for the Pinnacol Assurance fund shall ultimately become neither more nor less than necessary to make the fund self-supporting, which includes the attainment and maintenance of an adequate surplus as determined in accordance with section 8-45-111, and the premiums or rates levied for such purpose shall be subject to readjustment from time to time by the board as may become necessary.

8-45-108. Intentional misrepresentation by employer. (Repealed)

8-45-109. Rate schedules posted. (Repealed)

8-45-110. Board to keep accounts - readjustment by board of rates. (Repealed)

8-45-111. Portions of premiums paid carried to surplus. The board shall set aside such proportion as it may deem necessary of the earned premiums paid into the Pinnacol Assurance fund, as a contribution to the surplus of the fund.

8-45-112. Amendment of rates - distribution to policyholders. The board may amend at any time the rates for any class. No contract of insurance between Pinnacol Assurance and any employer shall be in effect until a policy or binder has been actually issued by the board and the premium therefor paid as and when required by this article. Not less often than once a year the chief executive officer shall tabulate the earned premiums paid by policyholders of Pinnacol Assurance. Should the experience of the Pinnacol Assurance fund show a credit balance and after payment of all amounts that have fallen due because of operating expenses, injury, or death, and after setting aside proper reserves, the board shall distribute such credit balance to the policyholders who have a balance to their credit in proportion to the premium paid and losses incurred by each such policyholder during the preceding insurance period. In the event any such policyholder fails to renew a policy with Pinnacol Assurance for the period following the period in which said dividends were earned, said policyholder shall be entitled to said credit dividend if such policy is terminated in good standing. In the event an employer actually discontinues business, said employer's policy shall be cancelled, and the dividend, if any, when ascertained, shall be returned to the employer.

8-45-113. New policies issued - when. Pinnacol Assurance shall not be required to issue a new policy of insurance to an employer until all moneys due Pinnacol Assurance have been paid, all premiums have been paid on all cancelled policies, and the employer has complied with all provisions of such cancelled policies.

8-45-114. Adjustment of premiums. (Repealed)

8-45-115. Determination of premium - payment in advance - deductibles. (Repealed)

8-45-116. Reinsurance. (Repealed)

8-45-117. Regulation by commissioner of insurance. (1) Pinnacol Assurance is subject to regulation by the commissioner of insurance as provided in:

(a) Part 11 of article 3 of title 10, C.R.S., pertaining to unfair competition and deceptive practices;

(b) Part 4 of article 4 of title 10, C.R.S., pertaining to rate regulation; however, if the pure premium rates used by Pinnacol Assurance are the national council on compensation insurance rates previously approved by the commissioner of insurance, Pinnacol Assurance may use different pure premium rates for employers who meet the requirements established by the board of directors after complying with the requirements of part 4 of article 4 of title 10, C.R.S., concerning type II insurers;

(c) Sections 24-31-104.5, C.R.S.; 10-1-108 (7), 10-1-109, and 10-1-102, except subsections (3) and (6), C.R.S.; 10-1-205 (1) to (6) and (8), C.R.S.; 10-3-109, C.R.S., except for the publication requirements; 10-3-128, C.R.S.; 10-3-202, C.R.S.; 10-3-207, C.R.S.; 10-3-208, C.R.S.; 10-3-231, C.R.S.; 10-3-239, C.R.S.; and parts 7 and 8 of article 3 of title 10, C.R.S., except as these sections are inconsistent with this article.

(2) (Deleted by amendment, L. 97, p. 936, § 5, effective May 21, 1997.)

(3) Nothing in this section shall be construed to subject Pinnacol Assurance to any premium tax assessed pursuant to title 10, C.R.S.

(4) The cost of examinations performed in accordance with section 8-45-121 (4) shall be billed by the commissioner to Pinnacol Assurance at prevailing hourly rates based upon time records kept by the commissioner. Any such payment received by the commissioner is hereby appropriated to the division of insurance in addition to any other funds appropriated for its normal operation.

(5) At such time as a reasonable surplus of the Pinnacol Assurance fund is reached pursuant to section 8-45-111, Pinnacol Assurance shall be subject to regulation by the commissioner of insurance as provided in section 10-1-205 (7) and part 4 of article 3 of title 10, C.R.S., to the extent consistent with the provisions of this article.

(6) Notwithstanding the provisions of sections 8-45-102 (1) and 8-45-118, upon the attainment of a reasonable surplus as set forth in section 8-45-111 and verified by audit and examination performed in accordance with section 8-45-121, all of the moneys in the Pinnacol Assurance fund shall be transferred out of the state treasury and into the custody of the board of Pinnacol Assurance. The board shall thereafter control the investment of the fund pursuant to the requirements set forth in part 2 of article 3 of title 10, C.R.S.

(7) Notwithstanding the provisions of sections 8-45-102 (1) and 8-45-118, upon the transfer of the moneys in the Pinnacol Assurance fund in accordance with subsection (6) of this section, the board of Pinnacol Assurance shall make all disbursements, and such disbursements shall not be made upon state warrants.

(8) Notwithstanding the provisions of sections 8-45-102 (1) and 8-45-119, upon the transfer of the moneys in the Pinnacol Assurance fund in accordance with subsection (6) of this section, the state treasurer shall not be required to give any bond as custodian of the Pinnacol Assurance fund.

(9) After the transfer of the moneys in the Pinnacol Assurance fund in accordance with subsection (6) of this section, if the commissioner of insurance places Pinnacol Assurance under direct supervision pursuant to the provisions of section 10-3-405, C.R.S., the moneys in the Pinnacol Assurance fund may be transferred back to the custody of the state treasury pursuant to sections 8-45-102 (1), 8-45-118, and

8-45-119, and the state treasurer shall control the investment of the fund pursuant to section 8-45-120. The transfer of funds shall be under such conditions and within such time period as the state treasurer and the commissioner of insurance deem appropriate.

(10) Pinnacol Assurance shall not acquire or control any other insurer.

8-45-118. Treasurer custodian of fund - disbursements. (1) The state treasurer shall be the custodian of the Pinnacol Assurance fund, and all disbursements therefrom shall be paid either by the state treasurer upon warrants drawn in accordance with law upon vouchers issued by the board upon order of the chief executive officer, or by or under the direction of the chief executive officer in such other manner as the state treasurer may approve. In every case occurring in which a warrant has been drawn in accordance with law against the state treasurer upon vouchers issued by the board for payment of any sum of money from the Pinnacol Assurance fund, or when another form of payment has been made from such fund by or under the direction of the chief executive officer, and the time within which said warrant or other form of payment shall be presented for payment in order to be valid has not been stamped, printed, or written across the face thereof, or otherwise specified, and a period of six months has elapsed since the issuance of such warrant or other form of payment, during which no person entitled thereto, or the proceeds thereof, has presented the same to the state treasurer for payment, or appeared to claim the funds so authorized to be paid from the hands of the state treasurer or the chief executive officer, such warrant or other form of payment may in the discretion of the chief executive officer be posted for cancellation, and thereafter cancelled and set aside.

(2) In every such case in which it is proposed to cancel any such warrant, the chief executive officer shall cause a notice to be drawn in duplicate, with a description of said warrant containing the amount, number, date of issuance, and name of payee, and shall cause one copy of said notice to be posted in a conspicuous place that is open to the public in the office of said board and one copy to be delivered to the state treasurer. If, at the end of one month after the posting of such notice and the delivery of a copy to the state treasurer, such warrant is not presented for payment and no person entitled to the proceeds thereof appears to claim the funds so authorized to be paid in said warrant, said warrant may be cancelled as provided in this section.

(3) (a) The state treasurer shall, upon the request of the chief executive officer, transfer any such funds held to the credit of or for the payment of such warrant back to the credit of the Pinnacol Assurance fund. Except as otherwise provided in paragraph (b) of this subsection (3), if at any time thereafter application shall be made for the reissuance of such warrant, the same may be reissued, if the claim that it represents appears to be valid and still outstanding. Such reissued warrant shall be made payable from the moneys on deposit in the Pinnacol Assurance fund and shall be made payable to the person entitled to the proceeds thereof.

(b) For warrants issued on or after August 6, 2003, the funds transferred pursuant to paragraph (a) of this subsection (3) shall be subject to the provisions of the "Unclaimed Property Act", article 13 of title 38, C.R.S., and for purposes of this paragraph (b), Pinnacol Assurance shall be considered an insurance company as defined in section 38-13-102 (6.5), C.R.S.

(4) Except as provided in section 8-45-117, the powers and discretion granted in this section to the chief executive officer and the state treasurer shall obtain in all cases relating to the warrants or other forms of payment drawn on the Pinnacol Assurance fund, anything to the contrary in any statute notwithstanding.

8-45-119. State treasurer to give separate bond as custodian. (1) The state treasurer shall give a separate and additional bond in such amount as may be fixed by the board with sureties to be approved by the governor, conditioned for the faithful performance of the state treasurer's duties as custodian of the Pinnacol Assurance fund, and as custodian of all the bonds, warrants, investments, and moneys of, or belonging to, said Pinnacol Assurance fund, subject to all provisions of law governing bonds of the state treasurer. The premium on said bond shall be paid out of the earnings of the Pinnacol Assurance fund.

(2) The state treasurer shall give a separate and additional bond in such amount as may be fixed by the executive director of the department of labor and employment with sureties to be approved by the governor, conditioned for the faithful performance of the state treasurer's duties as custodian of the funds under the jurisdiction of the director of the division of workers' compensation, and as custodian of all the bonds, warrants, investments, and moneys of, or belonging to, the funds under the jurisdiction of the director of the division of workers' compensation, subject to all provisions of law governing bonds of the state treasurer. The premium on said bond shall be paid out of the earnings of the funds under the jurisdiction of the director of the division of workers' compensation on a pro rata basis.

8-45-120. State treasurer to invest funds. (1) Except as provided in subsection (2) of this section, the state treasurer, after consulting with the board of directors or the board's designated committee as to the overall direction of the portfolio, shall invest any portion of the Pinnacol Assurance fund, including its surplus or reserves, which is not needed for immediate use. Such moneys may be invested in the types of investments authorized in sections 24-36-109, 24-36-112, and 24-36-113, C.R.S. Such moneys may also be invested in common and preferred stock in the same manner as a domestic insurance company pursuant to section 10-3-226, C.R.S. The state treasurer shall determine the appropriate percentage of the fund, not to exceed one hundred percent of the surplus, to be invested in common and preferred stock and the appropriate level of risk for such investments. The state treasurer may make such investments in the form of mutual funds and may contract with private professional fund managers and employ portfolio managers.

(2) Subject to approval by the board, the chief executive officer may authorize and direct the state treasurer to invest a portion of the funds in the Pinnacol Assurance fund for the purchase of real property, to house, contain, and maintain the offices and operational facilities of Pinnacol Assurance as may be deemed necessary to accommodate its immediate and reasonably anticipated future needs. The chief executive officer is authorized to purchase such real property,

buildings, and improvements thereon. Title to such real property, buildings, and improvements thereon shall vest in Pinnacol Assurance, and such assets shall be a part of the Pinnacol Assurance fund. The chief executive officer may lease or rent space not needed for the immediate requirements of Pinnacol Assurance in such real property to other public agencies or private businesses. Moneys received from such rental or lease of space and moneys appropriated by the general assembly for rental or lease of space in such real property shall be deposited with the state treasurer for credit to the Pinnacol Assurance fund. The chief executive officer shall not sell or otherwise dispose of any property, buildings, or improvements thereon so acquired, without consent of the board, and the moneys received from such sale or disposition shall be credited to the account of the Pinnacol Assurance fund.

(3) Repealed.

8-45-121. Visitation of fund by commissioner of insurance - annual audit - examination. (1) Pinnacol Assurance shall be open to visitation by the commissioner of insurance at all reasonable times, and the commissioner of insurance shall require from the chief executive officer reports as to the condition of Pinnacol Assurance, as required by law to be made by other insurance carriers doing business in this state insofar as applicable to Pinnacol Assurance.

(2) An annual financial audit and, in 2009, a performance audit of Pinnacol Assurance shall be made as soon as practicable by the state auditor, such audits to include, but not be limited to, executive compensation, premium rate structure, known loss reserves, incurred but not reported losses, and injured workers' claims experience. In conducting such audits, the state auditor may employ a firm of auditors and actuaries, or both, with the necessary specialized knowledge and experience. The cost of such annual audit shall be paid from the operating funds of Pinnacol Assurance. The state auditor shall report his or her findings from such audits, along with any comments and recommendations, to the governor, the general assembly, the executive director of the department of labor and employment, and the commissioner of insurance. The state auditor shall have continuing authority to conduct performance audits of Pinnacol Assurance as the state auditor deems appropriate. The cost of performance audits shall be paid from the operating funds of Pinnacol Assurance.

(3) (Deleted by amendment, L. 2002, p. 1879, § 20, effective July 1, 2002.)

(4) At least once every three years, the commissioner of insurance shall conduct an examination of said fund, such examination to be conducted in the same manner as an examination of a private insurance carrier. With respect to such examination, the provisions of section 10-1-204, C.R.S., shall be applicable. The commissioner of insurance shall transmit a copy of the commissioner's examination to the governor, the state auditor, the general assembly, the executive director of the department of labor and employment, and the chief executive officer.

8-45-122. Annual report. (1) The chief executive officer of Pinnacol Assurance shall submit an annual report to the governor; the business affairs and labor committee of the house of representatives; the business, labor, and technology committee of the senate; and the health and human services committees of the house of representatives and the senate, or their successor committees, reporting on the business operations, resources, and liabilities of the Pinnacol Assurance fund.

(2) The report required in subsection (1) of this section shall include the following information for the previous calendar year:

(a) The number of policies held by Pinnacol Assurance;

(b) The total assets of Pinnacol Assurance;

(c) The amount of reserves;

(d) The amount of surplus;

(e) The number of claims filed;

(f) The number of claims admitted or contested within the twenty-day period pursuant to section 8-43-203, specifying the number of contested claims that are medical only and those that are indemnity claims;

(g) The number of medical procedures denied;

(h) The amount of total compensation each executive officer or staff member receives, including bonuses or deferred compensation;

(i) The amount spent on commissions;

(j) The amount paid to trade associations for marketing fees;

(k) All information relating to bonus programs; and

(l) Any other information the chief executive officer deems relevant to the report.

8-45-123. Change of names - direction to revisor. The revisor of statutes is authorized to change all references to the Colorado compensation insurance authority in the "Workers' Compensation Act of Colorado" and everywhere else a reference is contained in the Colorado Revised Statutes to Pinnacol Assurance and to change all references to the Colorado compensation insurance authority fund in the "Workers' Compensation Act of Colorado" and everywhere else a reference is contained in the Colorado Revised Statutes to the Pinnacol Assurance fund.

8-45-124. Review of cost-effectiveness of use of national council on compensation insurance by the authority. (Repealed)

8-45-125. Legislative interim committee on operation of Pinnacol Assurance - creation - members - study - report - repeal. (Repealed)

ARTICLE 46
Specific Insurance Funds

PART 1
SUBSEQUENT INJURY FUND

8-46-101. Subsequent injury fund. (1) (a) In a case where an employee has previously sustained permanent partial industrial disability and in a subsequent injury sustains additional permanent partial industrial disability and it is shown that the combined industrial disabilities render the employee permanently and totally incapable of steady gainful employment and incapable of rehabilitation to steady gainful employment, then the employer in whose employ the employee sustained such subsequent injury shall be liable only for that portion of the employee's industrial disability attributable to said subsequent injury, and the balance of

compensation due such employee on account of permanent total disability shall be paid from the subsequent injury fund as is provided in this section.

(b) (I) In addition to such compensation and after the completion of the payments therefor, the employee shall continue to receive compensation at said employee's established compensation rate for permanent total disability until death out of a special fund to be known as the subsequent injury fund, hereby created for such purpose. The subsequent injury fund shall be funded pursuant to the provisions of section 8-46-102.

(II) The unrestricted year-end balance of the subsequent injury fund, created pursuant to subparagraph (I) of this paragraph (b), for the 1991-92 fiscal year shall constitute a reserve, as defined in section 24-77-102 (12), C.R.S., and, for purposes of section 24-77-103, C.R.S.:

(A) Any moneys credited to the subsequent injury fund in any subsequent fiscal year shall be included in state fiscal year spending, as defined in section 24-77-102 (17), C.R.S.; and

(B) Any transfers or expenditures from the subsequent injury fund in any subsequent fiscal year shall not be included in state fiscal year spending, as defined in section 24-77-102 (17), C.R.S., for such fiscal year.

(1.5) Notwithstanding any provision of this section to the contrary, on May 1, 2003, the state treasurer shall deduct twenty million dollars from the subsequent injury fund and transfer such sum to the general fund.

(1.7) Notwithstanding any provision of this section to the contrary, on March 30, 2009, the state treasurer shall deduct twenty-six million five hundred thousand dollars from the subsequent injury fund and transfer such sum to the general fund.

(2) If an employee entitled to additional benefits, as provided in this section, obtains employment while receiving compensation from the subsequent injury fund, such employee shall be compensated out of said fund at the rate of one-half of said employee's average weekly wage loss, subject to the maximum and minimum provisions of the workers' compensation act, during such period of employment.

(3) In case payment is or has been made under the provisions of this section and dependency later is shown or if payment is made by mistake or inadvertence or under such circumstances that justice requires a refund thereof, the division is authorized to refund such payment to the employer or, if insured, the employer's insurance carrier.

(4) (a) The sums provided for the subsequent injury fund created by this section shall be used to pay the costs related to the administration of the fund and to make such compensation payments as may be required by the provisions of articles 40 to 47 of this title.

(b) Moneys in the subsequent injury fund are continuously appropriated to the division for the payment of benefits as provided in this section and legal fees.

(5) The director shall administer and conduct all matters involving the subsequent injury fund in the name of the division, and, in that name and without any other name, title, or authority, the director may:

(a) (I) Sue and be sued in all the courts of this state, of any other state, or of the United States and in actions arising out of any act, deed, matter, or thing made, omitted, entered into, done, or suffered in connection with the subsequent injury fund and the administration or conduct of matters relating thereto, including the authority to employ counsel to represent the fund in any action.

(II) Nothing in this paragraph (a) shall be construed to waive any provisions of the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S., nor shall it be construed to waive immunity of the state of Colorado from suit in federal court, guaranteed by the eleventh amendment to the constitution of the United States.

(b) Make and enter into contracts or obligations relating to the subsequent injury fund as authorized or permitted under the provisions of articles 40 to 47 of this title, but neither the director nor any officer or employee of the division shall be personally liable in any private capacity for or on account of any act done or omitted or contract or other obligation entered into or undertaken in an official capacity in good faith and without intent to defraud in connection with the administration or conduct of the subsequent injury fund, its business, or other affairs relating thereto.

8-46-102. Funding for subsequent injury fund and major medical insurance fund. (1) (a) For every compensable injury resulting in death wherein there are no persons either wholly or partially dependent upon the deceased, the employer or the employer's insurance carrier, if any, shall pay to the division the sum of fifteen thousand dollars, not to exceed one hundred percent of the death benefit, to be transmitted to the state treasurer, as custodian, and credited by the state treasurer to the subsequent injury fund. In the event that there are only partially dependent persons dependent upon the deceased, the employer or the employer's insurance carrier, if any, shall first pay such benefits to such partial dependents and shall transmit the balance of the sum of fifteen thousand dollars to the state treasurer, as custodian, who shall credit the same to the subsequent injury fund.

(b) In the event that the deceased is a minor with no persons either wholly or partially dependent upon the deceased, the employer or the employer's insurance carrier, if any, shall pay to the parents of the deceased the sum of fifteen thousand dollars, not to exceed one hundred percent of the death benefit. In the event that there are no surviving parents, the employer or the employer's insurance carrier, if any, shall pay such benefits to the division, to be transmitted to the state treasurer, as custodian, and credited by the state treasurer to the subsequent injury fund. In the event that there are persons only partially dependent upon the deceased, the employer or the employer's insurance carrier, if any, shall first pay such benefits to such partially dependent persons and shall pay the balance to the surviving parents of the deceased, or in the event that there are no surviving parents, the remaining balance shall be paid to the division, to be transmitted to the state treasurer, as custodian, who shall credit the same to the subsequent injury fund.

(2) (a) (I) Notwithstanding sections 10-3-209 (1) (c) and 10-6-128 (3), C.R.S., for the purpose of funding the financial liabilities of the subsequent injury fund pursuant to this section and of the major medical insurance fund pursuant to section 8-46-202, every person, partnership, association, and corporation, whether organized under the laws of this state

or of any other state or country, every mutual company or association, every captive insurance company, and every other insurance carrier, including Pinnacol Assurance, insuring employers in this state against liability for personal injury to their employees or death caused thereby under the provisions of articles 40 to 47 of this title shall, as provided in this subsection (2), be levied a tax upon the premiums received in this state, whether or not in cash, or on account of business done in this state for such insurance in this state at a rate determined by the director to generate sufficient revenue for claim payments and direct and indirect costs of administration that are anticipated to be submitted in the following state fiscal year for which such funds are liable. In determining the rate, the director shall, in addition to revenue for claim payments and direct and indirect costs of administration that are anticipated to be due in the following state fiscal year, maintain a cash balance in both the major medical insurance fund and the subsequent injury fund of an amount of otherwise unrestricted revenues equal to approximately one year's worth of claim payments and direct and indirect administrative costs. Such insurance carriers shall be credited with all cancelled or returned premiums actually refunded during the year of such insurance.

(II) Repealed.

(b) Every such insurance carrier shall, on July 1, 1988, and semiannually thereafter, make a return, verified by affidavits of its president and its secretary or by affidavits of its other chief officers or agents, to the division, stating the amount of all such premiums received and credits granted during the period covered by such return. Every insurance carrier required to make such return shall file the same with the division within thirty days after the close of the period covered thereby and shall, at the same time, pay to the division a tax ascertained as provided in paragraph (a) of this subsection (2), less return premiums on cancelled policies.

(c) Every employer acting as a self-insurer under the provisions of articles 40 to 47 of this title shall, under oath, report to the division the employer's payroll in such form as may be prescribed by the director and at the times specified for premium reports by insurance companies in paragraph (b) of this subsection (2). The division shall assess against such payroll a tax for the purposes of paragraph (b) of this subsection (2) on the basic premiums chargeable against the same or most similar industry or business taken from the manual insurance rates, including any discount or experience modification allowed, chargeable by Pinnacol Assurance, and, upon receipt of notice from the division of the tax so assessed, every such self-insurer shall, within thirty days after the receipt of such notice, pay to the division the tax so assessed.

(d) If any such insurance carrier or self-insurer fails or refuses to make the return or report required by paragraph (b) or (c) of this subsection (2), the director shall assess the tax against such insurance carrier or self-insurer at the rate provided for in this subsection (2) on such amount of premium as the director may deem just, and the proceedings thereof shall be the same as if the return had been made.

(e) If any such insurance carrier or self-insurer withdraws from business in this state before the tax provided for in this subsection (2) falls due as provided in this section, or fails or neglects to pay such tax, the director shall proceed at once to collect the same; and the director is authorized to employ such legal processes as may be necessary for that purpose. Suit shall be brought by the director in any of the courts of this state having jurisdiction.

(f) The director, in the enforcement of this subsection (2), shall have all of the powers granted in articles 40 to 47 of this title, and any insurance carrier or self-insurer who violates any of the provisions of this subsection (2) or fails to pay the tax thereby imposed is guilty of a violation of said articles and shall be subject to the penalties therein prescribed.

(g) All moneys collected pursuant to this subsection (2) shall be transmitted to the state treasurer, as custodian, who shall credit the same to the subsequent injury fund and to the major medical insurance fund as determined by the director in accordance with subsection (3) of this section. Any interest earned on the investment or deposit of moneys in said funds shall remain in the funds and shall not revert to the general fund of the state at the end of any fiscal year.

(3) (a) As determined by the director, a portion of the revenue received each year pursuant to subsection (2) of this section shall be deposited into the subsequent injury fund, established in section 8-46-101 (1) (b), and a portion shall be deposited into the major medical insurance fund, established in section 8-46-202 (1). In addition, the director may move revenue between the funds when the director determines that doing so is necessary. The director shall continue to establish a surcharge rate pursuant to subsection (2) of this section until the balance in both such funds is sufficient to meet the future claim payments plus the amount necessary to pay the direct and indirect costs of administration of the funds, at which time the surcharge rate established in paragraph (a) of subsection (2) of this section shall be reduced to zero.

(b) For the purpose of determining the proper allocation of the surcharge and making the estimates contemplated in paragraph (a) of this subsection (3), the director shall contract for the services of qualified private actuaries.

8-46-103. State treasurer to invest funds. (1) The state treasurer shall invest any portion of the subsequent injury fund, including its surplus and reserves, which the division determines is not needed for immediate use. All interest earned upon such invested portion shall be credited to the fund and used for the same purposes and in the same manner as other moneys in the fund. Such moneys may be invested in the types of investments authorized in sections 24-36-109, 24-36-112, and 24-36-113, C.R.S.

(2) Repealed.

8-46-104. Closure of fund. No cases shall be accepted into the subsequent injury fund for injuries occurring on or after July 1, 1993, or for occupational diseases occurring on or after April 1, 1994. When all payments have been made for all cases accepted into the fund, any remaining balance shall revert to the general fund.

8-46-105. Calculation of premium - permanent total disability - employer may request examination. (1) Effective July 1, 1993, in any case in which an employee previously has sustained permanent partial disability and, in a subsequent injury, sustains additional permanent partial disability and it is shown that the combined industrial disabilities render the employee permanently and totally

disabled, then the premiums of the employer in whose employ the employee sustained such subsequent injury shall be determined only on the basis of the impairment rating for such subsequent injury and not on the basis of the employee's permanent total disability. If such employer disputes the impairment rating for the subsequent injury, the employer shall request an independent medical examination pursuant to the procedures set forth in section 8-42-107.2. The finding of the independent medical examiner regarding the impairment rating may be overcome only by clear and convincing evidence. The total cost of the employee's permanent total disability shall not be considered in determining the employer's premiums, but shall be considered by the commissioner of insurance in setting rates.

(2) In any case in which an employee becomes disabled by an occupational disease and the employer is liable for benefits pursuant to section 8-41-304 (2), then the premiums of the employer in whose employ the employee became disabled shall be determined only on the basis of the impairment rating for the portion of the occupational disease attributable to such employer and not on the basis of the combination of such portion and any prior impairment resulting from such occupational disease. For the purposes of premium calculations, if such employer disputes the impairment rating for the occupational disease, the employer shall request an independent medical examination pursuant to the procedures set forth in section 8-42-107.2. The finding of the independent medical examiner regarding the impairment rating may be overcome only by clear and convincing evidence. The total cost of the employee's occupational disease shall not be considered in determining the employer's premiums, but shall be considered by the commissioner of insurance in setting rates.

8-46-106. Abatement of taxes - independent review of fund. The funding provisions of section 8-46-102, including the provisions relating to the assessment and levying of taxes, shall cease to be effective when an independent actuary, retained by the division for such purpose, determines that the fund has sufficient resources to pay benefits for injuries occurring prior to July 1, 1993, and occupational diseases occurring prior to April 1, 1994.

8-46-107. Report to general assembly and governor. (Repealed)

8-46-108. Legislative council study of subsequent injury fund. (Repealed)

8-46-109. Legislative declaration - claims management. (1) The general assembly finds and declares that the purpose of this section is to provide for prompt, efficient, and fair settlement of all pending claims and the closure of both the subsequent injury fund and the major medical insurance fund as soon as is practicable.

(2) As necessary to augment the division's regular staff, the director shall contract for the services of qualified specialists in the area of settlements, who shall, on the director's behalf, negotiate for and enter into settlements of claims of the subsequent injury fund and the major medical insurance fund for present value whenever possible.

(3) Repealed.

PART 2
COLORADO MAJOR MEDICAL
INSURANCE FUND ACT

8-46-201. Short title. This part 2 shall be known and may be cited as the "Colorado Major Medical Insurance Fund Act".

8-46-202. Major medical insurance fund - tax imposed - returns. (1) (a) There is hereby established a major medical insurance fund to defray medical, surgical, dental, hospital, nursing, and drug expenses and expenses for medical, hospital, and surgical supplies, crutches, apparatus, and vocational rehabilitation, which shall include tuition, fees, transportation, and weekly maintenance equivalent to that which the employee would receive under section 8-42-105 for the period of time that the employee is attending a vocational rehabilitation course, which expenses are in excess of those provided under the "Workers' Compensation Act of Colorado" for employees who have established their entitlement to disability benefits under said act, whether necessary to promote recovery, alleviate pain, or reduce disability.

(b) The unrestricted year-end balance of the major medical insurance fund, created pursuant to paragraph (a) of this subsection (1), for the 1991-92 fiscal year shall constitute a reserve, as defined in section 24-77-102 (12), C.R.S., and, for purposes of section 24-77-103, C.R.S.:

(I) Any moneys credited to the major medical insurance fund in any subsequent fiscal year shall be included in state fiscal year spending, as defined in section 24-77-102 (17), C.R.S., for such fiscal year; and

(II) Any transfers or expenditures from the major medical insurance fund in any subsequent fiscal year shall not be included in state fiscal year spending, as defined in section 24-77-102 (17), C.R.S., for such fiscal year.

(c) Moneys in the major medical insurance fund are continuously appropriated to the division for the payment of benefits as provided in this section and legal fees.

(1.5) (a) Notwithstanding any provision of this section to the contrary, on May 1, 2003, the state treasurer shall deduct one hundred fifty million dollars from the major medical insurance fund and transfer such sum to the general fund.

(b) On July 1, 2003, the state controller shall transfer ten million dollars from the general fund to the major medical insurance fund.

(1.6) Notwithstanding any provision of this section to the contrary, on March 30, 2009, the state treasurer shall deduct sixty-nine million five hundred thousand dollars from the major medical insurance fund and transfer such sum to the general fund.

(1.7) Notwithstanding any provision of this section to the contrary, on March 31, 2010, the state treasurer shall deduct twenty-six million five hundred thousand dollars from the major medical insurance fund and transfer such sum to the general fund.

(1.8) Notwithstanding any provision of this section to the contrary, on June 30, 2011, the state treasurer shall deduct ten million dollars from the major medical insurance fund and transfer such sum to the general fund.

(2) The director shall administer the major medical insurance fund and is hereby given jurisdiction to enforce the provisions of this article. The director shall administer and conduct all matters involving the major medical insurance fund in the name of the division, and, in that name and without any other name, title, or authority, the director may:

(a) (I) Sue and be sued in all the courts of this state, of any other state, or of the United States and in actions arising out of any act, deed, matter, or thing made, omitted, entered into, done, or suffered in connection with the major medical insurance fund and the administration or conduct of matters relating thereto, including the authority to employ counsel to represent the fund in any action.

(II) Nothing in this paragraph (a) shall be construed to waive any provisions of the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S., nor shall it be construed to waive immunity of the state of Colorado from suit in federal court, guaranteed by the eleventh amendment to the constitution of the United States.

(b) Make and enter into contracts or obligations relating to the major medical insurance fund as authorized or permitted under the provisions of articles 40 to 47 of this title, but neither the director nor any officer or employee of the division shall be personally liable in any private capacity for or on account of any act done or omitted or contract or other obligation entered into or undertaken in an official capacity in good faith and without intent to defraud in connection with the administration or conduct of the major medical insurance fund, its business, or other affairs relating thereto;

(c) Contract with physicians, surgeons, and hospitals for medical and surgical treatment, services and supplies, crutches and apparatus, and the care and nursing of injured persons entitled to benefits from said fund and, in addition, may contract for medical, surgical, hospital, and nursing services and supplies in excess of the amount and period otherwise limited in this article if said director determines that the contracting of such extra medical, surgical, hospital, and nursing services and supplies will reduce the period of disability for which said fund would be liable for the payment and compensation.

(3) to (5) Repealed.

8-46-203. Failure to make returns. (Repealed)

8-46-204. Use of funds limited. (Repealed)

8-46-205. Collection of taxes due. If any such insurance carrier or self-insurer withdraws from business in this state before the tax falls due as provided in this part 2, or fails or neglects to pay such tax, the director shall at once proceed to collect the same; and the director is authorized to employ such legal processes as may be necessary for that purpose. Suit shall be brought by the director in any of the courts of this state having jurisdiction.

8-46-206. Enforcement powers - violations. The director, in the enforcement of this article, shall have all of the powers granted in the "Workers' Compensation Act of Colorado", and any insurance carrier or self-insurer violating any of the provisions of this article, or failing to pay the tax imposed in this article, is guilty of violation of said act and subject to the penalties therein prescribed.

8-46-207. Receipt and disbursement of moneys. (Repealed)

8-46-208. Applications - awards. (1) Payments from the major medical insurance fund shall be awarded by the director only after an application therefor has been filed by a claimant employee, the claimant's employer, or such employer's insurance carrier, or one on their behalf, for admission to the fund, in any case where the limits of liability provided under section 8-42-101 have been exhausted.

(2) Following the filing of an application, the director shall approve or disapprove the expenditure of further sums of money from the major medical insurance fund and in so doing may rely upon medical reports contained in the case file if the director deems them adequate, or the director may rely upon recommendations of the medical director, appointed pursuant to section 8-1-103, or the director may appoint a medical panel of not more than three medical experts to see and examine the applicant, each of whom shall render a report to the director, advising whether or not such expenditure of further sums of money will promote recovery, alleviate pain, or reduce disability, suggesting the form and manner of such treatment or services and suggesting the reasonable cost thereof. The director, in every case in which an award is made from this fund, shall review said case at such time as the total medical expenditures, including those expended under section 8-42-101, shall reach fifteen thousand dollars and at each ten thousand dollars increment thereafter to determine and enter an order regarding continuation or cessation of further payments from said fund.

(3) The director shall award, and the state treasurer shall pay from the major medical insurance fund, the reasonable fees and expenses of the appointed members of the medical panel when such procedure is used by the director.

8-46-209. Credit for reduced disability - when. In any determination of permanent disability, the employer or the employer's insurance carrier shall receive any credit or benefit for the reduction of disability of any claimant employee under the "Workers' Compensation Act of Colorado" directly attributable to a compensable accident or disease when such reduction of disability is accomplished by expenditures from the major medical insurance fund.

8-46-210. State treasurer to invest funds. (1) The state treasurer shall invest any portion of the major medical insurance fund, including its surplus and reserves, which the director of the division of workers' compensation determines is not needed for immediate use. All interest earned upon such invested portion shall be credited to the fund and used for the same purposes and in the same manner as other moneys in the fund. Such moneys may be invested in the types of investments authorized in sections 24-36-109, 24-36-112, and 24-36-113, C.R.S.

(2) Repealed.

8-46-211. Abatement of tax - when. (Repealed)

8-46-212. Closure of fund. Effective July 1, 1981, no further cases shall be accepted into the major medical insurance fund for injuries or occupational diseases occurring after that date, nor shall any cases be transferred from the medical disaster insurance fund to the major medical insurance fund.

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PART 3
COLORADO MEDICAL DISASTER
INSURANCE FUND

8-46-301. Short title. This part 3 shall be known and may be cited as the "Colorado Medical Disaster Insurance Fund Act".

8-46-302. Medical disaster insurance fund - tax imposed - returns. (1) There is hereby established a medical disaster insurance fund to defray medical, surgical, hospital, nursing, and drug expenses in excess of those provided under the "Workers' Compensation Act of Colorado" for employees who have established their entitlement to disability benefits under said act, whether necessary to promote recovery, alleviate pain, or reduce disability.

(2) The director shall administer the medical disaster insurance fund and is hereby given jurisdiction to enforce the provisions of this part 3. The director shall approve or disapprove admissions to the Colorado medical disaster insurance fund.

8-46-303. Use of funds limited. (1) All funds received by the division under the provisions of this article shall be used solely to pay the costs related to the administration of the medical disaster insurance fund and to defray the cost of medical, surgical, and hospital expenses necessary to effect the recovery, alleviate pain, or reduce the disability of employees who have established their entitlement to disability benefits under the "Workers' Compensation Act of Colorado" in accordance with and subject to the provisions of such act.

(2) Moneys in the medical disaster insurance fund are continuously appropriated to the division for the payment of benefits as provided in this section and legal fees.

8-46-304. Enforcement powers - violations. (1) The director, in the enforcement of this article, shall have all of the powers granted in the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, and any insurance carrier or self-insurer violating any of the provisions of this article is guilty of a violation of said act and shall be subject to the penalties therein prescribed.

(2) The director shall administer and conduct all matters involving the medical disaster insurance fund in the name of the division, and, in that name and without any other name, title, or authority, the director may:

(a) (I) Sue and be sued in all courts of this state, of any other state, or of the United States and in actions arising out of any act, deed, matter, or thing made, omitted, entered into, done, or suffered in connection with the medical disaster insurance fund and the administration or conduct of matters relating thereto, including the authority to employ counsel to represent the fund in any action.

(II) Nothing in this paragraph (a) shall be construed to waive any provisions of the "Colorado Governmental Immunity Act", article 10 of title 24, C.R.S., nor shall it be construed to waive immunity of the state of Colorado from suit in federal court, guaranteed by the eleventh amendment to the constitution of the United States.

(b) Make and enter into contracts or obligations relating to the medical disaster insurance fund as authorized or permitted under the provisions of articles 40 to 47 of this title, but neither the director nor any officer or employee of the division shall be personally liable in any private capacity for or on account of any act done or omitted or contract or other obligation entered into or undertaken in an official capacity in good faith and without intent to defraud in connection with the administration or conduct of the medical disaster insurance fund, its business, or other affairs relating thereto;

(c) Contract with physicians, surgeons, and hospitals for medical and surgical treatment, services and supplies, crutches and apparatus, and the care and nursing of injured persons entitled to benefits from said fund and, in addition, may contract for medical, surgical, hospital, and nursing services and supplies in excess of the amount and period otherwise limited in this article if said director determines that the contracting of such extra medical, surgical, hospital, and nursing services and supplies will reduce the period of disability for which said fund would be liable for the payment and compensation.

8-46-305. Receipt and disbursement of moneys. All moneys collected by the division pursuant to the provisions of this part 3 shall be transmitted to the state treasurer who shall deposit the same to the credit of the medical disaster insurance fund, and all disbursements therefrom shall be paid by the state treasurer in accordance with and subject to final awards of the director, as provided in this article.

8-46-306. Applications - medical panel - awards - limitations. (1) Payments from the medical disaster insurance fund shall be awarded by the director only after an application therefor has been filed by a claimant employee, the claimant's employer, or such employer's insurance carrier, or one on their behalf, and approved by the director for admission to the fund, in any case where the limits of liability provided under section 8-42-101 have been exhausted.

(2) The director shall, in every case where an application for payments from the medical disaster insurance fund is filed, immediately, after receipt of such application, appoint a medical panel of three medical experts to see and examine the applicant, each of whom shall render a report to the director, advising whether or not the expenditure of further sums of money will promote recovery, alleviate pain, or reduce disability, suggesting the form and manner of further treatment or services and suggesting the reasonable cost thereof.

(3) The director, upon receipt of reports from each of the medical experts appointed in accordance with subsection (2) of this section, shall either deny the application or award payments from the medical disaster insurance fund, based upon such reports and as nearly as possible in accordance with the majority opinion and suggestions of the medical panel.

(4) In making payment awards from the medical disaster insurance fund, the director shall be limited in any one case to the sum of fifty-five thousand dollars, less any amounts of money expended by the employer or the employer's insurance carrier for medical, surgical, or hospital services and the costs of any prosthetic devices, or the reasonable value of any such services or devices furnished by the employer or the employer's insurance carrier.

(5) The director shall award, and the state treasurer shall pay from the medical disaster insurance fund, the reasonable fees and expenses of the appointed members of the medical panel.

8-46-307. Credit for reduced disability - when. (1) In any determination of permanent disability, the employer or the employer's insurance carrier shall receive no credit or benefit for the reduction of disability of any claimant employee under the "Workers' Compensation Act of Colorado" directly attributable to a compensable accident or disease when such reduction of disability is accomplished by expenditures from the medical disaster insurance fund, unless it shall have been determined by a preponderance of the evidence:

(a) That the claimant employee had refused hospital, surgical, and medical services under the "Workers' Compensation Act of Colorado" necessary to reduce the employee's disability voluntarily offered by the employer; or

(b) That the claimant employee had reached maximum improvement as determined by the director prior to the filing of the application for payments from the medical disaster insurance fund.

8-46-308. State treasurer to invest funds. (1) The state treasurer shall invest any portion of the medical disaster insurance fund, including its surplus and reserves, which the director determines is not needed for immediate use. All interest earned upon such invested portion shall be credited to the fund and used for the same purposes and in the same manner as other moneys in the fund. Such moneys may be invested in the types of investments authorized in sections 24-36-109, 24-36-112, and 24-36-113, C.R.S.

(2) Repealed.

8-46-309. Authority to utilize other revenue. Revenues obtained from the tax imposed pursuant to section 8-46-102 (2) (a) may be used, in the discretion of the director, for the purposeof paying the costs incurred pursuant to this article.

ARTICLE 47
Administration

PART 1
DIRECTOR'S POWERS AND DUTIES

8-47-101. Division of workers' compensation - creation - powers, duties, and functions - transfer of functions - change of statutory references. (1) There is hereby created the division of workers' compensation in the department of labor and employment. Pursuant to section 13 of article XII of the state constitution, the executive director of the department of labor and employment shall appoint the director of the division of workers' compensation, and the director shall appoint such employees as are necessary to carry out the duties and exercise the powers conferred by law upon the division of workers' compensation and the director.

(2) The director and the division of workers' compensation shall enforce and administer the provisions of the "Workers' Compensation Act of Colorado", articles 40 to 47 of this title, as provided in said articles and the provisions of article 14.5 of this title.

(3) (a) The division of workers' compensation shall, on and after July 1, 1991, execute, administer, perform, and enforce the rights, powers, duties, functions, and obligations vested in the division of labor standards and statistics prior to July 1, 1991, concerning the duties and functions transferred to the division of workers' compensation. On July 1, 1991, all employees of the division of labor standards and statistics whose principal duties are concerned with the duties and functions transferred to the division of workers' compensation and whose employment in the division of workers' compensation is deemed necessary by the executive director of the department of labor and employment to carry out the purposes of this article shall be transferred to the division of workers' compensation and shall become employees thereof. Such employees shall retain all rights to the state personnel system and retirement benefits under the laws of this state, and their services shall be deemed to have been continuous. All transfers and any abolishment of positions in the state personnel system shall be made and processed in accordance with state personnel system laws and rules and regulations.

(b) Repealed.

(c) Whenever the division of labor standards and statistics is referred to or designated by any contract or other document in connection with the duties and functions transferred to the division of workers' compensation, such reference or designation shall be deemed to apply to the division of workers' compensation. All contracts entered into by the division of labor standards and statistics prior to July 1, 1991, in connection with the duties and functions transferred to the division of workers' compensation, are hereby validated, with the division of workers' compensation succeeding to all the rights and obligations of such contracts. Any appropriations of funds from prior fiscal years open to satisfy obligations incurred under such contracts are hereby transferred and appropriated to the division of workers' compensation for the payment of such obligations.

(d) (I) Repealed.

(II) At the discretion of the state auditor, the state auditor may conduct or cause to be conducted a performance review of the administrative law judges in the office of administrative courts who hear cases under articles 40 to 47 of this title. The review must include, but is not limited to, the following topics: The time elapsed from the date of hearing until decisions are rendered by the administrative law judges; the time elapsed from the point at which the file is complete and the case is ready for order until the decision is rendered by the administrative law judges; the number of decisions that are reversed upon appeal to the industrial claim appeals panel and to the court of appeals respectively; the workload or number of cases assigned to each administrative law judge; and the public perception of the quality of the performance of the office of administrative courts with respect to matters arising under the "Workers' Compensation Act of Colorado".

(4) Repealed.

(5) On and after July 1, 1991, when any provision of articles 40 to 47 of this title refers to the division of labor standards and statistics, said law shall be construed as referring to the division of workers' compensation.

(6) The revisor of statutes is authorized to change all references to the director of the division of labor standards and statistics and the division of labor standards and statistics in articles 14.5 and 40 to 47 of this title to refer to the director of the division of workers' compensation and the division of workers' compensation.

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8-47-102. Director to enforce orders. If any person fails or refuses to comply with an order of the director, or to obey any subpoena issued by the director or agents of the division, or to furnish the statistics, data, and information required to be furnished to the division by the provisions of articles 40 to 47 of this title, or refuses to permit an inspection as provided in said articles, or being in attendance refuses to be sworn or examined, or to answer a question, or to produce a book or paper when ordered to do so by the director or any of the deputies, agents, or referees of the division, the director may apply to the district court, upon proof by affidavit of the facts, for an order, returnable in not less than three days nor more than five days, directing such person to show cause before the district court which made the order why such person should not be committed to jail. Upon the return of such order, the district court shall examine under oath such person and give the person an opportunity to be heard. If the court determines that the person has refused without legal excuse in any one of the foregoing matters, it may commit the offender to jail forthwith by warrant, there to remain until the person submits to do the act which said person was required to do or until said person is discharged according to law.

8-47-103. Orders of director or appeals office - validity. All orders of the director or industrial claim appeals office shall be valid and in force and prima facie reasonable and lawful until found otherwise in an action brought for that purpose, pursuant to the provisions of articles 40 to 47 of this title, or until altered or revoked by the director or industrial claim appeals office, as the case may be.

8-47-104. Orders and awards - technical objections. Substantial compliance with the requirements of articles 40 to 47 of this title shall be sufficient to give effect to the orders or awards of the director or industrial claim appeals office, and they shall not be declared inoperative, illegal, or void for any omission of a technical nature in respect thereto.

8-47-105. Deposit on unpaid compensation or benefits - trust fund - surplus. (1) The director has the discretion, at any time, any provisions in articles 40 to 47 of this title to the contrary notwithstanding, to compute and require to be paid to the division, to be held by it in trust, an amount equal to the present value of all unpaid compensation or other benefits in any case computed at the rate of four percent per annum. Such action may be taken after a finding by the director as to the insolvency, the threatened insolvency, or any other condition or danger which may cause the loss of, or which has delayed or may impede, hinder, or delay prompt payment of, compensation or benefits by any insurance carrier or employer. The action and finding of the director shall not be subject to review, and the director shall not be required to give any notice of hearing or hold any hearing prior to taking such action or making such finding.

(2) All moneys so paid in shall constitute a separate trust fund in the office of the state treasurer, and, after any such payment is so ordered, the employer or insurance carrier shall thereupon be discharged from any further liability under such award for which payment is made to the extent of the payment made, and the payment of the award shall then be assumed to the extent of payment made by the special trust fund so created. If, for any reason, a beneficiary's right to the compensation awarded and ordered paid into said special trust fund ceases, lapses, or in any manner terminates by virtue of the terms and provisions of articles 40 to 47 of this title so that a surplus not surviving or accruing to any other beneficiary remains in said trust fund of the amount ordered paid into it on behalf of the beneficiary, the insurance carrier or employer who has made said payment shall be entitled to a refund of the present value of said surplus, if any, computed at the rate of four percent per annum. The state treasurer shall invest any portion of the special trust fund, including its surplus and reserves, which the director determines is not needed for immediate use.

8-47-106. State average weekly wage - method of computation. The state average weekly wage shall be established by the director annually on or before July 1 of each year. The state average weekly wage shall be determined from the average weekly earnings referenced in section 8-73-102 (1), computed by the division in June on the basis of the most recent available figures, and applicable to the ensuing twelve months beginning July 1. Such state average weekly wage shall automatically form the basis for establishing maximum benefits under the "Workers' Compensation Act of Colorado" as of 12:01 a.m., July 1, 1974, and at each succeeding time and date annually thereafter.

8-47-107. Adoption of rules. The director has the power to adopt reasonable and proper rules relative to the administration of articles 40 to 47 of this title and proper rules to govern proceedings and hearings of the division, and the director has the discretion to amend the rules from time to time. No such rule shall limit the jurisdiction of an administrative law judge in the office of administrative courts to hear and decide all matters arising under articles 40 to 47 of this title; except that in any matter where the director has issued an order to enforce a provision of the "Workers' Compensation Act of Colorado", an administrative law judge in the office of administrative courts shall not hear and decide the same matter while it is pending before the director. The rules shall be promulgated in accordance with section 24-4-103, C.R.S.

8-47-108. Workers' compensation study - report to general assembly. (Repealed)

8-47-109. Report to general assembly. (Repealed)

8-47-110. Public officers to enforce orders - furnish information. It is the duty of all officers and employees of the state, counties, and municipalities, upon the request of the director, to enforce in their respective departments all lawful orders of the director insofar as the same may be applicable and consistent with the general duties of such officers and employees. It is also their duty to make to the director such reports as the director may require concerning matters within their knowledge pertaining to the purposes of articles 40 to 47 of this title and to furnish the director such facts, data, statistics, and information as, from time to time, may come to them pertaining to the purposes of said articles and the duties of the division thereunder, and particularly all information coming to their knowledge respecting the condition of all places of employment subject to the provisions of said articles with regard to the health, protection, and safety of employees and the hazard of risk of such places of employment.

8-47-111. Division efforts to ensure employer compliance with workers' compensation coverage requirements - legislative declaration. (1) The general assembly finds, determines, and declares that it is in the best interests of the public to assure that all employers who fall under the provisions of articles 40 to 47 of this title have in effect current policies of insurance or self-insurance for workers' compensation liability.

(2) In order to implement the declaration in subsection (1) of this section, the division shall develop a procedure for verifying whether or not all employers doing business in the state of Colorado comply with the requirements of article 44 of this title. This procedure must include cross-referencing employer records of the division of unemployment insurance and the division of workers' compensation. Upon identifying employers that are not in compliance with article 44 of this title, the division, with the assistance and cooperation of the attorney general, shall use all available means under articles 40 to 47 of this title to ensure compliance. Every insurance carrier authorized to transact business in this state, including Pinnacol Assurance, which insures employers against liability for compensation under the provisions of articles 40 to 47 of this title, shall furnish the division, upon request, all information required by it to accomplish the purposes of this section.

8-47-112. Division website - procedures to file complaints. The director shall clearly post on the division's website 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 pursuant to articles 40 to 47 of this title.

PART 2
GENERAL POWERS

8-47-201. Information to division - blanks - verification. Every employer receiving from the division any blanks with directions to fill out the same or requests for information required for the purposes of articles 40 to 47 of this title shall properly fill out the blanks and furnish the information so requested fully and correctly. The director may require that any information requested by the division be verified under oath and may fix the time within which said information shall be returned.

8-47-202. Information furnished to division - confidential use. Every employer shall furnish the division, upon request, all information required by it to accomplish the purposes of articles 40 to 47 of this title. The information shall be for the confidential use of the division, unless otherwise ordered by the director, and shall not be open to the public nor used in any court or any action or proceeding pending therein, unless the director is a party to such action or proceeding.

8-47-203. Access to files, records, and orders. (1) Notwithstanding the provisions of section 8-47-202, the filing of a claim for compensation is deemed to be a limited waiver of the doctor-patient privilege to persons who are necessary to resolve the claim. Access to claim files maintained by the division will be permitted only as follows:

(a) Workers' compensation claim files shall be available for inspection upon request by the parties to the claim, including the claimant, the employer, and the insurer or their attorneys or other designated representatives. The parties to a claim may review other claim files relating to the said claimant.

(b) Persons who are not parties to a claim, or their attorneys or designated representatives, and who wish to inspect or obtain information from claim files may submit a request to inspect a particular file, stating the purpose for such inspection. The director may disallow such requests if the purpose of the inspection is to further commercial interests or to disseminate information to nonparties. Any such request shall be considered and determined by the division within seventy-two hours.

(c) (I) The director may permit access to other governmental entities only as required for the performance of their official duties and only if those official duties relate to enforcement of provisions of articles 40 to 47 of this title; except that the department of revenue may access results of any inquiry made by the division to determine whether an employer has any liability pursuant to articles 22 to 29 of title 39, C.R.S. As used in this subparagraph (I), "enforcement" includes duties of governmental entities involved in the administration of the provisions of articles 40 to 47 of this title or if such duties relate to the enforcement of child support under section 26-13-122, C.R.S. This provision is not intended to restrict the rights of persons otherwise provided for in articles 40 to 47 of this title to inspect and copy files.

(II) The general assembly intends that any contract, agreement, or any other means to transfer information between the department of labor and employment and any other governmental entity related to access to claim files in effect prior to May 27, 1997, shall be conformed to the provisions of this paragraph (c), as amended, or terminated as authorized by law.

(d) Persons entitled to review claim files may obtain copies upon payment of the fee set by the division. Such persons shall not disseminate information contained in those files except as required to resolve the claim, or as permitted by the director, or as permitted by law.

(e) Claimants may waive the protection of this statute by executing a waiver for the release of information. The waiver must be dated and will be effective for ninety days thereafter.

(2) All orders entered by the director or an administrative law judge pursuant to articles 40 to 47 of this title shall be made available by the division for inspection or copying for a fee reflecting actual costs; except that the name and other identifying information concerning the claimant and employer shall be excised.

8-47-203.3. Release of location information concerning individuals with outstanding felony arrest warrants. (1) Notwithstanding any provision of state law to the contrary and to the extent allowable under federal law, at the request of the Colorado bureau of investigation, the division shall provide the bureau with information concerning the location of any person whose name appears in the division's records who is the subject of an outstanding felony arrest warrant. Upon receipt of such information, it shall be the

responsibility of the bureau to provide appropriate law enforcement agencies with location information obtained from the division. Location information provided pursuant to this section shall be used solely for law enforcement purposes. The division and the bureau shall determine and employ the most cost-effective method for obtaining and providing location information pursuant to this section. Neither the division nor its employees or agents shall be liable in civil action for providing information in accordance with the provisions of this subsection (1).

(2) As used in subsection (1) of this section, "law enforcement agency" means any agency of the state or its political subdivisions that is responsible for enforcing the laws of this state. "Law enforcement agency" includes but is not limited to any police department, sheriff's department, district attorney's office, the office of the state attorney general, and the Colorado bureau of investigation.

8-47-204. Employees of division - qualifications. The executive director has the power to employ, pursuant to section 13 of article XII of the state constitution, such deputies, experts, statisticians, accountants, inspectors, clerks, and other employees as may be necessary to carry out the provisions of articles 40 to 47 of this title or to perform the duties and exercise the powers conferred by law upon the division.

8-47-205. Salaries of employees of division. All deputies, statisticians, accountants, clerks, experts, and other employees of the division shall receive such compensation as may be fixed by law. The salaries so fixed shall be paid monthly from the fund appropriated for the use of the division after approval by the director.

8-47-206. Employees of division - bonds. Such employees of the division as shall be directed by the director shall furnish surety company bonds in such sum as may be fixed by the director, the premiums therefor to be paid as other expenses of the division are paid.

8-47-207. Collection of statistics. The director or any agents of the division may enter into any place of employment for the purpose of collecting facts and statistics, examining the provisions made for the health, protection, and safety of the employees, and bringing to the attention of every employer any rule, order, or requirement of the division, or any law, or any failure on the part of any employer to comply therewith.

8-47-208. Records of employers open to inspection of division. All books, records, and payrolls of employers or of any contractor, subcontractor, lessee, sublessee, or person showing or reflecting in any way upon the amount of wage expenditure of such employers, contractor, subcontractor, lessee, sublessee, or person and all other facts, data, and statistics appertaining to the purposes of this article shall always be open for inspection by the director or any agents of the division for the purpose of ascertaining the correctness of the reported wage expenditure, number of persons employed, and such other information as may be necessary for the uses and purposes of the division in the administration of the "Workers' Compensation Act of Colorado".

8-47-209. Expenses of division. All expenses incurred by the division pursuant to the provisions of the "Workers' Compensation Act of Colorado" shall be paid from funds appropriated for the use of the division upon claims therefor which shall be itemized and sworn to by the person who incurred the same. The claims shall be allowed by the director subject to the approval of the controller. The traveling expenses of the director or of any employees of the division, incurred while on business of the division outside of the state of Colorado, shall be paid in the manner aforesaid, but only when such expenses are authorized in advance by the controller to be incurred by the division.

ARTICLE 55
Workers' Compensation Classification Appeals Board

8-55-101. Workers' compensation classification appeals board - creation. (1) There is hereby created, in the division of insurance in the department of regulatory agencies, the workers' compensation classification appeals board. The board shall hear grievances brought by employers against insurers and Pinnacol Assurance concerning the calculation of experience modification factors and classification assignment decisions. The board shall consist of five voting members, each of whom shall be knowledgeable about workers' compensation classification and experience modification factors, and one nonvoting member, as follows:

(a) Two members shall be either salaried employees of an insurance company that issues workers' compensation insurance policies in this state or representatives of Pinnacol Assurance. Such two members shall not both represent Pinnacol Assurance or the same insurance company. In addition, one person shall be selected to serve as an alternate member to represent the interests of the insurance industry or Pinnacol Assurance. The alternate shall represent such interests in the event the primary member recuses himself or herself.

(b) One member, who shall be a nonvoting member, shall be an employee of a workers' compensation rating organization functioning under the provisions of section 10-4-408, C.R.S. The workers' compensation rating organization shall serve as a technical resource for the board.

(c) Three members shall represent private employers. Each private employer member shall be knowledgeable with respect to workers' compensation insurance, rules, and classifications, and shall be familiar with the business environment and community in this state. No private employer member shall be an employee of an insurance company, insurance broker, insurance agent, law firm, actuary, Pinnacol Assurance, or any association of such entities or persons. All private employer board memberships shall be held in the name of an individual. At least one private employer member shall represent the construction industry.

(2) The private employer members and the members representing insurers and Pinnacol Assurance shall be appointed by the commissioner of insurance. The workers' compensation rating organization representative shall be appointed by the chief executive officer of such organization or by another officer designated to make such appointment.

The commissioner may solicit a list of nominees from any interested party before making such appointments. The commissioner shall immediately notify the workers' compensation rating organization concerning the identity of any appointees.

(3) Each member shall serve one three-year term, and, in addition:

(a) (Deleted by amendment, L. 2002, p. 1889, § 46, effective July 1, 2002.)

(b) A private employer member or member representing the insurance industry or Pinnacol Assurance may serve a second consecutive three-year term; and

(c) The member representing the workers' compensation rating organization may be reappointed without limitation.

(4) Any vacancy on the board shall be filled for the unexpired term in the same manner as the original appointment. The member appointed to fill such vacancy shall be from the same category described in subsection (1) of this section as the member vacating the position.

(5) Members of the board shall serve without compensation, but their reasonable expenses incurred when performing their duties as board members shall be reimbursed from the workers' compensation cash fund created in section 8-44-112 (7). Such expenses shall be limited to travel, food, and lodging expenses.

(6) Members of the board, in their capacity as members, shall be immune from liability in all claims for injury that lie in tort or could lie in tort, regardless of whether that may be the type of action or the form of relief chosen by the claimant.

8-55-102. Right to appeal - notice of appeal procedures. An employer may appeal to the workers' compensation classification appeals board any issue concerning the calculation of experience modification factors and classification assignment decisions under the workers' compensation laws of this state by filing written notice with said board within thirty days after the employer has exhausted all appeal review procedures provided by the insurance company. Every insurance carrier authorized to transact business in this state, including Pinnacol Assurance, shall provide employers with a written copy or summary of their appeal procedures, together with a written notice of the availability of an appeal under this article, at the beginning of each policy year and when notice is provided to the employer of a change in experience modification factors or job classification.

8-55-103. Hearings - conflicts of interest. (1) The board shall commence each term on January 1 of each year and shall terminate each term on December 31.

(2) At the beginning of each term the board shall either in person or by teleconference:

(a) Elect a chair who shall be responsible for conducting each hearing;

(b) Appoint the member representing the workers' compensation rating organization as secretary; and

(c) Establish such organizational and procedural rules as are deemed necessary.

(3) The board shall meet as needed and in accordance with the following:

(a) The board shall schedule a hearing within thirty days after receipt of an appeal.

(b) The board shall provide written notice of a hearing to the appellant, the insurer, and the workers' compensation rating organization within thirty days after receipt of an appeal, but not less than ten days before the hearing.

(c) A hearing shall be conducted only if a quorum of the board is present, either in person or by teleconference. A quorum shall consist of a simple majority of the voting members, including at least two private sector members.

(d) Any decision of the board shall be by majority vote of the voting members who are present at the hearing.

(e) A member's vote shall be cast only by such member.

(f) If a board member has a conflict of interest with respect to any matter scheduled for hearing before the board, such member shall recuse himself or herself from any discussion and decisions on said matter unless, after full disclosure of the facts giving rise to such conflict, all parties to the appeal agree to waive such conflict. For purposes of this paragraph (f), a member shall be deemed to have a conflict of interest if such member:

(I) Has a conflict that would call into question such member's ability to render an unbiased decision; and

(II) Is associated with either party to the appeal. A member is "associated" with a party to an appeal if:

(A) The member and the party to the appeal are involved in a common business enterprise or are members of a controlled group, as defined in section 1563(a) of the federal "Internal Revenue Code of 1986", as amended; or

(B) The member has a familial relationship with the party to the appeal.

(g) Notwithstanding the provisions of paragraph (f) of this subsection (3), the member representing the workers' compensation rating organization shall not be deemed to have a conflict of interest with respect to any appeal based solely on his or her affiliation with his or her organization.

(4) The secretary of the board shall carry out the administrative functions of the board and shall be responsible for providing notice of, preparing the agenda for, and arranging the facilities for each hearing and meeting. The secretary shall also prepare a memorandum after each hearing that includes the vote of the board. Such memoranda shall be signed by the chair of the board and, each month, the secretary shall deliver copies of that month's memoranda to the workers' compensation rating organization.

8-55-104. Review of board decisions. (1) A decision of the board shall be final and not subject to appeal unless the employer, insurance company, or Pinnacol Assurance provides written notice to the office of the commissioner of insurance, who shall determine whether a job misclassification occurred, as required pursuant to section 8-44-108. An employer may hold disputed premium amounts in abeyance from the date an appeal is filed pursuant to section 8-55-102 until the later of:

(a) The date a final decision is made by the board concerning such appeal; or

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(b) The date of any written decision of the commissioner of insurance issued pursuant to subsection (3) of this section.

(2) Each employer, insurance company, or Pinnacol Assurance, as the case may be, shall be advised of the right to appeal to the office of the commissioner of insurance.

(3) An employer, insurance company, or Pinnacol Assurance shall provide written notice of an appeal to the commissioner of insurance within thirty days after the date of the board's decision. The commissioner shall review any decision of the board properly appealed pursuant to this section and shall provide a written decision within thirty days after the request for such review.

(4) Any employer that holds disputed premium amounts in abeyance pursuant to subsection (1) of this section and loses its appeal shall pay the disputed premium amount plus interest at the rate of one percent of such disputed amount per month. Such interest shall accrue from the date of the premium rate increase to the date of payment.

8-55-105. Repeal of article. (1) This article is repealed, effective July 1, 2021.

(2) Prior to said repeal, the workers' compensation classification appeals board shall be reviewed as provided in section 24-34-104, C.R.S.

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