First Regular Session
Seventy-fifth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 25-0319.01 Kristen Forrestal x4217 **HOUSE BILL 25-1300**

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A BILL FOR AN ACT

CONCERNING CLAIMANTS' ACCESS TO MEDICAL CARE IN WORKERS' COMPENSATION CLAIMS, AND, IN CONNECTION THEREWITH, SHIFTING THE BURDEN OF PROOF FOR A CLAIMANT'S ENTITLEMENT TO MEDICAL BENEFITS THAT ARE RECOMMENDED BY AN AUTHORIZED TREATING PHYSICIAN, REQUIRING AN EMPLOYER OR THE EMPLOYER'S INSURER TO USE THE DIVISION OF WORKERS' COMPENSATION'S UTILIZATION STANDARDS, AND CHANGING THE MECHANISM BY WHICH A CLAIMANT CAN CHOOSE A TREATING PHYSICIAN.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that

applies to the reengrossed version of this bill will be available at http://leg.colorado.gov.)

In a dispute in a workers' compensation claim, current law requires a claimant to prove, by a preponderance of the evidence, the claimant's entitlement to medical benefits. When the dispute concerns whether the medical treatment recommended by an authorized treating physician is reasonable, necessary, and related to the claimant's injury, the bill shifts the burden of proof from the claimant to the claimant's employer or the employer's workers' compensation insurer.

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

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

SECTION 1. Legislative declaration. (1) The general assembly finds that:

(a) Without workers, no products are made, no meals are served, no goods are transported, no ski areas operate, no medical care is provided, no fires are fought, and no highways stay safe. Workers are the backbone of Colorado. When a worker is hurt, Colorado's backbone is weakened.

(b) Colorado's workers' compensation act, referred to in this section as the "workers' act", was enacted in 1915, and it opens with an unequivocal declaration of intent that can be summarized as assuring the quick and efficient delivery of disability and medical benefits to injured workers at a reasonable cost, without the necessity of litigation;

(c) In 1991, Colorado Senate Bill 91-218 drastically altered the workers' compensation system, undermining the intent of the workers' act set forth by the general assembly in 1915. Thirty-four years after those

amendments, we still have a workers' compensation system weighted heavily against injured workers and in favor of insurance companies, as evidenced by:

(I) Injured workers in Colorado lack basic agency to choose who treats their injuries. When a worker is hurt on the job, the employer and its insurer have control over the primary doctor assigned. Once a primary physician is assigned, that physician's referrals to other medical specialists and therapists are also subject to denial by employers and their insurers.

(II) Even after an employer and insurer direct a worker to seek treatment with a specific physician or physicians, they can deny the medical care that a physician recommends as unreasonable or unnecessary. When such a dispute arises, it is the worker who bears the burden of proof in court.

(III) While employers and insurers are directed to follow the state's utilization standards in making determinations regarding the authorization or denial of medical care, they often fail to do so. When they do fail, there is no expeditious recourse for workers. The division of workers' compensation in the department of labor and employment does not have clear authority to rule on issues surrounding an employer or their insurer's violation of the utilization standards.

(IV) Workers whose injuries are severe enough to lead to wage loss or permanent impairment, or both, are limited in recovering their economic losses by arbitrary benefit caps. Those caps most significantly and wrongfully impact workers whose injuries are severe.

(V) Benefits payable to injured workers for permanent impairment are paid unequally. While some permanent disabilities are paid through

a holistic lens based on the permanency of the workers' symptoms, lost income, and an inability to work or complete activities of daily living, others are paid according to an arbitrary schedule of benefits. The schedule of benefits almost always results in less compensation for injured workers, even in instances of severe disability.

(VI) Injured workers who are entitled to permanent impairment benefits must wait months or even years to fully collect their award. By default, employers and their insurers are allowed to pay those benefits over time, and if a worker wants the benefit paid in full without delay, they must pay a discount charge to the insurer.

(VII) Workers who are the most severely injured and therefore unable to return to similar or "suitable" employment following an industrial injury are not owed any additional monetary benefit under the current scheme. Since the 1991 changes to the workers' act, to obtain permanent total disability in Colorado, a worker must be "unable to earn any wage". This standard has rendered permanent total disability benefits nearly obsolete.

(VIII) Despite the fact that an injured worker is the first-party insured of their employer's workers' compensation insurer, meaning that the insurer is prohibited from the unreasonable delay or denial of benefits, workers do not have access to the normal statutory remedies available for the unfair claims handling practices of a workers' compensation insurer. This emboldens Colorado workers' compensation insurers to engage in deceptive, unfair, unreasonable, and frivolous practices in the handling of claims.

(IX) All workers deserve the best care when injured. The state of Colorado, as an employer, should make every effort to obtain workers'

compensation coverage with the worker experience in mind. Pinnacol is the top-rated workers' compensation insurer by workers and is already a quasi-state agency. The state should contract with Pinnacol for coverage, rather than other third parties, many of which are out-of-state entities without a connection to Colorado and are not subject to the same transparency and financial disclosure requirements as Pinnacol.

(d) In contrast to the hardships faced by injured workers since 1991, Colorado's workers' compensation insurers are enjoying unprecedented economic success, posting profit margins higher than any other type of insurance in Colorado.

(2) The general assembly declares that:

(a) The playing field must be leveled and the workers' act must be returned to a mechanism with the functionality of its original intent; and

(b) With this act, the state of Colorado hopes to alleviate a portion of the inequities set forth in this section but acknowledges that additional change must be made in the coming years.

SECTION 2. In Colorado Revised Statutes, 8-42-101, **amend** (3)(a)(I) and (5) as follows:

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 - mental health provider qualifications - mileage reimbursement - rules - definitions - repeal.

(3) (a) (I) (A) 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~~ A 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~~ ARTICLE 42 or an applicable fee schedule, ~~which~~ THAT are or may be in excess of ~~said~~ THE 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)~~ SUBSECTION (3)(a)(I) shall take effect on January 1. The director shall ~~promulgate~~ ADOPT 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 DESCRIBED in subsection (3.6) of this section. The fee schedule ~~shall apply~~ APPLIES 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.

(B) AN EMPLOYER OR THE EMPLOYER'S INSURER SHALL USE THE DIVISION'S UTILIZATION STANDARDS WHEN RESPONDING TO A REQUEST FOR AUTHORIZATION FROM A TREATING PHYSICIAN. IF AN EMPLOYER OR THE EMPLOYER'S INSURER FAILS TO ACT IN ACCORDANCE WITH THE

DIVISION'S UTILIZATION STANDARDS WHEN REVIEWING A REQUEST FOR AUTHORIZATION, THE DIRECTOR MAY DEEM THE SERVICES PROVIDED BY AN AUTHORIZED TREATING PHYSICIAN AS AUTHORIZED, REASONABLE, AND NECESSARY AND REQUIRE PAYMENT FOR THE SERVICES BY THE EMPLOYER OR THE EMPLOYER'S INSURER.

(5) If any party files an application for hearing on whether ~~the~~ A 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.

SECTION 3. In Colorado Revised Statutes, 8-43-201, **amend** (1) as follows:

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~~ PURSUANT TO articles 40 to 47 of this ~~title~~ TITLE 8; except that: ~~the following principles shall apply:~~

(a) A claimant in a workers' compensation claim ~~shall have~~ HAS the burden of proving entitlement to benefits by a preponderance of the evidence; EXCEPT THAT THE CLAIMANT'S EMPLOYER OR INSURER HAS THE BURDEN OF PROVING BY A PREPONDERANCE OF THE EVIDENCE THAT MEDICAL TREATMENT RECOMMENDED BY AN AUTHORIZED TREATING PHYSICIAN IS NOT REASONABLE, NECESSARY, AND RELATED TO THE INJURY;

(b) The facts in a workers' compensation case ~~shall~~ MUST 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

(c) A party seeking to modify an issue determined by a general or final admission, a summary order, or a full order ~~shall bear~~ BEARS the burden of proof for any such modification.

SECTION 4. In Colorado Revised Statutes, 8-43-404, **amend** (5)(a) and (10)(b) as follows:

8-43-404. Examination - refusal - personal responsibility - physicians to testify and furnish results - injured worker right to select treating physician - injured worker right to third-party communications - rules. (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~~ IMMEDIATELY UPON RECEIPT OF NOTICE OF AN ON-THE-JOB INJURY, BUT NOT MORE THAN SEVEN BUSINESS DAYS AFTER RECEIPT OF NOTICE OF THE ON-THE-JOB INJURY, AN EMPLOYER OR INSURER SHALL, IN WRITTEN VERIFIED FORM, NOTIFY THE INJURED EMPLOYEE OF THE INJURED EMPLOYEE'S RIGHT TO DESIGNATE A TREATING PHYSICIAN AND NOTIFY THE INJURED EMPLOYEE WHERE TO ACCESS THE DIVISION'S LIST OF LEVEL I AND LEVEL II ACCREDITED PHYSICIANS. THE DIRECTOR SHALL CREATE A FORM TO IMPLEMENT THE PROCEDURE TO DESIGNATE A PHYSICIAN. THE EMPLOYEE MAY DESIGNATE ONLY A LEVEL I OR LEVEL II ACCREDITED PHYSICIAN LICENSED UNDER THE "COLORADO MEDICAL PRACTICE ACT", ARTICLE 240 OF TITLE 12, AS THE EMPLOYEE'S AUTHORIZED TREATING PHYSICIAN. THE EMPLOYEE MUST DESIGNATE THE TREATING PHYSICIAN IN WRITING ON THE FORM PRESCRIBED BY THE DIRECTOR. THE EMPLOYEE MAY MAKE ONE TREATING PHYSICIAN DESIGNATION ON THE FORM PRESCRIBED BY THE DIRECTOR ANY TIME AFTER THE ON-THE-JOB INJURY BUT BEFORE BEING PLACED AT MAXIMUM MEDICAL IMPROVEMENT. IF THE EMPLOYEE DECLINES TO DESIGNATE A PHYSICIAN WITHIN SEVEN BUSINESS DAYS AFTER RECEIPT OF NOTICE OF THE RIGHT TO DESIGNATE IN WRITTEN VERIFIED FORM, AN EMPLOYER OR INSURER MAY DESIGNATE ONLY A LEVEL I OR LEVEL II ACCREDITED PHYSICIAN LICENSED UNDER THE "COLORADO MEDICAL PRACTICE ACT",

ARTICLE 240 OF TITLE 12, AS THE EMPLOYEE'S AUTHORIZED TREATING PHYSICIAN. THE EMPLOYEE MAY SUBSEQUENTLY DESIGNATE A PHYSICIAN CONSISTENT WITH THIS SUBSECTION (5)(a)(I)(A). THE PHYSICIAN DESIGNATED BY THE EMPLOYER OR INSURER AND THE PHYSICIAN DESIGNATED BY THE EMPLOYEE SHALL COMPLY WITH SUBSECTION (5)(a)(IV)(A) OF THIS SECTION.

(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~~ IN AN EMERGENCY SITUATION, AN INJURED EMPLOYEE SHALL BE TAKEN TO ANY PHYSICIAN OR HEALTH-CARE FACILITY THAT IS ABLE TO PROVIDE THE NECESSARY CARE. WHEN EMERGENCY CARE IS NO LONGER REQUIRED, SUBSECTION (5)(a)(I)(A) OF THIS SECTION APPLIES. IMMEDIATELY UPON RECEIPT OF NOTICE THAT EMERGENCY CARE IS NO LONGER REQUIRED, BUT NOT MORE THAN SEVEN BUSINESS DAYS AFTER RECEIPT OF NOTICE THAT EMERGENCY CARE IS NO LONGER REQUIRED, AN EMPLOYER OR INSURER SHALL, IN WRITTEN VERIFIED FORM, NOTIFY THE INJURED EMPLOYEE OF THE INJURED EMPLOYEE'S RIGHT TO DESIGNATE A TREATING PHYSICIAN AND NOTIFY THE INJURED EMPLOYEE WHERE TO ACCESS THE DIVISION'S LIST OF LEVEL I AND LEVEL II ACCREDITED PHYSICIANS.

~~(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)~~ (II) 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~~ ONE HUNDRED TWENTY days after the date of the ~~injury~~ EMPLOYEE'S FIRST PHYSICIAN DESIGNATION, but before the injured ~~worker~~ EMPLOYEE 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~~ SUBSECTION (5)(a)(II) MUST 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~~ INSURER 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~~ INSURER, 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~~ A LEVEL I OR LEVEL II ACCREDITED PHYSICIAN LICENSED UNDER THE "COLORADO MEDICAL PRACTICE ACT", ARTICLE 240 OF TITLE 12; AND

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

~~(F)~~ (III) An ~~insurance carrier~~ INSURER, 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)~~ SUBSECTION (5)(a)(II) OF THIS SECTION and shall report such information to the division upon request.

(IV) (A) When an injured employee changes ~~his or her~~ THEIR 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~~ THEIR 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~~ TERMINATES.

(D) The opinion of the originally authorized treating physician regarding work restrictions and return to work ~~shall control~~ CONTROLS 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~~ WHO IS A LEVEL I OR LEVEL II ACCREDITED PHYSICIAN LICENSED UNDER THE "COLORADO MEDICAL PRACTICE ACT", ARTICLE 240 OF TITLE 12.

(V) If ~~the~~ AN 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)~~ SUBSECTION (5)(a)(II) OF THIS SECTION, upon written request to the ~~insurance carrier~~ INSURER or to the employer's authorized representative if THE EMPLOYER IS self-insured, an

injured employee may procure written permission to have a personal physician or chiropractor treat the employee. The EMPLOYEE MUST COMPLETE THE written request ~~must be completed~~ on a form ~~that is~~ prescribed by the director. If ~~permission is neither granted nor refused~~ THE EMPLOYER OR INSURER NEITHER GRANTS NOR REFUSES THE PERMISSION REQUEST within twenty days after the date of the certificate of service of the request form, the employer or ~~insurance carrier shall be~~ INSURER IS deemed to have waived any objection to the employee's request. IF THE EMPLOYER OR INSURER OBJECTS TO THE REQUEST, THE EMPLOYER OR INSURER SHALL MAKE THE objection ~~shall be~~ in writing on a form prescribed by the director and shall ~~be served~~ SERVE THE WRITTEN OBJECTION 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~~ INSURER, or an employer's authorized representative if THE EMPLOYER IS self-insured, shall track how often an injured employee requests to change ~~his or her~~ THE EMPLOYEE'S 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~~ TITLE 8 as specified by the division.

(B) If an injured employee is permitted to change physicians

under ~~sub-subparagraph (A) of this subparagraph (VI)~~ SUBSECTION (5)(a)(VI)(A) OF THIS SECTION 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)~~ SUBSECTION (5)(a)(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)~~ SUBSECTION (5)(a)(VI)(A) OF THIS SECTION 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.

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

THE 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~~ AFTER 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~~ ADVISE THE INJURED EMPLOYEE IN WRITING THAT THE INJURED EMPLOYEE MAY DESIGNATE A NEW LEVEL I OR LEVEL II ACCREDITED PHYSICIAN LICENSED UNDER THE "COLORADO MEDICAL PRACTICE ACT", ARTICLE 240 OF TITLE 12, AS THE EMPLOYEE'S NEW AUTHORIZED TREATING PHYSICIAN. THE EMPLOYEE MUST DESIGNATE THE NEW TREATING PHYSICIAN IN WRITING ON THE FORM PRESCRIBED BY THE DIRECTOR.

SECTION 5. Act subject to petition - effective date - applicability. (1) This act takes effect January 1, 2026; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2026 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

(2) This act applies to workers' compensation claims filed on or after the applicable effective date of this act.