

# House Study Bill 771

HOUSE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE ON  
LABOR BILL BY CHAIRPERSON  
OLSON)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act relating to the choice of doctor to treat an injured  
2 employee under workers' compensation laws and providing an  
3 applicability date.  
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
5 TLSB 6539YC 82  
6 av/nh/5

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1 1 Section 1. Section 85.27, subsection 4, Code Supplement  
1 2 2007, is amended to read as follows:  
1 3 4. a. (1) For purposes of this section, the employer is  
1 4 obliged to furnish reasonable services and supplies to treat  
1 5 an injured employee, and has the right to choose the care  
1 6 unless the employee has predesignated a physician as provided  
1 7 in paragraph "b". If the employer chooses the care, the  
1 8 employer shall hold the employee harmless for the cost of care  
1 9 until the employer notifies the employee that the employer is  
1 10 no longer authorizing all or any part of the care and the  
1 11 reason for the change in authorization. An employer is not  
1 12 liable for the cost of care that the employer arranges in  
1 13 response to a sudden emergency if the employee's condition,  
1 14 for which care was arranged, is not related to the employment.  
1 15 The treatment must be offered promptly and be reasonably  
1 16 suited to treat the injury without undue inconvenience to the  
1 17 employee.  
1 18 (2) If the employee has reason to be dissatisfied with the  
1 19 care offered, the employee should communicate the basis of  
1 20 such dissatisfaction to the employer, in writing if requested,  
1 21 following which the employer and the employee may agree to  
1 22 alternate care reasonably suited to treat the injury. If the  
1 23 employer and employee cannot agree on such alternate care, the  
1 24 commissioner may, upon application and reasonable ~~proofs~~ proof  
1 25 of the necessity therefor, allow and order other care. In an  
1 26 emergency, the employee may choose the employee's care at the  
1 27 employer's expense, provided the employer or the employer's  
1 28 agent cannot be reached immediately.  
1 29 (3) An application made under this ~~subsection~~ paragraph  
1 30 "a" shall be considered an original proceeding for purposes of  
1 31 commencement and contested case proceedings under section  
1 32 85.26. The hearing shall be conducted pursuant to chapter  
1 33 17A. Before a hearing is scheduled, the parties may choose a  
1 34 telephone hearing, an audio-video conference hearing, or an  
1 35 in-person hearing. A request for an in-person hearing shall  
2 1 be approved unless the in-person hearing would be impractical  
2 2 because of the distance between the parties to the hearing.  
2 3 The workers' compensation commissioner shall issue a decision  
2 4 within ten working days of receipt of an application for  
2 5 alternate care made pursuant to a telephone hearing or  
2 6 audio-video conference hearing or within fourteen working days  
2 7 of receipt of an application for alternate care made pursuant  
2 8 to an in-person hearing. The employer shall notify an injured  
2 9 employee of the employee's ability to contest the employer's  
2 10 choice of care pursuant to this ~~subsection~~ paragraph "a".  
2 11 b. (1) An injured employee has the right to choose care  
2 12 if the employee has predesignated a physician who is a primary  
2 13 care provider, from whom the employee has previously received  
2 14 treatment for a nonoccupational injury, illness, or  
2 15 examination, to provide treatment for the injury. Upon hire  
2 16 and periodically during employment an employer shall provide  
2 17 written notice to all employees of their rights under this

2 18 paragraph "b" to predesignate such a physician for treatment  
2 19 of an injury, in a manner prescribed by the workers'  
2 20 compensation commissioner by rule. The employer or the  
2 21 employer's insurer shall not make suggestions or otherwise  
2 22 attempt to influence an injured employee's choice of a  
2 23 physician to provide care. An employee shall, as soon as  
2 24 practicable, notify the employer of an injury, and upon  
2 25 receiving such notice of an injury from an employee, the  
2 26 employer shall again provide written notice to that employee  
2 27 of the employee's rights under this paragraph "b" in a manner  
2 28 prescribed by the workers' compensation commissioner by rule.  
2 29 If an employer fails to notify employees of their right to  
2 30 choose a physician as provided in this paragraph "b", the  
2 31 employee has the right to choose any physician to provide  
2 32 treatment for the injury and the treatment shall be considered  
2 33 care authorized under this section.

2 34 (2) For the purposes of this paragraph "b", "physician"  
2 35 includes an individual physician, a group of physicians, or a  
3 1 clinic. For the purposes of this paragraph "b", "primary care  
3 2 provider" means a physician who provides primary care who is a  
3 3 family or general practitioner, a pediatrician, an internist,  
3 4 an obstetrician, or a gynecologist. A physician chosen by an  
3 5 injured employee to provide treatment is authorized to arrange  
3 6 for any consultation, surgical consultation, referral,  
3 7 emergency care, or other specialized medical services as the  
3 8 physician deems necessary to treat the injury. The employer  
3 9 shall pay for all such care, unless the workers' compensation  
3 10 commissioner determines otherwise.

3 11 (3) If the employer has reason to be dissatisfied with the  
3 12 care chosen by the employee, the employer should communicate  
3 13 the basis of such dissatisfaction to the employee, in writing  
3 14 if requested, following which the employee and the employer  
3 15 may agree to alternate care reasonably suited to treat the  
3 16 injury. If the employee and employer cannot agree on such  
3 17 alternate care, the commissioner may, upon application and  
3 18 reasonable proof of the necessity therefor, allow and order  
3 19 other care.

3 20 (4) An application made under this paragraph "b" shall be  
3 21 considered an original proceeding for purposes of commencement  
3 22 and contested case proceedings under section 85.26. The  
3 23 hearing shall be conducted pursuant to chapter 17A. Before a  
3 24 hearing is scheduled, the parties may choose a telephone  
3 25 hearing, an audio-video conference hearing, or an in-person  
3 26 hearing. A request for an in-person hearing shall be approved  
3 27 unless the in-person hearing would be impractical because of  
3 28 the distance between the parties to the hearing. The workers'  
3 29 compensation commissioner shall issue a decision within ten  
3 30 working days of receipt of an application for alternate care  
3 31 made pursuant to a telephone hearing or audio-video conference  
3 32 hearing or within fourteen working days of receipt of an  
3 33 application for alternate care made pursuant to an in-person  
3 34 hearing.

3 35 Sec. 2. Section 85.39, Code 2007, is amended to read as  
4 1 follows:

4 2 85.39 EXAMINATION OF INJURED EMPLOYEES.

4 3 1. a. After an injury, the employee, if requested by the  
4 4 employer, shall submit for examination at some reasonable time  
4 5 and place and as often as reasonably requested, to a physician  
4 6 or physicians authorized to practice under the laws of this  
4 7 state or another state, without cost to the employee; but if  
4 8 the employee requests, the employee, at the employee's own  
4 9 cost, is entitled to have a physician or physicians of the  
4 10 employee's own selection present to participate in the  
4 11 examination. If an employee is required to leave work for  
4 12 which the employee is being paid wages to attend the requested  
4 13 examination, the employee shall be compensated at the  
4 14 employee's regular rate for the time the employee is required  
4 15 to leave work, and the employee shall be furnished  
4 16 transportation to and from the place of examination, or the  
4 17 employer may elect to pay the employee the reasonable cost of  
4 18 the transportation. The refusal of the employee to submit to  
4 19 the examination shall suspend the employee's right to any  
4 20 compensation for the period of the refusal. Compensation  
4 21 shall not be payable for the period of suspension.

4 22 b. If an evaluation of permanent disability has been made  
4 23 by a physician retained by the employer and the employee  
4 24 believes this evaluation to be too low, the employee shall,  
4 25 upon application to the commissioner and upon delivery of a  
4 26 copy of the application to the employer and its insurance  
4 27 carrier, be reimbursed by the employer the reasonable fee for  
4 28 a subsequent examination by a physician of the employee's own

4 29 choice, and reasonably necessary transportation expenses  
4 30 incurred for the examination. The physician chosen by the  
4 31 employee has the right to confer with and obtain from the  
4 32 employer-retained physician sufficient history of the injury  
4 33 to make a proper examination.  
4 34 2. If the employee has chosen a physician to provide care  
4 35 as provided in section 85.27, subsection 4, paragraph "b",  
5 1 when it is medically indicated that no significant improvement  
5 2 from an injury is anticipated, the employee may obtain a  
5 3 medical opinion from the employee's physician, at the  
5 4 employer's expense, regarding the extent of the employee's  
5 5 permanent disability. If the employee obtains such an  
5 6 evaluation and the employer believes this evaluation of  
5 7 permanent disability to be too high, the employer may arrange  
5 8 for a medical examination of the injured employee by a  
5 9 physician of the employer's choice for the purpose of  
5 10 obtaining a medical opinion regarding the extent of the  
5 11 employee's permanent disability. If an employee is required  
5 12 to leave work for which the employee is being paid wages to  
5 13 attend an examination under this subsection, the employee  
5 14 shall be compensated at the employee's regular rate for the  
5 15 time the employee is required to leave work, and the employee  
5 16 shall be furnished transportation to and from the place of  
5 17 examination, or the employer may elect to pay the employee the  
5 18 reasonable cost of transportation. The physician chosen by  
5 19 the employer to conduct the examination has the right to  
5 20 confer with and obtain from any physician who has treated the  
5 21 injured employee sufficient history of the injury to make a  
5 22 proper examination. The refusal by the employee to submit to  
5 23 the examination shall suspend the employee's right to any  
5 24 compensation for the period of the refusal. Compensation  
5 25 shall not be payable for the period of suspension.

5 26 Sec. 3. APPLICABILITY DATE. This Act applies to injuries  
5 27 occurring on or after January 1, 2009.

5 28 EXPLANATION

5 29 This bill relates to the choice of a physician to treat an  
5 30 injured employee under the state's workers' compensation laws.  
5 31 The bill allows the employer to choose care unless the  
5 32 employee has predesignated a physician as provided in the  
5 33 bill.

5 34 The bill gives an employee the right to predesignate a  
5 35 physician who is a primary care provider, from whom the  
6 1 employee has previously received treatment for a  
6 2 nonoccupational injury, illness, or examination, to provide  
6 3 treatment for a work-related injury. The employer is required  
6 4 to provide written notice to employees of this right upon  
6 5 hire, periodically during employment, and upon receiving  
6 6 notice of an injury from an employee, in a manner prescribed  
6 7 by the workers' compensation commissioner.

6 8 If the employer fails to provide such notification, an  
6 9 injured employee has the right to choose any physician to  
6 10 provide treatment for the work-related injury and that  
6 11 treatment shall be considered authorized care.

6 12 If the employer or employee is dissatisfied with the care  
6 13 chosen by the other party, the dissatisfied party is required  
6 14 to communicate the basis of dissatisfaction to the other party  
6 15 in writing and the parties may agree to alternate care  
6 16 reasonably suited to treat the injury. If the parties cannot  
6 17 agree to such alternate care, the dissatisfied party may make  
6 18 an application for alternate care to the commissioner.

6 19 An application for alternate care is an original proceeding  
6 20 and is treated as a contested case. A party may request that  
6 21 the hearing be held in person, by telephone, or by audio-video  
6 22 conference. The commissioner is required to issue a decision  
6 23 within 10 working days of receipt of an application made  
6 24 pursuant to a telephone hearing or audio-video conference  
6 25 hearing and within 14 days of an in-person hearing.

6 26 Code section 85.39 is amended to provide that if the  
6 27 employee has chosen care, when it is medically indicated that  
6 28 no significant improvement from an injury is anticipated, the  
6 29 employee may obtain a medical opinion regarding the extent of  
6 30 the employee's permanent disability. If the employer believes  
6 31 that the evaluation of permanent disability obtained by the  
6 32 employee is too high, the employer has the right to obtain  
6 33 another medical opinion from a physician of the employer's  
6 34 choosing.

6 35 The bill applies to injuries occurring on or after January  
7 1 1, 2009.