

Senate File 2364

H-8215

1 Amend Senate File 2364, as amended, passed, and reprinted by
2 the Senate, as follows:

3 1. By striking everything after the enacting clause and
4 inserting:

5 <Section 1. Section 85.27, subsection 4, Code 2020, is
6 amended to read as follows:

7 4. a. (1) For purposes of this section, the employer is
8 obliged to furnish reasonable services and supplies to treat an
9 injured employee, and has the right to choose the care unless
10 the employee has predesignated a physician as provided in
11 paragraph "b". If the employer chooses the care, the employer
12 shall hold the employee harmless for the cost of care until the
13 employer notifies the employee that the employer is no longer
14 authorizing all or any part of the care and the reason for
15 the change in authorization. An employer is not liable for
16 the cost of care that the employer arranges in response to a
17 sudden emergency if the employee's condition, for which care
18 was arranged, is not related to the employment. The treatment
19 must be offered promptly and be reasonably suited to treat the
20 injury without undue inconvenience to the employee.

21 (2) If the employee has reason to be dissatisfied with the
22 care offered, the employee should communicate the basis of
23 such dissatisfaction to the employer, in writing if requested,
24 following which the employer and the employee may agree to
25 alternate care reasonably suited to treat the injury. If the
26 employer and employee cannot agree on such alternate care, the
27 commissioner may, upon application and reasonable ~~proofs~~ proof
28 of the necessity therefor, allow and order other care. In an
29 emergency, the employee may choose the employee's care at the
30 employer's expense, provided the employer or the employer's
31 agent cannot be reached immediately.

32 (3) An application made under this ~~subsection~~ paragraph
33 "a" shall be considered an original proceeding for purposes
34 of commencement and contested case proceedings under section
35 85.26. The hearing shall be conducted pursuant to chapter

1 17A. Before a hearing is scheduled, the parties may choose
2 a telephone hearing, an audio-video conference hearing, or
3 an in-person hearing. A request for an in-person hearing
4 shall be approved unless the in-person hearing would be
5 impractical because of the distance between the parties to the
6 hearing. The workers' compensation commissioner shall issue a
7 decision within ten working days of receipt of an application
8 for alternate care made pursuant to a telephone hearing or
9 audio-video conference hearing or within fourteen working days
10 of receipt of an application for alternate care made pursuant
11 to an in-person hearing. The employer shall notify an injured
12 employee of the employee's ability to contest the employer's
13 choice of care pursuant to this subsection paragraph "a".

14 b. (1) An injured employee has the right to choose care,
15 unless care needs to be provided at the job site in response to
16 a life-threatening emergency, if the employee has predesignated
17 a physician who is a primary care provider, who has previously
18 provided medical treatment to the employee and has retained
19 the employee's medical records, to provide treatment for the
20 injury. Upon hire and periodically during employment, an
21 employer shall provide written notice to all employees who have
22 not yet predesignated a physician, of their rights under this
23 paragraph "b" to predesignate such a physician for treatment of
24 an injury, in a manner prescribed by the workers' compensation
25 commissioner by rule. The employer or the employer's insurer
26 shall not coerce or otherwise attempt to influence an injured
27 employee's choice of a physician to provide care. An employee
28 shall, as soon as practicable, notify the employer of an
29 injury, and upon receiving such notice of an injury from an
30 employee, the employer shall again provide written notice to
31 that employee of the employee's rights under this paragraph
32 "b" in a manner prescribed by the workers' compensation
33 commissioner by rule. If an employer fails to notify employees
34 of their right to choose a physician as provided in this
35 paragraph "b", the employee has the right to choose any

1 physician to provide treatment for the injury and the treatment
2 shall be considered care authorized under this section.

3 (2) For the purposes of this paragraph "b", "physician"
4 includes an individual physician, a group of physicians, or
5 a clinic. For the purposes of this paragraph "b", "primary
6 care provider" means an employee's personal physician who is
7 licensed to practice medicine and surgery, osteopathic medicine
8 and surgery, or osteopathy in this state or in another state
9 and provides primary care and who is a family or general
10 practitioner, a pediatrician, an internist, an obstetrician,
11 or a gynecologist. A physician who practices in another
12 state shall not be predesignated by an employee unless the
13 physician's office is located within sixty miles of where
14 the employee is employed or was injured unless the workers'
15 compensation commissioner allows otherwise. A physician chosen
16 by an injured employee to provide treatment is authorized to
17 arrange for any consultation, surgical consultation, referral,
18 emergency care, or other specialized medical services as the
19 physician deems necessary to treat the injury. The employer
20 shall pay for all such care, unless the workers' compensation
21 commissioner determines otherwise.

22 (3) If the employer has reason to be dissatisfied with the
23 care chosen by the employee, the employer should communicate
24 the basis of such dissatisfaction to the employee, in writing
25 if requested, following which the employee and the employer may
26 agree to alternate care reasonably suited to treat the injury.
27 If the employee and employer cannot agree on such alternate
28 care, the commissioner may, upon application and reasonable
29 proof of the necessity therefor, allow and order other care.

30 (4) An application made under this paragraph "b" shall be
31 considered an original proceeding for purposes of commencement
32 and contested case proceedings under section 85.26. The
33 hearing shall be conducted pursuant to chapter 17A. Before
34 a hearing is scheduled, the parties may choose a telephone
35 hearing, an audio-video conference hearing, or an in-person

1 hearing. A request for an in-person hearing shall be approved
2 unless the in-person hearing would be impractical because of
3 the distance between the parties to the hearing. The workers'
4 compensation commissioner shall issue a decision within ten
5 working days of receipt of an application for alternate care
6 made pursuant to a telephone hearing or audio-video conference
7 hearing or within fourteen working days of receipt of an
8 application for alternate care made pursuant to an in-person
9 hearing.

10 Sec. 2. Section 85.39, Code 2020, is amended by adding the
11 following new subsection:

12 NEW SUBSECTION. 3. If the employee has chosen a physician
13 to provide care as provided in section 85.27, subsection
14 4, paragraph "b", when it is medically indicated that no
15 significant improvement from an injury is anticipated, the
16 employee may obtain a medical opinion from the employee's
17 physician, at the employer's expense, regarding the extent of
18 the employee's permanent disability. If the employee obtains
19 such an evaluation and the employer believes this evaluation
20 of permanent disability to be too high, the employer may
21 arrange for a medical examination of the injured employee by a
22 physician of the employer's choice for the purpose of obtaining
23 a medical opinion regarding the extent of the employee's
24 permanent disability. If an employee is required to leave
25 work for which the employee is being paid wages to attend
26 an examination under this subsection, the employee shall be
27 compensated at the employee's regular rate for the time the
28 employee is required to leave work, and the employee shall be
29 furnished transportation to and from the place of examination,
30 or the employer may elect to pay the employee the reasonable
31 cost of transportation. The physician chosen by the employer
32 to conduct the examination has the right to confer with and
33 obtain from any physician who has treated the injured employee
34 sufficient history of the injury to make a proper examination.
35 The refusal by the employee to submit to the examination shall

1 suspend the employee's right to any compensation for the period
2 of the refusal. Compensation shall not be payable for the
3 period of suspension.

4 Sec. 3. APPLICABILITY. This Act applies to injuries
5 occurring on or after January 1, 2021.>

6 2. Title page, by striking lines 1 through 5 and inserting
7 <An Act relating to the choice of doctor to treat an injured
8 employee under workers' compensation laws and including
9 applicability date provisions.>

HUNTER of Polk