

# House File 2608 - Introduced

HOUSE FILE \_\_\_\_\_  
BY COMMITTEE ON LABOR

(SUCCESSOR TO HSB 771)

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 6539HV 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 unless care needs to be provided at the job site in response  
2 13 to a life-threatening emergency, if the employee has  
2 14 predesignated a physician who is a primary care provider, who  
2 15 has previously provided medical treatment to the employee and  
2 16 has retained the employee's medical records, to provide  
2 17 treatment for the injury. Upon hire and periodically during

2 18 employment, an employer shall provide written notice to all  
2 19 employees who have not yet predesignated a physician, of their  
2 20 rights under this paragraph "b" to predesignate such a  
2 21 physician for treatment of an injury, in a manner prescribed  
2 22 by the workers' compensation commissioner by rule. The  
2 23 employer or the employer's insurer shall not coerce or  
2 24 otherwise attempt to influence an injured employee's choice of  
2 25 a physician to provide care. An employee shall, as soon as  
2 26 practicable, notify the employer of an injury, and upon  
2 27 receiving such notice of an injury from an employee, the  
2 28 employer shall again provide written notice to that employee  
2 29 of the employee's rights under this paragraph "b" in a manner  
2 30 prescribed by the workers' compensation commissioner by rule.  
2 31 If an employer fails to notify employees of their right to  
2 32 choose a physician as provided in this paragraph "b", the  
2 33 employee has the right to choose any physician to provide  
2 34 treatment for the injury and the treatment shall be considered  
2 35 care authorized under this section.

3 1 (2) For the purposes of this paragraph "b", "physician"  
3 2 includes an individual physician, a group of physicians, or a  
3 3 clinic. For the purposes of this paragraph "b", "primary care  
3 4 provider" means an employee's personal physician who is  
3 5 licensed to practice medicine and surgery, osteopathic  
3 6 medicine and surgery, or osteopathy in this state or in  
3 7 another state and provides primary care who is a family or  
3 8 general practitioner, a pediatrician, an internist, an  
3 9 obstetrician, or a gynecologist. A physician who practices in  
3 10 another state shall not be predesignated by an employee unless  
3 11 the physician's office is located within sixty miles of where  
3 12 the employee is employed or was injured unless the workers'  
3 13 compensation commissioner allows otherwise. A physician  
3 14 chosen by an injured employee to provide treatment is  
3 15 authorized to arrange for any consultation, surgical  
3 16 consultation, referral, emergency care, or other specialized  
3 17 medical services as the physician deems necessary to treat the  
3 18 injury. The employer shall pay for all such care, unless the  
3 19 workers' compensation commissioner determines otherwise.

3 20 (3) If the employer has reason to be dissatisfied with the  
3 21 care chosen by the employee, the employer should communicate  
3 22 the basis of such dissatisfaction to the employee, in writing  
3 23 if requested, following which the employee and the employer  
3 24 may agree to alternate care reasonably suited to treat the  
3 25 injury. If the employee and employer cannot agree on such  
3 26 alternate care, the commissioner may, upon application and  
3 27 reasonable proof of the necessity therefor, allow and order  
3 28 other care.

3 29 (4) An application made under this paragraph "b" shall be  
3 30 considered an original proceeding for purposes of commencement  
3 31 and contested case proceedings under section 85.26. The  
3 32 hearing shall be conducted pursuant to chapter 17A. Before a  
3 33 hearing is scheduled, the parties may choose a telephone  
3 34 hearing, an audio-video conference hearing, or an in-person  
3 35 hearing. A request for an in-person hearing shall be approved  
4 1 unless the in-person hearing would be impractical because of  
4 2 the distance between the parties to the hearing. The workers'  
4 3 compensation commissioner shall issue a decision within ten  
4 4 working days of receipt of an application for alternate care  
4 5 made pursuant to a telephone hearing or audio-video conference  
4 6 hearing or within fourteen working days of receipt of an  
4 7 application for alternate care made pursuant to an in-person  
4 8 hearing.

4 9 Sec. 2. Section 85.39, Code 2007, is amended to read as  
4 10 follows:

4 11 85.39 EXAMINATION OF INJURED EMPLOYEES.

4 12 1. a. After an injury, the employee, if requested by the  
4 13 employer, shall submit for examination at some reasonable time  
4 14 and place and as often as reasonably requested, to a physician  
4 15 or physicians authorized to practice under the laws of this  
4 16 state or another state, without cost to the employee; but if  
4 17 the employee requests, the employee, at the employee's own  
4 18 cost, is entitled to have a physician or physicians of the  
4 19 employee's own selection present to participate in the  
4 20 examination. If an employee is required to leave work for  
4 21 which the employee is being paid wages to attend the requested  
4 22 examination, the employee shall be compensated at the  
4 23 employee's regular rate for the time the employee is required  
4 24 to leave work, and the employee shall be furnished  
4 25 transportation to and from the place of examination, or the  
4 26 employer may elect to pay the employee the reasonable cost of  
4 27 the transportation. The refusal of the employee to submit to  
4 28 the examination shall suspend the employee's right to any

4 29 compensation for the period of the refusal. Compensation  
4 30 shall not be payable for the period of suspension.  
4 31 b. If an evaluation of permanent disability has been made  
4 32 by a physician retained by the employer and the employee  
4 33 believes this evaluation to be too low, the employee shall,  
4 34 upon application to the commissioner and upon delivery of a  
4 35 copy of the application to the employer and its insurance  
5 1 carrier, be reimbursed by the employer the reasonable fee for  
5 2 a subsequent examination by a physician of the employee's own  
5 3 choice, and reasonably necessary transportation expenses  
5 4 incurred for the examination. The physician chosen by the  
5 5 employee has the right to confer with and obtain from the  
5 6 employer-retained physician sufficient history of the injury  
5 7 to make a proper examination.

5 8 2. If the employee has chosen a physician to provide care  
5 9 as provided in section 85.27, subsection 4, paragraph "b",  
5 10 when it is medically indicated that no significant improvement  
5 11 from an injury is anticipated, the employee may obtain a  
5 12 medical opinion from the employee's physician, at the  
5 13 employer's expense, regarding the extent of the employee's  
5 14 permanent disability. If the employee obtains such an  
5 15 evaluation and the employer believes this evaluation of  
5 16 permanent disability to be too high, the employer may arrange  
5 17 for a medical examination of the injured employee by a  
5 18 physician of the employer's choice for the purpose of  
5 19 obtaining a medical opinion regarding the extent of the  
5 20 employee's permanent disability. If an employee is required  
5 21 to leave work for which the employee is being paid wages to  
5 22 attend an examination under this subsection, the employee  
5 23 shall be compensated at the employee's regular rate for the  
5 24 time the employee is required to leave work, and the employee  
5 25 shall be furnished transportation to and from the place of  
5 26 examination, or the employer may elect to pay the employee the  
5 27 reasonable cost of transportation. The physician chosen by  
5 28 the employer to conduct the examination has the right to  
5 29 confer with and obtain from any physician who has treated the  
5 30 injured employee sufficient history of the injury to make a  
5 31 proper examination. The refusal by the employee to submit to  
5 32 the examination shall suspend the employee's right to any  
5 33 compensation for the period of the refusal. Compensation  
5 34 shall not be payable for the period of suspension.

5 35 Sec. 3. APPLICABILITY DATE. This Act applies to injuries  
6 1 occurring on or after January 1, 2009.

6 2 EXPLANATION  
6 3 This bill relates to the choice of a physician to treat an  
6 4 injured employee under the state's workers' compensation laws.  
6 5 The bill allows the employer to choose care unless the  
6 6 employee has predesignated a physician as provided in the  
6 7 bill.

6 8 The bill gives an employee the right to predesignate a  
6 9 physician who is a primary care provider, who has previously  
6 10 provided treatment to the employee and has retained the  
6 11 employee's medical records, to provide treatment for a  
6 12 work-related injury. The employer is required to provide  
6 13 written notice to employees of this right upon hire, and  
6 14 periodically during employment, and upon receiving notice of  
6 15 an injury from an employee who has not yet predesignated a  
6 16 physician of their right to do so, in a manner prescribed by  
6 17 the workers' compensation commissioner. An employer or an  
6 18 employer's insurer shall not coerce or otherwise attempt to  
6 19 influence an injured employee's choice of a physician.

6 20 If the employer fails to provide such notification, an  
6 21 injured employee has the right to choose any physician to  
6 22 provide treatment for the work-related injury and that  
6 23 treatment shall be considered authorized care.

6 24 If the employer or employee is dissatisfied with the care  
6 25 chosen by the other party, the dissatisfied party is required  
6 26 to communicate the basis of dissatisfaction to the other party  
6 27 in writing and the parties may agree to alternate care  
6 28 reasonably suited to treat the injury. If the parties cannot  
6 29 agree to such alternate care, the dissatisfied party may make  
6 30 an application for alternate care to the commissioner.

6 31 An application for alternate care is an original proceeding  
6 32 and is treated as a contested case. A party may request that  
6 33 the hearing be held in person, by telephone, or by audio-video  
6 34 conference. The commissioner is required to issue a decision  
6 35 within 10 working days of receipt of an application made  
7 1 pursuant to a telephone hearing or audio-video conference  
7 2 hearing and within 14 days of an in-person hearing.

7 3 Code section 85.39 is amended to provide that if the  
7 4 employee has chosen care, when it is medically indicated that

7 5 no significant improvement from an injury is anticipated, the  
7 6 employee may obtain a medical opinion regarding the extent of  
7 7 the employee's permanent disability. If the employer believes  
7 8 that the evaluation of permanent disability obtained by the  
7 9 employee is too high, the employer has the right to obtain  
7 10 another medical opinion from a physician of the employer's  
7 11 choosing.  
7 12 The bill applies to injuries occurring on or after January  
7 13 1, 2009.  
7 14 LSB 6539HV 82  
7 15 av/nh/5