

House File 2308 - Introduced

HOUSE FILE 2308

BY ISENHART

A BILL FOR

1 An Act relating to the state's workers' compensation laws by
2 modifying alternate care procedures for medical treatment,
3 creating registries of physicians who treat and evaluate
4 work-related injuries, providing for the retention of
5 a medical director, creating a state workplace injury
6 care providers registry fund, establishing a workers'
7 compensation advisory board, providing for and appropriating
8 fees, and including for effective date provisions.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 85.27, subsection 4, Code 2009, is
2 amended by striking the subsection and inserting in lieu
3 thereof the following:

4 4. a. For purposes of this section, the employer is
5 obligated to furnish reasonable services and supplies to
6 treat an injured employee and has the right to predesignate
7 the initial provider of medical care. Upon receiving
8 notification of an injury, the employer is also obligated
9 to provide the injured employee with written information on
10 the state's workers' compensation laws, including the rights
11 and responsibilities of the employee and the employer and to
12 document in writing that the employee received the information
13 in a timely manner. The commissioner shall provide, by
14 administrative rule, the format, content, and procedure for the
15 predesignation of the initial provider of medical care by the
16 employer and the provision of this information to the injured
17 employee.

18 (1) The employer shall promptly provide medical care for
19 the injury and may predesignate a licensed physician to treat
20 the injury and any condition the physician believes is causally
21 related to the injury. If the employer has not predesignated
22 a licensed physician to treat the injury and any condition
23 causally related to the injury, the employee may designate a
24 licensed physician of the employee's choosing to provide that
25 treatment.

26 (2) The employer may predesignate a physician listed in the
27 state registry of workplace injury care providers, as provided
28 in section 85.73, to treat the injury and any condition
29 causally related to the injury.

30 (3) The physician predesignated by the employer or
31 designated by the employee shall be authorized by the employer
32 to treat the injury at the employer's expense in any manner
33 deemed appropriate by the physician, without a requirement of
34 preapproval for such referrals by the employer, by an agent or
35 representative of the employer, or the employer's insurer.

1 (4) The physician predesignated by the employer or
2 designated by the employee shall be authorized to make
3 referrals to other physicians, therapists, or health care
4 providers of specialized services at the employer's expense
5 without a requirement of preapproval for such referrals by the
6 employer, an agent or representative of the employer, or the
7 employer's insurer.

8 b. The physician predesignated by the employer or designated
9 by the employee to treat the injured employee shall provide
10 ongoing written documentation of the physician's opinions,
11 treatment recommendations, and care plan to the employee. Such
12 documentation shall indicate whether or not the physician's
13 opinions, treatment recommendations, and care plan are in
14 accord with the most recent edition of either the official
15 disability guidelines and treatment guidelines in workers'
16 compensation published by the work loss data institute or the
17 American college of occupational and environmental medicine
18 practice guidelines published by the American college of
19 occupational and environmental medicine, and if so, shall cite
20 the appropriate guidelines.

21 c. (1) If an employee receives treatment for an injury
22 from a physician predesignated by the employer and prior to
23 an evaluation of permanent disability by that predesignated
24 physician, the injured employee may be examined by and obtain a
25 second opinion, treatment recommendations, or a care plan from
26 another licensed physician of the employee's choosing. The
27 employee may request and the employer shall pay the reasonable
28 costs associated with this examination, including reimbursement
29 for transportation expenses incurred by the employee for
30 the examination. The employee shall notify the physician
31 predesignated by the employer that the employee is consulting
32 with another physician of the employee's choosing.

33 (2) If an employee receives treatment for an injury from
34 a physician designated by the employee, the employer is not
35 responsible for the costs of obtaining a second opinion,

1 treatment recommendations, or a care plan from an additional
2 licensed physician of the employee's choosing.

3 *d.* If the employer or employee has reason to be dissatisfied
4 with the care of a treating physician predesignated or
5 designated by the other party or with any referral made by that
6 physician, the employer and employee may mutually agree upon
7 alternate care.

8 *e.* If the employer and employee cannot agree on alternate
9 care, either the employer or employee may notify an insurance
10 claims specialist within the division of workers' compensation,
11 who shall, within five working days schedule a conference
12 between the employer and employee by any reasonable manner
13 available to review the basis for dissatisfaction and provide
14 an advisory opinion to resolve the medical care dispute.

15 *f.* If, following the conference with the insurance claims
16 specialist, the employer and employee cannot agree on such
17 alternate care, the workers' compensation commissioner
18 may, upon application and reasonable proof of the necessity
19 therefor, allow and order alternate care.

20 (1) The employee is responsible to make the application
21 for alternate care and to provide reasonable proof for the
22 necessity of alternate care if all of the following actions
23 occurred:

24 (a) The employer provided written information about the
25 state's workers' compensation laws as provided in paragraph
26 "a".

27 (b) The employer predesignated a treating physician listed
28 on the state registry of workplace injury care providers as
29 provided in paragraph "a", subparagraph (2).

30 (c) The treating physician predesignated by the employer
31 provided written documentation of the physician's opinions,
32 treatment recommendations, and care plan to the employee along
33 with a citation to appropriate treatment guidelines as provided
34 in paragraph "b".

35 (2) The employer is responsible to make the application

1 for alternate care and to provide reasonable proof for the
2 necessity of alternate care if all of the actions specified in
3 subparagraph (1) did not occur or if the employee designated
4 the treating physician to treat the injury.

5 (3) The commissioner shall not be bound by the advisory
6 opinion of the insurance claims specialist. Upon application,
7 the workers' compensation commissioner shall conduct a hearing
8 in any reasonable manner to effectuate a prompt resolution of
9 the alternate care dispute. The commissioner shall issue a
10 decision within ten working days of receipt of an application
11 for alternate care.

12 (4) The employer or its insurer is liable for the costs of
13 all medical care provided by a physician predesignated by the
14 employer or designated by the employee pursuant to paragraph
15 "a", subparagraph (1), or from referrals from the predesignated
16 or designated physician, and shall hold the employee harmless
17 for the cost of care by the predesignated or designated care
18 providers.

19 (5) In an emergency, the employee may choose the employee's
20 care at the employer's expense, provided the employer or the
21 employer's agent cannot be immediately contacted to indicate
22 who the employer has predesignated as a treating physician.

23 (6) The employer shall notify an injured employee of the
24 employee's ability to contest the employer's choice of the
25 predesignated treating physician or other provider of medical
26 care as part of the information given to the employee as
27 required under paragraph "a".

28 g. (1) The employer has the right to request an employee
29 to submit, as often as is reasonable and at a reasonable time
30 and place, to an examination by a licensed physician chosen
31 by the employer for any purpose relevant to the employer's
32 duties to provide benefits to the employee under this chapter,
33 or chapters 85A, 85B, and 86. If the employer makes such a
34 request to an employee in writing and offers to advance or
35 reimburse the employee's transportation expenses incurred

1 in traveling to and from the place of the examination, the
2 employee shall submit to the examination.

3 (2) Each time that an employee is requested to and submits
4 to an examination requested by the employer as provided in
5 subparagraph (1), the employee has the right to be examined by
6 a licensed physician chosen by the employee for any purpose
7 relevant to the employer's duties to provide benefits to the
8 employee as described in subparagraph (1).

9 (3) Each time that an employer obtains an evaluation of
10 an employee's permanent disability by a physician chosen
11 by the employer, if the injured employee believes that the
12 evaluation of the extent of the employee's permanent disability
13 is too low, the employee may obtain a subsequent examination
14 and evaluation of the employee's permanent disability by a
15 physician of the employee's choice. The physician chosen by
16 the employee has the right to confer with and obtain sufficient
17 medical history of the employee from the physician who examined
18 the employee on behalf of the employer to make a proper
19 evaluation of the employee's permanent disability.

20 (4) The employer shall promptly pay the costs of any
21 examination obtained pursuant to this paragraph "g", or if
22 necessary to obtain the examination, advance the costs of
23 the examination, and pay the employee's reasonably necessary
24 transportation expenses incurred in traveling to and from the
25 place of any examination and shall hold the employee harmless
26 for the cost of all examinations and medical care provided
27 pursuant to this paragraph "g" as well as the employee's
28 reasonably necessary transportation expenses.

29 **Sec. 2. NEW SECTION. 85.73 State workplace injury care**
30 **providers — registries — fees — medical director.**

31 1. The workers' compensation commissioner shall establish
32 and maintain a registry of physicians licensed in the state
33 that offer or provide treatment of work-related injuries.

34 a. The commissioner shall, by administrative rule, establish
35 requirements for a physician to be listed on the registry and

1 establish a registration fee.

2 *b.* This subsection shall not be construed to require a
3 physician to be listed on the registry in order to offer or
4 provide treatment of work-related injuries.

5 *c.* This subsection shall not be construed to prohibit an
6 employer from predesignating or an employee from designating a
7 physician to provide treatment of a work-related injury who is
8 not listed on the registry.

9 2. The commissioner shall establish and maintain a separate
10 registry of licensed physicians trained to perform independent
11 medical evaluations and to issue impairment ratings of injured
12 employees.

13 *a.* The commissioner shall establish, by administrative rule,
14 minimum training requirements for a physician to be listed on
15 the registry and establish a registration fee.

16 *b.* The commissioner shall also provide by administrative
17 rule that a physician must be listed on the registry in order
18 to perform independent medical evaluations and issue impairment
19 ratings of injured employees in this state. The commissioner
20 may prohibit an employer or employee from using an independent
21 medical evaluation or an impairment rating of an injured
22 employee from a physician who is not listed on the registry
23 as evidence at a hearing to determine benefits under Iowa's
24 workers' compensation laws.

25 3. The workers' compensation commissioner may retain
26 the services of a medical director to assist the division of
27 workers' compensation in advancing occupational health in Iowa
28 and to advise the commissioner on how to successfully apply and
29 administer the state's workers' compensation laws, including
30 assessments of the use of evidence-based care in treating
31 work-related injuries.

32 4. All fees collected pursuant to this section shall be
33 credited to the state workplace injury care providers registry
34 fund created in section 85.74 and are appropriated to the
35 division to be used to carry out the provisions of this section

1 including but not limited to establishing and maintaining
2 the registries described in subsections 1 and 2, retaining a
3 medical director as set forth in subsection 3, and providing
4 for the expenses of the workers' compensation advisory board
5 created in section 85.75.

6 Sec. 3. NEW SECTION. **85.74 State workplace injury care**
7 **providers registry fund.**

8 1. A state workplace injury care providers registry fund
9 is created in the state treasury as a separate fund under the
10 control of the division of workers' compensation. All moneys
11 appropriated or transferred to the fund shall be credited to
12 the fund. All moneys deposited or paid into the fund shall
13 only be appropriated to the workers' compensation commissioner
14 to be used for the purposes set forth in section 85.73.

15 2. Notwithstanding section 8.33, any balance in the fund
16 on June 30 of each fiscal year shall not revert to the general
17 fund of the state, but shall be available for purposes of
18 section 85.73 in subsequent fiscal years. Notwithstanding
19 section 12C.7, interest earnings on moneys in the fund shall
20 be credited to the fund.

21 Sec. 4. NEW SECTION. **85.75 Workers' compensation advisory**
22 **board.**

23 1. A workers' compensation advisory board is established
24 within the division of workers' compensation. The board shall
25 be composed of the following persons:

26 *a.* Two members appointed by the governor and subject to
27 confirmation by the senate pursuant to section 2.32, one
28 representing employers, and one representing organized labor.

29 *b.* Two members appointed jointly by the president and the
30 minority leader of the senate, one representing employers, and
31 one representing organized labor.

32 *c.* Two members appointed jointly by the speaker and
33 the minority leader of the house of representatives, one
34 representing employers and one representing organized labor.

35 2. The members shall serve six-year terms beginning and

1 ending as provided in section 69.19. However, the initial
2 members shall be appointed to serve for less than six years to
3 ensure members serve staggered terms. A member is eligible for
4 reappointment. A vacancy on the board shall be filled for the
5 unexpired portion of the regular term in the same manner as
6 regular appointments are made.

7 3. One representative of employers and one of organized
8 labor shall be elected as co-chairpersons by the board and
9 shall serve for two-year staggered terms. However, one of
10 the initial co-chairpersons shall be elected to serve for
11 a three-year term to ensure that the co-chairpersons serve
12 staggered terms.

13 4. Four members constitute a quorum. The affirmative vote
14 of a majority of the voting members present as well as the
15 approval of at least two employer representatives and two labor
16 representatives is necessary for any substantive action to be
17 taken by the board. The majority shall not include any member
18 who has a conflict of interest and a statement by a member
19 that the member has a conflict of interest is conclusive for
20 this purpose. A vacancy in the membership does not impair the
21 duties of the board.

22 5. The board shall meet on a regular basis and at the call
23 of the co-chairpersons or upon the written request to the
24 co-chairpersons of two or more members.

25 6. The members are entitled to receive a per diem allowance
26 and actual expense reimbursement as specified in section 7E.6.

27 7. The purpose of the board is to assist the workers'
28 compensation commissioner in the successful administration
29 of the division of workers' compensation and to make
30 recommendations to the governor and the general assembly
31 regarding workplace safety and improvements to the state's
32 workers' compensation system.

33 8. The responsibilities of the board are as follows:

34 a. Monitor and support the successful implementation of the
35 state's workers' compensation laws.

1 **b.** Identify problems and recommend solutions and
2 improvements with respect to the effectiveness of the state's
3 workers' compensation system, to the division of workers'
4 compensation and to the governor and the general assembly.

5 **c.** Assist the workers' compensation commissioner in
6 developing and implementing a program to train and certify
7 claims adjusters for practice in Iowa.

8 **d.** Work with all stakeholders, including the medical
9 director retained pursuant to section 85.73, to develop and
10 promote a system of high-performance, transparent, accountable,
11 and evidence-based health care for the treatment and prevention
12 of workplace injuries.

13 **e.** Make recommendations to and receive recommendations from
14 the nonprofit Iowa workers' compensation advisory committee
15 regarding topics for stakeholder and public education with
16 respect to the application of workers' compensation law and
17 successful workers' compensation programs and strategies, as
18 well as the prevention of workplace injuries.

19 Sec. 5. EFFECTIVE DATE. The following provision or
20 provisions of this Act take effect January 1, 2011:

21 1. The section of this Act enacting section 85.73,
22 subsections 1, 3, and 4.

23 2. The sections of this Act enacting sections 85.74 and
24 85.75.

25 Sec. 6. EFFECTIVE DATE. The following provision or
26 provisions of this Act take effect July 1, 2011:

27 1. The section of this Act amending section 85.27,
28 subsection 4.

29 2. The section of this Act enacting section 85.73,
30 subsection 2.

31 EXPLANATION

32 This bill relates to the state's workers' compensation laws
33 by modifying alternate care procedures for medical treatment,
34 creating registries of physicians who treat and evaluate
35 work-related injuries, providing for the retention of a medical

1 director, creating a state workplace injury care providers
2 registry fund, establishing a workers' compensation advisory
3 board, providing for fees, and providing effective dates.

4 ALTERNATE CARE. Code section 85.27(4), concerning the
5 provision of medical services, requires an employer to provide
6 written information about the state's workers' compensation
7 laws to an employee upon receiving notification that the
8 employee has suffered a work-related injury. The employer has
9 the right to predesignate a licensed physician to treat the
10 injury and make necessary referrals and may predesignate a
11 physician listed on the state registry of workplace injury care
12 providers. If the employer does not predesignate a treating
13 physician, the employee may designate a physician of the
14 employee's choosing to provide the treatment.

15 The physician predesignated by the employer or designated
16 by the employee is required to provide ongoing written
17 documentation of the physician's opinions, treatment
18 recommendations, and care plan to the employee along with
19 information about whether the opinions, recommendations, and
20 care plan are in accord with either the official disability
21 guidelines and treatment guidelines in workers' compensation
22 published by the work loss data institute or the American
23 college of occupational and environmental medicine practice
24 guidelines (ACOEM), and if so, citation to the appropriate
25 guidelines. The employee has the right to request and obtain
26 a second opinion from another licensed physician of the
27 employee's choosing at the employer's expense.

28 If the employer or employee is dissatisfied with the care
29 of a treating physician predesignated or designated by the
30 other party or with any referral made by that physician, the
31 employer and employee may mutually agree to alternate care. If
32 they cannot agree on alternate care, either party may notify
33 an insurance claims specialist within the division of workers'
34 compensation, who shall, within five working days, schedule
35 a conference between the parties to review the basis for

1 dissatisfaction and provide an advisory opinion to resolve the
2 dispute. If the parties still cannot agree on alternate care
3 after this conference, the workers' compensation commissioner
4 may, upon application and reasonable proof of the necessity,
5 allow and order alternate care.

6 The employee is responsible to make the application for
7 alternate care and to provide such reasonable proof to the
8 commissioner if the employer provided written information
9 about the state's workers' compensation laws at the time of
10 notification of the employee's injury, and predesignated a
11 treating physician listed on the state registry of workplace
12 injury care providers, and if the treating physician
13 predesignated by the employer provided written documentation
14 to the employee of the physician's opinions, treatment
15 recommendations, and care plan to the employee along with
16 citation to the appropriate treatment guidelines.

17 The employer is responsible for making the application for
18 alternate care and providing reasonable proof if the employer
19 and predesignated treating physician did not act as described
20 above or if the employee designated the treating physician to
21 treat the work injury.

22 The commissioner is not bound by the advisory opinion of
23 the claims specialist and must conduct a hearing and issue
24 a decision within 10 days of receipt of an application for
25 alternate care.

26 The employer has the right to request an employee to submit,
27 as often as is reasonable and at a reasonable time and place
28 to an examination by a licensed physician chosen by the
29 employer for any purpose relevant to the employer's duties to
30 provide benefits to the employee under the state's workers'
31 compensation laws and at the employer's expense. If the
32 employer makes the request in writing and pays all expenses,
33 including transportation, the employee shall submit to the
34 examination. Each time that the employer obtains an evaluation
35 of an employee's permanent disability by a physician chosen by

1 the employer, if the employee believes that the evaluation of
2 disability is too low, the employee may obtain a subsequent
3 examination and evaluation by a physician of the employee's
4 choosing at the employer's expense, including transportation
5 expenses to and from the place of the examination.

6 PROVIDER REGISTRIES — FEES — MEDICAL DIRECTOR. New Code
7 section 85.73 requires the workers' compensation commissioner
8 to establish and maintain a registry of licensed physicians
9 that offer or provide treatment of work-related injuries.
10 The commissioner shall, by administrative rule, establish
11 requirements for a physician to be listed on the registry and
12 establish a registration fee. The provision shall not be
13 construed to require a physician to be listed on the registry
14 in order to offer or provide treatment of work-related injuries
15 or to prohibit an employer or employee from predesignating or
16 designating a physician to provide treatment who is not listed
17 on the registry.

18 The commissioner is also required to establish and maintain
19 a separate registry of licensed physicians trained to perform
20 independent medical evaluations and to issue impairment ratings
21 of injured employees. The commissioner shall establish, by
22 administrative rule, minimum training requirements for a
23 physician to be listed on the registry and establish a fee. A
24 physician must be listed on the registry in order to perform
25 independent medical evaluations and issue impairment ratings
26 of injured employees in this state. The commissioner may
27 prohibit an employer or employee from using an independent
28 medical evaluation or impairment rating of an injured employee
29 from a physician who is not listed on the registry as evidence
30 at a hearing to determine benefits under Iowa's workers'
31 compensation laws.

32 The commissioner is authorized to retain the services
33 of a medical director to assist the division of workers'
34 compensation in advancing the field of occupational health in
35 Iowa and to advise the commissioner on how to successfully

1 apply and administer the state's workers' compensation laws.
2 STATE WORKPLACE INJURY CARE PROVIDERS REGISTRY FUND. All
3 registration fees collected pursuant to new Code section
4 85.73 shall be credited to the state workplace injury care
5 providers registry fund created in new Code section 85.74 and
6 are appropriated to the division of workers' compensation to
7 carry out the provisions of new Code section 85.73 including
8 establishing and maintaining the two physician registries,
9 retaining a medical director, and for the expenses of the
10 workers' compensation advisory board created in new Code
11 section 85.75.

12 WORKERS' COMPENSATION ADVISORY BOARD. New Code section
13 85.75 establishes a workers' compensation advisory board within
14 the division of workers' compensation that is composed of six
15 members, three representing employers and three representing
16 organized labor. The governor appoints two of the members,
17 the president and the minority leader of the senate appoint
18 two members, and the speaker and the minority leader of the
19 house of representatives appoint two members. The members
20 serve six-year staggered terms. The purpose of the board is to
21 assist the workers' compensation commissioner in the successful
22 administration of the division of workers' compensation and to
23 make recommendations to the governor and the general assembly
24 regarding workplace safety and improvements to the state's
25 workers' compensation system.

26 EFFECTIVE DATES. The sections of the bill creating the
27 provider registry for treatment of work injuries, the provider
28 registry fund, and the advisory board take effect January 1,
29 2011. The sections of the bill pertaining to alternate care
30 procedures and required registration of physicians performing
31 independent medical evaluations and impairment ratings take
32 effect July 1, 2011.