

House File 795 - Introduced

HOUSE FILE _____
BY COMMITTEE ON LABOR

(SUCCESSOR TO HF 530)

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
3 effective and applicability dates.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 1613HV 83
6 av/rj/5

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1 1 Section 1. Section 85.27, subsection 4, Code 2009, is
1 2 amended by striking the subsection and inserting in lieu
1 3 thereof the following:
1 4 4. a. For purposes of this section, the employer is
1 5 obligated to furnish reasonable services and supplies for the
1 6 treatment of an injured employee by the employee's
1 7 predesignated treating physician, who shall be the initial
1 8 provider of medical care. An injured employee has the right
1 9 to predesignate a physician, with whom the employee had a
1 10 previous relationship prior to the work injury, to provide
1 11 treatment for the injury. When an injury occurs, the employer
1 12 shall promptly provide medical care by the employee's
1 13 predesignated treating physician, as defined in section 135.1,
1 14 for the work injury and any condition the physician believes
1 15 is causally related to that injury. The employee's
1 16 predesignated treating physician includes an individual
1 17 physician, a group of physicians, or a specific medical
1 18 clinic.
1 19 (1) The predesignated treating physician shall be
1 20 authorized by the employer to treat the injury at the
1 21 employer's expense, in any manner deemed appropriate by the
1 22 physician, without a requirement of preapproval by a
1 23 representative or agent of the employer or the employer's
1 24 insurer for diagnostic testing or treatment modalities.
1 25 (2) The predesignated treating physician shall also be
1 26 authorized to refer the injured employee to other physicians,
1 27 therapists, or medical providers of specialized services, at
1 28 the employer's expense. Such referrals by the predesignated
1 29 treating physician shall be made without a requirement of
1 30 preapproval by a representative or agent of the employer or
1 31 the employer's insurer.
1 32 b. Upon hire and annually during employment an employer
1 33 shall provide written notice to all employees of their rights
1 34 under this subsection to predesignate a physician for
1 35 treatment of a workplace injury, in a manner prescribed by the
2 1 workers' compensation commissioner by rule. The employer or
2 2 the employer's insurer shall not make suggestions or otherwise
2 3 attempt to influence an employee's choice of a physician to
2 4 provide such care. An employee shall, as soon as is
2 5 practicable, notify the employer of an injury and upon
2 6 receiving such notice of an injury from an employee, the
2 7 employer shall again provide written notice to that employee
2 8 of the employee's rights under this subsection in a manner
2 9 prescribed by the workers' compensation commissioner by rule.
2 10 If an employer fails to notify an employee of the employee's
2 11 right to choose a physician as provided in this subsection,
2 12 the employee has the right to choose any physician to provide
2 13 treatment for the injury and the treatment shall be considered
2 14 care authorized under this section. The physician chosen by
2 15 an injured employee to treat the injury shall be authorized to
2 16 provide care as provided in paragraph "a", subparagraphs (1)
2 17 and (2), of this subsection. The employer shall pay for all

2 18 such care, unless the workers' compensation commissioner
2 19 determines otherwise.

2 20 c. The employer shall establish a panel of four physicians
2 21 from whom an injured employee may choose treatment for an
2 22 injury if the employee has not predesignated a physician with
2 23 whom the employee had a previous relationship prior to the
2 24 injury, and the employee or the employee's representative
2 25 shall choose a physician who is included on that panel to
2 26 provide treatment. If the employer has funded, in whole or in
2 27 part, a group medical plan for its employees, the panel shall
2 28 be chosen from the physicians participating in the group plan.
2 29 A collective bargaining agreement made between an employer and
2 30 an employee organization may provide that the employer and
2 31 employee organization jointly determine which physicians will
2 32 be included on the panel. If the employer fails to establish
2 33 such a panel as provided in this paragraph, an injured
2 34 employee shall have the right to choose any physician of the
2 35 employee's choice to provide treatment for the injury and the
3 1 treatment shall be considered care authorized under this
3 2 section. After an injured employee has received treatment for
3 3 a period of thirty days, the employee or the employee's
3 4 representative has the right to choose a physician who is not
3 5 included on the panel to provide continued treatment for the
3 6 injury, at the employer's expense.

3 7 d. If the employer or employee has reason to be
3 8 dissatisfied with the care provided by the predesignated
3 9 treating physician or with the care provided by a physician,
3 10 therapist, or medical provider to whom the injured employee
3 11 was referred by the predesignated treating physician,
3 12 including concerns about the cost of the medical treatment
3 13 ordered or provided, the employer and the employee may
3 14 mutually agree upon alternate care.

3 15 (1) If the employer and employee cannot agree on alternate
3 16 care, either the employer or the employee shall notify an
3 17 insurance claims specialist with the division of workers'
3 18 compensation who shall, within five working days, schedule a
3 19 conference between the employer and the employee by any
3 20 reasonable manner available, to review the basis for
3 21 dissatisfaction and to provide an advisory opinion to resolve
3 22 the medical care dispute.

3 23 (2) If following the conference with the insurance claims
3 24 specialist, the employer and employee still cannot agree on
3 25 alternate care, the commissioner may, upon application and
3 26 reasonable proof of the necessity therefor, allow and order
3 27 alternate care. The commissioner shall not be bound by the
3 28 advisory opinion of the insurance claims specialist. Upon
3 29 application the workers' compensation commissioner shall
3 30 conduct a hearing in any reasonable manner to effectuate a
3 31 prompt resolution of the alternate care dispute. The
3 32 commissioner shall issue a decision within ten working days of
3 33 receipt of an application for alternate care. The employer or
3 34 the employer's insurer is liable for the costs of all medical
3 35 care provided by the predesignated treating physician or by a
4 1 physician, therapist, or medical provider to whom an injured
4 2 employee is referred for medical care by the predesignated
4 3 treating physician and shall hold the employee harmless for
4 4 the cost of such medical care provided.

4 5 e. In an emergency, an injured employee may choose the
4 6 employee's care at the employer's expense.

4 7 f. When it is medically indicated that no significant
4 8 improvement from an injury is anticipated, the employer shall
4 9 obtain a medical opinion regarding the extent of the
4 10 employee's permanent disability and may arrange for a medical
4 11 examination of the injured employee in order to do so. The
4 12 employee shall be paid wages, at the employee's regular rate,
4 13 plus whatever reasonable transportation expenses are incurred
4 14 while attending the examination. The physician chosen by the
4 15 employer has the right to confer with and obtain from any
4 16 physician retained by the injured employee sufficient history
4 17 of the injury to make a proper examination. The refusal of
4 18 the employee to submit to the examination shall suspend the
4 19 employee's right to any compensation during the period of the
4 20 refusal. Compensation shall not be payable for the period of
4 21 the suspension.

4 22 Sec. 2. Section 85.39, unnumbered paragraph 1, Code 2009,
4 23 is amended to read as follows:

4 24 ~~1. After an injury, the employee, if requested by the~~
~~4 25 employer, shall submit for examination at some reasonable time~~
~~4 26 and place and as often as reasonably requested, to a physician~~
~~4 27 or physicians authorized to practice under the laws of this~~
~~4 28 state or another state, without cost to the employee; but if~~

~~4 29 the employee requests, the employee, at the employee's own
4 30 cost, is entitled to have a physician or physicians of the
4 31 employee's own selection present to participate in the
4 32 examination. After the employer obtains a medical opinion
4 33 regarding the extent of an injured employee's permanent
4 34 disability pursuant to section 85.27, subsection 4, and if the
4 35 injured employee believes that the evaluation of the extent of
5 1 the permanent disability contained in the opinion is
5 2 insufficient, the employee has the right to obtain another
5 3 medical opinion from a physician of the employee's choice, at
5 4 the employer's expense.~~

5 5 2. If an employee is required to leave work for which the
5 6 employee is being paid wages to attend ~~the requested an~~
5 7 examination to obtain another medical opinion, the employee
5 8 shall be compensated at the employee's regular rate for the
5 9 time the employee is required to leave work, and the employee
5 10 shall be furnished transportation to and from the place of
5 11 examination, or the employer may elect to pay the employee the
5 12 reasonable cost of the transportation. ~~The refusal of the
5 13 employee to submit to the examination shall suspend the
5 14 employee's right to any compensation for the period of the
5 15 refusal. Compensation shall not be payable for the period of
5 16 suspension.~~

5 17 Sec. 3. Section 85.39, unnumbered paragraph 2, Code 2009,
5 18 is amended by striking the unnumbered paragraph.
5 19 Sec. 4. EFFECTIVE AND APPLICABILITY DATES. This Act takes
5 20 effect January 1, 2010, and applies to injuries occurring on
5 21 or after that date.

5 22 EXPLANATION

5 23 This bill relates to the choice of a physician to treat an
5 24 injured employee under the state's workers' compensation laws.

5 25 The bill gives an employee the right to predesignate a
5 26 treating physician as defined in Code section 135.1, with whom
5 27 the employee had a previous relationship prior to the work
5 28 injury to provide treatment for the work injury. A
5 29 predesignated treating physician is authorized to provide
5 30 treatment deemed necessary or refer the injured employee to
5 31 other medical providers for treatment, at the employer's
5 32 expense, without any requirement of preapproval by the
5 33 employer or the employer's insurer. The employer is required
5 34 to provide written notice to employees of this right upon
5 35 hire, annually during employment, and upon receiving notice of
6 1 an injury from an employee, in a manner prescribed by the
6 2 workers' compensation commissioner.

6 3 If the employer fails to provide such notification, an
6 4 injured employee has the right to choose any physician to
6 5 provide treatment for the work-related injury and that
6 6 treatment shall be considered authorized care.

6 7 If the employee has not predesignated a physician prior to
6 8 a work injury, the employee shall choose a physician from a
6 9 panel of four physicians established by the employer.

6 10 If the employer or employee is dissatisfied with the care
6 11 provided by the predesignated treating physician or by a
6 12 medical provider to whom the injured employee was referred by
6 13 the predesignated treating physician including cost concerns,
6 14 the parties may agree to alternate care. If the parties
6 15 cannot agree on such alternate care, either party shall notify
6 16 an insurance claims specialist with the division of workers'
6 17 compensation, who shall provide an advisory opinion to resolve
6 18 the dispute.

6 19 If following the conference with the insurance claims
6 20 specialist, the parties still cannot agree, the commissioner
6 21 may upon application and proof of the necessity therefor,
6 22 order alternate care. The commissioner is required to issue a
6 23 decision within 10 working days of receipt of an application
6 24 for alternate medical care.

6 25 When it is medically indicated that no significant
6 26 improvement from an injury is anticipated, the employer shall
6 27 obtain a medical opinion regarding the extent of the
6 28 employee's permanent disability and may arrange for a medical
6 29 examination of the injured employee to do so.

6 30 Code section 85.39 is amended to allow an injured employee
6 31 to obtain another medical opinion from a physician of the
6 32 employee's choice, at the employer's expense, if the employee
6 33 believes the evaluation of the employee's permanent disability
6 34 obtained by the employer is insufficient.

6 35 The bill takes effect and applies to injuries occurring on
7 1 or after January 1, 2010.