

Senate Study Bill 1119

SENATE FILE _____
BY (PROPOSED COMMITTEE ON
LABOR AND BUSINESS RELATIONS
BILL BY CHAIRPERSON COURTNEY)

Passed Senate, Date _____ Passed House, 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 effective and applicability date.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 1979XC 83
6 av/rj/5

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1 1 Section 1. Section 85.27, subsection 4, Code 2009, is
1 2 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. ~~An application made~~
~~1 29 under this subsection shall be considered an original~~
~~1 30 proceeding for purposes of commencement and contested case~~
~~1 31 proceedings under section 85.26. The hearing shall be~~
~~1 32 conducted pursuant to chapter 17A. Before a hearing is~~
~~1 33 scheduled, the parties may choose a telephone hearing or an~~
~~1 34 in-person hearing. A request for an in-person hearing shall~~
~~1 35 be approved unless the in-person hearing would be impractical~~
~~2 1 because of the distance between the parties to the hearing.~~
~~2 2 The workers' compensation commissioner shall issue a decision~~
~~2 3 within ten working days of receipt of an application for~~
~~2 4 alternate care made pursuant to a telephone hearing or within~~
~~2 5 fourteen working days of receipt of an application for~~
~~2 6 alternate care made pursuant to an in-person hearing.~~
2 7 (3) The employer shall notify an injured employee of the
2 8 employee's ability to contest the employer's choice of care
2 9 pursuant to this ~~subsection~~ paragraph "a".
2 10 b. (1) An injured employee has the right to choose care,
2 11 unless care needs to be provided at the job site in response
2 12 to a life-threatening emergency, if the employee has
2 13 predesignated a physician who is a primary care provider, who
2 14 has previously provided medical treatment to the employee and
2 15 has retained the employee's medical records, to provide
2 16 treatment for the injury. Upon hire and periodically during
2 17 employment, an employer shall provide written notice to all

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

2 35 (2) For the purposes of this paragraph "b", "physician"
3 1 includes an individual physician, a group of physicians, or a
3 2 clinic. For the purposes of this paragraph "b", "primary care
3 3 provider" means an employee's personal physician licensed to
3 4 practice medicine and surgery or osteopathic medicine and
3 5 surgery in this state or in another state who provides primary
3 6 care and is a family or general practitioner, a pediatrician,
3 7 an internist, an obstetrician, or a gynecologist. A physician
3 8 who practices in another state shall not be predesignated by
3 9 an employee unless the physician's office is located within
3 10 sixty miles of where the employee is employed or was injured
3 11 unless the workers' compensation commissioner allows
3 12 otherwise. A physician chosen by an injured employee to
3 13 provide treatment is authorized to arrange for any
3 14 consultation, surgical consultation, referral, emergency care,
3 15 or other specialized medical services as the physician deems
3 16 necessary to treat the injury. The employer shall pay for all
3 17 such care, unless the workers' compensation commissioner
3 18 determines otherwise.

3 19 (3) If the employer has reason to be dissatisfied with the
3 20 care chosen by the employee, the employer should communicate
3 21 the basis of such dissatisfaction to the employee, in writing
3 22 if requested, following which the employee and the employer
3 23 may agree to alternate care reasonably suited to treat the
3 24 injury. If the employee and employer cannot agree on such
3 25 alternate care, the commissioner may, upon application and
3 26 reasonable proof of the necessity therefor, allow and order
3 27 other care.

3 28 c. An application made to the commissioner under paragraph
3 29 "a" or paragraph "b" shall be considered an original
3 30 proceeding for purposes of commencement and contested case
3 31 proceedings under section 85.26. The hearing shall be
3 32 conducted pursuant to chapter 17A. Before a hearing is
3 33 scheduled, the parties may choose a telephone hearing, an
3 34 audio=video conference hearing, or an in-person hearing. A
3 35 request for an in-person hearing shall be approved unless the
4 1 in-person hearing would be impractical because of the distance
4 2 between the parties to the hearing. The workers' compensation
4 3 commissioner shall issue a decision within ten working days of
4 4 receipt of an application for alternate care made pursuant to
4 5 a telephone hearing or audio=video conference hearing or
4 6 within fourteen working days of receipt of an application for
4 7 alternate care made pursuant to an in-person hearing.

4 8 Sec. 2. Section 85.39, Code 2009, is amended to read as
4 9 follows:

4 10 85.39 EXAMINATION OF INJURED EMPLOYEES.

4 11 1. a. After an injury, the employee, if requested by the
4 12 employer, shall submit for examination at some reasonable time
4 13 and place and as often as reasonably requested, to a physician
4 14 or physicians authorized to practice under the laws of this
4 15 state or another state, without cost to the employee; but if
4 16 the employee requests, the employee, at the employee's own
4 17 cost, is entitled to have a physician or physicians of the
4 18 employee's own selection present to participate in the
4 19 examination. If an employee is required to leave work for
4 20 which the employee is being paid wages to attend the requested
4 21 examination, the employee shall be compensated at the
4 22 employee's regular rate for the time the employee is required
4 23 to leave work, and the employee shall be furnished
4 24 transportation to and from the place of examination, or the
4 25 employer may elect to pay the employee the reasonable cost of
4 26 the transportation. The refusal of the employee to submit to
4 27 the examination shall suspend the employee's right to any
4 28 compensation for the period of the refusal. Compensation

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

5 7 2. If the employee has chosen a physician to provide care
5 8 as provided in section 85.27, subsection 4, paragraph "b",
5 9 when it is medically indicated that no significant improvement
5 10 from an injury is anticipated, the employee may obtain a
5 11 medical opinion from the employee's physician, at the
5 12 employer's expense, regarding the extent of the employee's
5 13 permanent disability. If the employee obtains such an
5 14 evaluation and the employer believes this evaluation of
5 15 permanent disability to be too high, the employer may arrange
5 16 for a medical examination of the injured employee by a
5 17 physician of the employer's choice for the purpose of
5 18 obtaining a medical opinion regarding the extent of the
5 19 employee's permanent disability. If an employee is required
5 20 to leave work for which the employee is being paid wages to
5 21 attend an examination under this subsection, the employee
5 22 shall be compensated at the employee's regular rate for the
5 23 time the employee is required to leave work, and the employee
5 24 shall be furnished transportation to and from the place of
5 25 examination, or the employer may elect to pay the employee the
5 26 reasonable cost of transportation. The physician chosen by
5 27 the employer to conduct the examination has the right to
5 28 confer with and obtain from any physician who has treated the
5 29 injured employee sufficient history of the injury to make a
5 30 proper examination. The refusal by the employee to submit to
5 31 the examination shall suspend the employee's right to any
5 32 compensation for the period of the refusal. Compensation
5 33 shall not be payable for the period of suspension.

5 34 Sec. 3. EFFECTIVE AND APPLICABILITY DATE. This Act takes
5 35 effect January 1, 2010, and applies to injuries occurring on
6 1 or after that date.

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 amends Code section 85.21, giving an employee the
6 9 right to predesignate a physician who is a primary care
6 10 provider, who has previously provided treatment to the
6 11 employee and has retained the employee's medical records, to
6 12 provide treatment for a work-related injury. The employer is
6 13 required to provide written notice to employees of this right
6 14 upon hire, and periodically during employment, and upon
6 15 receiving notice of an injury from an employee who has not yet
6 16 predesignated a physician of the employee's right to do so, in
6 17 a manner prescribed by the workers' compensation commissioner.
6 18 An employer or an employer's insurer shall not coerce or
6 19 otherwise attempt to influence an injured employee's choice of
6 20 a physician.

6 21 If the employer fails to provide such notification, an
6 22 injured employee has the right to choose any physician to
6 23 provide treatment for the work-related injury and that
6 24 treatment shall be considered authorized care.

6 25 If the employer or employee is dissatisfied with the care
6 26 chosen by the other party, the dissatisfied party is required
6 27 to communicate the basis of dissatisfaction to the other party
6 28 in writing and the parties may agree to alternate care
6 29 reasonably suited to treat the injury. If the parties cannot
6 30 agree to such alternate care, the dissatisfied party may make
6 31 an application for alternate care to the commissioner.

6 32 An application for alternate care is an original proceeding
6 33 and is treated as a contested case. A party may request that
6 34 the hearing be held in person, by telephone, or by audio-video
6 35 conference. The commissioner is required to issue a decision
7 1 within 10 working days of receipt of an application made
7 2 pursuant to a telephone hearing or audio-video conference
7 3 hearing and within 14 days of an in-person hearing.

7 4 Code section 85.39 is amended to provide that if the

7 5 employee has chosen care, when it is medically indicated that
7 6 no significant improvement from an injury is anticipated, the
7 7 employee may obtain a medical opinion regarding the extent of
7 8 the employee's permanent disability. If the employer believes
7 9 that the evaluation of permanent disability obtained by the
7 10 employee is too high, the employer has the right to obtain
7 11 another medical opinion from a physician of the employer's
7 12 choosing.
7 13 The bill takes effect and applies to injuries occurring on
7 14 or after January 1, 2010.
7 15 LSB 1979XC 83
7 16 av/rj/5