

House File 274 - Introduced

HOUSE FILE 274

BY ISENHART

A BILL FOR

1 An Act relating to the state's workers' compensation laws
2 by modifying alternate care procedures for medical
3 treatment, creating registries of physicians who treat
4 and evaluate work-related injuries, providing for the
5 retention of a medical director, creating a state workplace
6 injury care providers registry fund, establishing a
7 workers' compensation advisory council, providing for and
8 appropriating fees, and including 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 2013, 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 any 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 — registry — fees.**

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

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

1 registry and establish a registration fee.

2 3. This section 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 4. This section 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 Sec. 3. NEW SECTION. 85.74 **Independent medical evaluations**
10 **— provider — registry — fees.**

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

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

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

27 Sec. 4. NEW SECTION. 85.75 **Fees appropriated.**

28 All fees collected pursuant to sections 85.73 and 85.74
29 shall be credited to the state workplace injury care providers
30 registry fund created in section 85.77 and are appropriated to
31 the division to be used to carry out the provisions of sections
32 85.73, 85.74, 85.76, and 85.78, including but not limited
33 to establishing and maintaining the registries described in
34 sections 85.73 and 85.74, retaining a medical director as set
35 forth in section 85.76, and providing for the expenses of the

1 workers' compensation advisory council created in section
2 85.78.

3 **Sec. 5. NEW SECTION. 85.76 Medical director.**

4 The workers' compensation commissioner may retain the
5 services of a medical director to assist the division of
6 workers' compensation in advancing occupational health in this
7 state and to advise the commissioner on how to successfully
8 apply and administer the state's workers' compensation laws,
9 including assessments of the use of evidence-based care in
10 treating work-related injuries.

11 **Sec. 6. NEW SECTION. 85.77 State workplace injury care
12 providers registry fund.**

13 1. A state workplace injury care providers registry fund
14 is created in the state treasury as a separate fund under the
15 control of the division of workers' compensation. All moneys
16 appropriated or transferred to the fund shall be credited to
17 the fund. All moneys deposited or paid into the fund shall
18 only be appropriated to the workers' compensation commissioner
19 to be used for the purposes set forth in sections 85.73, 85.74,
20 85.75, 85.76, and 85.78.

21 2. Notwithstanding section 8.33, any balance in the fund
22 on June 30 of each fiscal year shall not revert to the general
23 fund of the state, but shall be available for purposes of
24 sections 85.73, 85.74, 85.75, 85.76, and 85.78 in subsequent
25 fiscal years. Notwithstanding section 12C.7, interest earnings
26 on moneys in the fund shall be credited to the fund.

27 **Sec. 7. NEW SECTION. 85.78 Workers' compensation advisory
28 council.**

29 1. A workers' compensation advisory council is established
30 within the division of workers' compensation. The council
31 shall be composed of the following persons:

32 *a.* Two members appointed by the governor and subject to
33 confirmation by the senate pursuant to section 2.32, one
34 representing employers, and one representing organized labor.

35 *b.* Two members appointed jointly by the president and the

1 minority leader of the senate, one representing employers, and
2 one representing organized labor.

3 c. Two members appointed jointly by the speaker and
4 the minority leader of the house of representatives, one
5 representing employers and one representing organized labor.

6 2. The members shall serve six-year terms beginning and
7 ending as provided in section 69.19. However, for the initial
8 terms commencing January 1, 2014, one member appointed by
9 the governor, one member representing employers, and one
10 member representing organized labor shall be appointed to
11 serve three-year terms to ensure that members serve staggered
12 terms. A member is eligible for reappointment. A vacancy on
13 the council shall be filled for the unexpired portion of the
14 regular term in the same manner as regular appointments are
15 made.

16 3. One representative of employers and one representative
17 of organized labor shall be elected as co-chairpersons by the
18 council and shall serve for two-year staggered terms. However,
19 one of the initial co-chairpersons shall be elected to serve
20 for a three-year term to ensure that the co-chairpersons serve
21 staggered terms.

22 4. Four members constitute a quorum. The affirmative
23 vote of a majority of the voting members present as well as
24 the approval of at least two employer representatives and two
25 labor representatives is necessary for any substantive action
26 to be taken by the council. The majority shall not include
27 any member who has a conflict of interest and a statement by a
28 member that the member has a conflict of interest is conclusive
29 for this purpose. A vacancy in the membership does not impair
30 the duties of the council.

31 5. The council shall meet on a regular basis and at the
32 call of the co-chairpersons or upon the written request to the
33 co-chairpersons of two or more members.

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

1 7. The purpose of the council is to assist the workers'
2 compensation commissioner in the successful administration
3 of the division of workers' compensation and to make
4 recommendations to the governor and the general assembly
5 regarding workplace safety and improvements to the state's
6 workers' compensation system.

7 8. The responsibilities of the council are as follows:

8 a. Monitor and support the successful implementation of the
9 state's workers' compensation laws.

10 b. Identify problems and recommend solutions and
11 improvements with respect to the effectiveness of the state's
12 workers' compensation system, to the division of workers'
13 compensation and to the governor and the general assembly.

14 c. Assist the workers' compensation commissioner in
15 developing and implementing a program to train and certify
16 claims adjusters for practice in this state.

17 d. Work with all stakeholders, including the medical
18 director retained pursuant to section 85.76, to develop and
19 promote a system of high-performance, transparent, accountable,
20 and evidence-based health care for the treatment and prevention
21 of workplace injuries.

22 e. Make recommendations to and receive recommendations from
23 the nonprofit Iowa workers' compensation advisory committee
24 regarding topics for stakeholder and public education with
25 respect to the application of workers' compensation law and
26 successful workers' compensation programs and strategies, as
27 well as the prevention of workplace injuries.

28 Sec. 8. EFFECTIVE DATE. The following provision or
29 provisions of this Act take effect July 1, 2014:

30 1. The section of this Act amending section 85.27.

31 2. The section of this Act enacting section 85.74.

32 Sec. 9. EFFECTIVE DATE. The following provision or
33 provisions of this Act take effect January 1, 2014:

34 1. The section of this Act enacting section 86.73.

35 2. The section of this Act enacting section 85.75.

1 3. The section of this Act enacting section 85.76.

2 4. The section of this Act enacting section 85.77.

3 5. The section of this Act enacting section 85.78.

4

EXPLANATION

5 This bill relates to the state's workers' compensation laws
6 by modifying alternate care procedures for medical treatment,
7 creating registries of physicians who treat and evaluate
8 work-related injuries, providing for the retention of a medical
9 director, creating a state workplace injury care providers
10 registry fund, establishing a workers' compensation advisory
11 council, providing for and appropriating fees, and providing
12 effective dates.

13 MEDICAL AND ALTERNATE CARE. Code section 85.27(4),
14 concerning the provision of medical services, requires an
15 employer to provide written information about the state's
16 workers' compensation laws to an employee upon receiving
17 notification that the employee has suffered a work-related
18 injury. The employer has the right to predesignate a licensed
19 physician to treat the injury and make necessary referrals and
20 may predesignate a physician listed on the state registry of
21 workplace injury care providers. If the employer does not
22 predesignate a treating physician, the employee may designate a
23 physician of the employee's choosing to provide the treatment.

24 The physician predesignated by the employer or designated
25 by the employee is required to provide ongoing written
26 documentation of the physician's opinions, treatment
27 recommendations, and care plan to the employee along with
28 information about whether the opinions, recommendations, and
29 care plan are in accord with either the official disability
30 guidelines and treatment guidelines in workers' compensation
31 published by the work loss data institute or the American
32 college of occupational and environmental medicine practice
33 guidelines (ACOEM), and if so, citation to the appropriate
34 guidelines. The employee has the right to request and obtain
35 a second opinion from another licensed physician of the

1 employee's choosing at the employer's expense.

2 If the employer or employee is dissatisfied with the care
3 of a treating physician predesignated or designated by the
4 other party or with any referral made by that physician, the
5 employer and employee may mutually agree to alternate care. If
6 they cannot agree on alternate care, either party may notify
7 an insurance claims specialist within the division of workers'
8 compensation, who shall, within five working days, schedule
9 a conference between the parties to review the basis for
10 dissatisfaction and provide an advisory opinion to resolve the
11 dispute. If the parties still cannot agree on alternate care
12 after this conference, the workers' compensation commissioner
13 may, upon application and reasonable proof of the necessity,
14 allow and order alternate care.

15 The employee is responsible to make the application for
16 alternate care and to provide such reasonable proof to the
17 commissioner if the employer provided written information
18 about the state's workers' compensation laws at the time of
19 notification of the employee's injury, and predesignated a
20 treating physician listed on the state registry of workplace
21 injury care providers, and if the treating physician
22 predesignated by the employer provided written documentation
23 to the employee of the physician's opinions, treatment
24 recommendations, and care plan along with citation to the
25 appropriate treatment guidelines.

26 The employer is responsible for making the application for
27 alternate care and providing reasonable proof if the employer
28 and predesignated treating physician did not act as described
29 above or if the employee designated the treating physician to
30 treat the work injury.

31 The commissioner is not bound by the advisory opinion of
32 the claims specialist and must conduct a hearing and issue
33 a decision within 10 days of receipt of an application for
34 alternate care.

35 The employer has the right to request an employee to submit,

1 as often as is reasonable and at a reasonable time and place
2 to an examination by a licensed physician chosen by the
3 employer for any purpose relevant to the employer's duties to
4 provide benefits to the employee under the state's workers'
5 compensation laws and at the employer's expense. If the
6 employer makes the request in writing and pays all expenses,
7 including transportation, the employee shall submit to the
8 examination. Each time that the employer obtains an evaluation
9 of an employee's permanent disability by a physician chosen by
10 the employer, if the employee believes that the evaluation of
11 disability is too low, the employee may obtain a subsequent
12 examination and evaluation by a physician of the employee's
13 choosing at the employer's expense, including transportation
14 expenses to and from the place of the examination.

15 PROVIDER REGISTRIES — FEES — MEDICAL DIRECTOR. New Code
16 section 85.73 requires the workers' compensation commissioner
17 to establish and maintain a registry of licensed physicians
18 that offer or provide treatment of work-related injuries.
19 The commissioner shall, by administrative rule, establish
20 requirements for a physician to be listed on the registry and
21 establish a registration fee. The provision shall not be
22 construed to require a physician to be listed on the registry
23 in order to offer or provide treatment of work-related injuries
24 or to prohibit an employer or employee from predesignating or
25 designating a physician to provide treatment who is not listed
26 on the registry.

27 New Code section 85.74 requires the commissioner to
28 establish and maintain a separate registry of licensed
29 physicians trained to perform independent medical evaluations
30 and to issue impairment ratings of injured employees. The
31 commissioner shall establish, by administrative rule, minimum
32 training requirements for a physician to be listed on the
33 registry and establish a fee. A physician must be listed
34 on the registry in order to perform independent medical
35 evaluations and issue impairment ratings of injured employees

1 in this state. The commissioner may prohibit an employer
2 or employee from using an independent medical evaluation or
3 impairment rating of an injured employee from a physician who
4 is not listed on the registry as evidence at a hearing to
5 determine benefits under the state's workers' compensation
6 laws.

7 New Code section 85.76 authorizes the commissioner to
8 retain the services of a medical director to assist the
9 division of workers' compensation in advancing the field of
10 occupational health in Iowa and to advise the commissioner on
11 how to successfully apply and administer the state's workers'
12 compensation laws.

13 STATE WORKPLACE INJURY CARE PROVIDERS REGISTRY FUND. All
14 registration fees collected pursuant to new Code sections 85.73
15 and 85.74 shall be credited to the state workplace injury care
16 providers registry fund created in new Code section 85.77 and
17 are appropriated to the division of workers' compensation by
18 new Code section 85.75 to carry out the provisions of new Code
19 sections 85.73, 85.74, 85.75, 85.76, and 85.78, including
20 establishing and maintaining the two physician registries,
21 retaining a medical director, and for the expenses of the
22 workers' compensation advisory council created in new Code
23 section 85.78.

24 WORKERS' COMPENSATION ADVISORY COUNCIL. New Code section
25 85.78 establishes a workers' compensation advisory council
26 within the division of workers' compensation that is composed
27 of six members, three representing employers and three
28 representing organized labor. The governor appoints two of the
29 members, the president and the minority leader of the senate
30 jointly appoint two members, and the speaker and the minority
31 leader of the house of representatives jointly appoint two
32 members. The members serve six-year staggered terms, except
33 that for the initial terms beginning on January 1, 2014, one
34 member appointed by the governor, one member representing
35 employers, and one member representing organized labor shall

1 be appointed for three-year terms to ensure that members serve
2 staggered terms. The purpose of the council is to assist
3 the workers' compensation commissioner in the successful
4 administration of the division of workers' compensation and to
5 make recommendations to the governor and the general assembly
6 regarding workplace safety and improvements to the state's
7 workers' compensation system.

8 EFFECTIVE DATES. The sections of the bill creating the
9 provider registry for treatment of work injuries, the provider
10 registry fund, the position of medical director, and the
11 advisory council, and appropriating fees, take effect January
12 1, 2014. The sections of the bill pertaining to alternate care
13 procedures and required registration of physicians performing
14 independent medical evaluations and impairment ratings take
15 effect July 1, 2014.