

House File 33 - Introduced

HOUSE FILE 33

BY HUNTER

A BILL FOR

1 An Act relating to the choice of doctor to treat an injured
2 employee under workers' compensation laws and including
3 applicability date provisions.

4 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 to read as follows:

3 4. a. (1) For purposes of this section, the employer is
4 obliged to furnish reasonable services and supplies to treat an
5 injured employee, and has the right to choose the care unless
6 the employee has predesignated a physician as provided in
7 paragraph "b". If the employer chooses the care, the employer
8 shall hold the employee harmless for the cost of care until the
9 employer notifies the employee that the employer is no longer
10 authorizing all or any part of the care and the reason for
11 the change in authorization. An employer is not liable for
12 the cost of care that the employer arranges in response to a
13 sudden emergency if the employee's condition, for which care
14 was arranged, is not related to the employment. The treatment
15 must be offered promptly and be reasonably suited to treat the
16 injury without undue inconvenience to the employee.

17 (2) If the employee has reason to be dissatisfied with the
18 care offered, the employee should communicate the basis of
19 such dissatisfaction to the employer, in writing if requested,
20 following which the employer and the employee may agree to
21 alternate care reasonably suited to treat the injury. If the
22 employer and employee cannot agree on such alternate care, the
23 commissioner may, upon application and reasonable ~~proofs~~ proof
24 of the necessity therefor, allow and order other care. In an
25 emergency, the employee may choose the employee's care at the
26 employer's expense, provided the employer or the employer's
27 agent cannot be reached immediately.

28 (3) An application made under this ~~subsection~~ lettered
29 paragraph "a" shall be considered an original proceeding for
30 purposes of commencement and contested case proceedings under
31 section 85.26. The hearing shall be conducted pursuant to
32 chapter 17A. Before a hearing is scheduled, the parties may
33 choose a telephone hearing, an audio-video conference hearing,
34 or an in-person hearing. A request for an in-person hearing
35 shall be approved unless the in-person hearing would be

1 impractical because of the distance between the parties to the
2 hearing. The workers' compensation commissioner shall issue a
3 decision within ten working days of receipt of an application
4 for alternate care made pursuant to a telephone hearing or
5 audio-video conference hearing or within fourteen working days
6 of receipt of an application for alternate care made pursuant
7 to an in-person hearing. The employer shall notify an injured
8 employee of the employee's ability to contest the employer's
9 choice of care pursuant to this ~~subsection~~ lettered paragraph
10 "a".

11 b. (1) An injured employee has the right to choose the
12 care if the employee has predesignated a physician who is a
13 primary care provider, from whom the employee has previously
14 received treatment for a nonoccupational injury, illness,
15 or examination, to provide treatment for the injury. Upon
16 hire and periodically during employment, an employer shall
17 provide written notice to all employees of their rights under
18 this lettered paragraph "b" to predesignate such a physician
19 for treatment of an injury, in a manner prescribed by the
20 workers' compensation commissioner by rule. The employer
21 or the employer's insurer shall not make suggestions or
22 otherwise attempt to influence an injured employee's choice
23 of a physician to provide care. An employee shall, as soon
24 as practicable, notify the employer of an injury, and upon
25 receiving such notice of an injury from an employee, the
26 employer shall again provide written notice to that employee
27 of the employee's rights under this lettered paragraph "b" in a
28 manner prescribed by the workers' compensation commissioner by
29 rule. If an employer fails to notify employees of their right
30 to choose a physician as provided in this lettered paragraph
31 "b", the employee has the right to choose any physician to
32 provide treatment for the injury and the treatment shall be
33 considered care authorized under this section.

34 (2) For the purposes of this lettered paragraph "b",
35 "physician" includes an individual physician, a group of

1 physicians, or a clinic. For the purposes of this lettered
2 paragraph "b", "primary care provider" means a physician
3 who provides primary care who is a family or general
4 practitioner, a pediatrician, an internist, an obstetrician,
5 or a gynecologist. A physician chosen by an injured employee
6 to provide treatment is authorized to arrange for any
7 consultation, surgical consultation, referral, emergency care,
8 or other specialized medical services as the physician deems
9 necessary to treat the injury. The employer shall pay for
10 all such care, unless the workers' compensation commissioner
11 determines otherwise.

12 (3) If the employer has reason to be dissatisfied with the
13 care chosen by the employee, the employer should communicate
14 the basis of such dissatisfaction to the employee, in writing
15 if requested, following which the employee and the employer may
16 agree to alternate care reasonably suited to treat the injury.
17 If the employee and employer cannot agree on such alternate
18 care, the commissioner may, upon application and reasonable
19 proof of the necessity therefor, allow and order other care.

20 (4) An application made under this lettered paragraph
21 "b" shall be considered an original proceeding for purposes
22 of commencement and contested case proceedings under section
23 85.26. The hearing shall be conducted pursuant to chapter
24 17A. Before a hearing is scheduled, the parties may choose
25 a telephone hearing, an audio-video conference hearing, or
26 an in-person hearing. A request for an in-person hearing
27 shall be approved unless the in-person hearing would be
28 impractical because of the distance between the parties to the
29 hearing. The workers' compensation commissioner shall issue a
30 decision within ten working days of receipt of an application
31 for alternate care made pursuant to a telephone hearing or
32 audio-video conference hearing or within fourteen working days
33 of receipt of an application for alternate care made pursuant
34 to an in-person hearing.

35 Sec. 2. Section 85.39, Code 2013, is amended to read as

1 follows:

2 **85.39 Examination of injured employees.**

3 1. a. After an injury, the employee, if requested by the
4 employer, shall submit for examination at some reasonable
5 time and place and as often as reasonably requested, to a
6 physician or physicians authorized to practice under the laws
7 of this state or another state, without cost to the employee;
8 but if the employee requests, the employee, at the employee's
9 own cost, is entitled to have a physician or physicians
10 of the employee's own selection present to participate in
11 the examination. If an employee is required to leave work
12 for which the employee is being paid wages to attend the
13 requested examination, the employee shall be compensated at
14 the employee's regular rate for the time the employee is
15 required to leave work, and the employee shall be furnished
16 transportation to and from the place of examination, or the
17 employer may elect to pay the employee the reasonable cost of
18 the transportation. The refusal of the employee to submit
19 to the examination shall suspend the employee's right to any
20 compensation for the period of the refusal. Compensation shall
21 not be payable for the period of suspension.

22 b. If an evaluation of permanent disability has been made by
23 a physician retained by the employer and the employee believes
24 this evaluation to be too low, the employee shall, upon
25 application to the commissioner and upon delivery of a copy of
26 the application to the employer and its insurance carrier, be
27 reimbursed by the employer the reasonable fee for a subsequent
28 examination by a physician of the employee's own choice, and
29 reasonably necessary transportation expenses incurred for the
30 examination. The physician chosen by the employee has the
31 right to confer with and obtain from the employer-retained
32 physician sufficient history of the injury to make a proper
33 examination.

34 2. If the employee has chosen a physician to provide care
35 as provided in section 85.27, subsection 4, paragraph "b", when

1 treatment for a work-related injury. The employer is required
2 to provide written notice to employees of this right upon hire,
3 periodically during employment, and upon receiving notice of an
4 injury from an employee, in a manner prescribed by the workers'
5 compensation commissioner.

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

10 If the employer or employee is dissatisfied with the care
11 chosen by the other party, the dissatisfied party is required
12 to communicate the basis of dissatisfaction to the other
13 party in writing and the parties may agree to alternate care
14 reasonably suited to treat the injury. If the parties cannot
15 agree to such alternate care, the dissatisfied party may make
16 an application for alternate care to the commissioner.

17 An application for alternate care is an original proceeding
18 and is treated as a contested case. A party may request that
19 the hearing be held in person, by telephone, or by audio-video
20 conference. The commissioner is required to issue a decision
21 within 10 working days of receipt of an application made
22 pursuant to a telephone hearing or audio-video conference
23 hearing and within 14 days of an in-person hearing.

24 Code section 85.39 is amended to provide that if the
25 employee has chosen care, when it is medically indicated that
26 no significant improvement from an injury is anticipated, the
27 employee may obtain a medical opinion regarding the extent of
28 the employee's permanent disability. If the employer believes
29 that the evaluation of permanent disability obtained by the
30 employee is too high, the employer has the right to obtain
31 another medical opinion from a physician of the employer's
32 choosing.

33 The bill applies to injuries occurring on or after January
34 1, 2014.