

Senate File 2185 - Introduced

SENATE FILE 2185

BY BOULTON

A BILL FOR

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

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

1 Section 1. Section 85.27, subsection 4, Code 2018, 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. ~~An application made under~~
28 ~~this subsection~~ shall be considered an original proceeding
29 for purposes of commencement and contested case proceedings
30 under ~~section 85.26~~. The hearing shall be conducted pursuant
31 to ~~chapter 17A~~. Before a hearing is scheduled, the parties
32 may choose a telephone hearing or an in-person hearing. A
33 request for an in-person hearing shall be approved unless the
34 in-person hearing would be impractical because of the distance
35 between the parties to the hearing. ~~The workers' compensation~~

~~1 commissioner shall issue a decision within ten working days of
2 receipt of an application for alternate care made pursuant to a
3 telephone hearing or within fourteen working days of receipt of
4 an application for alternate care made pursuant to an in-person
5 hearing.~~

6 (3) The employer shall notify an injured employee of the
7 employee's ability to contest the employer's choice of care
8 pursuant to this subsection paragraph "a".

9 b. (1) An injured employee has the right to choose care,
10 unless care needs to be provided at the job site in response to
11 a life-threatening emergency, if the employee has predesignated
12 a physician who is a primary care provider, who has previously
13 provided medical treatment to the employee and has retained
14 the employee's medical records, to provide treatment for the
15 injury. Upon hire and periodically during employment, an
16 employer shall provide written notice to all employees who have
17 not yet predesignated a physician, of their right under this
18 paragraph "b" to predesignate such a physician for treatment of
19 an injury, in a manner prescribed by the workers' compensation
20 commissioner by rule. The employer or the employer's insurer
21 shall not coerce or otherwise attempt to influence an injured
22 employee's choice of a physician to provide care. An employee
23 shall, as soon as practicable, notify the employer of an
24 injury, and upon receiving such notice of an injury from an
25 employee, the employer shall again provide written notice to
26 that employee of the employee's right under this paragraph
27 "b" in a manner prescribed by the workers' compensation
28 commissioner by rule. If an employer fails to notify an
29 employee of the employee's right to choose a physician as
30 provided in this paragraph "b", the employee has the right to
31 choose any physician to provide treatment for the injury and
32 the treatment shall be considered care authorized under this
33 section.

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

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

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

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

1 for alternate care if a telephone hearing or audio-video
2 conference hearing is held or within fourteen working days of
3 receipt of an application for alternate care if an in-person
4 hearing is held.

5 Sec. 2. Section 85.39, Code 2018, is amended to read as
6 follows:

7 **85.39 Examination of injured employees.**

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

27 ~~2.~~ b. If an evaluation of permanent disability has been
28 made by a physician retained by the employer and the employee
29 believes this evaluation to be too low, the employee shall,
30 upon application to the commissioner and upon delivery of a
31 copy of the application to the employer and its insurance
32 carrier, be reimbursed by the employer the reasonable fee for
33 a subsequent examination by a physician of the employee's
34 own choice, and reasonably necessary transportation expenses
35 incurred for the examination. The physician chosen by the

1 employee has the right to confer with and obtain from the
 2 employer-retained physician sufficient history of the injury
 3 to make a proper examination. An employer is only liable to
 4 reimburse an employee for the cost of an examination conducted
 5 pursuant to this subsection paragraph "b" if the injury for
 6 which the employee is being examined is determined to be
 7 compensable under this chapter or chapter 85A or 85B. An
 8 employer is not liable for the cost of such an examination
 9 if the injury for which the employee is being examined is
 10 determined not to be a compensable injury. A determination of
 11 the reasonableness of a fee for an examination made pursuant to
 12 this subsection paragraph "b", shall be based on the typical fee
 13 charged by a medical provider to perform an impairment rating
 14 in the local area where the examination is conducted.

15 2. If the employee has chosen a physician to provide care
 16 as provided in section 85.27, subsection 4, paragraph "b", when
 17 it is medically indicated that no significant improvement from
 18 an injury is anticipated, the employee may obtain a medical
 19 opinion from the employee's physician, at the employer's
 20 expense, regarding the extent of the employee's permanent
 21 disability. If the employee obtains such an evaluation and the
 22 employer believes this evaluation of permanent disability to be
 23 too high, the employer may arrange for a medical examination of
 24 the injured employee by a physician of the employer's choice
 25 for the purpose of obtaining a medical opinion regarding the
 26 extent of the employee's permanent disability. If an employee
 27 is required to leave work for which the employee is being paid
 28 wages to attend an examination under this subsection, the
 29 employee shall be compensated at the employee's regular rate
 30 for the time the employee is required to leave work, and the
 31 employee shall be furnished transportation to and from the
 32 place of examination, or the employer may elect to pay the
 33 employee the reasonable cost of transportation. The physician
 34 chosen by the employer to conduct the examination has the right
 35 to confer with and obtain from any physician who has treated

1 the injured employee sufficient history of the injury to make
2 a proper examination. The refusal by the employee to submit
3 to the examination shall forfeit the employee's right to any
4 compensation for the period of the refusal. Compensation shall
5 not be payable for the period of refusal.

6 Sec. 3. EFFECTIVE DATE. This Act takes effect January 1,
7 2019.

8 Sec. 4. APPLICABILITY. This Act applies to injuries
9 occurring on or after January 1, 2019.

10 EXPLANATION

11 The inclusion of this explanation does not constitute agreement with
12 the explanation's substance by the members of the general assembly.

13 This bill relates to the choice of a physician to treat an
14 injured employee under the state's workers' compensation laws.
15 The bill allows the employer to choose care unless the employee
16 has predesignated a physician as provided in the bill.

17 The bill amends Code section 85.27, giving an employee
18 the right to predesignate a physician who is a primary care
19 provider, who has previously provided treatment to the employee
20 and has retained the employee's medical records, to provide
21 treatment for a work-related injury. The employer is required
22 to provide written notice to employees of this right upon hire,
23 and periodically during employment, and upon receiving notice
24 of an injury from an employee who has not yet predesignated
25 a physician of the employee's right to do so, in a manner
26 prescribed by the workers' compensation commissioner. An
27 employer or an employer's insurer shall not coerce or otherwise
28 attempt to influence an injured employee's choice of a
29 physician.

30 If the employer fails to provide such notification, an
31 injured employee has the right to choose any physician to
32 provide treatment for the work-related injury and that
33 treatment shall be considered authorized care.

34 If the employer or employee is dissatisfied with the care
35 chosen by the other party, the dissatisfied party should

1 communicate the basis of dissatisfaction to the other party, in
2 writing if requested, and the parties may agree to alternate
3 care reasonably suited to treat the injury. If the parties
4 cannot agree to such alternate care, the dissatisfied party may
5 make an application for alternate care to the commissioner.

6 An application for alternate care is an original proceeding
7 and is treated as a contested case. A party may request that
8 the hearing be held in person, by telephone, or by audio-video
9 conference. The commissioner is required to issue a decision
10 within 10 working days of receipt of an application if a
11 telephone hearing or audio-video conference hearing is held or
12 within 14 days if an in-person hearing is held.

13 Code section 85.39 is amended to provide that if the
14 employee has chosen care, when it is medically indicated that
15 no significant improvement from an injury is anticipated, the
16 employee may obtain a medical opinion regarding the extent of
17 the employee's permanent disability. If the employer believes
18 that the evaluation of permanent disability obtained by the
19 employee is too high, the employer has the right to obtain
20 another medical opinion from a physician of the employer's
21 choosing.

22 The bill takes effect and applies to injuries occurring on or
23 after January 1, 2019.