

House File 86 - Introduced

HOUSE FILE 86
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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 2019, 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 paragraph
29 "a" shall be considered an original proceeding for purposes
30 of commencement and contested case proceedings under section
31 85.26. The hearing shall be conducted pursuant to chapter
32 17A. Before a hearing is scheduled, the parties may choose
33 a telephone hearing, an audio-video conference hearing, or
34 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~~ paragraph "a".

10 b. (1) An injured employee has the right to choose care,
11 unless care needs to be provided at the job site in response to
12 a life-threatening emergency, if the employee has predesignated
13 a physician who is a primary care provider, who has previously
14 provided medical treatment to the employee and has retained
15 the employee's medical records, to provide treatment for the
16 injury. Upon hire and periodically during employment, an
17 employer shall provide written notice to all employees who have
18 not yet predesignated a physician, of their rights under this
19 paragraph "b" to predesignate such a physician for treatment of
20 an injury, in a manner prescribed by the workers' compensation
21 commissioner by rule. The employer or the employer's insurer
22 shall not coerce or otherwise attempt to influence an injured
23 employee's choice of a physician to provide care. An employee
24 shall, as soon as practicable, notify the employer of an
25 injury, and upon receiving such notice of an injury from an
26 employee, the employer shall again provide written notice to
27 that employee of the employee's rights under this paragraph
28 "b" in a manner prescribed by the workers' compensation
29 commissioner by rule. If an employer fails to notify employees
30 of their right to choose a physician as provided in this
31 paragraph "b", the employee has the right to choose any
32 physician to provide treatment for the injury and the treatment
33 shall be considered care authorized under this 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 who is
 3 licensed to practice medicine and surgery, osteopathic medicine
 4 and surgery, or osteopathy in this state or in another state
 5 and provides primary care and who is a family or general
 6 practitioner, a pediatrician, an internist, an obstetrician,
 7 or a gynecologist. A physician who practices in another
 8 state shall not be predesignated by an employee unless the
 9 physician's office is located within sixty miles of where
 10 the employee is employed or was injured unless the workers'
 11 compensation commissioner allows otherwise. A physician chosen
 12 by an injured employee to provide treatment is authorized to
 13 arrange for any consultation, surgical consultation, referral,
 14 emergency care, or other specialized medical services as the
 15 physician deems necessary to treat the injury. The employer
 16 shall pay for all such care, unless the workers' compensation
 17 commissioner determines otherwise.

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

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

1 working days of receipt of an application for alternate care
2 made pursuant to a telephone hearing or audio-video conference
3 hearing or within fourteen working days of receipt of an
4 application for alternate care made pursuant to an in-person
5 hearing.

6 Sec. 2. Section 85.39, Code 2019, is amended by adding the
7 following new subsection:

8 NEW SUBSECTION. 3. If the employee has chosen a physician
9 to provide care as provided in section 85.27, subsection
10 4, paragraph "b", when it is medically indicated that no
11 significant improvement from an injury is anticipated, the
12 employee may obtain a medical opinion from the employee's
13 physician, at the employer's expense, regarding the extent of
14 the employee's permanent disability. If the employee obtains
15 such an evaluation and the employer believes this evaluation
16 of permanent disability to be too high, the employer may
17 arrange for a medical examination of the injured employee by a
18 physician of the employer's choice for the purpose of obtaining
19 a medical opinion regarding the extent of the employee's
20 permanent disability. If an employee is required to leave
21 work for which the employee is being paid wages to attend
22 an examination under this subsection, the employee shall be
23 compensated at the employee's regular rate for the time the
24 employee is required to leave work, and the employee shall be
25 furnished transportation to and from the place of examination,
26 or the employer may elect to pay the employee the reasonable
27 cost of transportation. The physician chosen by the employer
28 to conduct the examination has the right to confer with and
29 obtain from any physician who has treated the injured employee
30 sufficient history of the injury to make a proper examination.
31 The refusal by the employee to submit to the examination shall
32 suspend the employee's right to any compensation for the period
33 of the refusal. Compensation shall not be payable for the
34 period of suspension.

35 Sec. 3. APPLICABILITY. This Act applies to injuries

1 occurring on or after January 1, 2020.

2 EXPLANATION

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

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

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

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

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

32 An application for alternate care is an original proceeding
33 and is treated as a contested case. A party may request that
34 the hearing be held in person, by telephone, or by audio-video
35 conference. The commissioner is required to issue a decision

1 within 10 working days of receipt of an application made
2 pursuant to a telephone hearing or audio-video conference
3 hearing and within 14 days of an in-person hearing.

4 Code section 85.39 is amended to provide that if the
5 employee has chosen care, when it is medically indicated that
6 no significant improvement from an injury is anticipated, the
7 employee may obtain a medical opinion regarding the extent
8 of the employee's permanent disability from the employee's
9 physician. If the employer believes that the evaluation of
10 permanent disability obtained by the employee is too high, the
11 employer has the right to obtain another medical opinion from a
12 physician of the employer's choosing.

13 The bill applies to injuries occurring on or after January
14 1, 2020.