

House File 530 - Introduced

HOUSE FILE _____
BY HUNTER, T. TAYLOR, and
WILLEMS

Passed House, Date _____ Passed Senate, 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
3 effective and applicability dates.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 1613HH 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. If
1 6 the employer chooses the care, unless the employee has
1 7 predesignated a physician as provided in paragraph "b", 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.

~~1 29 (3) An application made under this subsection shall be
1 30 considered an original proceeding for purposes of commencement
1 31 and contested case proceedings under section 85.26. The
1 32 hearing shall be conducted pursuant to chapter 17A. Before a
1 33 hearing is scheduled, the parties may choose a telephone
1 34 hearing or an in-person hearing. A request for an in-person
1 35 hearing shall be approved unless the in-person hearing would
2 1 be impractical because of the distance between the parties to
2 2 the hearing. The workers' compensation commissioner shall
2 3 issue a decision within ten working days of receipt of an
2 4 application for alternate care made pursuant to a telephone
2 5 hearing or within fourteen working days of receipt of an
2 6 application for alternate care made pursuant to an in-person
2 7 hearing. 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 if the employee has predesignated a physician who is a primary
2 12 care provider, from whom the employee has previously received
2 13 treatment for a nonoccupational injury, illness, or
2 14 examination, to provide treatment for the injury. Upon hire
2 15 and periodically during employment an employer shall provide
2 16 written notice to all employees of their rights under this
2 17 paragraph "b" to predesignate such a physician for treatment
2 18 of an injury, in a manner prescribed by the workers'
2 19 compensation commissioner by rule. The employer or the
2 20 employer's insurer shall not make suggestions or otherwise
2 21 attempt to influence an injured employee's choice of a
2 22 physician to provide care. An employee shall, as soon as
2 23 practicable, notify the employer of an injury, and upon
2 24 receiving such notice of an injury from an employee, the
2 25 employer shall again provide written notice to that employee
2 26 of the employee's rights under this paragraph "b" in a manner
2 27 prescribed by the workers' compensation commissioner by rule.
2 28 If an employer fails to notify an employee of the employee's
2 29 right to choose a physician as provided in this paragraph "b",
2 30 the employee has the right to choose any physician to provide
2 31 treatment for the injury and the treatment shall be considered
2 32 care authorized under this section.

2 33 (2) For the purposes of this paragraph "b":

2 34 (a) "Physician" includes an individual physician, a group
2 35 of physicians, or a clinic.

3 1 (b) "Primary care provider" means a physician who provides
3 2 primary care who is a family or general practitioner, a
3 3 pediatrician, an internist, an obstetrician, or a
3 4 gynecologist.

3 5 (3) A physician chosen by an injured employee to provide
3 6 treatment is authorized to arrange for any consultation,
3 7 surgical consultation, referral, emergency care, or other
3 8 specialized medical services as the physician deems necessary
3 9 to treat the injury. The employer shall pay for all such
3 10 care, unless the workers' compensation commissioner determines
3 11 otherwise.

3 12 (4) If the employer has reason to be dissatisfied with the
3 13 care chosen by the employee, the employer shall communicate
3 14 the basis of such dissatisfaction to the employee, in writing
3 15 if requested, following which the employee and the employer
3 16 may agree to alternate care reasonably suited to treat the
3 17 injury. If the employee and employer cannot agree on such
3 18 alternate care, the workers' compensation commissioner may,
3 19 upon application and reasonable proof of the necessity
3 20 therefor, allow and order other care.

3 21 c. An application made under paragraph "a" or "b" shall be
3 22 considered an original proceeding for purposes of commencement
3 23 and contested case proceedings under section 85.26. The
3 24 hearing shall be conducted pursuant to chapter 17A. Before a
3 25 hearing is scheduled, the parties may choose a telephone
3 26 hearing, an audio-video conference hearing, or an in-person
3 27 hearing. A request for an in-person hearing shall be approved
3 28 unless the in-person hearing would be impractical because of
3 29 the distance between the parties to the hearing. The workers'
3 30 compensation commissioner shall issue a decision within ten
3 31 working days of receipt of an application for alternate care
3 32 made pursuant to a telephone hearing or audio-video conference
3 33 hearing or within fourteen working days of receipt of an
3 34 application for alternate care made pursuant to an in-person
3 35 hearing.

4 1 Sec. 2. Section 85.39, Code 2009, is amended to read as
4 2 follows:

4 3 85.39 EXAMINATION OF INJURED EMPLOYEES.

4 4 1. a. After an injury, the employee, if requested by the
4 5 employer, shall submit for examination at some reasonable time
4 6 and place and as often as reasonably requested, to a physician
4 7 or physicians authorized to practice under the laws of this
4 8 state or another state, without cost to the employee; but if
4 9 the employee requests, the employee, at the employee's own
4 10 cost, is entitled to have a physician or physicians of the
4 11 employee's own selection present to participate in the
4 12 examination. If an employee is required to leave work for
4 13 which the employee is being paid wages to attend the requested
4 14 examination, the employee shall be compensated at the
4 15 employee's regular rate for the time the employee is required
4 16 to leave work, and the employee shall be furnished
4 17 transportation to and from the place of examination, or the
4 18 employer may elect to pay the employee the reasonable cost of
4 19 the transportation. The refusal of the employee to submit to
4 20 the examination shall suspend the employee's right to any
4 21 compensation for the period of the refusal. Compensation
4 22 shall not be payable for the period of suspension.

4 23 b. If an evaluation of permanent disability has been made
4 24 by a physician retained by the employer and the employee
4 25 believes this evaluation to be too low, the employee shall,
4 26 upon application to the commissioner and upon delivery of a
4 27 copy of the application to the employer and its insurance
4 28 carrier, be reimbursed by the employer the reasonable fee for
4 29 a subsequent examination by a physician of the employee's own
4 30 choice, and reasonably necessary transportation expenses

4 31 incurred for the examination. The physician chosen by the
4 32 employee has the right to confer with and obtain from the
4 33 employer=retained physician sufficient history of the injury
4 34 to make a proper examination.

4 35 2. If the employee has chosen a physician to provide care
5 1 as provided in section 85.27, subsection 4, paragraph "b",
5 2 when it is medically indicated that no significant improvement
5 3 from an injury is anticipated, the employee may obtain a
5 4 medical opinion from the employee's physician, at the
5 5 employer's expense, regarding the extent of the employee's
5 6 permanent disability. If the employee obtains such an
5 7 evaluation and the employer believes this evaluation of
5 8 permanent disability to be too high, the employer may arrange
5 9 for a medical examination of the injured employee by a
5 10 physician of the employer's choice for the purpose of
5 11 obtaining a medical opinion regarding the extent of the
5 12 employee's permanent disability. If an employee is required
5 13 to leave work for which the employee is being paid wages to
5 14 attend an examination under this subsection, the employee
5 15 shall be compensated at the employee's regular rate for the
5 16 time the employee is required to leave work, and the employee
5 17 shall be furnished transportation to and from the place of
5 18 examination, or the employer may elect to pay the employee the
5 19 reasonable cost of transportation. The physician chosen by
5 20 the employer to conduct an examination has the right to confer
5 21 with and obtain from any physician who has treated the injured
5 22 employee sufficient history of the injury to make a proper
5 23 examination. The refusal by the employee to submit to the
5 24 examination shall suspend the employee's right to any
5 25 compensation for the period of the refusal. Compensation
5 26 shall not be payable for the period of suspension.

5 27 Sec. 3. EFFECTIVE AND APPLICABILITY DATES. This Act takes
5 28 effect January 1, 2010, and applies to injuries occurring on
5 29 or after that date.

5 30 EXPLANATION

5 31 This bill relates to the choice of a physician to treat an
5 32 injured employee under the state's workers' compensation laws.
5 33 The bill allows the employer to choose care unless the
5 34 employee has predesignated a physician as provided in the
5 35 bill.

6 1 The bill gives an employee the right to predesignate a
6 2 physician who is a primary care provider, from whom the
6 3 employee has previously received treatment for a
6 4 nonoccupational injury, illness, or examination, to provide
6 5 treatment for a work-related injury. The employer is required
6 6 to provide written notice to employees of this right upon
6 7 hire, periodically during employment, and upon receiving
6 8 notice of an injury from an employee, in a manner prescribed
6 9 by the workers' compensation commissioner.

6 10 If the employer fails to provide such notification, an
6 11 injured employee has the right to choose any physician to
6 12 provide treatment for the work-related injury and that
6 13 treatment shall be considered authorized care.

6 14 If the employer or employee is dissatisfied with the care

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6 15 chosen by the other party, the dissatisfied party is required
6 16 to communicate the basis of dissatisfaction to the other party
6 17 in writing and the parties may agree to alternate care
6 18 reasonably suited to treat the injury. If the parties cannot
6 19 agree to such alternate care, the dissatisfied party may make
6 20 an application for alternate care to the commissioner.

6 21 An application for alternate care is an original proceeding
6 22 and is treated as a contested case. A party may request that
6 23 the hearing be held in person, by telephone, or by audio=video
6 24 conference. The commissioner is required to issue a decision
6 25 within 10 working days of receipt of an application made
6 26 pursuant to a telephone hearing or audio=video conference
6 27 hearing and within 14 days of an in=person hearing.

6 28 Code section 85.39 is amended to provide that if the
6 29 employee has chosen care, when it is medically indicated that
6 30 no significant improvement from an injury is anticipated, the
6 31 employee may obtain a medical opinion from the employee's
6 32 physician at the employer's expense regarding the extent of
6 33 the employee's permanent disability. If the employer believes
6 34 that the evaluation of permanent disability obtained by the
6 35 employee is too high, the employer has the right to obtain
7 1 another medical opinion from a physician of the employer's
7 2 choosing.

7 3 The bill takes effect and applies to injuries occurring on
7 4 or after January 1, 2010.

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7 6 av/rj/5.2