

**Senate File 155 - Introduced**

SENATE FILE \_\_\_\_\_  
BY COMMITTEE ON LABOR AND  
BUSINESS RELATIONS

(SUCCESSOR TO SSB 1119)

Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_  
Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_

**A BILL FOR**

1 An Act relating to the choice of doctor to treat an injured  
2 employee under workers' compensation laws and providing an  
3 effective and applicability date.  
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
5 TLSB 1979SV 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  
1 6 unless the employee has predesignated a physician as provided  
1 7 in paragraph "b". If the employer chooses the care, 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. ~~An application made~~  
1 29 ~~under this subsection shall be considered an original~~  
1 30 ~~proceeding for purposes of commencement and contested case~~  
1 31 ~~proceedings under section 85.26. The hearing shall be~~  
1 32 ~~conducted pursuant to chapter 17A. Before a hearing is~~  
1 33 ~~scheduled, the parties may choose a telephone hearing or an~~  
1 34 ~~in-person hearing. A request for an in-person hearing shall~~  
1 35 ~~be approved unless the in-person hearing would be impractical~~  
2 1 ~~because of the distance between the parties to the hearing.~~  
2 2 ~~The workers' compensation commissioner shall issue a decision~~  
2 3 ~~within ten working days of receipt of an application for~~  
2 4 ~~alternate care made pursuant to a telephone hearing or within~~  
2 5 ~~fourteen working days of receipt of an application for~~  
2 6 ~~alternate care made pursuant to an in-person hearing.~~  
2 7 (3) 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 unless care needs to be provided at the job site in response  
2 12 to a life-threatening emergency, if the employee has  
2 13 predesignated a physician who is a primary care provider, who  
2 14 has previously provided medical treatment to the employee and  
2 15 has retained the employee's medical records, to provide  
2 16 treatment for the injury. Upon hire and periodically during  
2 17 employment, an employer shall provide written notice to all  
2 18 employees who have not yet predesignated a physician, of their  
2 19 right under this paragraph "b" to predesignate such a  
2 20 physician for treatment of an injury, in a manner prescribed  
2 21 by the workers' compensation commissioner by rule. The  
2 22 employer or the employer's insurer shall not coerce or  
2 23 otherwise attempt to influence an injured employee's choice of  
2 24 a physician to provide care. An employee shall, as soon as  
2 25 practicable, notify the employer of an injury, and upon  
2 26 receiving such notice of an injury from an employee, the  
2 27 employer shall again provide written notice to that employee  
2 28 of the employee's right under this paragraph "b" in a manner  
2 29 prescribed by the workers' compensation commissioner by rule.  
2 30 If an employer fails to notify an employee of the employee's  
2 31 right to choose a physician as provided in this paragraph "b",  
2 32 the employee has the right to choose any physician to provide  
2 33 treatment for the injury and the treatment shall be considered  
2 34 care authorized under this section.  
2 35 (2) For the purposes of this paragraph "b", "physician"  
3 1 includes an individual physician, a group of physicians, or a  
3 2 clinic. For the purposes of this paragraph "b", "primary care  
3 3 provider" means an employee's personal physician licensed to  
3 4 practice medicine and surgery or osteopathic medicine and  
3 5 surgery in this state or in another state who provides primary  
3 6 care and is a family or general practitioner, a pediatrician,  
3 7 an internist, an obstetrician, or a gynecologist. A physician

3 8 who practices in another state shall not be predesignated by  
3 9 an employee unless the physician's office is located within  
3 10 sixty miles of where the employee is employed or was injured  
3 11 unless the workers' compensation commissioner allows  
3 12 otherwise. A physician chosen by an injured employee to  
3 13 provide treatment is authorized to arrange for any  
3 14 consultation, surgical consultation, referral, emergency care,  
3 15 or other specialized medical services as the physician deems  
3 16 necessary to treat the injury. The employer shall pay for all  
3 17 such care, unless the workers' compensation commissioner  
3 18 determines otherwise.

3 19 (3) If the employer has reason to be dissatisfied with the  
3 20 care chosen by the employee, the employer should communicate  
3 21 the basis of such dissatisfaction to the employee, in writing  
3 22 if requested, following which the employee and the employer  
3 23 may agree to alternate care reasonably suited to treat the  
3 24 injury. If the employee and employer cannot agree on such  
3 25 alternate care, the commissioner may, upon application and  
3 26 reasonable proof of the necessity therefor, allow and order  
3 27 other care.

3 28 c. An application made to the commissioner under paragraph  
3 29 "a" or paragraph "b" shall be considered an original  
3 30 proceeding for purposes of commencement and contested case  
3 31 proceedings under section 85.26. The hearing shall be  
3 32 conducted pursuant to chapter 17A. Before a hearing is  
3 33 scheduled, the parties may choose a telephone hearing, an  
3 34 audio-video conference hearing, or an in-person hearing. A  
3 35 request for an in-person hearing shall be approved unless the  
4 1 in-person hearing would be impractical because of the distance  
4 2 between the parties to the hearing. The workers' compensation  
4 3 commissioner shall issue a decision within ten working days of  
4 4 receipt of an application for alternate care made pursuant to  
4 5 a telephone hearing or audio-video conference hearing or  
4 6 within fourteen working days of receipt of an application for  
4 7 alternate care made pursuant to an in-person hearing.

4 8 Sec. 2. Section 85.39, Code 2009, is amended to read as  
4 9 follows:

4 10 85.39 EXAMINATION OF INJURED EMPLOYEES.  
4 11 1. a. After an injury, the employee, if requested by the  
4 12 employer, shall submit for examination at some reasonable time  
4 13 and place and as often as reasonably requested, to a physician  
4 14 or physicians authorized to practice under the laws of this  
4 15 state or another state, without cost to the employee; but if  
4 16 the employee requests, the employee, at the employee's own  
4 17 cost, is entitled to have a physician or physicians of the  
4 18 employee's own selection present to participate in the  
4 19 examination. If an employee is required to leave work for  
4 20 which the employee is being paid wages to attend the requested  
4 21 examination, the employee shall be compensated at the  
4 22 employee's regular rate for the time the employee is required  
4 23 to leave work, and the employee shall be furnished  
4 24 transportation to and from the place of examination, or the  
4 25 employer may elect to pay the employee the reasonable cost of  
4 26 the transportation. The refusal of the employee to submit to

4 27 the examination shall suspend the employee's right to any  
4 28 compensation for the period of the refusal. Compensation  
4 29 shall not be payable for the period of suspension.

4 30 b. If an evaluation of permanent disability has been made  
4 31 by a physician retained by the employer and the employee  
4 32 believes this evaluation to be too low, the employee shall,  
4 33 upon application to the commissioner and upon delivery of a  
4 34 copy of the application to the employer and its insurance  
4 35 carrier, be reimbursed by the employer the reasonable fee for  
5 1 a subsequent examination by a physician of the employee's own  
5 2 choice, and reasonably necessary transportation expenses  
5 3 incurred for the examination. The physician chosen by the  
5 4 employee has the right to confer with and obtain from the  
5 5 employer-retained physician sufficient history of the injury  
5 6 to make a proper examination.

5 7 2. If the employee has chosen a physician to provide care  
5 8 as provided in section 85.27, subsection 4, paragraph "b",  
5 9 when it is medically indicated that no significant improvement  
5 10 from an injury is anticipated, the employee may obtain a  
5 11 medical opinion from the employee's physician, at the  
5 12 employer's expense, regarding the extent of the employee's  
5 13 permanent disability. If the employee obtains such an  
5 14 evaluation and the employer believes this evaluation of  
5 15 permanent disability to be too high, the employer may arrange  
5 16 for a medical examination of the injured employee by a  
5 17 physician of the employer's choice for the purpose of  
5 18 obtaining a medical opinion regarding the extent of the  
5 19 employee's permanent disability. If an employee is required  
5 20 to leave work for which the employee is being paid wages to  
5 21 attend an examination under this subsection, the employee  
5 22 shall be compensated at the employee's regular rate for the  
5 23 time the employee is required to leave work, and the employee  
5 24 shall be furnished transportation to and from the place of  
5 25 examination, or the employer may elect to pay the employee the  
5 26 reasonable cost of transportation. The physician chosen by  
5 27 the employer to conduct the examination has the right to  
5 28 confer with and obtain from any physician who has treated the  
5 29 injured employee sufficient history of the injury to make a  
5 30 proper examination. The refusal by the employee to submit to  
5 31 the examination shall suspend the employee's right to any  
5 32 compensation for the period of the refusal. Compensation  
5 33 shall not be payable for the period of suspension.

5 34 Sec. 3. EFFECTIVE AND APPLICABILITY DATE. This Act takes  
5 35 effect January 1, 2010, and applies to injuries occurring on  
6 1 or after that date.

#### 6 2 EXPLANATION

6 3 This bill relates to the choice of a physician to treat an  
6 4 injured employee under the state's workers' compensation laws.  
6 5 The bill allows the employer to choose care unless the  
6 6 employee has predesignated a physician as provided in the  
6 7 bill.

6 8 The bill amends Code section 85.27, giving an employee the  
6 9 right to predesignate a physician who is a primary care  
6 10 provider, who has previously provided treatment to the

6 11 employee and has retained the employee's medical records, to  
6 12 provide treatment for a work-related injury. The employer is  
6 13 required to provide written notice to employees of this right  
6 14 upon hire, and periodically during employment, and upon  
6 15 receiving notice of an injury from an employee who has not yet  
6 16 predesignated a physician of the employee's right to do so, in  
6 17 a manner prescribed by the workers' compensation commissioner.  
6 18 An employer or an employer's insurer shall not coerce or  
6 19 otherwise attempt to influence an injured employee's choice of  
6 20 a physician.

6 21 If the employer fails to provide such notification, an  
6 22 injured employee has the right to choose any physician to  
6 23 provide treatment for the work-related injury and that  
6 24 treatment shall be considered authorized care.

6 25 If the employer or employee is dissatisfied with the care  
6 26 chosen by the other party, the dissatisfied party is required  
6 27 to communicate the basis of dissatisfaction to the other  
6 28 party, in writing if requested, and the parties may agree to  
6 29 alternate care reasonably suited to treat the injury. If the  
6 30 parties cannot agree to such alternate care, the dissatisfied  
6 31 party may make an application for alternate care to the  
6 32 commissioner.

6 33 An application for alternate care is an original proceeding  
6 34 and is treated as a contested case. A party may request that  
6 35 the hearing be held in person, by telephone, or by audio-video  
7 1 conference. The commissioner is required to issue a decision  
7 2 within 10 working days of receipt of an application made  
7 3 pursuant to a telephone hearing or audio-video conference  
7 4 hearing and within 14 days of an in-person hearing.

7 5 Code section 85.39 is amended to provide that if the  
7 6 employee has chosen care, when it is medically indicated that  
7 7 no significant improvement from an injury is anticipated, the  
7 8 employee may obtain a medical opinion regarding the extent of  
7 9 the employee's permanent disability. If the employer believes  
7 10 that the evaluation of permanent disability obtained by the  
7 11 employee is too high, the employer has the right to obtain  
7 12 another medical opinion from a physician of the employer's  
7 13 choosing.

7 14 The bill takes effect and applies to injuries occurring on  
7 15 or after January 1, 2010.

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