

Benefits Available

Workers' Compensation Seminar
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Material Prepared By:

David Drake
Lawyer, Lawyer, Dutton & Drake
1200 Valley West Drive, Suite 500
Des Moines, IA 50266
(515) 224-4400
Fax: (515) 223-4121

IOWA WORKERS' COMPENSATION MEDICAL BENEFITS

COVERAGE, AUTHORIZED TREATING PHYSICIANS, ALTERNATE CARE AND INDEPENDENT MEDICAL EXAMS

David D. Drake
Lawyer, Lawyer, Dutton & Drake, L.L.P.
1200 Valley West Drive, Suite 500
West Des Moines, Iowa 50266

OVERVIEW

Iowa Code section 85.27 sets forth that employers shall for all compensible injuries furnish to employees reasonable surgical, medical, dental, osteopathic, chiropractic, podiatric, physical rehabilitation, nursing, ambulance and hospital services and supplies and shall allow reasonably necessary transportation expenses incurred for such services. The employer shall also furnish reasonable and necessary crutches, artificial members and appliances but shall not be required to furnish more than one set of permanent prosthetic devices.

In return for being responsible for providing reasonable services and supplies to treat an injured employee the employer has the right to choose the care. The care that is provided must be offered promptly and be reasonably suited to treat the employee's injury without undue inconvenience to the employee.

The injured employee, the employer and insurance carrier making or defending a claim for benefits agrees to the release of all information to which the employee, employer or insurance carrier has access concerning the employee's physical or mental condition relative to the claim and further waives any privilege for the release of the information. The information shall be made available to any party or party's representative upon request. If release of information is refused the party seeking the information may apply to the workers' compensation commissioner for relief.

Section 85.27 also requires that if, after the third day of incapacity to work, or if the injury results in a permanent injury then anytime following injury that an employee who is not receiving temporary total or healing period benefits returns to work and is required to leave work for one full day or less to receive medical care pursuant to section 85.27 the employee shall be paid whatever amount would be equivalent to their lost wages by the employer. The employer then must seek reimbursement for those wages paid from the insurance carrier. The payments made to the employee are not to be construed as payment of weekly compensation.

Section 85.27 further sets out the procedure by which an employee who has reason to be dissatisfied with the care offered by the employer can seek alternate care. The employee must communicate that dissatisfaction to the employer in writing, if requested, following which

communication the employer and employee may agree on a change. If no agreement can be reached by discussion, then the employee may file an application for alternate care with the Iowa Workers' Compensation Commission and the commissioner may order and allow other care, or may maintain the care that the employer has authorized and provided. The employer shall notify an injured worker of the ability to contest the employer's choice of care pursuant to section 85.27.

Section 85.27 provides that while a contested case proceeding is pending before the commission no debt collection activity shall be undertaken by any health care provider for the collection of charges related to treatment alleged to have been undertaken connected to the injury that is a part of the contested case proceeding. The health care provider may send one itemized bill to the employee setting forth the amount of the charges after receiving notification of the contested case proceeding.

Section 85.27 also contains the framework upon which an employer and its' insurance carrier can contest health care costs that they believe to be excessive or unnecessary in the treatment of the injury to the employee. Any health care provider agrees to be bound to the charges found to be reasonable and cannot seek payment from the injured employee.

Iowa Code section 85.39 sets forth that after an injury, the employee shall if requested, submit for examination at some reasonable time and place and as often as reasonably requested, to a physician or physicians, as long as it is without cost to the employee. The refusal of the employee to submit to the examination shall suspend the employee's right to any compensation for the period of the refusal. Any loss of wages as a result of the attendance to the examination shall be at the employee's rate of pay.

Section 85.39 also sets forth the employee's right after evaluation of any permanent disability that may be present by the employer retained physician to obtain an examination by a physician of the employee's choosing, and be reimbursed for that evaluation, along with reasonably necessary transportation charges. The employee in order to assure payment of the charges must either get an agreement with the employer or insurance carrier regarding reimbursement, or section 85.39 provides the procedure necessary for the employee's filing of an application to the commission ordering such payment.

SPECIFIC CONSIDERATIONS ALTERNATE MEDICAL CARE

What constitutes reasonable medical care and how and where that care is being provided or sought constitute the major battles under section 85.27 after causal connection issues. The injured worker wants to change doctors, the doctor is being changed and the worker does not want it changed. Surgery is recommended, but one of the parties wants a second opinion. Medical care is being provided, but at a substantial distance from the injured workers' home. What is reasonable and what is not can be clearly in the eye of the beholder.

When those differing opinions can not be resolved by the parties that is the time for the employee to file for alternate care. Again, the claimant needs to communicate the basis for the dissatisfaction to the employer/insurance carrier.

If after that no progress can be made the claimant needs to file a Petition for Alternate Care. The process for commencement of an Alternate Care proceeding is the same as in a regular petition filing, with the exception of no filing fee.

The defendants answer the petition on the reverse side and if the question regarding liability denied is checked the petition will be dismissed. This procedure is to determine whether alternate care for a compensable injury will be awarded, not whether an injury occurred. However, if the employer disputes the liability then no argument can be made that the care was unauthorized as the right to select the care goes away with a denial.

Rule 876-4.48 sets out the specifics of the process. After filing, service and answer the commission will notify the parties as to the time, place and nature of the hearing. The hearing may be by telephone or in person. All discovery must be completed prior to the hearing, any written evidence to be used at the hearing must be exchanged prior to the hearing and filed with the agency prior to the hearing. Written evidence is limited to 10 pages.

The hearing is usually electronically recorded unless one of the parties brings a court reporter. The decision of the commission will be issued within 10 working days of receipt of a proper application for hearing if a telephone hearing is scheduled, or 14 days when an in-person hearing is held. This means that you will get a very quick hearing, and a very quick decision.

Reasons for care to be changed include distance the worker is being required to travel for care and treatment, referrals by the authorized doctor to another doctor that are denied, failure of the named doctor to have any further care to offer to the worker, if the employer/insurance carrier fails to offer prompt care and if the care being offered has not been successful in treating the condition.

Appeal from the decision of the alternate medical care decision is to the District Court as the Deputy Workers' Compensation Commissioner hearing the case has usually, if not always, been delegated the final agency action in these matters.

SECTION 85.39

Section 85.39 differs from section 85.27 in that this section allows for the examination of the injured worker by the employer/insurance carrier, but does not have anything to do with the ongoing care and treatment of the claimant. The claimant will need to show-up for properly noticed and timely scheduled appointments when clearly labeled section 85.39 examinations or face the immediate suspension of benefits. Some employers/insurance carriers have suspended claimant's benefits for failure to attend a treating physicians appointment under the disguise of this section, however if a claimant fails to attend a regularly scheduled treating doctors appointment and the employer/insurance carrier want to punish the claimant a 30 notice would need to be sent before termination of benefits.

Section 85.39 allows the injured worker to obtain one examination paid for by the employer and insurance carrier. However, there are conditions precedent to the employee's ability to qualify for the examination. First, the injury must be one where liability is accepted. Secondly, the employer/insurance company physician must have set out a permanency rating, even if it is zero, prior to the employee's eligibility for this IME section to take place.