

HOUSE BILL No. 1490

DIGEST OF INTRODUCED BILL

Citations Affected: IC 22-3.

Synopsis: Worker's compensation and choice of physician. Provides that an employee entitled to compensation for: (1) personal injury by accident arising out of and in the course of employment; or (2) disablement by occupational disease arising out of and in the course of employment; may select a physician or surgeon of the employee's choice or may choose to be treated by the physician or surgeon furnished by the employer.

Effective: July 1, 2007.

Cheney

January 23, 2007, read first time and referred to Committee on Labor and Employment.

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Introduced

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

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HOUSE BILL No. 1490

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 22-3-3-4 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 2007]: Sec. 4. (a) After an injury and prior to
3 an adjudication of permanent impairment, the employer shall furnish
4 or cause to be furnished, free of charge to the employee, an attending
5 physician for the treatment of ~~his~~ **the employee's** injuries, and in
6 addition thereto such surgical, hospital, and nursing services and
7 supplies as the attending physician or the worker's compensation board
8 may deem necessary. **The employee may select an attending**
9 **physician of the employee's choice for the treatment or may choose**
10 **to be treated by the attending physician furnished by the employer.**
11 If the employee is requested or required by the employer to submit to
12 treatment outside the county of employment, the employer shall also
13 pay the reasonable expense of travel, food, and lodging necessary
14 during the travel, but not to exceed the amount paid at the time of the
15 travel by the state to its employees under the state travel policies and
16 procedures established by the department of administration and
17 approved by the state budget agency. If the treatment or travel to or



1 from the place of treatment causes a loss of working time to the
 2 employee, the employer shall reimburse the employee for the loss of
 3 wages using the basis of the employee's average daily wage.

4 (b) During the period of temporary total disability resulting from the
 5 injury, the employer shall furnish the physician services and supplies,
 6 and the worker's compensation board may, on proper application of
 7 either party, require that treatment by the physician and services and
 8 supplies be furnished by or on behalf of the employer as the worker's
 9 compensation board may deem reasonably necessary. **The employee**
 10 **may select a physician of the employee's choice for the treatment**
 11 **or may choose to be treated by the physician furnished by the**
 12 **employer.**

13 (c) After an employee's injury has been adjudicated by agreement
 14 or award on the basis of permanent partial impairment and within the
 15 statutory period for review in such case as provided in section 27 of
 16 this chapter, the employer may continue to furnish a physician or
 17 surgeon and other medical services and supplies, and the worker's
 18 compensation board may within the statutory period for review as
 19 provided in section 27 of this chapter, on a proper application of either
 20 party, require that treatment by that physician and other medical
 21 services and supplies be furnished by and on behalf of the employer as
 22 the worker's compensation board may deem necessary to limit or
 23 reduce the amount and extent of the employee's impairment. **If the**
 24 **employer continues to furnish a physician or surgeon, the employee**
 25 **may select a physician or surgeon of the employee's choice or may**
 26 **choose to be treated by the physician or surgeon furnished by the**
 27 **employer.** The refusal of the employee to accept such services and
 28 supplies, when provided by or on behalf of the employer, shall bar the
 29 employee from all compensation otherwise payable during the period
 30 of the refusal, and ~~his~~ **the employee's** right to prosecute any
 31 proceeding under IC 22-3-2 through IC 22-3-6 shall be suspended and
 32 abated until the employee's refusal ceases. The employee must be
 33 served with a notice setting forth the consequences of the refusal under
 34 this section. The notice must be in a form prescribed by the worker's
 35 compensation board. No compensation for permanent total impairment,
 36 permanent partial impairment, permanent disfigurement, or death shall
 37 be paid or payable for that part or portion of the impairment,
 38 disfigurement, or death which is the result of the failure of the
 39 employee to accept the treatment, services, and supplies required under
 40 this section. However, an employer may at any time permit an
 41 employee to have treatment for ~~his~~ **the employee's** injuries by spiritual
 42 means or prayer in lieu of the physician or surgeon and other medical

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1 services and supplies required under this section.

2 (d) If, because of an emergency, or because of the employer's failure

3 to provide an attending physician or surgical, hospital, or nursing

4 services and supplies, or treatment by spiritual means or prayer, as

5 required by this section, or because of any other good reason, **including**

6 **the selection of a physician by the employee under subsection (a),**

7 **(b), or (c),** a physician other than that provided by the employer treats

8 the injured employee during the period of the employee's temporary

9 total disability, or necessary and proper surgical, hospital, or nursing

10 services and supplies are procured within the period, the reasonable

11 cost of those services and supplies shall, subject to the approval of the

12 worker's compensation board, be paid by the employer.

13 (e) Regardless of when it occurs, where a compensable injury

14 results in the amputation of a body part, the enucleation of an eye, or

15 the loss of natural teeth, the employer shall furnish an appropriate

16 artificial member, braces, and prosthodontics. The cost of repairs to or

17 replacements for the artificial members, braces, or prosthodontics that

18 result from a compensable injury pursuant to a prior award and are

19 required due to either medical necessity or normal wear and tear,

20 determined according to the employee's individual use, but not abuse,

21 of the artificial member, braces, or prosthodontics, shall be paid from

22 the second injury fund upon order or award of the worker's

23 compensation board. The employee is not required to meet any other

24 requirement for admission to the second injury fund.

25 (f) If an accident arising out of and in the course of employment

26 after June 30, 1997, results in the loss of or damage to an artificial

27 member, a brace, an implant, eyeglasses, prosthodontics, or other

28 medically prescribed device, the employer shall repair the artificial

29 member, brace, implant, eyeglasses, prosthodontics, or other medically

30 prescribed device or furnish an identical or a reasonably equivalent

31 replacement.

32 (g) This section may not be construed to prohibit an agreement

33 between an employer and the employer's employees that has the

34 approval of the board and that binds the parties to:

35 (1) medical care furnished by health care providers selected by

36 agreement before or after injury; or

37 (2) the findings of a health care provider who was chosen by

38 agreement.

39 SECTION 2. IC 22-3-7-17 IS AMENDED TO READ AS

40 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 17. (a) During the

41 period of disablement, the employer shall furnish or cause to be

42 furnished, free of charge to the employee, an attending physician for

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1 the treatment of ~~his~~ **the employee's** occupational disease, and in
 2 addition thereto such surgical, hospital, and nursing services and
 3 supplies as the attending physician or the worker's compensation board
 4 may deem necessary. **The employee may select an attending**
 5 **physician of the employee's choice for the treatment or may choose**
 6 **to be treated by the attending physician furnished by the employer.**
 7 If the employee is requested or required by the employer to submit to
 8 treatment outside the county of employment, the employer shall also
 9 pay the reasonable expense of travel, food, and lodging necessary
 10 during the travel, but not to exceed the amount paid at the time of the
 11 travel by the state of Indiana to its employees. If the treatment or travel
 12 to or from the place of treatment causes a loss of working time to the
 13 employee, the employer shall reimburse the employee for the loss of
 14 wages using the basis of the employee's average daily wage.

15 (b) During the period of disablement resulting from the occupational
 16 disease, the employer shall furnish such physician, services, and
 17 supplies, and the worker's compensation board may, on proper
 18 application of either party, require that treatment by such physician and
 19 such services and supplies be furnished by or on behalf of the employer
 20 as the board may deem reasonably necessary. **The employee may**
 21 **select a physician of the employee's choice for the treatment or**
 22 **may choose to be treated by the physician furnished by the**
 23 **employer.** After an employee's occupational disease has been
 24 adjudicated by agreement or award on the basis of permanent partial
 25 impairment and within the statutory period for review in such case as
 26 provided in section 27(i) of this chapter, the employer may continue to
 27 furnish a physician or a surgeon and other medical services and
 28 supplies, and the board may, within such statutory period for review as
 29 provided in section 27(i) of this chapter, on a proper application of
 30 either party, require that treatment by such physician or surgeon and
 31 such services and supplies be furnished by and on behalf of the
 32 employer as the board may deem necessary to limit or reduce the
 33 amount and extent of such impairment. **If the employer continues to**
 34 **furnish a physician or surgeon, the employee may select a**
 35 **physician or surgeon of the employee's choice or may choose to be**
 36 **treated by the physician or surgeon furnished by the employer.** The
 37 refusal of the employee to accept such services and supplies when so
 38 provided by or on behalf of the employer shall bar the employee from
 39 all compensation otherwise payable during the period of such refusal,
 40 and ~~his~~ **the employee's** right to prosecute any proceeding under this
 41 chapter shall be suspended and abated until such refusal ceases. The
 42 employee must be served with a notice setting forth the consequences

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1 of the refusal under this section. The notice must be in a form
 2 prescribed by the worker's compensation board. No compensation for
 3 permanent total impairment, permanent partial impairment, permanent
 4 disfigurement, or death shall be paid or payable for that part or portion
 5 of such impairment, disfigurement, or death which is the result of the
 6 failure of such employee to accept such treatment, services, and
 7 supplies, provided that an employer may at any time permit an
 8 employee to have treatment for **his the employee's** disease or injury by
 9 spiritual means or prayer in lieu of such physician, services, and
 10 supplies.

11 (c) Regardless of when it occurs, where a compensable occupational
 12 disease results in the amputation of a body part, the enucleation of an
 13 eye, or the loss of natural teeth, the employer shall furnish an
 14 appropriate artificial member, braces, and prosthodontics. The cost of
 15 repairs to or replacements for the artificial members, braces, or
 16 prosthodontics that result from a compensable occupational disease
 17 pursuant to a prior award and are required due to either medical
 18 necessity or normal wear and tear, determined according to the
 19 employee's individual use, but not abuse, of the artificial member,
 20 braces, or prosthodontics, shall be paid from the second injury fund
 21 upon order or award of the worker's compensation board. The
 22 employee is not required to meet any other requirement for admission
 23 to the second injury fund.

24 (d) If an emergency or because of the employer's failure to provide
 25 such attending physician or such surgical, hospital, or nurse's services
 26 and supplies or such treatment by spiritual means or prayer as specified
 27 in this section, or for other good reason, **including the selection of a**
 28 **physician by the employee under subsection (a) or (b)**, a physician
 29 other than that provided by the employer treats the diseased employee
 30 within the period of disability, or necessary and proper surgical,
 31 hospital, or nurse's services and supplies are procured within the
 32 period, the reasonable cost of such services and supplies shall, subject
 33 to approval of the worker's compensation board, be paid by the
 34 employer.

35 (e) This section may not be construed to prohibit an agreement
 36 between an employer and employees that has the approval of the board
 37 and that:

- 38 (1) binds the parties to medical care furnished by providers
- 39 selected by agreement before or after disablement; or
- 40 (2) makes the findings of a provider chosen in this manner
- 41 binding upon the parties.

42 (f) The employee and the employee's estate do not have liability to

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1 a health care provider for payment for services obtained under this
2 section. The right to order payment for all services provided under this
3 chapter is solely with the board. All claims by a health care provider for
4 payment for services are against the employer and the employer's
5 insurance carrier, if any, and must be made with the board under this
6 chapter.

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