

HOUSE BILL No. 1339

DIGEST OF INTRODUCED BILL

Citations Affected: IC 22-3.

Synopsis: Choice of physician for worker injury or disease. Permits an employee to choose the attending physician who will provide services and goods resulting from an employment injury or occupational disease for purposes of the worker's compensation law.

Effective: Upon passage; July 1, 2021.

Lucas, Hatfield, Pryor

January 14, 2021, read first time and referred to Committee on Employment, Labor and Pensions.



First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

HOUSE BILL No. 1339

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, AS AMENDED BY P.L.275-2013,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2021]: Sec. 4. (a) After an injury and prior to an adjudication
4 of permanent impairment, the employer ~~shall furnish or cause to be~~
5 ~~furnished~~; **is responsible for providing**, free of charge to the
6 employee, an attending physician for the treatment of the employee's
7 injuries, and in addition thereto ~~such~~ **the** services and products ~~as that~~
8 the attending physician or the worker's compensation board ~~may~~ deem
9 **reasonably necessary. After June 30, 2021, the employee is entitled**
10 **to choose the attending physician that the employer is required to**
11 **provide, free of charge, regardless of whether the injury occurred**
12 **before July 1, 2021. If, due to the nature of the injury, the employee**
13 **is unable to select an attending physician or does not select an**
14 **attending physician and the nature of the injury requires**
15 **immediate treatment and care, the employer shall select an**
16 **attending physician for the employee as required or appropriate to**
17 **provide immediate treatment and care. The employer shall provide**



1 or cause to be provided an attending physician during any time
 2 that the employee has not chosen an attending physician. When
 3 medically necessary or advisable, or at the request of the employee,
 4 the attending physician shall consult with the employee's personal
 5 physician. Notice that the employee has chosen an attending
 6 physician and notice of the provision of services and products as
 7 they occur shall be given to the employer and the employer's
 8 insurance carrier as required under rules adopted by the worker's
 9 compensation board. If the employee is requested or required by the
 10 employer to submit to treatment outside the county of employment, the
 11 employer shall also pay the reasonable expense of travel, food, and
 12 lodging necessary during the travel, but not to exceed the amount paid
 13 at the time of the travel by the state to its employees under the state
 14 travel policies and procedures established by the department of
 15 administration and approved by the state budget agency. If the
 16 treatment or travel to or from the place of treatment causes a loss of
 17 working time to the employee, the employer shall reimburse the
 18 employee for the loss of wages using the basis of the employee's
 19 average daily wage.

20 (b) During the period of temporary total disability resulting from the
 21 injury, the employer shall furnish **is responsible for providing to the**
 22 **employee, free of charge**, the physician, services, and products, and
 23 the worker's compensation board may, on proper application of either
 24 party, require that treatment by the physician and services and products
 25 be furnished by or on behalf of the employer as the worker's
 26 compensation board may deem reasonably necessary. **After June 30,**
 27 **2021, the employee is entitled to choose the physician and obtain**
 28 **the services and products that the chosen physician or the worker's**
 29 **compensation board deem reasonably necessary, free of charge,**
 30 **regardless of whether the injury occurred before July 1, 2021. The**
 31 **employer shall provide or cause to be provided an attending**
 32 **physician during any time that the employee has not chosen an**
 33 **attending physician. When medically necessary or advisable, or at**
 34 **the request of the employee, the attending physician shall consult**
 35 **with the employee's personal physician. Notice that the employee**
 36 **has received physician services and products chosen by the**
 37 **employee shall be given to the employer and the employer's**
 38 **insurance carrier as required under the rules of the worker's**
 39 **compensation board.**

40 (c) After an employee's injury has been adjudicated by agreement
 41 or award on the basis of permanent partial impairment and within the
 42 statutory period for review in such case as provided in section 27 of



1 this chapter, the employer may continue to ~~furnish~~ **provide to the**
2 **employee, free of charge**, a physician or surgeon and other medical
3 services and products, and the worker's compensation board may within
4 the statutory period for review as provided in section 27 of this chapter,
5 on a proper application of either party, require that treatment by that
6 physician and other services and products be furnished by and on
7 behalf of the employer as the worker's compensation board may deem
8 necessary to limit or reduce the amount and extent of the employee's
9 impairment. **If the employer chooses to continue providing a**
10 **physician or surgeon, after June 30, 2021, the employee is entitled**
11 **to choose the physician or surgeon and obtain the services and**
12 **products that the chosen physician or surgeon or the worker's**
13 **compensation board deem reasonably necessary, regardless of**
14 **whether the injury occurred before July 1, 2021. The employer**
15 **may provide or cause to be provided the physician or surgeon**
16 **during any time that the employee has not chosen an attending**
17 **physician. When medically necessary or advisable, or at the**
18 **request of the employee, the attending physician shall consult with**
19 **the employee's personal physician. Notice that the employee has**
20 **received physician or surgeon services and products chosen by the**
21 **employee shall be given to the employer and the employer's**
22 **insurance carrier as required under the rules of the worker's**
23 **compensation board.** The refusal of the employee to accept such
24 services and products, when provided by or on behalf of the employer,
25 shall bar the employee from all compensation otherwise payable during
26 the period of the refusal, and the employee's right to prosecute any
27 proceeding under IC 22-3-2 through IC 22-3-6 shall be suspended and
28 abated until the employee's refusal ceases. The employee must be
29 served with a notice setting forth the consequences of the refusal under
30 this section. The notice must be in a form prescribed by the worker's
31 compensation board. No compensation for permanent total impairment,
32 permanent partial impairment, permanent disfigurement, or death shall
33 be paid or payable for that part or portion of the impairment,
34 disfigurement, or death which is the result of the failure of the
35 employee to accept the services and products required under this
36 section. However, an employer may at any time permit an employee to
37 have treatment for the employee's injuries by spiritual means or prayer
38 in lieu of the physician or surgeon and other services and products
39 required under this section.

40 (d) If, because of an emergency, or because of the employer's failure
41 to provide an attending physician or services and products, or treatment
42 by spiritual means or prayer, as required by this section, or because of



1 any other good reason, a physician ~~other than that provided by the~~
 2 ~~employer chosen by the employee and not otherwise furnished by~~
 3 ~~the employer~~ treats the injured employee during the period of the
 4 employee's temporary total disability, or necessary and proper services
 5 and products are procured within the period, the reasonable cost of
 6 those services and products shall, subject to the approval of the
 7 worker's compensation board, be paid by the employer.

8 (e) An employer or employer's insurance carrier may not delay the
 9 provision of emergency medical care whenever emergency medical
 10 care is considered necessary in the professional judgment of the
 11 attending health care facility physician.

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

24 (g) If an accident arising out of and in the course of employment
 25 after June 30, 1997, results in the loss of or damage to an artificial
 26 member, a brace, an implant, eyeglasses, prosthodontics, or other
 27 medically prescribed device, the employer shall repair the artificial
 28 member, brace, implant, eyeglasses, prosthodontics, or other medically
 29 prescribed device or furnish an identical or a reasonably equivalent
 30 replacement.

31 (h) This section may not be construed to prohibit an agreement
 32 between an employer and the employer's employees that has the
 33 approval of the board and that binds the parties to:

- 34 (1) medical care furnished by medical service providers selected
 35 by agreement before or after injury; or
- 36 (2) the findings of a medical service provider who was chosen by
 37 agreement.

38 SECTION 2. IC 22-3-7-17, AS AMENDED BY P.L.275-2013,
 39 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 40 JULY 1, 2021]: Sec. 17. (a) During the period of disablement, the
 41 employer ~~shall furnish or cause to be furnished;~~ **is responsible for**
 42 **providing**, free of charge to the employee, an attending physician for



1 the treatment of the employee's occupational disease, and in addition
2 thereto such services and products as the attending physician or the
3 worker's compensation board may deem necessary. **After June 30,**
4 **2021, the employee is entitled to choose the attending physician**
5 **that the employer is required to provide, free of charge, regardless**
6 **of whether the occupational disease occurred before July 1, 2021.**
7 **If, due to the nature of the occupational disease, the employee is**
8 **unable to select an attending physician or does not select an**
9 **attending physician and the nature of the occupational disease**
10 **requires immediate treatment and care, the employer shall select**
11 **an attending physician for the employee as required or appropriate**
12 **to provide immediate treatment and care. The employer shall**
13 **provide or cause to be provided an attending physician during any**
14 **time that the employee has not chosen an attending physician.**
15 **When medically necessary or advisable, or at the request of the**
16 **employee, the attending physician shall consult with the employee's**
17 **personal physician. Notice that the employee has chosen an**
18 **attending physician and notice of the provision of services and**
19 **products as they occur shall be given to the employer and the**
20 **employer's insurance carrier as required under rules adopted by**
21 **the worker's compensation board.** If the employee is requested or
22 required by the employer to submit to treatment outside the county of
23 employment, the employer shall also pay the reasonable expense of
24 travel, food, and lodging necessary during the travel, but not to exceed
25 the amount paid at the time of the travel by the state of Indiana to its
26 employees. If the treatment or travel to or from the place of treatment
27 causes a loss of working time to the employee, the employer shall
28 reimburse the employee for the loss of wages using the basis of the
29 employee's average daily wage.

30 (b) During the period of disablement resulting from the occupational
31 disease, the employer shall furnish is responsible for providing to the
32 **employee, free of charge,** such physician, services and products, and
33 the worker's compensation board may, on proper application of either
34 party, require that treatment by such physician and such services and
35 products be furnished by or on behalf of the employer as the board may
36 deem reasonably necessary. **After June 30, 2021, the employee is**
37 **entitled to choose the physician and obtain the services and**
38 **products that the chosen physician or the worker's compensation**
39 **board deem reasonably necessary, free of charge, regardless of**
40 **whether the occupational disease occurred before July 1, 2021. The**
41 **employer shall provide or cause to be provided an attending**
42 **physician during any time that the employee has not chosen an**



1 attending physician. When medically necessary or advisable, or at
2 the request of the employee, the attending physician shall consult
3 with the employee's personal physician. Notice that the employee
4 has received physician services and products chosen by the
5 employee shall be given to the employer and the employer's
6 insurance carrier as required under the rules of the worker's
7 compensation board. After an employee's occupational disease has
8 been adjudicated by agreement or award on the basis of permanent
9 partial impairment and within the statutory period for review in such
10 case as provided in section 27(i) of this chapter, the employer may
11 continue to furnish a physician or a surgeon and other services and
12 products, and the board may, within such statutory period for review as
13 provided in section 27(i) of this chapter, on a proper application of
14 either party, require that treatment by such physician or surgeon and
15 such services and products be furnished by and on behalf of the
16 employer as the board may deem necessary to limit or reduce the
17 amount and extent of such impairment. **If the employer chooses to**
18 **continue providing a physician or surgeon, after June 30, 2021, the**
19 **employee is entitled to choose the physician or surgeon and obtain**
20 **the services and products that the chosen physician or surgeon or**
21 **the worker's compensation board deem reasonably necessary,**
22 **regardless of whether the occupational disease occurred before**
23 **July 1, 2021. The employer may provide or cause to be provided**
24 **the physician or surgeon during any time that the employee has not**
25 **chosen an attending physician. When medically necessary or**
26 **advisable, or at the request of the employee, the attending**
27 **physician shall consult with the employee's personal physician.**
28 **Notice that the employee has received physician or surgeon**
29 **services and products chosen by the employee shall be given to the**
30 **employer and the employer's insurance carrier as required under**
31 **the rules of the worker's compensation board.** The refusal of the
32 employee to accept such services and products when so provided by or
33 on behalf of the employer, shall bar the employee from all
34 compensation otherwise payable during the period of such refusal and
35 the employee's right to prosecute any proceeding under this chapter
36 shall be suspended and abated until such refusal ceases. The employee
37 must be served with a notice setting forth the consequences of the
38 refusal under this section. The notice must be in a form prescribed by
39 the worker's compensation board. No compensation for permanent total
40 impairment, permanent partial impairment, permanent disfigurement,
41 or death shall be paid or payable for that part or portion of such
42 impairment, disfigurement, or death which is the result of the failure of



1 such employee to accept such services and products, provided that an
2 employer may at any time permit an employee to have treatment for the
3 employee's disease or injury by spiritual means or prayer in lieu of such
4 physician, services and products.

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

18 (d) If an emergency or because of the employer's failure to provide
19 such attending physician or such services and products or such
20 treatment by spiritual means or prayer as specified in this section, or for
21 other good reason, a physician ~~other than that provided by the employer~~
22 **chosen by the employee and not otherwise furnished by the**
23 **employer** treats the diseased employee within the period of disability,
24 or necessary and proper services and products are procured within the
25 period, the reasonable cost of such services and products shall, subject
26 to approval of the worker's compensation board, be paid by the
27 employer.

28 (e) An employer or employer's insurance carrier may not delay the
29 provision of emergency medical care whenever emergency medical
30 care is considered necessary in the professional judgment of the
31 attending health care facility physician.

32 (f) This section may not be construed to prohibit an agreement
33 between an employer and employees that has the approval of the board
34 and that:

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

39 (g) The employee and the employee's estate do not have liability to
40 a medical service provider for payment for services obtained under this
41 section. The right to order payment for all services provided under this
42 chapter is solely with the board. All claims by a medical service



1 provider for payment for services are against the employer and the
 2 employer's insurance carrier, if any, and must be made with the board
 3 under this chapter. After June 30, 2011, a medical service provider
 4 must file an application for adjustment of a claim for a medical service
 5 provider's fee with the board not later than two (2) years after the
 6 receipt of an initial written communication from the employer, the
 7 employer's insurance carrier, if any, or an agent acting on behalf of the
 8 employer after the medical service provider submits a bill for services.
 9 To offset a part of the board's expenses related to the administration of
 10 medical service provider reimbursement disputes, a medical service
 11 facility shall pay a filing fee of sixty dollars (\$60) in a balance billing
 12 case. The filing fee must accompany each application filed with the
 13 board. If an employer, employer's insurance carrier, or an agent acting
 14 on behalf of the employer denies or fails to pay any amount on a claim
 15 submitted by a medical service facility, a filing fee is not required to
 16 accompany an application that is filed for the denied or unpaid claim.
 17 A medical service provider may combine up to ten (10) individual
 18 claims into one (1) application whenever:

- 19 (1) all individual claims involve the same employer, insurance
 20 carrier, or billing review service; and
 21 (2) the amount of each individual claim does not exceed two
 22 hundred dollars (\$200).

23 **SECTION 3. [EFFECTIVE UPON PASSAGE] (a) The worker's**
 24 **compensation board may adopt emergency rules under**
 25 **IC 4-22-2-37.1 to implement the amendments made by this act to**
 26 **IC 22-3-3-4 and IC 22-3-7-17.**

27 **(b) This SECTION expires December 31, 2022.**

28 **SECTION 4. An emergency is declared for this act.**

