

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 364

Introduced by Quick, 35; McDonnell, 5.

Read first time January 16, 2019

Committee:

- 1 A BILL FOR AN ACT relating to the Nebraska Workers' Compensation Act; to
- 2 amend section 48-120, Revised Statutes Cumulative Supplement, 2018;
- 3 to change provisions relating to a limit on certain fees; and to
- 4 repeal the original section.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 48-120, Revised Statutes Cumulative Supplement,
2 2018, is amended to read:

3 48-120 (1)(a) The employer is liable for all reasonable medical,
4 surgical, and hospital services, including plastic surgery or
5 reconstructive surgery but not cosmetic surgery when the injury has
6 caused disfigurement, appliances, supplies, prosthetic devices, and
7 medicines as and when needed, which are required by the nature of the
8 injury and which will relieve pain or promote and hasten the employee's
9 restoration to health and employment, and includes damage to or
10 destruction of artificial members, dental appliances, teeth, hearing
11 instruments, and eyeglasses, but, in the case of dental appliances,
12 hearing instruments, or eyeglasses, only if such damage or destruction
13 resulted from an accident which also caused personal injury entitling the
14 employee to compensation therefor for disability or treatment, subject to
15 the approval of and regulation by the Nebraska Workers' Compensation
16 Court, not to exceed the regular charge made for such service in similar
17 cases.

18 (b) Except as provided in section 48-120.04, the compensation court
19 shall establish schedules of fees for such services. The compensation
20 court shall review such schedules at least biennially and adopt
21 appropriate changes when necessary. The compensation court may contract
22 with any person, firm, corporation, organization, or government agency to
23 secure adequate data to establish such fees. The compensation court shall
24 publish and furnish to the public the fee schedules established pursuant
25 to this subdivision and section 48-120.04. The compensation court may
26 establish and charge a fee to recover the cost of published fee
27 schedules.

28 (c) Reimbursement for inpatient hospital services provided by
29 hospitals located in or within fifteen miles of a Nebraska city of the
30 metropolitan class or primary class and by other hospitals with fifty-one
31 or more licensed beds shall be according to the Diagnostic Related Group

1 inpatient hospital fee schedule or the trauma services inpatient hospital
2 fee schedule established in section 48-120.04.

3 (d) A workers' compensation insurer, risk management pool, self-
4 insured employer, or managed care plan certified pursuant to section
5 48-120.02 may contract with a provider or provider network for medical,
6 surgical, or hospital services. Such contract may establish fees for
7 services different than the fee schedules established under subdivision
8 (1)(b) of this section or established under section 48-120.04. Such
9 contract shall be in writing and mutually agreed upon prior to the date
10 services are provided.

11 (e) The provider or supplier of such services shall not collect or
12 attempt to collect from any employer, insurer, government, or injured
13 employee or dependent or the estate of any injured or deceased employee
14 any amount in excess of (i) the fee established by the compensation court
15 for any such service, (ii) the fee established under section 48-120.04,
16 ~~or~~ (iii) the fee contracted under subdivision (1)(d) of this section,
17 including any finance charge or late penalty, or (iv) the fee established
18 by the compensation court for any opinion or report addressing the
19 medical condition, causation, or disability.

20 (2)(a) The employee has the right to select a physician who has
21 maintained the employee's medical records prior to an injury and has a
22 documented history of treatment with the employee prior to an injury or a
23 physician who has maintained the medical records of an immediate family
24 member of the employee prior to an injury and has a documented history of
25 treatment with an immediate family member of the employee prior to an
26 injury. For purposes of this subsection, immediate family member means
27 the employee's spouse, children, parents, stepchildren, and stepparents.
28 The employer shall notify the employee following an injury of such right
29 of selection in a form and manner and within a timeframe established by
30 the compensation court. If the employer fails to notify the employee of
31 such right of selection or fails to notify the employee of such right of

1 selection in a form and manner and within a timeframe established by the
2 compensation court, then the employee has the right to select a
3 physician. If the employee fails to exercise such right of selection in a
4 form and manner and within a timeframe established by the compensation
5 court following notice by the employer pursuant to this subsection, then
6 the employer has the right to select the physician. If selection of the
7 initial physician is made by the employee or employer pursuant to this
8 subsection following notice by the employer pursuant to this subsection,
9 the employee or employer shall not change the initial selection of
10 physician made pursuant to this subsection unless such change is agreed
11 to by the employee and employer or is ordered by the compensation court
12 pursuant to subsection (6) of this section. If compensability is denied
13 by the workers' compensation insurer, risk management pool, or self-
14 insured employer, (i) the employee has the right to select a physician
15 and shall not be made to enter a managed care plan and (ii) the employer
16 is liable for medical, surgical, and hospital services subsequently found
17 to be compensable. If the employer has exercised the right to select a
18 physician pursuant to this subsection and if the compensation court
19 subsequently orders reasonable medical services previously refused to be
20 furnished to the employee by the physician selected by the employer, the
21 compensation court shall allow the employee to select another physician
22 to furnish further medical services. If the employee selects a physician
23 located in a community not the home or place of work of the employee and
24 a physician is available in the local community or in a closer community,
25 no travel expenses shall be required to be paid by the employer or his or
26 her workers' compensation insurer.

27 (b) In cases of injury requiring dismemberment or injuries involving
28 major surgical operation, the employee may designate to his or her
29 employer the physician or surgeon to perform the operation.

30 (c) If the injured employee unreasonably refuses or neglects to
31 avail himself or herself of medical or surgical treatment furnished by

1 the employer, except as herein and otherwise provided, the employer is
2 not liable for an aggravation of such injury due to such refusal and
3 neglect and the compensation court or judge thereof may suspend, reduce,
4 or limit the compensation otherwise payable under the Nebraska Workers'
5 Compensation Act.

6 (d) If, due to the nature of the injury or its occurrence away from
7 the employer's place of business, the employee or the employer is unable
8 to select a physician using the procedures provided by this subsection,
9 the selection requirements of this subsection shall not apply as long as
10 the inability to make a selection persists.

11 (e) The physician selected may arrange for any consultation,
12 referral, or extraordinary or other specialized medical services as the
13 nature of the injury requires.

14 (f) The employer is not responsible for medical services furnished
15 or ordered by any physician or other person selected by the employee in
16 disregard of this section. Except as otherwise provided by the Nebraska
17 Workers' Compensation Act, the employer is not liable for medical,
18 surgical, or hospital services or medicines if the employee refuses to
19 allow them to be furnished by the employer.

20 (3) No claim for such medical treatment is valid and enforceable
21 unless, within fourteen days following the first treatment, the physician
22 giving such treatment furnishes the employer a report of such injury and
23 treatment on a form prescribed by the compensation court. The
24 compensation court may excuse the failure to furnish such report within
25 fourteen days when it finds it to be in the interest of justice to do so.

26 (4) All physicians and other providers of medical services attending
27 injured employees shall comply with all the rules and regulations adopted
28 and promulgated by the compensation court and shall make such reports as
29 may be required by it at any time and at such times as required by it
30 upon the condition or treatment of any injured employee or upon any other
31 matters concerning cases in which they are employed. All medical and

1 hospital information relevant to the particular injury shall, on demand,
2 be made available to the employer, the employee, the workers'
3 compensation insurer, and the compensation court. The party requesting
4 such medical and hospital information shall pay the cost thereof. No such
5 relevant information developed in connection with treatment or
6 examination for which compensation is sought shall be considered a
7 privileged communication for purposes of a workers' compensation claim.
8 When a physician or other provider of medical services willfully fails to
9 make any report required of him or her under this section, the
10 compensation court may order the forfeiture of his or her right to all or
11 part of payment due for services rendered in connection with the
12 particular case.

13 (5) Whenever the compensation court deems it necessary, in order to
14 assist it in resolving any issue of medical fact or opinion, it shall
15 cause the employee to be examined by a physician or physicians selected
16 by the compensation court and obtain from such physician or physicians a
17 report upon the condition or matter which is the subject of inquiry. The
18 compensation court may charge the cost of such examination to the
19 workers' compensation insurer. The cost of such examination shall include
20 the payment to the employee of all necessary and reasonable expenses
21 incident to such examination, such as transportation and loss of wages.

22 (6) The compensation court shall have the authority to determine the
23 necessity, character, and sufficiency of any medical services furnished
24 or to be furnished and shall have authority to order a change of
25 physician, hospital, rehabilitation facility, or other medical services
26 when it deems such change is desirable or necessary. Any dispute
27 regarding medical, surgical, or hospital services furnished or to be
28 furnished under this section may be submitted by the parties, the
29 supplier of such service, or the compensation court on its own motion for
30 informal dispute resolution by a staff member of the compensation court
31 or an outside mediator pursuant to section 48-168. In addition, any party

1 or the compensation court on its own motion may submit such a dispute for
2 a medical finding by an independent medical examiner pursuant to section
3 48-134.01. Issues submitted for informal dispute resolution or for a
4 medical finding by an independent medical examiner may include, but are
5 not limited to, the reasonableness and necessity of any medical treatment
6 previously provided or to be provided to the injured employee. The
7 compensation court may adopt and promulgate rules and regulations
8 regarding informal dispute resolution or the submission of disputes to an
9 independent medical examiner that are considered necessary to effectuate
10 the purposes of this section.

11 (7) For the purpose of this section, physician has the same meaning
12 as in section 48-151.

13 (8) The compensation court shall order the employer to make payment
14 directly to the supplier of any services provided for in this section or
15 reimbursement to anyone who has made any payment to the supplier for
16 services provided in this section. No such supplier or payor may be made
17 or become a party to any action before the compensation court.

18 (9) Notwithstanding any other provision of this section, a workers'
19 compensation insurer, risk management pool, or self-insured employer may
20 contract for medical, surgical, hospital, and rehabilitation services to
21 be provided through a managed care plan certified pursuant to section
22 48-120.02. Once liability for medical, surgical, and hospital services
23 has been accepted or determined, the employer may require that employees
24 subject to the contract receive medical, surgical, and hospital services
25 in the manner prescribed in the contract, except that an employee may
26 receive services from a physician selected by the employee pursuant to
27 subsection (2) of this section if the physician so selected agrees to
28 refer the employee to the managed care plan for any other treatment that
29 the employee may require and if the physician so selected agrees to
30 comply with all the rules, terms, and conditions of the managed care
31 plan. If compensability is denied by the workers' compensation insurer,

1 risk management pool, or self-insured employer, the employee may leave
2 the managed care plan and the employer is liable for medical, surgical,
3 and hospital services previously provided. The workers' compensation
4 insurer, risk management pool, or self-insured employer shall give notice
5 to employees subject to the contract of eligible service providers and
6 such other information regarding the contract and manner of receiving
7 medical, surgical, and hospital services under the managed care plan as
8 the compensation court may prescribe.

9 Sec. 2. Original section 48-120, Revised Statutes Cumulative
10 Supplement, 2018, is repealed.