

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FOURTH LEGISLATURE  
FIRST SESSION

**LEGISLATIVE BILL 429**

Introduced by Smith, 14.

Read first time January 16, 2015

Committee: Business and Labor

1 A BILL FOR AN ACT relating to the Nebraska Workers' Compensation Act; to  
2 amend section 48-134.01, Reissue Revised Statutes of Nebraska, and  
3 section 48-1,110, Revised Statutes Cumulative Supplement, 2014; to  
4 provide for medical utilization and treatment guidelines; to change  
5 provisions relating to independent medical examiners; to harmonize  
6 provisions; and to repeal the original sections.

7 Be it enacted by the people of the State of Nebraska,

1           Section 1.   (1) Medical, surgical, and hospital services provided  
2 under the Nebraska Workers' Compensation Act on or after January 1, 2016,  
3 in accordance with the official disability guidelines published by the  
4 Work Loss Data Institute as of January 1, 2015, and any revisions to such  
5 guidelines adopted by the Nebraska Workers' Compensation Court under this  
6 section shall be conclusively presumed to be reasonable and necessary  
7 medical, surgical, and hospital services under subdivision (1)(a) of  
8 section 48-120. For calendar years beginning in 2016, the Nebraska  
9 Workers' Compensation Court shall annually adopt revisions to such  
10 guidelines to include all updates and adjustments to the guidelines  
11 published by the Work Loss Data Institute. Any revisions to the  
12 guidelines shall be effective on January 1 of the ensuing calendar year.

13           (2) Services that do not fall within the guidelines adopted under  
14 subsection (1) of this section are conclusively presumed to be reasonable  
15 and necessary medical, surgical, and hospital services under subdivision  
16 (1)(a) of section 48-120 if prior authorization for the services is  
17 obtained from the workers' compensation insurer, risk management pool, or  
18 self-insured employer. Unless otherwise determined in accordance with  
19 subsection (3) of this section, a workers' compensation insurer, risk  
20 management pool, or self-insured employer is not responsible for services  
21 that do not fall within guidelines adopted under subsection (1) of this  
22 section unless the workers' compensation insurer, risk management pool,  
23 or self-insured employer has provided prior authorization for such  
24 services.

25           (3) Any party may request a finding by an independent medical  
26 examiner pursuant to section 48-134.01 if (a) the workers' compensation  
27 insurer, risk management pool, or self-insured employer denies payment  
28 for services on the basis that the services are not provided in  
29 accordance with the guidelines adopted under subsection (1) of this  
30 section or (b) the workers' compensation insurer, risk management pool,  
31 or self-insured employer denies prior authorization for services which do

1 not fall within the guidelines adopted under subsection (1) of this  
2 section.

3 (4) The Nebraska Workers' Compensation Court may adopt and  
4 promulgate rules and regulations necessary to implement this section.

5 Sec. 2. Section 48-134.01, Reissue Revised Statutes of Nebraska, is  
6 amended to read:

7 48-134.01 (1) The Nebraska Workers' Compensation Court may develop  
8 and implement an independent medical examiner system consistent with the  
9 requirements of this section. As part of such system, the compensation  
10 court by a majority vote of the judges thereof may create, maintain, and  
11 periodically validate a list of physicians that it finds to be the most  
12 qualified and to be highly experienced and competent in their specific  
13 fields of expertise and in the treatment of work-related injuries to  
14 serve as independent medical examiners from each of the health care  
15 specialties that the compensation court finds most commonly used by  
16 injured employees. The compensation court may establish a fee schedule  
17 for services rendered by independent medical examiners and may adopt and  
18 promulgate any rules and regulations considered necessary to carry out  
19 the purposes of this section.

20 (2) An independent medical examiner shall render medical findings on  
21 the medical condition of an employee and related issues as specified  
22 under this section. The independent medical examiner shall not be the  
23 employee's treating physician and shall not have treated the employee  
24 with respect to the injury for which the claim is being made or the  
25 benefits are being paid.

26 (3) If the parties to a dispute cannot agree on an independent  
27 medical examiner of their own choosing, the compensation court shall  
28 assign an independent medical examiner from the list of qualified  
29 examiners to render medical findings in any dispute relating to the  
30 medical condition of a claimant and related issues, including, but not  
31 limited to, whether the injured employee is able to perform any gainful

1 employment temporarily or permanently, what physical restrictions, if  
2 any, would be imposed on the employee's employment, whether the injured  
3 employee has reached maximum medical improvement, the existence and  
4 extent of any permanent physical impairment, the reasonableness and  
5 necessity of any medical treatment previously provided, or to be  
6 provided, to the injured employee, and any other medical questions which  
7 may pertain to causality and relatedness of the medical condition to the  
8 employment.

9 (4) The compensation court may adopt and promulgate rules and  
10 regulations pertaining to the procedures before the independent medical  
11 examiner, including the parties' ability to propound questions relating  
12 to the medical condition of the employee and related issues to be  
13 submitted to the independent medical examiner. In addition to the review  
14 of records and information, the independent medical examiner may examine  
15 the employee as often as the examiner determines necessary to render  
16 medical findings on the questions propounded by the parties or by the  
17 compensation court.

18 (5) The independent medical examiner shall submit a written report  
19 to the compensation court, the employer, and the employee stating the  
20 examiner's medical findings on the issues raised and providing a  
21 description of findings sufficient to explain the basis of those  
22 findings. The fee for the examination and report shall be paid by the  
23 employer.

24 (6) The written report of the independent medical examiner's  
25 findings shall be admissible in a proceeding before the compensation  
26 court and may be received into evidence by the compensation court on its  
27 own motion. It is a rebuttable presumption that the findings of the  
28 independent medical examiner are correct.

29 (7) Any physician acting without malice and within the scope of the  
30 physician's duties as an independent medical examiner shall be immune  
31 from civil liability for making any report or other information available

1 to the compensation court or for assisting in the origination,  
2 investigation, or preparation of the report or other information so  
3 provided.

4 Sec. 3. Section 48-1,110, Revised Statutes Cumulative Supplement,  
5 2014, is amended to read:

6 48-1,110 Sections 48-101 to 48-1,117 and section 1 of this act shall  
7 be known and may be cited as the Nebraska Workers' Compensation Act.

8 Sec. 4. Original section 48-134.01, Reissue Revised Statutes of  
9 Nebraska, and section 48-1,110, Revised Statutes Cumulative Supplement,  
10 2014, are repealed.