

AMENDMENTS TO LB364

Introduced by Quick, 35.

1 1. Strike the original sections and insert the following new
2 sections:

3 Section 1. Section 48-120, Revised Statutes Cumulative Supplement,
4 2018, is amended to read:

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

20 (b) Except as provided in section 48-120.04, the compensation court
21 shall establish schedules of fees for such services and for any opinion
22 or report addressing the medical condition, causation, or disability. The
23 compensation court shall review such schedules at least biennially and
24 adopt appropriate changes when necessary. The compensation court may
25 contract with any person, firm, corporation, organization, or government
26 agency to secure adequate data to establish such fees. The compensation
27 court shall publish and furnish to the public the fee schedules

1 established pursuant to this subdivision and section 48-120.04. The
2 compensation court may establish and charge a fee to recover the cost of
3 published fee schedules.

4 (c) Reimbursement for inpatient hospital services provided by
5 hospitals located in or within fifteen miles of a Nebraska city of the
6 metropolitan class or primary class and by other hospitals with fifty-one
7 or more licensed beds shall be according to the Diagnostic Related Group
8 inpatient hospital fee schedule or the trauma services inpatient hospital
9 fee schedule established in section 48-120.04.

10 (d) A workers' compensation insurer, risk management pool, self-
11 insured employer, or managed care plan certified pursuant to section
12 48-120.02 may contract with a provider or provider network for medical,
13 surgical, or hospital services. Such contract may establish fees for
14 services different than the fee schedules established under subdivision
15 (1)(b) of this section or established under section 48-120.04. Such
16 contract shall be in writing and mutually agreed upon prior to the date
17 services are provided.

18 (e) The provider or supplier of such services shall not collect or
19 attempt to collect from any employer, insurer, government, or injured
20 employee or dependent or the estate of any injured or deceased employee
21 any amount in excess of (i) the fee established by the compensation court
22 under subdivision (1)(b) of this section for any such service or for any
23 opinion or report addressing the medical condition, causation, or
24 disability, (ii) the fee established under section 48-120.04, or (iii)
25 the fee contracted under subdivision (1)(d) of this section, including
26 any finance charge or late penalty.

27 (2)(a) The employee has the right to select a physician who has
28 maintained the employee's medical records prior to an injury and has a
29 documented history of treatment with the employee prior to an injury or a
30 physician who has maintained the medical records of an immediate family
31 member of the employee prior to an injury and has a documented history of

1 treatment with an immediate family member of the employee prior to an
2 injury. For purposes of this subsection, immediate family member means
3 the employee's spouse, children, parents, stepchildren, and stepparents.
4 The employer shall notify the employee following an injury of such right
5 of selection in a form and manner and within a timeframe established by
6 the compensation court. If the employer fails to notify the employee of
7 such right of selection or fails to notify the employee of such right of
8 selection in a form and manner and within a timeframe established by the
9 compensation court, then the employee has the right to select a
10 physician. If the employee fails to exercise such right of selection in a
11 form and manner and within a timeframe established by the compensation
12 court following notice by the employer pursuant to this subsection, then
13 the employer has the right to select the physician. If selection of the
14 initial physician is made by the employee or employer pursuant to this
15 subsection following notice by the employer pursuant to this subsection,
16 the employee or employer shall not change the initial selection of
17 physician made pursuant to this subsection unless such change is agreed
18 to by the employee and employer or is ordered by the compensation court
19 pursuant to subsection (6) of this section. If compensability is denied
20 by the workers' compensation insurer, risk management pool, or self-
21 insured employer, (i) the employee has the right to select a physician
22 and shall not be made to enter a managed care plan and (ii) the employer
23 is liable for medical, surgical, and hospital services subsequently found
24 to be compensable. If the employer has exercised the right to select a
25 physician pursuant to this subsection and if the compensation court
26 subsequently orders reasonable medical services previously refused to be
27 furnished to the employee by the physician selected by the employer, the
28 compensation court shall allow the employee to select another physician
29 to furnish further medical services. If the employee selects a physician
30 located in a community not the home or place of work of the employee and
31 a physician is available in the local community or in a closer community,

1 no travel expenses shall be required to be paid by the employer or his or
2 her workers' compensation insurer.

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

6 (c) If the injured employee unreasonably refuses or neglects to
7 avail himself or herself of medical or surgical treatment furnished by
8 the employer, except as herein and otherwise provided, the employer is
9 not liable for an aggravation of such injury due to such refusal and
10 neglect and the compensation court or judge thereof may suspend, reduce,
11 or limit the compensation otherwise payable under the Nebraska Workers'
12 Compensation Act.

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

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

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

27 (3) No claim for such medical treatment is valid and enforceable
28 unless, within fourteen days following the first treatment, the physician
29 giving such treatment furnishes the employer a report of such injury and
30 treatment on a form prescribed by the compensation court. The
31 compensation court may excuse the failure to furnish such report within

1 fourteen days when it finds it to be in the interest of justice to do so.

2 (4) All physicians and other providers of medical services attending
3 injured employees shall comply with all the rules and regulations adopted
4 and promulgated by the compensation court and shall make such reports as
5 may be required by it at any time and at such times as required by it
6 upon the condition or treatment of any injured employee or upon any other
7 matters concerning cases in which they are employed. All medical and
8 hospital information relevant to the particular injury shall, on demand,
9 be made available to the employer, the employee, the workers'
10 compensation insurer, and the compensation court. The party requesting
11 such medical and hospital information shall pay the cost thereof. No such
12 relevant information developed in connection with treatment or
13 examination for which compensation is sought shall be considered a
14 privileged communication for purposes of a workers' compensation claim.
15 When a physician or other provider of medical services willfully fails to
16 make any report required of him or her under this section, the
17 compensation court may order the forfeiture of his or her right to all or
18 part of payment due for services rendered in connection with the
19 particular case.

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

29 (6) The compensation court shall have the authority to determine the
30 necessity, character, and sufficiency of any medical services furnished
31 or to be furnished and shall have authority to order a change of

1 physician, hospital, rehabilitation facility, or other medical services
2 when it deems such change is desirable or necessary. Any dispute
3 regarding medical, surgical, or hospital services furnished or to be
4 furnished under this section may be submitted by the parties, the
5 supplier of such service, or the compensation court on its own motion for
6 informal dispute resolution by a staff member of the compensation court
7 or an outside mediator pursuant to section 48-168. In addition, any party
8 or the compensation court on its own motion may submit such a dispute for
9 a medical finding by an independent medical examiner pursuant to section
10 48-134.01. Issues submitted for informal dispute resolution or for a
11 medical finding by an independent medical examiner may include, but are
12 not limited to, the reasonableness and necessity of any medical treatment
13 previously provided or to be provided to the injured employee. The
14 compensation court may adopt and promulgate rules and regulations
15 regarding informal dispute resolution or the submission of disputes to an
16 independent medical examiner that are considered necessary to effectuate
17 the purposes of this section.

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

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

25 (9) Notwithstanding any other provision of this section, a workers'
26 compensation insurer, risk management pool, or self-insured employer may
27 contract for medical, surgical, hospital, and rehabilitation services to
28 be provided through a managed care plan certified pursuant to section
29 48-120.02. Once liability for medical, surgical, and hospital services
30 has been accepted or determined, the employer may require that employees
31 subject to the contract receive medical, surgical, and hospital services

1 in the manner prescribed in the contract, except that an employee may
2 receive services from a physician selected by the employee pursuant to
3 subsection (2) of this section if the physician so selected agrees to
4 refer the employee to the managed care plan for any other treatment that
5 the employee may require and if the physician so selected agrees to
6 comply with all the rules, terms, and conditions of the managed care
7 plan. If compensability is denied by the workers' compensation insurer,
8 risk management pool, or self-insured employer, the employee may leave
9 the managed care plan and the employer is liable for medical, surgical,
10 and hospital services previously provided. The workers' compensation
11 insurer, risk management pool, or self-insured employer shall give notice
12 to employees subject to the contract of eligible service providers and
13 such other information regarding the contract and manner of receiving
14 medical, surgical, and hospital services under the managed care plan as
15 the compensation court may prescribe.

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