

LEGISLATURE OF NEBRASKA  
ONE HUNDRED THIRD LEGISLATURE  
FIRST SESSION  
**LEGISLATIVE BILL 584**

Introduced by Smith, 14.

Read first time January 23, 2013

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to the Nebraska Workers' Compensation Act; to  
2 amend section 48-134.01, Reissue Revised Statutes of  
3 Nebraska, and section 48-1,110, Revised Statutes  
4 Cumulative Supplement, 2012; to provide for medical  
5 utilization and treatment guidelines; to change  
6 provisions relating to independent medical examiners; to  
7 harmonize provisions; and to repeal the original  
8 sections.

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

1           Section 1. (1) Effective January 1, 2014, the scope and  
2 duration of medical, surgical, and hospital services shall be  
3 provided in accordance with the official disability guidelines in  
4 effect on such date, as published by the Work Loss Data Institute.  
5 Medical, surgical, and hospital services provided in accordance with  
6 the official disability guidelines are presumed to be reasonable  
7 medical, surgical, and hospital services under subdivision (1)(a) of  
8 section 48-120.

9           (2) The insurer, risk-management pool, or self-insured  
10 employer shall not be responsible for charges for medical, surgical,  
11 or hospital services not provided in accordance with the official  
12 disability guidelines unless the medical, surgical, or hospital  
13 services were provided in a medical emergency, the medical, surgical,  
14 or hospital services were preauthorized by the insurer, risk-  
15 management pool, or self-insured employer, or the medical, surgical,  
16 or hospital services are approved pursuant to subdivision (3) of this  
17 section.

18           (3) In any case in which charges for treatment or  
19 services have been denied by the insurer, risk management pool, or  
20 self-insured employer on the basis of not having been provided in  
21 accordance with the official disability guidelines, the parties to  
22 the dispute may agree to have the dispute resolved as provided by  
23 section 48-134.01.

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

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

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

21                   (3) If the parties to a dispute cannot agree on an  
22 independent medical examiner of their own choosing, the compensation  
23 court shall assign an independent medical examiner from the list of  
24 qualified examiners to render medical findings in any dispute  
25 relating to the medical condition of a claimant and related issues,

1 including, but not limited to, whether the injured employee is able  
2 to perform any gainful employment temporarily or permanently, what  
3 physical restrictions, if any, would be imposed on the employee's  
4 employment, whether the injured employee has reached maximum medical  
5 improvement, the existence and extent of any permanent physical  
6 impairment, the reasonableness and necessity of any medical treatment  
7 previously provided, or to be provided, to the injured employee, and  
8 any other medical questions which may pertain to causality and  
9 relatedness of the medical condition to the employment.

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

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

25 (6) The written report of the independent medical

1 examiner's findings shall be admissible in a proceeding before the  
2 compensation court and may be received into evidence by the  
3 compensation court on its own motion. If the parties to a dispute  
4 involving the reasonableness and necessity of medical, surgical, or  
5 hospital treatment that was not provided in accordance with the  
6 official disability guidelines established by section 1 of this act  
7 agree to the use of an independent medical examiner of their own  
8 choosing, whether or not the independent medical examiner is on the  
9 list established by the compensation court under this section, the  
10 medical findings of the independent medical examiner shall be binding  
11 on the parties and constitute a final resolution of the  
12 reasonableness and necessity of the medical, surgical, or hospital  
13 treatment in dispute. If the compensation court assigns an  
14 independent medical examiner in any case involving the reasonableness  
15 and necessity of medical, surgical, or hospital treatment that was  
16 not provided in accordance with the official disability guidelines  
17 established by section 1 of this act, the compensation court shall  
18 adopt the medical findings of the independent medical examiner on the  
19 issue of reasonableness and necessity of medical, surgical, or  
20 hospital treatment unless there is clear and convincing evidence to  
21 the contrary in the record that does not support the medical  
22 findings.

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

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

4           Sec. 3. Section 48-1,110, Revised Statutes Cumulative  
5 Supplement, 2012, is amended to read:

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

9           Sec. 4. Original section 48-134.01, Reissue Revised  
10 Statutes of Nebraska, and section 48-1,110, Revised Statutes  
11 Cumulative Supplement, 2012, are repealed.