

LEGISLATURE OF NEBRASKA

ONE HUNDREDTH LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 588

Introduced by Business and Labor Committee: Cornett, 45,
Chairperson; Lathrop, 12; McGill, 26; Rogert,
16; Wallman, 30; White, 8

Read first time January 17, 2007

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to workers' compensation; to amend section
2 48-120, Revised Statutes Cumulative Supplement, 2006; to
3 change provisions relating to the hospital fee schedule
4 and payment of providers; and to repeal the original
5 section.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 48-120, Revised Statutes Cumulative
2 Supplement, 2006, is amended to read:

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

18 The compensation court may establish schedules of maximum
19 fees for such services. The fee for hospital services shall not
20 exceed the lowest price negotiated with any private insurance
21 carrier or third-party payor, not to include medicaid or medicare.

22 If the compensation court establishes such a schedule, it shall
23 publish and furnish such schedule to the public. The compensation
24 court shall review such schedule at least biennially and adopt
25 appropriate changes when necessary. The compensation court may

1 contract with any person, firm, corporation, organization, or
2 government agency to secure adequate data to establish such fees.
3 The provider or supplier of such services shall not collect
4 or attempt to collect from any employer, insurer, government,
5 or injured employee or dependent or the estate of any injured
6 or deceased employee any amount in excess of the maximum fee
7 established by the compensation court for any such service. The
8 compensation court shall establish and charge a fee to recover
9 the cost of published fee schedules. Notwithstanding any other
10 provision of this section, the compensation court may exclude from
11 the application of such schedules those services performed under a
12 managed care plan certified pursuant to section 48-120.02.

13 Payors or employers shall notify the provider within
14 twenty days after receiving a claim as to what information is
15 needed to process the claim. Failure to notify the provider assumes
16 the payor or employer has all information necessary to pay the
17 claim. Payors or employers shall pay providers within thirty days
18 after receipt of all information necessary to process the claim.
19 Failure to pay the provider within the thirty days will cause the
20 payor or employer to reimburse the provider normal billed charges
21 instead of the scheduled fees.

22 (2) (a) The employee has the right to select a physician
23 who has maintained the employee's medical records prior to an
24 injury and has a documented history of treatment with the employee
25 prior to an injury or a physician who has maintained the medical

1 records of an immediate family member of the employee prior to an
2 injury and has a documented history of treatment with an immediate
3 family member of the employee prior to an injury. For purposes of
4 this subsection, immediate family member means the employee's
5 spouse, children, parents, stepchildren, and stepparents. The
6 employer shall notify the employee following an injury of such
7 right of selection in a form and manner and within a timeframe
8 established by the compensation court. If the employer fails to
9 notify the employee of such right of selection or fails to notify
10 the employee of such right of selection in a form and manner and
11 within a timeframe established by the compensation court, then the
12 employee has the right to select a physician. If the employee
13 fails to exercise such right of selection in a form and manner and
14 within a timeframe established by the compensation court following
15 notice by the employer pursuant to this subsection, then the
16 employer has the right to select the physician. If selection of the
17 initial physician is made by the employee or employer pursuant to
18 this subsection following notice by the employer pursuant to this
19 subsection, the employee or employer shall not change the initial
20 selection of physician made pursuant to this subsection unless such
21 change is agreed to by the employee and employer or is ordered by
22 the compensation court pursuant to subsection (6) of this section.
23 If compensability is denied by the workers' compensation insurer,
24 risk management pool, or self-insured employer, (i) the employee
25 has the right to select a physician and shall not be made to

1 enter a managed care plan and (ii) the employer is liable for
2 medical, surgical, and hospital services subsequently found to be
3 compensable. If the employer has exercised the right to select
4 a physician pursuant to this subsection and if the compensation
5 court subsequently orders reasonable medical services previously
6 refused to be furnished to the employee by the physician selected
7 by the employer, the compensation court shall allow the employee
8 to select another physician to furnish further medical services.
9 If the employee selects a physician located in a community not the
10 home or place of work of the employee and a physician is available
11 in the local community or in a closer community, no travel expenses
12 shall be required to be paid by the employer or his or her workers'
13 compensation insurer.

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

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

25 (d) If, due to the nature of the injury or its occurrence

1 away from the employer's place of business, the employee or the
2 employer is unable to select a physician using the procedures
3 provided by this subsection, the selection requirements of this
4 subsection shall not apply as long as the inability to make a
5 selection persists.

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

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

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

23 (4) All physicians and other providers of medical
24 services attending injured employees shall comply with all the
25 rules and regulations adopted and promulgated by the compensation

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

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

1 employee of all necessary and reasonable expenses incident to such
2 examination, such as transportation and loss of wages.

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

25 (7) For the purpose of this section, physician has the

1 same meaning as in section 48-151.

2 (8) The compensation court shall order the employer to
3 make payment directly to the supplier of any services provided
4 for in this section or reimbursement to anyone who has made any
5 payment to the supplier for services provided in this section. No
6 such supplier or payor may be made or become a party to any action
7 before the compensation court.

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

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

7 Sec. 2. Original section 48-120, Revised Statutes
8 Cumulative Supplement, 2006, is repealed.