

AMENDMENTS TO LB 152

Introduced by Lathrop

1           1. Strike the original sections and all amendments  
2 thereto and insert the following sections:

3           Section 1. Section 48-120, Reissue Revised Statutes of  
4 Nebraska, is amended to read:

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

20           (b) Except as provided in section 48-120.04, the  
21 compensation court shall establish schedules of fees for such  
22 services. The compensation court shall review such schedules at  
23 least biennially and adopt appropriate changes when necessary. The

1 compensation court may contract with any person, firm, corporation,  
2 organization, or government agency to secure adequate data to  
3 establish such fees. The compensation court shall publish and  
4 furnish to the public the fee schedules established pursuant to  
5 this subdivision and section 48-120.04. The compensation court may  
6 establish and charge a fee to recover the cost of published fee  
7 schedules.

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

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

24 (e) The provider or supplier of such services shall  
25 not collect or attempt to collect from any employer, insurer,  
26 government, or injured employee or dependent or the estate of any  
27 injured or deceased employee any amount in excess of (i) the fee

1 established by the compensation court for any such service, (ii)  
2 the fee established under section 48-120.04, or (iii) the fee  
3 contracted under subdivision (1)(d) of this section.

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

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

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

23 (c) If the injured employee unreasonably refuses or  
24 neglects to avail himself or herself of medical or surgical  
25 treatment furnished by the employer, except as herein and otherwise  
26 provided, the employer is not liable for an aggravation of such  
27 injury due to such refusal and neglect and the compensation court

1 or judge thereof may suspend, reduce, or limit the compensation  
2 otherwise payable under the Nebraska Workers' Compensation Act.

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

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

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

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

26 (4) All physicians and other providers of medical  
27 services attending injured employees shall comply with all the

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

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

1 examination, such as transportation and loss of wages.

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

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

26           (8) The compensation court shall order the employer to  
27 make payment directly to the supplier of any services provided

1 for in this section or reimbursement to anyone who has made any  
2 payment to the supplier for services provided in this section. No  
3 such supplier or payor may be made or become a party to any action  
4 before the compensation court.

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

1 the managed care plan as the compensation court may prescribe.

2 Sec. 2. Section 48-120.04, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

4 48-120.04 (1) This section applies only to hospitals  
5 identified in subdivision (1)(c) of section 48-120.

6 (2) For inpatient discharges on or after January 1, 2008,  
7 the Diagnostic Related Group inpatient hospital fee schedule shall  
8 be as set forth in this section, except as otherwise provided in  
9 subdivision (1)(d) of section 48-120. Adjustments shall be made  
10 annually as provided in this section, with such adjustments to  
11 become effective each January 1.

12 (3) For inpatient trauma discharges on or after January  
13 1, 2012, the trauma services inpatient hospital fee schedule shall  
14 be as set forth in this section, except as otherwise provided in  
15 subdivision (1)(d) of section 48-120. Adjustments shall be made  
16 annually as provided in this section, with such adjustments to  
17 become effective each January 1.

18 ~~(3)~~ (4) For purposes of this section:

19 (a) Current Medicare Factor is derived from the  
20 Diagnostic Related Group Prospective Payment System as established  
21 by the Centers for Medicare and Medicaid Services under the United  
22 States Department of Health and Human Services and means the  
23 summation of the following components:

24 (i) Hospital-specific Federal Standardized Amount,  
25 including all wage index adjustments and reclassifications;

26 (ii) Hospital-specific Capital Standard Federal Rate,  
27 including geographic, outlier, and exception adjustment factors;

1 (iii) Hospital-specific Indirect Medical Education Rate,  
2 reflecting a percentage add-on for indirect medical education costs  
3 and related capital; and

4 (iv) Hospital-specific Disproportionate Share Hospital  
5 Rate, reflecting a percentage add-on for disproportionate share of  
6 low-income patient costs and related capital;

7 (b) Current Medicare Weight means the weight assigned  
8 to each Medicare Diagnostic Related Group as established by the  
9 Centers for Medicare and Medicaid Services under the United States  
10 Department of Health and Human Services;

11 (c) Diagnostic Related Group means the Diagnostic Related  
12 Group assigned to inpatient hospital services using the public  
13 domain classification and methodology system developed for the  
14 Centers for Medicare and Medicaid Services under the United States  
15 Department of Health and Human Services; and

16 (d) Trauma means a major single-system or multisystem  
17 injury requiring immediate medical or surgical intervention or  
18 treatment to prevent death or permanent disability;

19 ~~(d)~~ (e) Workers' Compensation Factor means the Current  
20 Medicare Factor for each hospital multiplied by one hundred fifty  
21 percent except for inpatient hospital trauma services; and-

22 (f) Workers' Compensation Trauma Factor for inpatient  
23 hospital trauma services means the Current Medicare Factor for each  
24 hospital multiplied by one hundred sixty percent.

25 ~~(4)~~ (5) The Diagnostic Related Group inpatient hospital  
26 fee schedule shall include at least thirty-eight of the most  
27 frequently utilized Medicare Diagnostic Related Groups for workers'

1 compensation with the goal that the fee schedule covers at least  
2 ninety percent of all workers' compensation inpatient hospital  
3 claims submitted by hospitals identified in subdivision (1)(c) of  
4 section 48-120. Rehabilitation Diagnostic Related Groups shall not  
5 be included in the Diagnostic Related Group inpatient hospital  
6 fee schedule. Claims for inpatient trauma services shall not be  
7 reimbursed under the Diagnostic Related Group inpatient hospital  
8 fee schedule established under this section, ~~until January 1, 2012.~~  
9 Claims for inpatient trauma services prior to January 1, 2012,  
10 shall be reimbursed under the fees established by the compensation  
11 court pursuant to subdivision (1)(b) of section 48-120 or as  
12 contracted pursuant to subdivision (1)(d) of such section. ~~For~~  
13 ~~purposes of this subsection,~~ trauma means a major single-system  
14 ~~or multisystem injury requiring immediate medical or surgical~~  
15 ~~intervention or treatment to prevent death or permanent disability.~~  
16 Claims for inpatient trauma services on or after January 1, 2012,  
17 for Diagnostic Related Groups subject to the Diagnostic Related  
18 Group inpatient hospital fee schedule shall be reimbursed under  
19 the trauma services inpatient hospital fee schedule established in  
20 this section, except as otherwise provided in subdivision (1)(d) of  
21 section 48-120.

22 (6) The trauma services inpatient hospital fee schedule  
23 shall be established by the following methodology:

24 (a) The trauma services reimbursement amount required  
25 under the Nebraska Workers' Compensation Act shall be equal to  
26 the Current Medicare Weight multiplied by the Workers' Compensation  
27 Trauma Factor for each hospital;

1           (b) The Stop-Loss Threshold amount shall be the trauma  
2 services reimbursement amount calculated in subdivision (6)(a) of  
3 this section multiplied by one and one-quarter;

4           (c) For charges over the Stop-Loss Threshold amount of  
5 the schedule, the hospital shall be reimbursed the trauma services  
6 reimbursement amount calculated in subdivision (6)(a) of this  
7 section plus sixty-five percent of the charges over the Stop-Loss  
8 Threshold amount; and

9           (d) For charges less than the Stop-Loss Threshold amount  
10 of the schedule, the hospital shall be reimbursed the lower of  
11 the hospital's billed charges or the trauma services reimbursement  
12 amount calculated in subdivision (6)(a) of this section.

13           ~~(5)~~ (7) The Diagnostic Related Group inpatient hospital  
14 fee schedule shall be established by the following methodology:

15           (a) The Diagnostic Related Group reimbursement amount  
16 required under the Nebraska Workers' Compensation Act shall be  
17 equal to the Current Medicare Weight multiplied by the Workers'  
18 Compensation Factor for each hospital;

19           (b) The Stop-Loss Threshold amount shall be the  
20 Diagnostic Related Group reimbursement amount calculated in  
21 subdivision ~~(5)(a)~~ (7)(a) of this section multiplied by two and  
22 one-half;

23           (c) For charges over the Stop-Loss Threshold amount of  
24 the schedule, the hospital shall be reimbursed the Diagnostic  
25 Related Group reimbursement amount calculated in subdivision ~~(5)(a)~~  
26 (7)(a) of this section plus sixty percent of the charges over the  
27 Stop-Loss Threshold amount; and

1           (d) For charges less than the Stop-Loss Threshold amount  
2 of the schedule, the hospital shall be reimbursed the lower of  
3 the hospital's billed charges or the Diagnostic Related Group  
4 reimbursement amount calculated in subdivision ~~(5)-(a)~~ (7) (a) of  
5 this section.

6           ~~(6)~~ (8) For charges for all other stays or services that  
7 are not ~~en~~ reimbursed under the Diagnostic Related Group inpatient  
8 hospital fee schedule or the trauma services inpatient hospital  
9 fee schedule or are not contracted for under subdivision (1)(d)  
10 of section 48-120, the hospital shall be reimbursed under the  
11 schedule of fees established by the compensation court pursuant to  
12 subdivision (1)(b) of section 48-120.

13           ~~(7)~~ (9) Each hospital shall assign and include a  
14 Diagnostic Related Group on each workers' compensation claim  
15 submitted. The workers' compensation insurer, risk management pool,  
16 or self-insured employer may audit the Diagnostic Related Group  
17 assignment of the hospital.

18           ~~(8)~~ (10) The chief executive officer of each hospital  
19 shall sign and file with the administrator of the compensation  
20 court by October 15 of each year, in the form and manner prescribed  
21 by the administrator, a sworn statement disclosing the Current  
22 Medicare Factor of the hospital in effect on October 1 of such year  
23 and each item and amount making up such factor.

24           ~~(9)~~ (11) Each hospital, workers' compensation insurer,  
25 risk management pool, and self-insured employer shall report to the  
26 administrator of the compensation court by October 15 of each year,  
27 in the form and manner prescribed by the administrator, the total

1 number of claims submitted for each Diagnostic Related Group, the  
2 number of claims for each Diagnostic Related Group that included  
3 trauma services, and the number of times billed charges exceeded  
4 the Stop-Loss Threshold amount for each Diagnostic Related Group,  
5 and the number of times billed charges exceeded the Stop-Loss  
6 Threshold amount for each trauma service.

7           ~~(10)~~ (12) The compensation court may add or subtract  
8 Diagnostic Related Groups in striving to achieve the goal of  
9 including those Diagnostic Related Groups that encompass at least  
10 ninety percent of the inpatient hospital workers' compensation  
11 claims submitted by hospitals identified in subdivision (1)(c) of  
12 section 48-120. The administrator of the compensation court shall  
13 annually make necessary adjustments to comply with the Current  
14 Medicare Weights and shall annually adjust the Current Medicare  
15 Factor for each hospital based on the annual statement submitted  
16 pursuant to subsection ~~(8)~~ (10) of this section.

17           Sec. 3. Original sections 48-120 and 48-120.04, Reissue  
18 Revised Statutes of Nebraska, are repealed.