

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 152

Final Reading

Introduced by Lathrop, 12; Nordquist, 7; Lautenbaugh, 18; Smith, 14;
Wallman, 30; Larson, 40.

Read first time January 07, 2011

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to the Nebraska Workers' Compensation Act; to
2 amend sections 48-120 and 48-120.04, Reissue Revised
3 Statutes of Nebraska; to provide for a trauma services
4 inpatient hospital fee schedule; to define terms; to
5 harmonize provisions; and to repeal the original
6 sections.

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

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

3 48-120 (1)(a) 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 nature of
8 the injury and which will relieve pain or promote and hasten the
9 employee's restoration to health and employment, and includes damage
10 to or destruction of artificial members, dental appliances, teeth,
11 hearing instruments, and eyeglasses, but, in the case of dental
12 appliances, hearing instruments, or eyeglasses, only if such damage
13 or destruction resulted from an accident which also caused personal
14 injury entitling the employee to compensation therefor for disability
15 or treatment, subject to the approval of and regulation by the
16 Nebraska Workers' Compensation Court, not to exceed the regular
17 charge made for such service in similar cases.

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

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

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

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

19 (e) The provider or supplier of such services shall not
20 collect or attempt to collect from any employer, insurer, government,
21 or injured employee or dependent or the estate of any injured or
22 deceased employee any amount in excess of (i) the fee established by
23 the compensation court for any such service, (ii) the fee established
24 under section 48-120.04, or (iii) the fee contracted under
25 subdivision (1)(d) of this section.

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

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

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

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

1 may suspend, reduce, or limit the compensation otherwise payable
2 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 medical
11 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 by the
14 employee in disregard of this section. Except as otherwise provided
15 by the Nebraska Workers' Compensation Act, the employer is not liable
16 for medical, surgical, or hospital services or medicines if the
17 employee refuses to allow them to be furnished by the employer.

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

25 (4) All physicians and other providers of medical

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

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

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

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

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

1 notice to employees subject to the contract of eligible service
2 providers and such other information regarding the contract and
3 manner of receiving medical, surgical, and hospital services under
4 the managed care plan as the compensation court may prescribe.

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

7 48-120.04 (1) This section applies only to hospitals
8 identified in subdivision (1)(c) of section 48-120.

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

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

21 ~~(3)-(4)~~ For purposes of this section:

22 (a) Current Medicare Factor is derived from the
23 Diagnostic Related Group Prospective Payment System as established by
24 the Centers for Medicare and Medicaid Services under the United
25 States Department of Health and Human Services and means the

1 summation of the following components:

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

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

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

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

12 (b) Current Medicare Weight means the weight assigned to
13 each Medicare Diagnostic Related Group as established by the Centers
14 for Medicare and Medicaid Services under the United States Department
15 of Health and Human Services;

16 (c) Diagnostic Related Group means the Diagnostic Related
17 Group assigned to inpatient hospital services using the public domain
18 classification and methodology system developed for the Centers for
19 Medicare and Medicaid Services under the United States Department of
20 Health and Human Services; and

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

24 ~~(d)~~-(e) Workers' Compensation Factor means the Current
25 Medicare Factor for each hospital multiplied by one hundred fifty

1 percent except for inpatient hospital trauma services; and -

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

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

1 hospital fee schedule established in this section, except as
2 otherwise provided in subdivision (1)(d) of section 48-120.

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

5 (a) The trauma services reimbursement amount required
6 under the Nebraska Workers' Compensation Act shall be equal to the
7 Current Medicare Weight multiplied by the Workers' Compensation
8 Trauma Factor for each hospital;

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

12 (c) For charges over the Stop-Loss Threshold amount of
13 the schedule, the hospital shall be reimbursed the trauma services
14 reimbursement amount calculated in subdivision (6)(a) of this section
15 plus sixty-five percent of the charges over the Stop-Loss Threshold
16 amount; and

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

21 ~~(5)-(7)~~ The Diagnostic Related Group inpatient hospital
22 fee schedule shall be established by the following methodology:

23 (a) The Diagnostic Related Group reimbursement amount
24 required under the Nebraska Workers' Compensation Act shall be equal
25 to the Current Medicare Weight multiplied by the Workers'

1 Compensation Factor for each hospital;

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

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

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

16 ~~(6)~~(8) For charges for all other stays or services that
17 are not ~~en-reimbursed under~~ the Diagnostic Related Group inpatient
18 hospital fee schedule or the trauma services inpatient hospital fee
19 schedule or are not contracted for under subdivision (1)(d) of
20 section 48-120, the hospital shall be reimbursed under the schedule
21 of fees established by the compensation court pursuant to subdivision
22 (1)(b) of section 48-120.

23 ~~(7)~~(9) Each hospital shall assign and include a
24 Diagnostic Related Group on each workers' compensation claim
25 submitted. The workers' compensation insurer, risk management pool,

1 or self-insured employer may audit the Diagnostic Related Group
2 assignment of the hospital.

3 ~~(8)~~—(10) The chief executive officer of each hospital
4 shall sign and file with the administrator of the compensation court
5 by October 15 of each year, in the form and manner prescribed by the
6 administrator, a sworn statement disclosing the Current Medicare
7 Factor of the hospital in effect on October 1 of such year and each
8 item and amount making up such factor.

9 ~~(9)~~—(11) Each hospital, workers' compensation insurer,
10 risk management pool, and self-insured employer shall report to the
11 administrator of the compensation court by October 15 of each year,
12 in the form and manner prescribed by the administrator, the total
13 number of claims submitted for each Diagnostic Related Group, the
14 number of claims for each Diagnostic Related Group that included
15 trauma services, and the number of times billed charges exceeded the
16 Stop-Loss Threshold amount for each Diagnostic Related Group, and the
17 number of times billed charges exceeded the Stop-Loss Threshold
18 amount for each trauma service.

19 ~~(10)~~—(12) The compensation court may add or subtract
20 Diagnostic Related Groups in striving to achieve the goal of
21 including those Diagnostic Related Groups that encompass at least
22 ninety percent of the inpatient hospital workers' compensation claims
23 submitted by hospitals identified in subdivision (1)(c) of section
24 48-120. The administrator of the compensation court shall annually
25 make necessary adjustments to comply with the Current Medicare

1 Weights and shall annually adjust the Current Medicare Factor for
2 each hospital based on the annual statement submitted pursuant to
3 subsection ~~(8)~~(10) of this section.

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