

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 153

Introduced by Lathrop, 12.

Read first time January 07, 2011

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to workers' compensation; to amend section
2 48-120, Reissue Revised Statutes of Nebraska; to change
3 reimbursement for medical services; to clarify
4 provisions; and to repeal the original section.
5 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 (1)(a) The employer is liable for all reasonable medical,
19 surgical, and hospital services which are required by the nature of a
20 compensable injury and which will relieve pain or promote and hasten
21 the employee's restoration to health and employment, subject to the
22 approval of and regulation by the Nebraska Workers' Compensation
23 Court. Reimbursement for such services shall be in accordance with
24 subdivisions (b) through (e) of this subsection and section
25 48-120.04, as applicable. Such services include:

1 (i) Plastic surgery or reconstructive surgery, but not
2 cosmetic surgery, when the injury has caused disfigurement;

3 (ii) Appliances, supplies, prosthetic devices, and
4 medicines as and when needed due to the injury; and

5 (iii) Repairing damage to or destruction of artificial
6 members, dental appliances, teeth, hearing instruments, and
7 eyeglasses caused by the injury, but, in the case of dental
8 appliances, hearing instruments, or eyeglasses, only if such damage
9 or destruction resulted from an accident which also caused personal
10 injury entitling the employee to compensation therefor for disability
11 or treatment.

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

23 (c) Reimbursement for inpatient hospital services
24 provided by hospitals located in or within fifteen miles of a
25 Nebraska city of the metropolitan class or primary class and by other

1 hospitals with fifty-one or more licensed beds shall be according to
2 the Diagnostic Related Group inpatient hospital fee schedule
3 established in section 48-120.04.

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

12 (e) The provider or supplier of such services shall not
13 collect or attempt to collect from any employer, insurer, government,
14 or injured employee or dependent or the estate of any injured or
15 deceased employee any amount in excess of (i) the fee established by
16 the compensation court for any such service, (ii) the fee established
17 under section 48-120.04, or (iii) the fee contracted under
18 subdivision (1)(d) of this section.

19 (2)(a) The employee has the right to select a physician
20 who has maintained the employee's medical records prior to an injury
21 and has a documented history of treatment with the employee prior to
22 an injury or a physician who has maintained the medical records of an
23 immediate family member of the employee prior to an injury and has a
24 documented history of treatment with an immediate family member of
25 the employee prior to an injury. For purposes of this subsection,

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

1 compensation court subsequently orders reasonable medical services
2 previously refused to be furnished to the employee by the physician
3 selected by the employer, the compensation court shall allow the
4 employee to select another physician to furnish further medical
5 services. If the employee selects a physician located in a community
6 not the home or place of work of the employee and a physician is
7 available in the local community or in a closer community, no travel
8 expenses shall be required to be paid by the employer or his or her
9 workers' compensation insurer.

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

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

21 (d) If, due to the nature of the injury or its occurrence
22 away from the employer's place of business, the employee or the
23 employer is unable to select a physician using the procedures
24 provided by this subsection, the selection requirements of this
25 subsection shall not apply as long as the inability to make a

1 selection persists.

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

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

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

18 (4) All physicians and other providers of medical
19 services attending injured employees shall comply with all the rules
20 and regulations adopted and promulgated by the compensation court and
21 shall make such reports as may be required by it at any time and at
22 such times as required by it upon the condition or treatment of any
23 injured employee or upon any other matters concerning cases in which
24 they are employed. All medical and hospital information relevant to
25 the particular injury shall, on demand, be made available to the

1 employer, the employee, the workers' compensation insurer, and the
2 compensation court. The party requesting such medical and hospital
3 information shall pay the cost thereof. No such relevant information
4 developed in connection with treatment or examination for which
5 compensation is sought shall be considered a privileged communication
6 for purposes of a workers' compensation claim. When a physician or
7 other provider of medical services willfully fails to make any report
8 required of him or her under this section, the compensation court may
9 order the forfeiture of his or her right to all or part of payment
10 due for services rendered in connection with the particular case.

11 (5) Whenever the compensation court deems it necessary,
12 in order to assist it in resolving any issue of medical fact or
13 opinion, it shall cause the employee to be examined by a physician or
14 physicians selected by the compensation court and obtain from such
15 physician or physicians a report upon the condition or matter which
16 is the subject of inquiry. The compensation court may charge the cost
17 of such examination to the workers' compensation insurer. The cost of
18 such examination shall include the payment to the employee of all
19 necessary and reasonable expenses incident to such examination, such
20 as transportation and loss of wages.

21 (6) The compensation court shall have the authority to
22 determine the necessity, character, and sufficiency of any medical
23 services furnished or to be furnished and shall have authority to
24 order a change of physician, hospital, rehabilitation facility, or
25 other medical services when it deems such change is desirable or

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

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

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

25 (9) Notwithstanding any other provision of this section,

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

23 Sec. 2. Original section 48-120, Reissue Revised Statutes
24 of Nebraska, is repealed.