

AMENDMENTS TO LB 588

Introduced by Business and Labor

1           1. Strike the original sections and insert the following  
2 sections:

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

5           48-120 (1) 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  
10 nature of the injury and which will relieve pain or promote and  
11 hasten the employee's restoration to health and employment, and  
12 includes damage to or destruction of artificial members, dental  
13 appliances, teeth, hearing aids, and eyeglasses, but, in the case  
14 of dental appliances, hearing aids, 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           The compensation court ~~may~~ shall establish schedules of  
21 maximum fees for such services. ~~If the~~ The compensation court  
22 ~~establishes such a schedule,~~ ~~it~~ shall publish and furnish such  
23 schedule to the public. The compensation court shall review such

1 schedule at least biennially and adopt appropriate changes when  
2 necessary. The compensation court may contract with any person,  
3 firm, corporation, organization, or government agency to secure  
4 adequate data to establish such fees. The provider or supplier of  
5 such services shall not collect or attempt to collect from any  
6 employer, insurer, government, or injured employee or dependent  
7 or the estate of any injured or deceased employee any amount  
8 in excess of the maximum fee established by the compensation  
9 court for any such service. The compensation court ~~shall~~ may  
10 establish and charge a fee to recover the cost of published fee  
11 schedules. Notwithstanding any other provision of this section,  
12 the compensation court may exclude from the application of  
13 such schedules those services performed under a managed care  
14 plan certified pursuant to section 48-120.02. Reimbursement for  
15 inpatient hospital services provided by hospitals located in or  
16 within twenty miles of a Nebraska city of the metropolitan class  
17 or primary class and by other hospitals with fifty-one or more  
18 licensed beds shall be according to the Diagnostic Related Group  
19 inpatient hospital fee schedule in section 2 of this act.

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

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

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

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

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

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

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

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

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

15           (4) All physicians and other providers of medical  
16 services attending injured employees shall comply with all the  
17 rules and regulations adopted and promulgated by the compensation  
18 court and shall make such reports as may be required by it at  
19 any time and at such times as required by it upon the condition  
20 or treatment of any injured employee or upon any other matters  
21 concerning cases in which they are employed. All medical and  
22 hospital information relevant to the particular injury shall,  
23 on demand, be made available to the employer, the employee,  
24 the workers' compensation insurer, and the compensation court.  
25 The party requesting such medical and hospital information shall  
26 pay the cost thereof. No such relevant information developed in  
27 connection with treatment or examination for which compensation is

1 sought shall be considered a privileged communication for purposes  
2 of a workers' compensation claim. When a physician or other  
3 provider of medical services willfully fails to make any report  
4 required of him or her under this section, the compensation court  
5 may order the forfeiture of his or her right to all or part of  
6 payment due for services rendered in connection with the particular  
7 case.

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

18 (6) The compensation court shall have the authority  
19 to determine the necessity, character, and sufficiency of any  
20 medical services furnished or to be furnished and shall have  
21 authority to order a change of physician, hospital, rehabilitation  
22 facility, or other medical services when it deems such change is  
23 desirable or necessary. Any dispute regarding medical, surgical,  
24 or hospital services furnished or to be furnished under this  
25 section may be submitted by the parties, the supplier of such  
26 service, or the compensation court on its own motion for informal  
27 dispute resolution by a staff member of the compensation court or

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

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

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

21 (9) Notwithstanding any other provision of this section,  
22 a workers' compensation insurer, risk management pool, or  
23 self-insured employer may contract for medical, surgical, hospital,  
24 and rehabilitation services to be provided through a managed care  
25 plan certified pursuant to section 48-120.02. Once liability for  
26 medical, surgical, and hospital services has been accepted or  
27 determined, the employer may require that employees subject to

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

18           Sec. 2. (1) Beginning January 1, 2008, the Diagnostic  
19 Related Group inpatient hospital fee schedule shall be based on  
20 federal medicare reimbursement as set forth in this section.

21           (2) For purposes of this section:

22           (a) Current Medicare Factor means the Medicare Diagnostic  
23 Related Groups Prospective Payment System Base Rate added to the  
24 Medicare Capital Rate, the Medicare Indirect Medical Education  
25 Base Rate, the Medicare Capital Indirect Medical Education Base  
26 Rate, the Medicare Disproportionate Share Hospital Base Rate, and  
27 the Medicare Capital Disproportionate Share Hospital in effect on

1 October 1, 2007, as established by the Centers for Medicare and  
2 Medicaid Services under the United States Department of Health and  
3 Human Services;

4 (b) Current Medicare Weight means the payment weight  
5 assigned to each Medicare Diagnostic Related Group in effect on  
6 October 1, 2007, as established by the Centers for Medicare and  
7 Medicaid Services under the United States Department of Health and  
8 Human Services;

9 (c) Diagnostic Related Group means the Medicare  
10 Diagnostic Related Group assigned to in-patient hospital services  
11 as established by the Centers for Medicare and Medicaid Services  
12 under the United States Department of Health and Human Services;  
13 and

14 (d) Workers' Compensation Factor means the Current  
15 Medicare Factor for each hospital multiplied by one hundred forty  
16 percent.

17 (3) The Diagnostic Related Group inpatient hospital  
18 fee schedule shall include at least thirty-eight of the most  
19 frequently utilized Medicare Diagnostic Related Groups for workers'  
20 compensation with the goal that the fee schedule covers at least  
21 ninety percent of all workers' compensation inpatient hospital  
22 claims in the state. Diagnostic Related Group 462 - Rehabilitation  
23 shall not be included in the Diagnostic Related Group inpatient  
24 hospital fee schedule.

25 (4) The Diagnostic Related Group inpatient hospital fee  
26 schedule shall be established by the following methodology:

27 (a) The Diagnostic Related Group reimbursement amount

1 required under the Nebraska Workers' Compensation Act shall be  
2 equal to the Current Medicare Weight multiplied by the Workers'  
3 Compensation Factor for each hospital;

4 (b) The Stop Loss Threshold shall be the Diagnostic  
5 Related Group reimbursement amount calculated in subdivision (4) (a)  
6 of this section multiplied by three;

7 (c) For charges over the Stop Loss Threshold amount of  
8 the schedule, the hospital shall be paid the Diagnostic Related  
9 Group reimbursement amount calculated in subdivision (4) (a) of this  
10 section plus sixty percent of the charges over the Stop Loss  
11 Threshold amount; and

12 (d) For charges less than the Stop Loss Threshold amount  
13 of the schedule, the hospital shall be reimbursed the lower of  
14 the hospital's billed charges or the Diagnostic Related Group  
15 reimbursement amount calculated in subdivision (4) (a) of this  
16 section.

17 (5) For charges for all other stays or services that  
18 are not on the Diagnostic Related Group inpatient hospital fee  
19 schedule, the hospital shall be reimbursed under the schedule of  
20 maximum fees established by the compensation court pursuant to  
21 subsection (1) of section 48-120.

22 (6) A hospital shall assign a Diagnostic Related Group to  
23 each workers' compensation claim submitted following the Medicare  
24 Group Criteria. The employer, insurer, or third party payor may  
25 audit the Diagnostic Related Group assignment of the hospital.

26 (7) The chief executive officer of a hospital shall  
27 sign and file with the administrator of the compensation court by

1 October 15 of each year a sworn statement disclosing the Current  
2 Medicare Factor of the hospital and each item and amount making up  
3 such factor.

4 (8) Each hospital and payor shall report to the  
5 administrator of the compensation court by October 15 of each year,  
6 in the form and manner proscribed by the administrator, the total  
7 number of each Diagnostic Related Group services provided and the  
8 number of times billed charges exceeding the Stop Loss Threshold  
9 amount were reimbursed for each Diagnostic Related Group.

10 (9) The administrator of the compensation court shall  
11 review the list of Diagnostic Related Groups annually and make  
12 necessary adjustments to comply with the applicable Diagnostic  
13 Related Groups and weights. The compensation court may add or  
14 subtract Diagnostic Related Groups in striving to achieve the goal  
15 of including those Diagnostic Related Groups that encompass at  
16 least ninety percent of the hospital workers' compensation claims  
17 in the state for the year. The administrator of the compensation  
18 court shall annually adjust the Current Medicare Factor for each  
19 hospital based on the annual statement submitted pursuant to  
20 subsection (7) of this section.

21 Sec. 3. Regarding payment of a claim for medical,  
22 surgical, or hospital services for an employee under the Nebraska  
23 Workers' Compensation Act:

24 (1) Payors or employers shall notify the provider within  
25 fifteen days after receiving a claim as to what information is  
26 needed to process the claim. Failure to notify the provider assumes  
27 the payor or employer has all information necessary to pay the

1 claim. Payors or employers shall pay providers within thirty  
2 calendar days after receipt of all information necessary to process  
3 the claim. Failure to pay the provider within the thirty days will  
4 cause the payor or employer to reimburse the provider's billed  
5 charges instead of the scheduled fees;

6 (2) If a claim is submitted electronically, the  
7 claim is presumed to have been received on the date of the  
8 electronic verification of receipt by the insurer or the insurer's  
9 clearinghouse. If a claim is submitted by mail, the claim is  
10 presumed to have been received five business days after the claim  
11 has been placed in the United States mail with first-class postage  
12 prepaid. The presumption may be rebutted by sufficient evidence  
13 that the claim was received on another day or not received at all;  
14 and

15 (3) Payment of a claim by the payor or employer means  
16 the receipt of funds by the provider. If payment is submitted  
17 electronically, the payment is presumed to have been received on  
18 the date of the electronic verification of receipt by the provider  
19 or the provider's clearinghouse. If payment is submitted by mail,  
20 the payment is presumed to have been received five business days  
21 after the payment has been placed in the United States mail with  
22 first-class postage prepaid. The presumption may be rebutted by  
23 sufficient evidence that the payment was received on another day or  
24 not received at all.

25 Sec. 4. Section 48-121, Reissue Revised Statutes of  
26 Nebraska, is amended to read:

27 48-121 The following schedule of compensation is hereby

1 established for injuries resulting in disability:

2 (1) For total disability, the compensation during such  
3 disability shall be sixty-six and two-thirds percent of the wages  
4 received at the time of injury, but such compensation shall not be  
5 more than the maximum weekly income benefit specified in section  
6 48-121.01 nor less than the minimum weekly income benefit specified  
7 in section 48-121.01, except that if at the time of injury the  
8 employee receives wages of less than the minimum weekly income  
9 benefit specified in section 48-121.01, then he or she shall  
10 receive the full amount of such wages per week as compensation.  
11 Nothing in this subdivision shall require payment of compensation  
12 after disability shall cease.

13 (2) For disability partial in character, except the  
14 particular cases mentioned in subdivision (3) of this section,  
15 the compensation shall be sixty-six and two-thirds percent of the  
16 difference between the wages received at the time of the injury and  
17 the earning power of the employee thereafter, but such compensation  
18 shall not be more than the maximum weekly income benefit specified  
19 in section 48-121.01. This compensation shall be paid during the  
20 period of such partial disability but not beyond three hundred  
21 weeks. Should total disability be followed by partial disability,  
22 the period of three hundred weeks mentioned in this subdivision  
23 shall be reduced by the number of weeks during which compensation  
24 was paid for such total disability.

25 (3) For disability resulting from permanent injury of  
26 the classes listed in this subdivision, the compensation shall be  
27 in addition to the amount paid for temporary disability, except

1 that the compensation for temporary disability shall cease as  
2 soon as the extent of the permanent disability is ascertainable.  
3 For disability resulting from permanent injury of the following  
4 classes, compensation shall be: For the loss of a thumb, sixty-six  
5 and two-thirds percent of daily wages during sixty weeks. For the  
6 loss of a first finger, commonly called the index finger, sixty-six  
7 and two-thirds percent of daily wages during thirty-five weeks. For  
8 the loss of a second finger, sixty-six and two-thirds percent of  
9 daily wages during thirty weeks. For the loss of a third finger,  
10 sixty-six and two-thirds percent of daily wages during twenty  
11 weeks. For the loss of a fourth finger, commonly called the little  
12 finger, sixty-six and two-thirds percent of daily wages during  
13 fifteen weeks. The loss of the first phalange of the thumb or of  
14 any finger shall be considered to be equal to the loss of one-half  
15 of such thumb or finger and compensation shall be for one-half of  
16 the periods of time above specified, and the compensation for the  
17 loss of one-half of the first phalange shall be for one-fourth of  
18 the periods of time above specified. The loss of more than one  
19 phalange shall be considered as the loss of the entire finger or  
20 thumb, except that in no case shall the amount received for more  
21 than one finger exceed the amount provided in this schedule for  
22 the loss of a hand. For the loss of a great toe, sixty-six and  
23 two-thirds percent of daily wages during thirty weeks. For the  
24 loss of one of the toes other than the great toe, sixty-six and  
25 two-thirds percent of daily wages during ten weeks. The loss of the  
26 first phalange of any toe shall be considered equal to the loss of  
27 one-half of such toe, and compensation shall be for one-half of the

1 periods of time above specified. The loss of more than one phalange  
2 shall be considered as the loss of the entire toe. For the loss of  
3 a hand, sixty-six and two-thirds percent of daily wages during one  
4 hundred seventy-five weeks. For the loss of an arm, sixty-six and  
5 two-thirds percent of daily wages during two hundred twenty-five  
6 weeks. For the loss of a foot, sixty-six and two-thirds percent of  
7 daily wages during one hundred fifty weeks. For the loss of a leg,  
8 sixty-six and two-thirds percent of daily wages during two hundred  
9 fifteen weeks. For the loss of an eye, sixty-six and two-thirds  
10 percent of daily wages during one hundred twenty-five weeks. For  
11 the loss of an ear, sixty-six and two-thirds percent of daily  
12 wages during twenty-five weeks. For the loss of hearing in one ear,  
13 sixty-six and two-thirds percent of daily wages during fifty weeks.  
14 For the loss of the nose, sixty-six and two-thirds percent of daily  
15 wages during fifty weeks.

16           In any case in which there is a loss or loss of use  
17 of more than one member or parts of more than one member set  
18 forth in this subdivision, but not amounting to total and permanent  
19 disability, compensation benefits shall be paid for the loss or  
20 loss of use of each such member or part thereof, with the periods  
21 of benefits to run consecutively. The total loss or permanent  
22 total loss of use of both hands, or both arms, or both feet,  
23 or both legs, or both eyes, or hearing in both ears, or of any  
24 two thereof, in one accident, shall constitute total and permanent  
25 disability and be compensated for according to subdivision (1) of  
26 this section. In all other cases involving a loss or loss of use  
27 of both hands, both arms, both feet, both legs, both eyes, or

1 hearing in both ears, or of any two thereof, total and permanent  
2 disability shall be determined in accordance with the facts.  
3 Amputation between the elbow and the wrist shall be considered  
4 as the equivalent of the loss of a hand, and amputation between  
5 the knee and the ankle shall be considered as the equivalent of  
6 the loss of a foot. Amputation at or above the elbow shall be  
7 considered as the loss of an arm, and amputation at or above the  
8 knee shall be considered as the loss of a leg. Permanent total  
9 loss of the use of a finger, hand, arm, foot, leg, or eye shall  
10 be considered as the equivalent of the loss of such finger, hand,  
11 arm, foot, leg, or eye. In all cases involving a permanent partial  
12 loss of the use or function of any of the members mentioned in  
13 this subdivision, the compensation shall bear such relation to the  
14 amounts named in such subdivision as the disabilities bear to those  
15 produced by the injuries named therein.

16 If, in the court's discretion, a combination of member  
17 impairments from the same accident or illness adversely affects a  
18 worker such that simple member disability alone does not accurately  
19 assess an employee's disability and such disability results in at  
20 least a thirty percent loss of earning capacity, then the court  
21 shall determine the employee's loss of earning capacity consistent  
22 with the process for such determination under subdivision (1) or  
23 (2) of this section.

24 If the employer and the employee are unable to agree upon  
25 the amount of compensation to be paid in cases not covered by the  
26 schedule, the amount of compensation shall be settled according  
27 to sections 48-173 to 48-185. Compensation under this subdivision

1 shall not be more than the maximum weekly income benefit specified  
2 in section 48-121.01 nor less than the minimum weekly income  
3 benefit specified in section 48-121.01, except that if at the  
4 time of the injury the employee received wages of less than the  
5 minimum weekly income benefit specified in section 48-121.01, then  
6 he or she shall receive the full amount of such wages per week as  
7 compensation.

8 (4) For disability resulting from permanent disability,  
9 if immediately prior to the accident the rate of wages was fixed  
10 by the day or hour, or by the output of the employee, the weekly  
11 wages shall be taken to be computed upon the basis of a workweek of  
12 a minimum of five days, if the wages are paid by the day, or upon  
13 the basis of a workweek of a minimum of forty hours, if the wages  
14 are paid by the hour, or upon the basis of a workweek of a minimum  
15 of five days or forty hours, whichever results in the higher weekly  
16 wage, if the wages are based on the output of the employee.

17 (5) The employee shall be entitled to compensation  
18 from his or her employer for temporary disability while  
19 undergoing physical or medical rehabilitation and while undergoing  
20 vocational rehabilitation whether such vocational rehabilitation is  
21 voluntarily offered by the employer and accepted by the employee or  
22 is ordered by the Nebraska Workers' Compensation Court or any judge  
23 of the compensation court.

24 Sec. 5. Section 48-1,110, Revised Statutes Cumulative  
25 Supplement, 2006, is amended to read:

26 48-1,110 Sections 48-101 to 48-1,117 and sections 2 and  
27 3 of this act shall be known and may be cited as the Nebraska

1 Workers' Compensation Act.

2           Sec. 6. Original section 48-121, Reissue Revised Statutes

3 of Nebraska, and sections 48-120 and 48-1,110, Revised Statutes

4 Cumulative Supplement, 2006, are repealed.