

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIRST LEGISLATURE
SECOND SESSION
LEGISLATIVE BILL 1043

Introduced by Lautenbaugh, 18.

Read first time January 21, 2010

Committee: Judiciary

A BILL

1 FOR AN ACT relating to medical claims; to amend section 52-401,
2 Revised Statutes Cumulative Supplement, 2008; to change
3 provisions relating to liens; to provide for discovery of
4 value and payment rights for medical treatment rendered;
5 and to repeal the original section.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 52-401, Revised Statutes Cumulative
2 Supplement, 2008, is amended to read:

3 52-401 Whenever any person employs a physician, nurse,
4 chiropractor, or hospital to perform professional service or
5 services of any nature, in the treatment of or in connection
6 with an injury, and such injured person claims damages from the
7 party causing the injury, such physician, nurse, chiropractor,
8 or hospital, as the case may be, shall have a lien upon
9 any sum awarded the injured person in judgment or obtained
10 by settlement or compromise on the amount due for the usual
11 and customary charges of such physician, nurse, chiropractor,
12 or hospital applicable at the times services are performed,
13 except that no such lien shall be valid against anyone coming
14 under the Nebraska Workers' Compensation Act. ~~For persons covered~~
15 ~~under private medical insurance or another private health benefit~~
16 ~~plan, the amount of the lien shall be reduced by the contracted~~
17 ~~discount or other limitation which would have been applied had the~~
18 ~~claim been submitted for reimbursement to the medical insurer or~~
19 ~~administrator of such other health benefit plan. The measure of~~
20 ~~damages for medical expenses in personal injury claims shall be the~~
21 ~~private party rate, not the discounted amount.~~

22 In order to prosecute such lien, it shall be necessary
23 for such physician, nurse, chiropractor, or hospital to serve a
24 written notice upon the person or corporation from whom damages
25 are claimed that such physician, nurse, chiropractor, or hospital

1 claims a lien for such services and stating the amount due and the
2 nature of such services, except that whenever an action is pending
3 in court for the recovery of such damages, it shall be sufficient
4 to file the notice of such lien in the pending action.

5 A physician, nurse, chiropractor, or hospital claiming
6 a lien under this section shall not be liable for attorney's
7 fees and costs incurred by the injured person in securing the
8 judgment, settlement, or compromise, but the lien of the injured
9 person's attorney shall have precedence over the lien created by
10 this section.

11 Upon a written request and with the injured person's
12 consent, a lienholder shall provide medical records, answers
13 to interrogatories, depositions, or any expert medical testimony
14 related to the recovery of damages within its custody and control
15 at a reasonable charge to the injured person.

16 Sec. 2. (1) In an action brought seeking damages for
17 personal injury, the parties may introduce evidence of the value of
18 the medical treatment rendered to a party that was reasonable and
19 necessary and a proximate result of any cause of action recognized
20 by the laws of the State of Nebraska. In proving the value of the
21 medical treatment rendered, the parties shall be allowed to present
22 evidence as to the previous payments or future right of payment of
23 actual economic losses incurred or to be incurred as a result of
24 the personal injury.

25 (2) Once evidence of previous payments or future right of

1 payments of the actual economic losses incurred or to be incurred
2 has been submitted, any party may present evidence of the cost of
3 procuring the previous payments or future rights of payment and
4 may present evidence of any existing rights of indemnification or
5 subrogation relating to the previous payments or future rights of
6 payment.

7 (3) Notwithstanding subsection (1), (2), or (4) of this
8 section, no evidence of any collateral source for payment of
9 such damages shall be made known to the jury in presenting
10 evidence as to the previous payment or future right of payment of
11 actual economic losses or rights of indemnification or subrogation
12 relating to the previous payments or future rights of payment.

13 (4) In any action in which this section applies, the
14 amount of previous payments or future right of payment of actual
15 economic losses and the cost to the claimant of procuring the
16 previous payments or future rights of payment and any existing
17 rights of indemnification or subrogation relating to the previous
18 payment or future rights of payment shall be considered relevant
19 for purposes of discovery.

20 Sec. 3. Original section 52-401, Revised Statutes
21 Cumulative Supplement, 2008, is repealed.