

## LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 630**

Introduced by Business and Labor Committee Lathrop, 12,  
Chairperson; McGill, 26; Schilz, 47; Wallman,  
30; White, 8.

Read first time January 21, 2009

Committee: Business and Labor

## A BILL

1 FOR AN ACT relating to the Nebraska Workers' Compensation Act;  
2 to amend sections 48-139 and 48-167, Reissue Revised  
3 Statutes of Nebraska, and sections 48-120.04, 48-125,  
4 48-144.03, and 48-168, Revised Statutes Cumulative  
5 Supplement, 2008; to change applicability of the medical  
6 fee schedule as prescribed; to change provisions relating  
7 to method of payment, applications, notices, court  
8 records, and informal dispute resolution; to repeal the  
9 original sections; and to declare an emergency.  
10 Be it enacted by the people of the State of Nebraska,

1                   Section 1. Section 48-120.04, Revised Statutes Cumulative  
2 Supplement, 2008, is amended to read:

3                   48-120.04 (1) This section applies only to hospitals  
4 identified in subdivision (1)(c) of section 48-120.

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

11                  (3) For purposes of this section:

12                  (a) Current Medicare Factor is derived from the  
13 Diagnostic Related Group Prospective Payment System as established  
14 by the Centers for Medicare and Medicaid Services under the United  
15 States Department of Health and Human Services and means the  
16 summation of the following components:

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

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

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

24                  (iv) Hospital-specific Disproportionate Share Hospital  
25 Rate, reflecting a percentage add-on for disproportionate share of

1 low income patient costs and related capital;

2                 (b) Current Medicare Weight means the weight assigned  
3 to each Medicare Diagnostic Related Group as established by the  
4 Centers for Medicare and Medicaid Services under the United States  
5 Department of Health and Human Services;

6                 (c) Diagnostic Related Group means the Diagnostic Related  
7 Group assigned to inpatient hospital services using the public  
8 domain classification and methodology system developed for the  
9 Centers for Medicare and Medicaid Services under the United States  
10 Department of Health and Human Services; and

11                 (d) Workers' Compensation Factor means the Current  
12 Medicare Factor for each hospital multiplied by one hundred fifty  
13 percent.

14                 (4) The Diagnostic Related Group inpatient hospital  
15 fee schedule shall include at least thirty-eight of the most  
16 frequently utilized Medicare Diagnostic Related Groups for workers'  
17 compensation with the goal that the fee schedule covers at least  
18 ninety percent of all workers' compensation inpatient hospital  
19 claims submitted by hospitals identified in subdivision (1)(c) of  
20 section 48-120. Rehabilitation Diagnostic Related Groups shall not  
21 be included in the Diagnostic Related Group inpatient hospital  
22 fee schedule. Claims for inpatient trauma services shall not be  
23 reimbursed under the Diagnostic Related Group inpatient hospital  
24 fee schedule established under this section until January 1, 2010.  
25 2011. Claims for inpatient trauma services prior to January 1,

1   2010, 2011, shall be reimbursed under the fees established by  
2   the compensation court pursuant to subdivision (1)(b) of section  
3   48-120 or as contracted pursuant to subdivision (1)(d) of such  
4   section. For purposes of this subsection, trauma means a major  
5   single-system or multisystem injury requiring immediate medical or  
6   surgical intervention or treatment to prevent death or permanent  
7   disability.

8                 (5) The Diagnostic Related Group inpatient hospital fee  
9   schedule shall be established by the following methodology:

10                (a) The Diagnostic Related Group reimbursement amount  
11   required under the Nebraska Workers' Compensation Act shall be  
12   equal to the Current Medicare Weight multiplied by the Workers'  
13   Compensation Factor for each hospital;

14                (b) The Stop-Loss Threshold amount shall be the  
15   Diagnostic Related Group reimbursement amount calculated in  
16   subdivision (5)(a) of this section multiplied by two and one-half;

17                (c) For charges over the Stop-Loss Threshold amount of  
18   the schedule, the hospital shall be reimbursed the Diagnostic  
19   Related Group reimbursement amount calculated in subdivision (5)(a)  
20   of this section plus sixty percent of the charges over the  
21   Stop-Loss Threshold amount; and

22                (d) For charges less than the Stop-Loss Threshold amount  
23   of the schedule, the hospital shall be reimbursed the lower of  
24   the hospital's billed charges or the Diagnostic Related Group  
25   reimbursement amount calculated in subdivision (5)(a) of this

1 section.

2 (6) For charges for all other stays or services that are  
3 not on the Diagnostic Related Group inpatient hospital fee schedule  
4 or are not contracted for under subdivision (1)(d) of section  
5 48-120, the hospital shall be reimbursed under the schedule of  
6 fees established by the compensation court pursuant to subdivision  
7 (1)(b) of section 48-120.

8 (7) Each hospital shall assign and include a Diagnostic  
9 Related Group on each workers' compensation claim submitted.  
10 The workers' compensation insurer, risk management pool, or  
11 self-insured employer may audit the Diagnostic Related Group  
12 assignment of the hospital.

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

19 (9) Each hospital, workers' compensation insurer, risk  
20 management pool, and self-insured employer shall report to the  
21 administrator of the compensation court by October 15 of each year,  
22 in the form and manner prescribed by the administrator, the total  
23 number of claims submitted for each Diagnostic Related Group and  
24 the number of times billed charges exceeded the Stop-Loss Threshold  
25 amount for each Diagnostic Related Group.

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11 Sec. 2. Section 48-125, Revised Statutes Cumulative  
12 Supplement, 2008, is amended to read:

13                   48-125 (1) (a) Except as hereinafter provided, all  
14 amounts of compensation payable under the Nebraska Workers'  
15 Compensation Act shall be payable periodically in accordance with  
16 the methods of payment of wages of the employee at the time of the  
17 injury or death. Upon agreement of the parties, payment may be made  
18 by direct deposit, debit card, prepaid card, or similar electronic  
19 payment system. Any fees or other charges relating to electronic  
20 payment shall be disclosed to the employee and are subject to the  
21 written consent of the employee.

22                   **(b)** Fifty percent shall be added for waiting time for  
23 all delinquent payments after thirty days' notice has been given  
24 of disability or after thirty days from the entry of a final  
25 order, award, or judgment of the compensation court, except that

1 for any award or judgment against the state in excess of one  
2 hundred thousand dollars which must be reviewed by the Legislature  
3 as provided in section 48-1,102, fifty percent shall be added  
4 for waiting time for delinquent payments thirty days after the  
5 effective date of the legislative bill appropriating any funds  
6 necessary to pay the portion of the award or judgment in excess of  
7 one hundred thousand dollars. Such payments shall be sent directly  
8 to the person entitled to compensation or his or her designated  
9 representative except as otherwise provided in section 48-149.

10 (2) Whenever the employer refuses payment of compensation  
11 or medical payments subject to section 48-120, or when the employer  
12 neglects to pay compensation for thirty days after injury or  
13 neglects to pay medical payments subject to such section after  
14 thirty days' notice has been given of the obligation for medical  
15 payments, and proceedings are held before the Nebraska Workers'  
16 Compensation Court, a reasonable attorney's fee shall be allowed  
17 the employee by the compensation court in all cases when the  
18 employee receives an award. Attorney's fees allowed shall not  
19 be deducted from the amounts ordered to be paid for medical  
20 services nor shall attorney's fees be charged to the medical  
21 providers. If the employer files an application for review before  
22 the compensation court from an award of a judge of the compensation  
23 court and fails to obtain any reduction in the amount of such  
24 award, the compensation court shall allow the employee a reasonable  
25 attorney's fee to be taxed as costs against the employer for such

1 review, and the Court of Appeals or Supreme Court shall in like  
2 manner allow the employee a reasonable sum as attorney's fees for  
3 the proceedings in the Court of Appeals or Supreme Court. If the  
4 employee files an application for a review before the compensation  
5 court from an order of a judge of the compensation court denying an  
6 award and obtains an award or if the employee files an application  
7 for a review before the compensation court from an award of a judge  
8 of the compensation court when the amount of compensation due is  
9 disputed and obtains an increase in the amount of such award, the  
10 compensation court may allow the employee a reasonable attorney's  
11 fee to be taxed as costs against the employer for such review, and  
12 the Court of Appeals or Supreme Court may in like manner allow the  
13 employee a reasonable sum as attorney's fees for the proceedings in  
14 the Court of Appeals or Supreme Court. A reasonable attorney's fee  
15 allowed pursuant to this section shall not affect or diminish the  
16 amount of the award.

17 (3) When an attorney's fee is allowed pursuant to this  
18 section, there shall further be assessed against the employer an  
19 amount of interest on the final award obtained, computed from the  
20 date compensation was payable, as provided in section 48-119, until  
21 the date payment is made by the employer, at a rate equal to the  
22 rate of interest allowed per annum under section 45-104.01, as such  
23 rate may from time to time be adjusted by the Legislature. Interest  
24 shall apply only to those weekly compensation benefits awarded  
25 which have accrued as of the date payment is made by the employer.

1    If the employer pays or tenders payment of compensation, the amount  
2    of compensation due is disputed, and the award obtained is greater  
3    than the amount paid or tendered by the employer, the assessment of  
4    interest shall be determined solely upon the difference between the  
5    amount awarded and the amount tendered or paid.

6               Sec. 3. Section 48-139, Reissue Revised Statutes of  
7    Nebraska, is amended to read:

8               48-139 Whenever an injured employee or his or her  
9    dependents and the employer agree that the amounts of compensation  
10   due as periodic payments for death, permanent disability,  
11   or claimed permanent disability under the Nebraska Workers'  
12   Compensation Act shall be commuted to one or more lump-sum  
13   payments, such settlement or agreement therefor shall be submitted  
14   to the Nebraska Workers' Compensation Court in the following  
15   manner: An application for an order approving such settlement or  
16   agreement, and a duplicate original of such application, both  
17   signed and verified by both parties, shall be filed with the clerk  
18   of the Nebraska Workers' Compensation Court and shall be entitled  
19   the same as an action by such employee or dependents against such  
20   employer. The application shall contain a concise statement of the  
21   terms of the settlement or agreement sought to be approved with  
22   a brief statement of the facts concerning the injury, the nature  
23   thereof, the wages received by the injured employee prior thereto,  
24   the nature of the employment, and such other matters as may be  
25   required by the compensation court. The application may provide

1 for payment of future medical expenses incurred by the employee.  
2 The compensation court may hold a hearing on the application at a  
3 time and place selected by the compensation court, and proof may  
4 be adduced and witnesses subpoenaed and examined the same as in  
5 an action in equity.

6 If the compensation court finds such settlement or  
7 agreement is made in conformity with the compensation schedule  
8 and for the best interests of the employee or his or her dependents  
9 under all the circumstances, the compensation court shall make an  
10 order approving the same. If such agreement or settlement is not  
11 approved, the compensation court may dismiss the application at the  
12 cost of the employer or continue the hearing, in the discretion of  
13 the compensation court.

14 Every such lump-sum settlement or agreement approved by  
15 order of the compensation court shall be final and conclusive  
16 unless procured by fraud. Upon paying the amount approved by the  
17 compensation court, the employer (1) shall be discharged from  
18 further liability on account of the injury or death, other than  
19 liability for the payment of future medical expenses if such  
20 liability is approved by the compensation court on the application  
21 of the parties, and (2) shall be entitled to a duly executed  
22 release. Upon filing the release or other proof of payment, the  
23 liability of the employer under any agreement, award, finding, or  
24 decree shall be discharged of record.

25 The fees of the clerk of the compensation court for

1 filing, docketing, and indexing an application for an order  
2 approving a settlement or agreement shall be fifteen dollars.  
3 The fees shall be remitted by the clerk to the State Treasurer for  
4 credit to the Compensation Court Cash Fund.

5 Sec. 4. Section 48-144.03, Revised Statutes Cumulative  
6 Supplement, 2008, is amended to read:

7 48-144.03 (1) Notwithstanding policy provisions that  
8 stipulate a workers' compensation insurance policy to be a contract  
9 with a fixed term of coverage that expires at the end of the  
10 term, coverage under a workers' compensation insurance policy  
11 shall continue in full force and effect until notice is given in  
12 accordance with this section.

13 (2) No cancellation of a workers' compensation insurance  
14 policy within the policy period shall be effective unless notice  
15 of the cancellation is given by the workers' compensation insurer  
16 to the Nebraska Workers' Compensation Court and to the employer.  
17 No such cancellation shall be effective until thirty days after  
18 the giving of such notices, except that the cancellation may  
19 be effective ten days after the giving of such notices if such  
20 cancellation is based on (a) notice from the employer to the  
21 insurer to cancel the policy, (b) nonpayment of premium due the  
22 insurer under any policy written by the insurer for the employer,  
23 (c) failure of the employer to reimburse deductible losses as  
24 required under any policy written by the insurer for the employer,  
25 or (d) failure of the employer, if covered pursuant to section

1       44-3,158, to comply with sections 48-443 to 48-445.

2                     (3) No workers' compensation insurance policy shall  
3        expire or lapse at the end of the policy period unless notice  
4        of nonrenewal is given by the workers' compensation insurer to the  
5        compensation court and to the employer. No workers' compensation  
6        insurance policy shall expire or lapse until thirty days after the  
7        giving of such notices, except that a policy may expire or lapse  
8        ten days after the giving of such notices if the nonrenewal is  
9        based on (a) notice from the employer to the insurer to not renew  
10      the policy, (b) nonpayment of premium due the insurer under any  
11      policy written by the insurer for the employer, (c) failure of  
12      the employer to reimburse deductible losses as required under any  
13      policy written by the insurer for the employer, or (d) failure of  
14      the employer, if covered pursuant to section 44-3,158, to comply  
15      with sections 48-443 to 48-445.

16                   (4) Notwithstanding other provisions of this section, if  
17      the employer has secured workers' compensation insurance coverage  
18      with another workers' compensation insurer, then the cancellation  
19      or nonrenewal shall be effective as of the effective date of such  
20      other insurance coverage.

21                   (5) The notices required by this section shall state the  
22      reason for the cancellation or nonrenewal of the policy.

23                   (6) The notices required by this section shall be  
24      provided in writing and shall be deemed given upon the mailing  
25      of such notices by certified mail, except that notices from

1      insurers to the compensation court may be provided by electronic  
2      means if such electronic means is approved by the administrator of  
3      the compensation court. If notice is provided by electronic means  
4      pursuant to such an approval, it shall be deemed given upon receipt  
5      and acceptance by the compensation court.

6                Sec. 5. Section 48-167, Reissue Revised Statutes of  
7      Nebraska, is amended to read:

8                48-167 The Nebraska Workers' Compensation Court shall  
9      keep and maintain, in its office at the State Capitol, a full and  
10     true record of all proceedings, documents, or papers ordered filed,  
11     rules and regulations, and decisions or orders.

12               Sec. 6. Section 48-168, Revised Statutes Cumulative  
13      Supplement, 2008, is amended to read:

14               48-168 (1) The Nebraska Workers' Compensation Court shall  
15      not be bound by the usual common-law or statutory rules of evidence  
16      or by any technical or formal rules of procedure, other than as  
17      herein provided, but may make the investigation in such manner as  
18      in its judgment is best calculated to ascertain the substantial  
19      rights of the parties and to carry out justly the spirit of the  
20      Nebraska Workers' Compensation Act.

21               (2) (a) The Nebraska Workers' Compensation Court may  
22      establish procedures whereby a dispute may be submitted by  
23      the parties, by the provider of medical, surgical, or hospital  
24      services pursuant to section 48-120, by a vocational rehabilitation  
25      counselor certified pursuant to section 48-162.01, or by the

1 compensation court on its own motion for informal dispute  
2 resolution by a staff member of the compensation court or outside  
3 mediator. Any party who requests such informal dispute resolution  
4 shall not be precluded from filing a petition pursuant to section  
5 48-173 if otherwise permitted. If informal dispute resolution  
6 is ordered by the compensation court on its own motion, the  
7 compensation court may state a date for the case to return to  
8 court. Such date shall be no longer than ninety days after the  
9 date the order was signed unless the court grants an extension upon  
10 request of the parties. No settlement or agreement reached as the  
11 result of an informal dispute resolution proceeding shall be final  
12 or binding unless such settlement or agreement is in conformity  
13 with the Nebraska Workers' Compensation Act and approved by order  
14 of the compensation court pursuant to section 48-139. Any such  
15 settlement or agreement shall be voluntarily entered into by the  
16 parties.

17 (b) Until January 1, 2008, the Nebraska Workers'  
18 Compensation Court shall establish procedures for informal dispute  
19 resolution and arbitration for a dispute regarding the fees owed  
20 for medical, surgical, or hospital services provided pursuant  
21 to section 48-120. If the provider of medical, surgical, or  
22 hospital services and the workers' compensation insurer, risk  
23 management pool, or self-insured employer are unable to reach an  
24 agreement on the fees to be paid for such services: (i) They  
25 may agree to submit the dispute to an attorney staff member of

1       the compensation court for resolution of the dispute through the  
2       informal dispute resolution process and for arbitration, if the  
3       dispute is unresolved in the informal dispute resolution process;  
4       or (ii) the parties may agree to submit the dispute directly to  
5       arbitration. A decision by the attorney staff member for the court  
6       as the result of an arbitration proceeding shall be final and  
7       binding and not subject to appeal.

8                 (b) (i) Except as permitted in subdivision (b)(ii) of  
9       this subsection, a mediator shall not make a report, assessment,  
10      evaluation, recommendation, finding, or other communication  
11      regarding a mediation to a judge of the compensation court that may  
12      make a ruling on the dispute that is the subject of the mediation.

13                 (ii) A mediator may disclose:

14                 (A) Whether the mediation occurred or has terminated,  
15      whether a settlement was reached, and attendance; and  
16                 (B) A mediation communication evidencing abuse, neglect,  
17      abandonment, or exploitation of an individual to a public agency  
18      responsible for protecting individuals against such mistreatment.

19                 (iii) A communication made in violation of subdivision  
20      (b)(i) of this subsection shall not be considered by a judge of the  
21      compensation court.

22                 (c) Informal dispute resolution and arbitration  
23      proceedings shall be regarded as settlement negotiations and no  
24      admission, representation, or statement made in informal dispute  
25      resolution or arbitration proceedings, not otherwise discoverable

1 or obtainable, shall be admissible as evidence or subject to  
2 discovery. A staff member or mediator shall not be subject  
3 to process requiring the disclosure of any matter discussed  
4 during informal dispute resolution ~~or arbitration~~ proceedings.  
5 Any information from the files, reports, notes of the staff  
6 member or mediator, or other materials or communications, oral or  
7 written, relating to an informal dispute resolution ~~or arbitration~~  
8 proceeding obtained by a staff member or mediator is privileged and  
9 confidential and may not be disclosed without the written consent  
10 of all parties to the proceeding. No staff member or mediator shall  
11 be held liable for civil damages for any statement or decision made  
12 in the process of dispute resolution ~~or arbitration~~ unless such  
13 person acted in a manner exhibiting willful or wanton misconduct.

14 (d) The compensation court may adopt and promulgate  
15 rules and regulations regarding informal dispute resolution and  
16 ~~arbitration~~ proceedings that are considered necessary to effectuate  
17 the purposes of this section.

18 Sec. 7. Original sections 48-139 and 48-167, Reissue  
19 Revised Statutes of Nebraska, and sections 48-120.04, 48-125,  
20 48-144.03, and 48-168, Revised Statutes Cumulative Supplement,  
21 2008, are repealed.

22 Sec. 8. Since an emergency exists, this act takes effect  
23 when passed and approved according to law.