

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.

1 (10) The compensation court may add or subtract
2 Diagnostic Related Groups in striving to achieve the goal of
3 including those Diagnostic Related Groups that encompass at least
4 ninety percent of the inpatient hospital workers' compensation
5 claims submitted by hospitals identified in subdivision (1)(c) of
6 section 48-120. The administrator of the compensation court shall
7 annually make necessary adjustments to comply with the Current
8 Medicare Weights and shall annually adjust the Current Medicare
9 Factor for each hospital based on the annual statement submitted
10 pursuant to subsection (8) of this section.

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

13 48-125 ~~(1)~~ (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.