

## LEGISLATIVE BILL 187

Approved by the Governor May 29, 1987

Introduced by Barrett, 39

AN ACT relating to workers' compensation; to amend sections 48-120 and 48-162, Revised Statutes Supplement, 1986; to provide for the establishment of a medical services fee schedule; to prohibit certain acts; to provide a fee; to change provisions relating to certain orders for payment or reimbursement as prescribed; to harmonize provisions; to provide an operative date; to repeal the original sections; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 48-120, Revised Statutes Supplement, 1986, be amended to read as follows:

48-120. The employer shall be liable for all reasonable medical, surgical, and hospital services, including plastic or reconstructive but not cosmetic surgery when the injury has caused disfigurement, appliances, supplies, prosthetic devices, and medicines as and when needed, which are required by the nature of the injury and which will relieve pain or promote and hasten the employee's restoration to health and employment, and shall include damage to or destruction of artificial members, dental appliances, teeth, hearing aids, and eyeglasses, but, in the case of dental appliances, hearing aids, or eyeglasses, only if such damage or destruction resulted from an accident which also caused personal injury entitling the employee to compensation therefor for disability or treatment, subject to the approval of and regulation by the Nebraska Workers' Compensation Court, not to exceed the regular charge made for such service in similar cases. The compensation court may establish and publish schedules of maximum fees for such services. If the compensation court establishes such a schedule, it shall review such schedule annually and adopt appropriate changes when necessary. The compensation court may contract with any person, firm, corporation, organization, or government agency to secure adequate data to establish such fees. The provider or supplier

of such services shall not collect or attempt to collect from any employer, insurer, government, or injured employee or dependent or the estate of any injured or deceased employee any amount in excess of the maximum fee established by the compensation court for any such service. The compensation court may establish and charge a fee to recover the cost of published fee schedules. The employee shall have the right to make the initial selection of his or her physician from among all licensed physicians in the state and shall have the right to make an alternative choice of physician if he or she is not satisfied with the physician first selected. If the employee shall select a physician located in a community not the home or place of work of the employee, and a physician is available in the local community or in a closer community, no travel expenses shall be required to be paid by the employer or his or her insurer. In cases of injury requiring dismemberment, or injuries involving major surgical operation, the employee may designate to his or her employer the physician or surgeon to perform the operation. If the injured employee unreasonably refuses or neglects to avail himself or herself of medical or surgical treatment, except as herein and otherwise provided, the employer shall not be liable for an aggravation of such injury due to such refusal and neglect and the compensation court or judge thereof may suspend, reduce, or limit the compensation otherwise payable under the Nebraska Workers' Compensation Act.

If, due to the nature of the injury or its occurrence away from the employer's place of business, the employee is unable to make such selection, the selection requirements of this section shall not apply as long as the inability to make a selection persists. The physician selected may arrange for any consultation, referral, or extraordinary or other specialized medical services as the nature of the injury shall require. The employer shall not be responsible for medical services furnished or ordered by any physician or other person selected by the employee in disregard of this section.

No claim for such medical treatment shall be valid and enforceable unless, within fourteen days following the first treatment, the physician giving such treatment furnishes the employer and the Nebraska Workers' Compensation Court a report of such injury and treatment on a form prescribed by the compensation court. The compensation court may excuse the failure to furnish such report within fourteen days when it finds it to be in the interest of justice to do so.

All physicians attending injured employees shall comply with all the rules and regulations adopted and promulgated by the Nebraska Workers' Compensation Court and shall make such reports as may be required by it at any time and at such times as required by it upon the condition or treatment of any injured employee or upon any other matters concerning cases in which they are employed. Generally, all medical and hospital information relevant to the particular injury shall, on demand, be made available to the employer, employee, carrier, and the compensation court. The party requesting such medical and hospital information shall pay the cost thereof. No such relevant information developed in connection with treatment or examination for which compensation is sought shall be considered a privileged communication for purposes of a workers' compensation claim. When a physician willfully fails to make any report required of him or her under this section, the compensation court may order the forfeiture of his or her right to all or part of payment due for services rendered in connection with the particular case.

Whenever the Nebraska Workers' Compensation Court deems it necessary, in order to assist it in resolving any issue of medical fact or opinion, it shall cause the employee to be examined by a physician or physicians selected by the compensation court and obtain from such physician or physicians a report upon the condition or matter which is the subject of inquiry. The compensation court may charge the cost of such examination to the carrier. The cost of such examination shall include the payment to the employee of all necessary and reasonable expenses incident to such examination, such as transportation and loss of wages.

The Nebraska Workers' Compensation Court shall have the authority to determine the necessity, character, and sufficiency of any medical services furnished or to be furnished and shall have authority to order a change of doctor, physician, hospital, or rehabilitation facility when it deems such change is desirable or necessary. For the purpose of this section, physician shall mean any person licensed to practice medicine and surgery, osteopathic medicine, chiropractic, podiatry, or dentistry.

The Nebraska Workers' Compensation Court shall may order the employer to make payment directly to the supplier of any services provided for in this section or reimbursement to anyone who has made any payment to the supplier for services provided in this section. No such

supplier or payor may be made or become a party to any action before the compensation court.

Sec. 2. That section 48-162, Revised Statutes Supplement, 1986, be amended to read as follows:

48-162. The Nebraska Workers' Compensation Court, or any judge thereof, is authorized and empowered to examine under oath or otherwise any person, employee, employer, agent, superintendent, foreman, or officer of any copartnership or corporation, any officer of any domestic insurance company, any agent of any foreign insurance company, or any medical practitioner, to issue subpoenas for the appearance of witnesses and the production of books and papers, to solemnize marriages, and to administer oaths with like effect as is done in other courts of law in this state. In the examination of any witness and in requiring the production of books, papers, and other evidence, the compensation court shall have and exercise all of the powers of a judge, magistrate, or other officer in the taking of depositions or the examination of witnesses, including the power to enforce his or her orders by commitment for refusal to answer or for the disobedience of any such order. The compensation court may establish a schedule of fees for services including, but not limited to, copying, preparation of forms and other material, responding to inquiries for information, and publications prepared by the compensation court. In establishing fees the compensation court shall consider costs for time, material, and delivery.

There is hereby created the Nebraska Workers' Compensation Court Cash Fund. All sums of money received from fees pursuant to this section and sections 48-120, 48-157, and 48-165 shall be paid to the State Treasurer and deposited in the Nebraska Workers' Compensation Court Cash Fund. Money in such fund shall be used to fund the services described in this section and sections 48-120, 48-157, and 48-165. Any money in the Nebraska Workmen's Compensation Court Cash Fund shall, on July 17, 1986, be transferred to the Nebraska Workers' Compensation Court Cash Fund. Any money in the fund available for investment shall be invested by the state investment officer pursuant to sections 72-1237 to 72-1269.

Sec. 3. This act shall become operative on July 1, 1987.

Sec. 4. That original sections 48-120 and 48-162, Revised Statutes Supplement, 1986, are repealed.

Sec. 5. Since an emergency exists, this act shall be in full force and take effect, from and after