

LEGISLATIVE BILL 256

Approved by the Governor May 21, 2021

Introduced by Hansen, M., 26; Blood, 3.

A BILL FOR AN ACT relating to the Nebraska Workers' Compensation Act; to amend section 48-139, Revised Statutes Cumulative Supplement, 2020; to change provisions relating to lump-sum settlement approval and the filing of releases; and to repeal the original section.

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

Section 1. Section 48-139, Revised Statutes Cumulative Supplement, 2020, is amended to read:

48-139 (1)(a) Whenever an injured employee or his or her dependents and the employer agree that the amounts of compensation due as periodic payments for death, permanent disability, or claimed permanent disability under the Nebraska Workers' Compensation Act shall be commuted to one or more lump-sum payments, such settlement shall be submitted to the Nebraska Workers' Compensation Court for approval as provided in subsection (2) of this section if:

(i) The employee is not represented by counsel;

(ii) The employee, at the time the settlement is executed, is eligible for medicare, is a medicare beneficiary, or has a reasonable expectation of becoming eligible for medicare within thirty months after the date the settlement is executed. This subdivision (ii) is not applicable if the employee's right to receive future medical, surgical, and hospital services as provided in section 48-120 is specifically excluded from the settlement and medicare has not paid medical, surgical, or hospital expenses or if medicare has paid medical, surgical, or hospital expenses for which it claims it is entitled to reimbursement and medicare has been reimbursed for such expenses at the time the settlement is executed;

(iii) Medical, surgical, or hospital expenses incurred for treatment of the injury have been paid by medicaid and medicaid will not be reimbursed as part of the settlement;

(iv) Medical, surgical, or hospital expenses incurred for treatment of the injury will not be fully paid as part of the settlement; or

(v) The settlement seeks to commute amounts of compensation due to dependents of the employee.

(b) If such lump-sum settlement is not required to be submitted for approval by the compensation court, a release shall be filed with the compensation court as provided in subsection (3) of this section. Nothing in this section shall be construed to increase the compensation court's duties or authority with respect to the approval of lump-sum settlements under the act.

(2)(a) An application for an order approving a lump-sum settlement, signed and verified by both parties, shall be filed with the clerk of the compensation court and shall be entitled the same as an action by such employee or dependents against such employer. The application shall contain a concise statement of the terms of the settlement or agreement sought to be approved with a brief statement of the facts concerning the injury, the nature thereof, the wages received by the injured employee prior thereto, the nature of the employment, a description of the medical, surgical, or hospital expenses incurred for treatment of the injury that will remain unpaid as part of the settlement which are disputed and for which compensability has been denied by the employer, and such other matters as may be reasonably required by the compensation court. The application shall also include a statement that the parties have considered the interests of medicare and have taken reasonable steps to protect any interests of medicare. The application may provide for payment of future medical, surgical, or hospital expenses incurred by the employee. The compensation court may, on its own motion, and shall, on a motion by one of the parties, hold a hearing on the application at a time and place selected by the compensation court, and proof may be adduced and witnesses subpoenaed and examined the same as in an action in equity.

(b)(i) If the compensation court finds such lump-sum settlement is made in conformity with the compensation schedule and for the best interests of the employee or his or her dependents under all the circumstances, the compensation court shall make an order approving the same.

(ii) If the expenses for medical, surgical, or hospital services provided to the employee are not paid by the employer, or if any person, other than medicaid, who has made any payment to the supplier of medical, surgical, or hospital services provided to the employee, is not reimbursed by the employer, it shall be conclusively presumed that the nonpayment or nonreimbursement of disputed medical, surgical, or hospital expenses, as set forth in the application, is in conformity with the compensation schedule and for the best interests of the employee or his or her dependents, if the employee's attorney elects to affirm and does affirm in the application that the nonpayment or nonreimbursement of disputed medical, surgical, or hospital expenses is in conformity with the compensation schedule and for the best interests of the employee or his or her dependents under all the circumstances.

(iii) If the employee, at the time the settlement is executed, is eligible for medicare, is a medicare beneficiary, or has a reasonable expectation of becoming eligible for medicare within thirty months after the date the settlement is executed, and if the employee's attorney elects to affirm and does affirm in the application that the parties' agreement relating to consideration of medicare's interests set forth in such lump-sum settlement is in conformity with the compensation schedule and for the best interests of the employee or his or her dependents under all the circumstances, it shall be conclusively presumed that the parties' agreement relating to consideration of medicare's interests set forth in the application is in conformity with the compensation schedule and for the best interests of the employee or his or her dependents.

(iv) If such settlement is not approved, the compensation court may dismiss the application at the cost of the employer or continue the hearing, in the discretion of the compensation court.

(c) Every such lump-sum settlement approved by order of the compensation court shall be final and conclusive unless procured by fraud. An order approving an application under this subsection shall, in any case in which the employee is represented by counsel and in which the application contains a description of the medical, surgical, or hospital expenses incurred for treatment of the injury that will remain unpaid as part of the settlement which are disputed and for which compensability has been denied by the employer, provide that the employer is not liable for such expenses. Upon paying the amount approved by the compensation court, the employer shall be discharged from further liability on account of the injury or death, other than liability for the payment of future medical, surgical, or hospital expenses if such liability is approved by the compensation court on the application of the parties.

(d) An exclusion from coverage in any health, accident, or other insurance policy covering an employee which provides that coverage under such insurance policy does not apply if such employee is entitled to workers' compensation coverage is void as to such employee if his or her employer is not liable for medical, surgical, or hospital expenses incurred for treatment of an injury that will remain unpaid as part of the settlement pursuant to an order entered under subdivision (2)(c) of this section.

(3) If such lump-sum settlement is not required to be submitted for approval by the compensation court, a release shall be filed with the compensation court in accordance with this subsection that is signed and verified by the employee and the employee's attorney. The release shall be made on a form approved by the compensation court and shall contain a statement signed and verified by the employee that:

(a) The employee understands and waives all rights under the Nebraska Workers' Compensation Act, including, but not limited to:

(i) The right to receive weekly disability benefits, both temporary and permanent;

(ii) The right to receive vocational rehabilitation services;

(iii) The right to receive future medical, surgical, and hospital services as provided in section 48-120, unless such services are specifically excluded from the release; and

(iv) The right to ask a judge of the compensation court to decide the parties' rights and obligations;

(b) The employee is not eligible for medicare, is not a current medicare beneficiary, and does not have a reasonable expectation of becoming eligible for medicare within thirty months after the date the settlement is executed. This subdivision (b) is not applicable if the employee's right to receive future medical, surgical, and hospital services as provided in section 48-120 is specifically excluded from the settlement and medicare has not paid medical, surgical, or hospital expenses or if medicare has paid medical, surgical, or hospital expenses for which it claims it is entitled to reimbursement and medicare has been reimbursed for such expenses at the time the settlement is executed;

(c) There are no medical, surgical, or hospital expenses incurred for treatment of the injury which have been paid by medicaid and not reimbursed to medicaid by the employer as part of the settlement; and

(d) There are no medical, surgical, or hospital expenses incurred for treatment of the injury that will remain unpaid after the settlement.

(4) Upon the entry of an order of dismissal with prejudice, a release filed with the compensation court in accordance with subsection (3) of this section shall be final and conclusive as to all rights waived in the release unless procured by fraud. Amounts to be paid by the employer to the employee pursuant to such release shall be paid within thirty days of filing the release with the compensation court. Fifty percent shall be added for payments owed to the employee if made after thirty days after the date the release is filed with the compensation court. Upon making payment owed by the employer as set forth in the release and upon the entry of an order of dismissal with prejudice, as to all rights waived in the release, such release shall be a full and complete discharge from further liability for the employer on account of the injury, including future medical, surgical, or hospital expenses, unless such expenses are specifically excluded from the release.

(5) The fees of the clerk of the compensation court for filing, docketing, and indexing an application for an order approving a lump-sum settlement or filing a release as provided in this section shall be fifteen dollars. The fees shall be remitted by the clerk to the State Treasurer for credit to the

Compensation Court Cash Fund.

Sec. 2. Original section 48-139, Revised Statutes Cumulative Supplement, 2020, is repealed.