

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 307

Introduced by Nelson, 6.

Read first time January 17, 2013

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to the Nebraska Workers' Compensation Act; to
2 amend sections 48-121, 48-141, and 48-162.01, Reissue
3 Revised Statutes of Nebraska, and sections 48-120 and
4 48-1,110, Revised Statutes Cumulative Supplement, 2012;
5 to change provisions relating to medical treatment,
6 temporary disability compensation, and periodic payment
7 modification; to provide intent and purpose; to harmonize
8 provisions; and to repeal the original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 48-120, Revised Statutes Cumulative
2 Supplement, 2012, is amended to read:

3 48-120 (1)(a) The employer is liable for all reasonable
4 medical, surgical, and hospital services, including plastic surgery
5 or reconstructive surgery but not cosmetic surgery when the injury
6 has caused disfigurement, appliances, supplies, prosthetic devices,
7 and medicines as and when needed, which are required by the nature of
8 the injury and which will relieve pain or promote and hasten the
9 employee's restoration to health and employment, and includes damage
10 to or destruction of artificial members, dental appliances, teeth,
11 hearing instruments, and eyeglasses, but, in the case of dental
12 appliances, hearing instruments, or eyeglasses, only if such damage
13 or destruction resulted from an accident which also caused personal
14 injury entitling the employee to compensation therefor for disability
15 or treatment, subject to the approval of and regulation by the
16 Nebraska Workers' Compensation Court, not to exceed the regular
17 charge made for such service in similar cases.

18 (b) Except as provided in section 48-120.04, the
19 compensation court shall establish schedules of fees for such
20 services. The compensation court shall review such schedules at least
21 biennially and adopt appropriate changes when necessary. The
22 compensation court may contract with any person, firm, corporation,
23 organization, or government agency to secure adequate data to
24 establish such fees. The compensation court shall publish and furnish
25 to the public the fee schedules established pursuant to this

1 subdivision and section 48-120.04. The compensation court may
2 establish and charge a fee to recover the cost of published fee
3 schedules.

4 (c) Reimbursement for inpatient hospital services
5 provided by hospitals located in or within fifteen miles of a
6 Nebraska city of the metropolitan class or primary class and by other
7 hospitals with fifty-one or more licensed beds shall be according to
8 the Diagnostic Related Group inpatient hospital fee schedule or the
9 trauma services inpatient hospital fee schedule established in
10 section 48-120.04.

11 (d) A workers' compensation insurer, risk management
12 pool, self-insured employer, or managed care plan certified pursuant
13 to section 48-120.02 may contract with a provider or provider network
14 for medical, surgical, or hospital services. Such contract may
15 establish fees for services different than the fee schedules
16 established under subdivision (1)(b) of this section or established
17 under section 48-120.04. Such contract shall be in writing and
18 mutually agreed upon prior to the date services are provided.

19 (e) The provider or supplier of such services shall not
20 collect or attempt to collect from any employer, insurer, government,
21 or injured employee or dependent or the estate of any injured or
22 deceased employee any amount in excess of (i) the fee established by
23 the compensation court for any such service, (ii) the fee established
24 under section 48-120.04, or (iii) the fee contracted under
25 subdivision (1)(d) of this section.

1 (2)(a) The employee has the right to select a physician
2 who has maintained the employee's medical records prior to an injury
3 and has a documented history of treatment with the employee prior to
4 an injury or a physician who has maintained the medical records of an
5 immediate family member of the employee prior to an injury and has a
6 documented history of treatment with an immediate family member of
7 the employee prior to an injury. For purposes of this subsection,
8 immediate family member means the employee's spouse, children,
9 parents, stepchildren, and stepparents. The employer shall notify the
10 employee following an injury of such right of selection in a form and
11 manner and within a timeframe established by the compensation court.
12 If the employer fails to notify the employee of such right of
13 selection or fails to notify the employee of such right of selection
14 in a form and manner and within a timeframe established by the
15 compensation court, then the employee has the right to select a
16 physician. If the employee fails to exercise such right of selection
17 in a form and manner and within a timeframe established by the
18 compensation court following notice by the employer pursuant to this
19 subsection, then the employer has the right to select the physician.
20 If selection of the initial physician is made by the employee or
21 employer pursuant to this subsection following notice by the employer
22 pursuant to this subsection, the employee or employer shall not
23 change the initial selection of physician made pursuant to this
24 subsection unless such change is agreed to by the employee and
25 employer or is ordered by the compensation court pursuant to

1 subsection (6) of this section. If compensability is denied by the
2 workers' compensation insurer, risk management pool, or self-insured
3 employer, (i) the employee has the right to select a physician and
4 shall not be made to enter a managed care plan and (ii) the employer
5 is liable for medical, surgical, and hospital services subsequently
6 found to be compensable. If the employer has exercised the right to
7 select a physician pursuant to this subsection and if the
8 compensation court subsequently orders reasonable medical services
9 previously refused to be furnished to the employee by the physician
10 selected by the employer, the compensation court shall allow the
11 employee to select another physician to furnish further medical
12 services. If the employee selects a physician located in a community
13 not the home or place of work of the employee and a physician is
14 available in the local community or in a closer community, no travel
15 expenses shall be required to be paid by the employer or his or her
16 workers' compensation insurer.

17 (b) In cases of injury requiring dismemberment or
18 injuries involving major surgical operation, the employee may
19 designate to his or her employer the physician or surgeon to perform
20 the operation.

21 (c) If the injured employee unreasonably refuses or
22 neglects to avail himself or herself of medical or surgical treatment
23 furnished by the employer, except as herein and otherwise provided,
24 the employer is not liable for an aggravation of such injury due to
25 such refusal and neglect and the compensation court or judge thereof

1 may terminate, suspend, reduce, or limit the compensation otherwise
2 payable under the Nebraska Workers' Compensation Act. The employee's
3 refusal or neglect to avail himself or herself of medical or surgical
4 treatment furnished by the employer shall result in a rebuttable
5 presumption that the employee's disability would have been reduced or
6 his or her condition would have been improved if he or she had
7 availed himself or herself of such medical or surgical treatment.

8 (d) If, due to the nature of the injury or its occurrence
9 away from the employer's place of business, the employee or the
10 employer is unable to select a physician using the procedures
11 provided by this subsection, the selection requirements of this
12 subsection shall not apply as long as the inability to make a
13 selection persists.

14 (e) The physician selected may arrange for any
15 consultation, referral, or extraordinary or other specialized medical
16 services as the nature of the injury requires.

17 (f) The employer is not responsible for medical services
18 furnished or ordered by any physician or other person selected by the
19 employee in disregard of this section. Except as otherwise provided
20 by the Nebraska Workers' Compensation Act, the employer is not liable
21 for medical, surgical, or hospital services or medicines if the
22 employee refuses to allow them to be furnished by the employer.

23 (3) No claim for such medical treatment is valid and
24 enforceable unless, within fourteen days following the first
25 treatment, the physician giving such treatment furnishes the employer

1 a report of such injury and treatment on a form prescribed by the
2 compensation court. The compensation court may excuse the failure to
3 furnish such report within fourteen days when it finds it to be in
4 the interest of justice to do so.

5 (4) All physicians and other providers of medical
6 services attending injured employees shall comply with all the rules
7 and regulations adopted and promulgated by the compensation court and
8 shall make such reports as may be required by it at any time and at
9 such times as required by it upon the condition or treatment of any
10 injured employee or upon any other matters concerning cases in which
11 they are employed. All medical and hospital information relevant to
12 the particular injury shall, on demand, be made available to the
13 employer, the employee, the workers' compensation insurer, and the
14 compensation court. The party requesting such medical and hospital
15 information shall pay the cost thereof. No such relevant information
16 developed in connection with treatment or examination for which
17 compensation is sought shall be considered a privileged communication
18 for purposes of a workers' compensation claim. When a physician or
19 other provider of medical services willfully fails to make any report
20 required of him or her under this section, the compensation court may
21 order the forfeiture of his or her right to all or part of payment
22 due for services rendered in connection with the particular case.

23 (5) Whenever the compensation court deems it necessary,
24 in order to assist it in resolving any issue of medical fact or
25 opinion, it shall cause the employee to be examined by a physician or

1 physicians selected by the compensation court and obtain from such
2 physician or physicians a report upon the condition or matter which
3 is the subject of inquiry. The compensation court may charge the cost
4 of such examination to the workers' compensation insurer. The cost of
5 such examination shall include the payment to the employee of all
6 necessary and reasonable expenses incident to such examination, such
7 as transportation and loss of wages.

8 (6) The compensation court shall have the authority to
9 determine the necessity, character, and sufficiency of any medical
10 services furnished or to be furnished and shall have authority to
11 order a change of physician, hospital, rehabilitation facility, or
12 other medical services when it deems such change is desirable or
13 necessary. Any dispute regarding medical, surgical, or hospital
14 services furnished or to be furnished under this section may be
15 submitted by the parties, the supplier of such service, or the
16 compensation court on its own motion for informal dispute resolution
17 by a staff member of the compensation court or an outside mediator
18 pursuant to section 48-168. In addition, any party or the
19 compensation court on its own motion may submit such a dispute for a
20 medical finding by an independent medical examiner pursuant to
21 section 48-134.01. Issues submitted for informal dispute resolution
22 or for a medical finding by an independent medical examiner may
23 include, but are not limited to, the reasonableness and necessity of
24 any medical treatment previously provided or to be provided to the
25 injured employee. The compensation court may adopt and promulgate

1 rules and regulations regarding informal dispute resolution or the
2 submission of disputes to an independent medical examiner that are
3 considered necessary to effectuate the purposes of this section.

4 (7) For the purpose of this section, physician has the
5 same meaning as in section 48-151.

6 (8) The compensation court shall order the employer to
7 make payment directly to the supplier of any services provided for in
8 this section or reimbursement to anyone who has made any payment to
9 the supplier for services provided in this section. No such supplier
10 or payor may be made or become a party to any action before the
11 compensation court.

12 (9) Notwithstanding any other provision of this section,
13 a workers' compensation insurer, risk management pool, or self-
14 insured employer may contract for medical, surgical, hospital, and
15 rehabilitation services to be provided through a managed care plan
16 certified pursuant to section 48-120.02. Once liability for medical,
17 surgical, and hospital services has been accepted or determined, the
18 employer may require that employees subject to the contract receive
19 medical, surgical, and hospital services in the manner prescribed in
20 the contract, except that an employee may receive services from a
21 physician selected by the employee pursuant to subsection (2) of this
22 section if the physician so selected agrees to refer the employee to
23 the managed care plan for any other treatment that the employee may
24 require and if the physician so selected agrees to comply with all
25 the rules, terms, and conditions of the managed care plan. If

1 compensability is denied by the workers' compensation insurer, risk
2 management pool, or self-insured employer, the employee may leave the
3 managed care plan and the employer is liable for medical, surgical,
4 and hospital services previously provided. The workers' compensation
5 insurer, risk management pool, or self-insured employer shall give
6 notice to employees subject to the contract of eligible service
7 providers and such other information regarding the contract and
8 manner of receiving medical, surgical, and hospital services under
9 the managed care plan as the compensation court may prescribe.

10 Sec. 2. Section 48-121, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 48-121 The following schedule of compensation is hereby
13 established for injuries resulting in disability:

14 (1) For total disability, the compensation during such
15 disability shall be sixty-six and two-thirds percent of the wages
16 received at the time of injury, but such compensation shall not be
17 more than the maximum weekly income benefit specified in section
18 48-121.01 nor less than the minimum weekly income benefit specified
19 in section 48-121.01, except that if at the time of injury the
20 employee receives wages of less than the minimum weekly income
21 benefit specified in section 48-121.01, then he or she shall receive
22 the full amount of such wages per week as compensation. Nothing in
23 this subdivision shall require payment of compensation after
24 disability shall cease;

25 (2) For disability partial in character, except the

1 particular cases mentioned in subdivision (3) of this section, the
2 compensation shall be sixty-six and two-thirds percent of the
3 difference between the wages received at the time of the injury and
4 the earning power of the employee thereafter, but such compensation
5 shall not be more than the maximum weekly income benefit specified in
6 section 48-121.01. This compensation shall be paid during the period
7 of such partial disability but not beyond three hundred weeks. Should
8 total disability be followed by partial disability, the period of
9 three hundred weeks mentioned in this subdivision shall be reduced by
10 the number of weeks during which compensation was paid for such total
11 disability;

12 (3) For disability resulting from permanent injury of the
13 classes listed in this subdivision, the compensation shall be in
14 addition to the amount paid for temporary disability, except that the
15 compensation for temporary disability shall cease as soon as the
16 extent of the permanent disability is ascertainable. For disability
17 resulting from permanent injury of the following classes,
18 compensation shall be: For the loss of a thumb, sixty-six and two-
19 thirds percent of daily wages during sixty weeks. For the loss of a
20 first finger, commonly called the index finger, sixty-six and two-
21 thirds percent of daily wages during thirty-five weeks. For the loss
22 of a second finger, sixty-six and two-thirds percent of daily wages
23 during thirty weeks. For the loss of a third finger, sixty-six and
24 two-thirds percent of daily wages during twenty weeks. For the loss
25 of a fourth finger, commonly called the little finger, sixty-six and

1 two-thirds percent of daily wages during fifteen weeks. The loss of
2 the first phalange of the thumb or of any finger shall be considered
3 to be equal to the loss of one-half of such thumb or finger and
4 compensation shall be for one-half of the periods of time above
5 specified, and the compensation for the loss of one-half of the first
6 phalange shall be for one-fourth of the periods of time above
7 specified. The loss of more than one phalange shall be considered as
8 the loss of the entire finger or thumb, except that in no case shall
9 the amount received for more than one finger exceed the amount
10 provided in this schedule for the loss of a hand. For the loss of a
11 great toe, sixty-six and two-thirds percent of daily wages during
12 thirty weeks. For the loss of one of the toes other than the great
13 toe, sixty-six and two-thirds percent of daily wages during ten
14 weeks. The loss of the first phalange of any toe shall be considered
15 equal to the loss of one-half of such toe, and compensation shall be
16 for one-half of the periods of time above specified. The loss of more
17 than one phalange shall be considered as the loss of the entire toe.
18 For the loss of a hand, sixty-six and two-thirds percent of daily
19 wages during one hundred seventy-five weeks. For the loss of an arm,
20 sixty-six and two-thirds percent of daily wages during two hundred
21 twenty-five weeks. For the loss of a foot, sixty-six and two-thirds
22 percent of daily wages during one hundred fifty weeks. For the loss
23 of a leg, sixty-six and two-thirds percent of daily wages during two
24 hundred fifteen weeks. For the loss of an eye, sixty-six and two-
25 thirds percent of daily wages during one hundred twenty-five weeks.

1 For the loss of an ear, sixty-six and two-thirds percent of daily
2 wages during twenty-five weeks. For the loss of hearing in one ear,
3 sixty-six and two-thirds percent of daily wages during fifty weeks.
4 For the loss of the nose, sixty-six and two-thirds percent of daily
5 wages during fifty weeks.

6 In any case in which there is a loss or loss of use of
7 more than one member or parts of more than one member set forth in
8 this subdivision, but not amounting to total and permanent
9 disability, compensation benefits shall be paid for the loss or loss
10 of use of each such member or part thereof, with the periods of
11 benefits to run consecutively. The total loss or permanent total loss
12 of use of both hands, or both arms, or both feet, or both legs, or
13 both eyes, or hearing in both ears, or of any two thereof, in one
14 accident, shall constitute total and permanent disability and be
15 compensated for according to subdivision (1) of this section. In all
16 other cases involving a loss or loss of use of both hands, both arms,
17 both feet, both legs, both eyes, or hearing in both ears, or of any
18 two thereof, total and permanent disability shall be determined in
19 accordance with the facts. Amputation between the elbow and the wrist
20 shall be considered as the equivalent of the loss of a hand, and
21 amputation between the knee and the ankle shall be considered as the
22 equivalent of the loss of a foot. Amputation at or above the elbow
23 shall be considered as the loss of an arm, and amputation at or above
24 the knee shall be considered as the loss of a leg. Permanent total
25 loss of the use of a finger, hand, arm, foot, leg, or eye shall be

1 considered as the equivalent of the loss of such finger, hand, arm,
2 foot, leg, or eye. In all cases involving a permanent partial loss of
3 the use or function of any of the members mentioned in this
4 subdivision, the compensation shall bear such relation to the amounts
5 named in such subdivision as the disabilities bear to those produced
6 by the injuries named therein.

7 If, in the compensation court's discretion, compensation
8 benefits payable for a loss or loss of use of more than one member or
9 parts of more than one member set forth in this subdivision,
10 resulting from the same accident or illness, do not adequately
11 compensate the employee for such loss or loss of use and such loss or
12 loss of use results in at least a thirty percent loss of earning
13 capacity, the compensation court shall, upon request of the employee,
14 determine the employee's loss of earning capacity consistent with the
15 process for such determination under subdivision (1) or (2) of this
16 section, and in such a case the employee shall not be entitled to
17 compensation under this subdivision.

18 If the employer and the employee are unable to agree upon
19 the amount of compensation to be paid in cases not covered by the
20 schedule, the amount of compensation shall be settled according to
21 sections 48-173 to 48-185. Compensation under this subdivision shall
22 not be more than the maximum weekly income benefit specified in
23 section 48-121.01 nor less than the minimum weekly income benefit
24 specified in section 48-121.01, except that if at the time of the
25 injury the employee received wages of less than the minimum weekly

1 income benefit specified in section 48-121.01, then he or she shall
2 receive the full amount of such wages per week as compensation;

3 (4) For disability resulting from permanent disability,
4 if immediately prior to the accident the rate of wages was fixed by
5 the day or hour, or by the output of the employee, the weekly wages
6 shall be taken to be computed upon the basis of a workweek of a
7 minimum of five days, if the wages are paid by the day, or upon the
8 basis of a workweek of a minimum of forty hours, if the wages are
9 paid by the hour, or upon the basis of a workweek of a minimum of
10 five days or forty hours, whichever results in the higher weekly
11 wage, if the wages are based on the output of the employee; and

12 (5) The employee shall be entitled to compensation from
13 his or her employer for temporary disability while undergoing
14 physical or medical rehabilitation and while undergoing vocational
15 rehabilitation whether such vocational rehabilitation is voluntarily
16 offered by the employer and accepted by the employee or is ordered by
17 the Nebraska Workers' Compensation Court or any judge of the
18 compensation court; -

19 (6) If the treating physician has imposed temporary
20 restrictions as a result of the workplace injury, the employer may
21 provide work which will meet the restrictions for the employee at the
22 employer's own company or at any other for-profit or not-for-profit
23 organization or company. A refusal by the employee to do such
24 accommodated work within the temporary restrictions imposed by the
25 treating physician shall result in a rebuttable presumption that the

1 employee is ineligible to receive compensation for temporary
2 disability; and

3 (7) An employee convicted of a misdemeanor or felony in
4 this state or any other jurisdiction is not entitled to compensation
5 for temporary disability during any period of incarceration. Upon
6 confirmation of the employee's incarceration, compensation for
7 temporary disability may be terminated by the employer or insurance
8 carrier without an order of the court. This subdivision shall not
9 apply to compensation for temporary disability of an inmate for
10 injuries sustained by the inmate while in the employ of a private
11 for-profit employer or while employed in private prison industries
12 involving a for-profit employer that deals in interstate commerce or
13 that sell products or services to the federal government. A time
14 limit on benefits otherwise provided in the Nebraska Workers'
15 Compensation Act is not extended due to termination of temporary
16 disability during any period of incarceration.

17 Sec. 3. Section 48-141, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 48-141 (1) All amounts paid by an employer or by an
20 insurance company a compensation insurer, risk management pool, or
21 self-insurer carrying such risk, as the case may be, and received by
22 the employee or his or her dependents by lump-sum payments pursuant
23 to section 48-139 shall be final and not subject to readjustment if
24 the lump-sum settlement is in conformity with the Nebraska Workers'
25 Compensation Act, unless the settlement is procured by fraud, but the

1 amount of any agreement or award payable periodically may be modified
2 as follows: ~~(1)-(a)~~ At any time by agreement of the parties with the
3 approval of the Nebraska Workers' Compensation Court; or ~~(2)-(b)~~ if
4 the parties cannot agree, then ~~at any time after six months from the~~
5 ~~date of the agreement or award~~, an application may be made by either
6 party on the ground of increase or decrease of ~~incapacity disability~~
7 due solely to the injury or that the condition of a dependent has
8 changed as to age or marriage or by reason of the death of the
9 dependent. In such case, the same procedure shall be followed as in
10 sections 48-173 to 48-185 in case of disputed claim for compensation.

11 (2) A modification of an award under this section in a
12 case in which the parties cannot agree on the ground of increase or
13 decrease of disability shall be effective as of the date that the
14 increase or decrease actually occurred. If the compensation court
15 determines that an overpayment of income benefits has been made and
16 no further income benefits are due, the compensation court in its
17 discretion may order the employee or beneficiary to repay to the
18 employer or the compensation insurer, risk management pool, or self-
19 insurer the sum of the overpayment. If the compensation court
20 determines that an overpayment of income benefits has been made and
21 further income benefits are due, the compensation court shall order
22 the overpayment to be recovered by shortening the period of future
23 weekly income benefits or by reducing the weekly income benefit, or
24 both. If the compensation court determines that an underpayment of
25 income benefits has been made, whether or not further income benefits

1 are due, the compensation court shall order the employer or
2 compensation insurer, risk management pool, or self-insurer to repay
3 to the employee or beneficiary the sum of the underpayment. If future
4 income benefits are due, the compensation court shall order the
5 underpayment to be recovered by lengthening the period of future
6 weekly income benefits or by increasing the weekly income benefit or
7 both.

8 Sec. 4. Section 48-162.01, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 48-162.01 (1) One of the primary purposes of the Nebraska
11 Workers' Compensation Act is restoration of the injured employee to
12 gainful employment. To this end the Nebraska Workers' Compensation
13 Court may employ one or more specialists in vocational
14 rehabilitation. Salaries, other benefits, and administrative expenses
15 incurred by the compensation court for purposes of vocational
16 rehabilitation shall be paid from the Compensation Court Cash Fund.

17 (2) Vocational rehabilitation specialists employed by the
18 court shall continuously study the problems of vocational
19 rehabilitation and shall maintain a directory of individual service
20 providers, counselors, and specialists which have been approved by
21 the Nebraska Workers' Compensation Court. The compensation court may
22 approve as qualified such individual service providers, counselors,
23 and specialists as are capable of rendering competent vocational
24 rehabilitation services to injured employees. No individual service
25 provider, counselor, or specialist shall be considered qualified to

1 provide vocational rehabilitation services to injured employees
2 unless he or she has satisfied the standards for certification
3 established by the compensation court and has been certified by the
4 compensation court.

5 (3) When as a result of the injury an employee is unable
6 to perform suitable work for which he or she has previous training or
7 experience, he or she is entitled to such vocational rehabilitation
8 services, including job placement and training, as may be reasonably
9 necessary to restore him or her to suitable employment. Vocational
10 rehabilitation training costs shall be paid from the Workers'
11 Compensation Trust Fund. When vocational rehabilitation training
12 requires residence at or near a facility or institution away from the
13 employee's customary residence, whether within or without this state,
14 the reasonable costs of his or her board, lodging, and travel shall
15 be paid from the Workers' Compensation Trust Fund.

16 If entitlement to vocational rehabilitation services is
17 claimed by the employee, the employee and the employer or his or her
18 insurer shall attempt to agree on the choice of a vocational
19 rehabilitation counselor from the directory of vocational
20 rehabilitation counselors established pursuant to subsection (2) of
21 this section. If they are unable to agree on a vocational
22 rehabilitation counselor, the employee or employer or his or her
23 insurer shall notify the compensation court, and a vocational
24 rehabilitation specialist of the compensation court shall select a
25 counselor from the directory of vocational rehabilitation counselors

1 established pursuant to subsection (2) of this section. Only one such
2 vocational rehabilitation counselor may provide vocational
3 rehabilitation services at any one time, and any change in the choice
4 of a vocational rehabilitation counselor shall be approved by a
5 vocational rehabilitation specialist or judge of the compensation
6 court. The vocational rehabilitation counselor so chosen or selected
7 shall evaluate the employee and, if necessary, develop and implement
8 a vocational rehabilitation plan. Any such plan shall be evaluated by
9 a vocational rehabilitation specialist of the compensation court and
10 approved by such specialist or a judge of the compensation court
11 prior to implementation. In evaluating a plan the specialist shall
12 make an independent determination as to whether the proposed plan is
13 likely to result in suitable employment for the injured employee that
14 is consistent with the priorities listed in this subsection. It is a
15 rebuttable presumption that any vocational rehabilitation plan
16 developed by such vocational rehabilitation counselor and approved by
17 a vocational rehabilitation specialist of the compensation court is
18 an appropriate form of vocational rehabilitation. The fee for the
19 evaluation and for the development and implementation of the
20 vocational rehabilitation plan shall be paid by the employer or his
21 or her workers' compensation insurer. The compensation court may
22 establish a fee schedule for services rendered by a vocational
23 rehabilitation counselor. Any loss-of-earning-power evaluation
24 performed by a vocational rehabilitation counselor shall be performed
25 by a counselor from the directory established pursuant to subsection

1 (2) of this section and chosen or selected according to the
2 procedures described in this subsection. It is a rebuttable
3 presumption that any opinion expressed as the result of such a loss-
4 of-earning-power evaluation is correct.

5 The following priorities shall be used in developing and
6 evaluating a vocational rehabilitation plan. No higher priority may
7 be utilized unless all lower priorities have been determined by the
8 vocational rehabilitation counselor and a vocational rehabilitation
9 specialist or judge of the compensation court to be unlikely to
10 result in suitable employment for the injured employee that is
11 consistent with the priorities listed in this subsection. If a lower
12 priority is clearly inappropriate for the employee, the next higher
13 priority shall be utilized. The priorities are, listed in order from
14 lower to higher priority:

- 15 (a) Return to the previous job with the same employer;
16 (b) Modification of the previous job with the same
17 employer;
18 (c) A new job with the same employer;
19 (d) A job with a new employer; or
20 (e) A period of formal training which is designed to lead
21 to employment in another career field.

22 (4) The compensation court may cooperate on a reciprocal
23 basis with federal and state agencies for vocational rehabilitation
24 services or with any public or private agency.

25 (5) The Attorney General, when requested by the

1 administrator of the compensation court, may file a motion pursuant
2 to section 48-162.03 regarding any issue related to vocational
3 rehabilitation services or costs pursuant to this section. The
4 Attorney General shall be considered a party for purposes of such
5 motion. The Attorney General may initiate an original action before
6 the compensation court or may intervene in a pending action and
7 become a party to the litigation. Any such motion shall be heard by a
8 judge of the compensation court other than the presiding judge.

9 (6) An employee who has suffered an injury covered by the
10 Nebraska Workers' Compensation Act is entitled to prompt physical and
11 medical rehabilitation services. If physical or medical
12 rehabilitation services are not voluntarily offered and accepted, the
13 compensation court or any judge thereof on its or his or her own
14 motion, or upon application of the employee or employer, and after
15 affording the parties an opportunity to be heard by the compensation
16 court or judge thereof, may refer the employee to a facility,
17 institution, physician, or other individual service provider capable
18 of rendering competent physical or medical rehabilitation services
19 for evaluation and report of the practicability of, need for, and
20 kind of service or treatment necessary and appropriate to render him
21 or her fit for a remunerative occupation, and the costs of such
22 evaluation and report involving physical or medical rehabilitation
23 shall be borne by the employer or his or her workers' compensation
24 insurer. Upon receipt of such report and after affording the parties
25 an opportunity to be heard, the compensation court or judge thereof

1 may order that the physical or medical services and treatment
2 recommended in the report or other necessary physical or medical
3 rehabilitation treatment or service be provided at the expense of the
4 employer or his or her workers' compensation insurer.

5 When physical or medical rehabilitation requires
6 residence at or near the facility or institution away from the
7 employee's customary residence, whether within or without this state,
8 the reasonable costs of his or her board, lodging, and travel shall
9 be paid for by the employer or his or her workers' compensation
10 insurer in addition to any other benefits payable under the Nebraska
11 Workers' Compensation Act, including weekly compensation benefits for
12 temporary disability.

13 (7) If the injured employee without reasonable cause
14 refuses to undertake or fails to cooperate with a physical, medical,
15 or vocational rehabilitation program determined by the compensation
16 court or judge thereof to be suitable for him or her or refuses to be
17 evaluated under subsection (3) or (6) of this section or fails to
18 cooperate in such evaluation, the compensation court or judge thereof
19 may terminate, suspend, reduce, or limit the compensation otherwise
20 payable under the Nebraska Workers' Compensation Act. The employee's
21 refusal to undertake or failure to cooperate with a physical,
22 medical, or vocational rehabilitation program or refusal to be
23 evaluated as provided in this subsection shall result in a rebuttable
24 presumption that the employee's disability would have been reduced or
25 his or her condition would have been improved if he or she had

1 undertaken or cooperated with such physical, medical, or vocational
2 rehabilitation program or evaluation. The compensation court or judge
3 thereof may also modify a previous finding, order, award, or judgment
4 relating to physical, medical, or vocational rehabilitation services
5 as necessary in order to accomplish the goal of restoring the injured
6 employee to gainful and suitable employment, or as otherwise required
7 in the interest of justice.

8 Sec. 5. The Nebraska Workers' Compensation Act shall be
9 fairly and impartially construed and applied according to the law and
10 the evidence in the record. Notwithstanding any common law or case
11 law to the contrary, the act shall not be presumed in favor of one
12 party over another and shall not be liberally construed in order to
13 fulfill any beneficent purposes.

14 Sec. 6. Section 48-1,110, Revised Statutes Cumulative
15 Supplement, 2012, is amended to read:

16 48-1,110 Sections 48-101 to 48-1,117 and section 5 of
17 this act shall be known and may be cited as the Nebraska Workers'
18 Compensation Act.

19 Sec. 7. Original sections 48-121, 48-141, and 48-162.01,
20 Reissue Revised Statutes of Nebraska, and sections 48-120 and
21 48-1,110, Revised Statutes Cumulative Supplement, 2012, are repealed.