

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 1012**

Introduced by Lautenbaugh, 18.

Read first time January 17, 2012

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to the Nebraska Workers' Compensation Act; to  
2 amend sections 48-121 and 48-162.01, Reissue Revised  
3 Statutes of Nebraska, and section 48-120, Revised  
4 Statutes Supplement, 2011; to change provisions relating  
5 to medical treatment and temporary disability  
6 compensation; and to repeal the original sections.

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

1                   Section 1. Section 48-120, Revised Statutes Supplement,  
2   2011, 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.

3 (7) The employee is not entitled to compensation from his  
4 or her employer for temporary disability if the employee has been  
5 terminated for cause or voluntarily resigns following a workplace  
6 injury and the employer would have accommodated the temporary  
7 restrictions imposed by the treating physician but for the employee's  
8 separation from employment.

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

23 Sec. 3. Section 48-162.01, Reissue Revised Statutes of  
24 Nebraska, is amended to read:

25 48-162.01 (1) One of the primary purposes of the Nebraska

1 Workers' Compensation Act is restoration of the injured employee to  
2 gainful employment. To this end the Nebraska Workers' Compensation  
3 Court may employ one or more specialists in vocational  
4 rehabilitation. Salaries, other benefits, and administrative expenses  
5 incurred by the compensation court for purposes of vocational  
6 rehabilitation shall be paid from the Compensation Court Cash Fund.

7 (2) Vocational rehabilitation specialists employed by the  
8 court shall continuously study the problems of vocational  
9 rehabilitation and shall maintain a directory of individual service  
10 providers, counselors, and specialists which have been approved by  
11 the Nebraska Workers' Compensation Court. The compensation court may  
12 approve as qualified such individual service providers, counselors,  
13 and specialists as are capable of rendering competent vocational  
14 rehabilitation services to injured employees. No individual service  
15 provider, counselor, or specialist shall be considered qualified to  
16 provide vocational rehabilitation services to injured employees  
17 unless he or she has satisfied the standards for certification  
18 established by the compensation court and has been certified by the  
19 compensation court.

20 (3) When as a result of the injury an employee is unable  
21 to perform suitable work for which he or she has previous training or  
22 experience, he or she is entitled to such vocational rehabilitation  
23 services, including job placement and training, as may be reasonably  
24 necessary to restore him or her to suitable employment. Vocational  
25 rehabilitation training costs shall be paid from the Workers'

1 Compensation Trust Fund. When vocational rehabilitation training  
2 requires residence at or near a facility or institution away from the  
3 employee's customary residence, whether within or without this state,  
4 the reasonable costs of his or her board, lodging, and travel shall  
5 be paid from the Workers' Compensation Trust Fund.

6           If entitlement to vocational rehabilitation services is  
7 claimed by the employee, the employee and the employer or his or her  
8 insurer shall attempt to agree on the choice of a vocational  
9 rehabilitation counselor from the directory of vocational  
10 rehabilitation counselors established pursuant to subsection (2) of  
11 this section. If they are unable to agree on a vocational  
12 rehabilitation counselor, the employee or employer or his or her  
13 insurer shall notify the compensation court, and a vocational  
14 rehabilitation specialist of the compensation court shall select a  
15 counselor from the directory of vocational rehabilitation counselors  
16 established pursuant to subsection (2) of this section. Only one such  
17 vocational rehabilitation counselor may provide vocational  
18 rehabilitation services at any one time, and any change in the choice  
19 of a vocational rehabilitation counselor shall be approved by a  
20 vocational rehabilitation specialist or judge of the compensation  
21 court. The vocational rehabilitation counselor so chosen or selected  
22 shall evaluate the employee and, if necessary, develop and implement  
23 a vocational rehabilitation plan. Any such plan shall be evaluated by  
24 a vocational rehabilitation specialist of the compensation court and  
25 approved by such specialist or a judge of the compensation court

1 prior to implementation. In evaluating a plan the specialist shall  
2 make an independent determination as to whether the proposed plan is  
3 likely to result in suitable employment for the injured employee that  
4 is consistent with the priorities listed in this subsection. It is a  
5 rebuttable presumption that any vocational rehabilitation plan  
6 developed by such vocational rehabilitation counselor and approved by  
7 a vocational rehabilitation specialist of the compensation court is  
8 an appropriate form of vocational rehabilitation. The fee for the  
9 evaluation and for the development and implementation of the  
10 vocational rehabilitation plan shall be paid by the employer or his  
11 or her workers' compensation insurer. The compensation court may  
12 establish a fee schedule for services rendered by a vocational  
13 rehabilitation counselor. Any loss-of-earning-power evaluation  
14 performed by a vocational rehabilitation counselor shall be performed  
15 by a counselor from the directory established pursuant to subsection  
16 (2) of this section and chosen or selected according to the  
17 procedures described in this subsection. It is a rebuttable  
18 presumption that any opinion expressed as the result of such a loss-  
19 of-earning-power evaluation is correct.

20           The following priorities shall be used in developing and  
21 evaluating a vocational rehabilitation plan. No higher priority may  
22 be utilized unless all lower priorities have been determined by the  
23 vocational rehabilitation counselor and a vocational rehabilitation  
24 specialist or judge of the compensation court to be unlikely to  
25 result in suitable employment for the injured employee that is

1 consistent with the priorities listed in this subsection. If a lower  
2 priority is clearly inappropriate for the employee, the next higher  
3 priority shall be utilized. The priorities are, listed in order from  
4 lower to higher priority:

5 (a) Return to the previous job with the same employer;

6 (b) Modification of the previous job with the same  
7 employer;

8 (c) A new job with the same employer;

9 (d) A job with a new employer; or

10 (e) A period of formal training which is designed to lead  
11 to employment in another career field.

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

15 (5) The Attorney General, when requested by the  
16 administrator of the compensation court, may file a motion pursuant  
17 to section 48-162.03 regarding any issue related to vocational  
18 rehabilitation services or costs pursuant to this section. The  
19 Attorney General shall be considered a party for purposes of such  
20 motion. The Attorney General may initiate an original action before  
21 the compensation court or may intervene in a pending action and  
22 become a party to the litigation. Any such motion shall be heard by a  
23 judge of the compensation court other than the presiding judge.

24 (6) An employee who has suffered an injury covered by the  
25 Nebraska Workers' Compensation Act is entitled to prompt physical and

1 medical rehabilitation services. If physical or medical  
2 rehabilitation services are not voluntarily offered and accepted, the  
3 compensation court or any judge thereof on its or his or her own  
4 motion, or upon application of the employee or employer, and after  
5 affording the parties an opportunity to be heard by the compensation  
6 court or judge thereof, may refer the employee to a facility,  
7 institution, physician, or other individual service provider capable  
8 of rendering competent physical or medical rehabilitation services  
9 for evaluation and report of the practicability of, need for, and  
10 kind of service or treatment necessary and appropriate to render him  
11 or her fit for a remunerative occupation, and the costs of such  
12 evaluation and report involving physical or medical rehabilitation  
13 shall be borne by the employer or his or her workers' compensation  
14 insurer. Upon receipt of such report and after affording the parties  
15 an opportunity to be heard, the compensation court or judge thereof  
16 may order that the physical or medical services and treatment  
17 recommended in the report or other necessary physical or medical  
18 rehabilitation treatment or service be provided at the expense of the  
19 employer or his or her workers' compensation insurer.

20           When physical or medical rehabilitation requires  
21 residence at or near the facility or institution away from the  
22 employee's customary residence, whether within or without this state,  
23 the reasonable costs of his or her board, lodging, and travel shall  
24 be paid for by the employer or his or her workers' compensation  
25 insurer in addition to any other benefits payable under the Nebraska

1 Workers' Compensation Act, including weekly compensation benefits for  
2 temporary disability.

3 (7) If the injured employee without reasonable cause  
4 refuses to undertake or fails to cooperate with a physical, medical,  
5 or vocational rehabilitation program determined by the compensation  
6 court or judge thereof to be suitable for him or her or refuses to be  
7 evaluated under subsection (3) or (6) of this section or fails to  
8 cooperate in such evaluation, the compensation court or judge thereof  
9 may terminate, suspend, reduce, or limit the compensation otherwise  
10 payable under the Nebraska Workers' Compensation Act. The employee's  
11 refusal to undertake or failure to cooperate with a physical,  
12 medical, or vocational rehabilitation program or refusal to be  
13 evaluated as provided in this subsection shall result in a rebuttable  
14 presumption that the employee's disability would have been reduced or  
15 his or her condition would have been improved if he or she had  
16 undertaken or cooperated with such physical, medical, or vocational  
17 rehabilitation program or evaluation. The compensation court or judge  
18 thereof may also modify a previous finding, order, award, or judgment  
19 relating to physical, medical, or vocational rehabilitation services  
20 as necessary in order to accomplish the goal of restoring the injured  
21 employee to gainful and suitable employment, or as otherwise required  
22 in the interest of justice.

23 Sec. 4. Original sections 48-121 and 48-162.01, Reissue  
24 Revised Statutes of Nebraska, and section 48-120, Revised Statutes  
25 Supplement, 2011, are repealed.