

LEGISLATIVE BILL 630

Approved by the Governor May 26, 2009

Introduced by Business and Labor Committee: Lathrop, 12, Chairperson; McGill, 26; Schilz, 47; Wallman, 30; White, 8.

FOR AN ACT relating to the Nebraska Workers' Compensation Act; to amend sections 48-138, 48-139, 48-140, and 48-141, Reissue Revised Statutes of Nebraska, and sections 48-106, 48-120.04, 48-125, 48-136, 48-144.03, and 48-168, Revised Statutes Cumulative Supplement, 2008; to change provisions relating to an employer exclusion from the act, implementation of a certain medical fee schedule, periodic compensation payments and lump-sum settlements, court procedures, informal dispute resolution approval, and mediators; to harmonize provisions; to repeal the original sections; and to declare an emergency.

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

Section 1. Section 48-106, Revised Statutes Cumulative Supplement, 2008, is amended to read:

48-106 (1) The Nebraska Workers' Compensation Act shall apply to the State of Nebraska, to every governmental agency created by the state, and, except as provided in this section, to every resident employer in this state and nonresident employer performing work in this state who employs one or more employees in the regular trade, business, profession, or vocation of such employer.

(2) The act shall not apply to:

- (a) A railroad company engaged in interstate or foreign commerce;
- (b) Service performed by a worker who is a household domestic servant in a private residence;
- (c) Service performed by a worker when performed for an employer who is engaged in an agricultural operation and employs only related employees;
- (d) Service performed by a worker when performed for an employer who is engaged in an agricultural operation and employs unrelated employees unless such service is performed for an employer who during any calendar year employs ten or more unrelated, full-time employees, whether in one or more locations, on each working day for thirteen calendar weeks, whether or not such weeks are consecutive. The act shall apply to an employer thirty days after the thirteenth such week; and
- (e) Service performed by a person who is engaged in an agricultural operation, or performed by his or her related employees, when the service performed is (i) occasional and (ii) for another person who is engaged in an agricultural operation who has provided or will provide reciprocal or similar service.

(3) If the employer is the state or any governmental agency created by the state, the exemption from the act under subdivision (2)(d) of this section does not apply.

(4) If the act applies to an employer because the employer meets the requirements of subdivision (2)(d) of this section, all unrelated employees shall be covered under the act and such employees' wages shall be considered for premium purposes.

(5) If an employer to whom the act applies because the employer meets the requirements of subdivision (2)(d) of this section subsequently does not employ ten or more unrelated, full-time employees, such employer shall continue to provide workers' compensation insurance coverage for the employees for the remainder of the calendar year and for the next full calendar year. When the required coverage period has expired, such employer may elect to return to exempt status by (a) posting, continuously in a conspicuous place at the employment locations of the employees for a period of at least ninety days, a written or printed notice stating that the employer will no longer carry workers' compensation insurance for the employees and the date such insurance will cease and (b) thereafter no longer carrying a policy of workers' compensation insurance. Failure to provide notice in accordance with this subsection voids an employer's attempt to return to exempt status.

(6) An employer who is exempt from the act under subsection (2) of this section may elect to bring the employees of such employer under the act. Such election is made by the employer obtaining a policy of workers' compensation insurance covering such employees. Such policy shall be obtained from a corporation, association, or organization authorized and licensed to transact the business of workers' compensation insurance in this state. If such an exempt employer procures a policy of workers' compensation insurance

which is in full force and effect at the time of an accident to an employee of such employer, such procurement is conclusive proof of the employer's and employee's election to be bound by the act. Such an exempt employer who has procured a policy of workers' compensation insurance may elect to return to exempt status by (a) posting, continuously in a conspicuous place at the employment locations of the employees for a period of at least ninety days, a written or printed notice stating that the employer will no longer carry workers' compensation insurance for the employees and the date such insurance will cease and (b) thereafter no longer carrying a policy of workers' compensation insurance. Failure to provide notice in accordance with this subsection voids an employer's attempt to return to exempt status.

(7) Every employer exempted under subdivision (2)(d) of this section who does not elect to provide workers' compensation insurance under subsection (6) of this section shall give all unrelated employees at the time of hiring or at any time more than thirty calendar days prior to the time of injury the following written notice which shall be signed by the unrelated employee and retained by the employer: "In this employment you will not be covered by the Nebraska Workers' Compensation Act and you will not be compensated under the act if you are injured on the job or suffer an occupational disease. You should plan accordingly." Failure to provide the notice required by this subsection subjects an employer to liability under and inclusion in the act for all unrelated employees on the basis of failure to give such notice.

(8) An exclusion from coverage in any health, accident, or other insurance policy covering a person employed by an employer who is exempt from the act under this section which provides that coverage under the health, accident, or other insurance policy does not apply if such person is entitled to workers' compensation coverage is void as to such person if such employer has not elected to bring the employees of such employer within the act as provided in subsection (6) of this section.

(9) For purposes of this section:

(a) Agricultural operation means (i) the cultivation of land for the production of agricultural crops, fruit, or other horticultural products or (ii) the ownership, keeping, or feeding of animals for the production of livestock or livestock products;

(b) Full-time employee means a person who is employed to work one-half or more of the regularly scheduled hours during each pay period; and

(c) Related employee means a spouse of an employer and an employee related to the employer within the third degree by blood or marriage. Relationship by blood or marriage within the third degree includes parents, grandparents, great grandparents, children, grandchildren, great grandchildren, brothers, sisters, uncles, aunts, nephews, nieces, and spouses of the same. If the employer is a partnership, limited liability company, or corporation in which all of the partners, members, or shareholders are related within the third degree by blood or marriage, then related employee means any employee related to any such partner, member, or shareholder within the third degree by blood or marriage.

Sec. 2. Section 48-120.04, Revised Statutes Cumulative Supplement, 2008, is amended to read:

48-120.04 (1) This section applies only to hospitals identified in subdivision (1)(c) of section 48-120.

(2) For inpatient discharges on or after January 1, 2008, the Diagnostic Related Group inpatient hospital fee schedule shall be as set forth in this section, except as otherwise provided in subdivision (1)(d) of section 48-120. Adjustments shall be made annually as provided in this section, with such adjustments to become effective each January 1.

(3) For purposes of this section:

(a) Current Medicare Factor is derived from the Diagnostic Related Group Prospective Payment System as established by the Centers for Medicare and Medicaid Services under the United States Department of Health and Human Services and means the summation of the following components:

(i) Hospital-specific Federal Standardized Amount, including all wage index adjustments and reclassifications;

(ii) Hospital-specific Capital Standard Federal Rate, including geographic, outlier, and exception adjustment factors;

(iii) Hospital-specific Indirect Medical Education Rate, reflecting a percentage add-on for indirect medical education costs and related capital; and

(iv) Hospital-specific Disproportionate Share Hospital Rate, reflecting a percentage add-on for disproportionate share of low income patient costs and related capital;

(b) Current Medicare Weight means the weight assigned to each Medicare Diagnostic Related Group as established by the Centers for Medicare

and Medicaid Services under the United States Department of Health and Human Services;

(c) Diagnostic Related Group means the Diagnostic Related Group assigned to inpatient hospital services using the public domain classification and methodology system developed for the Centers for Medicare and Medicaid Services under the United States Department of Health and Human Services; and

(d) Workers' Compensation Factor means the Current Medicare Factor for each hospital multiplied by one hundred fifty percent.

(4) The Diagnostic Related Group inpatient hospital fee schedule shall include at least thirty-eight of the most frequently utilized Medicare Diagnostic Related Groups for workers' compensation with the goal that the fee schedule covers at least ninety percent of all workers' compensation inpatient hospital claims submitted by hospitals identified in subdivision (1)(c) of section 48-120. Rehabilitation Diagnostic Related Groups shall not be included in the Diagnostic Related Group inpatient hospital fee schedule. Claims for inpatient trauma services shall not be reimbursed under the Diagnostic Related Group inpatient hospital fee schedule established under this section until January 1, ~~2010~~, 2011. Claims for inpatient trauma services prior to January 1, ~~2010~~, 2011, shall be reimbursed under the fees established by the compensation court pursuant to subdivision (1)(b) of section 48-120 or as contracted pursuant to subdivision (1)(d) of such section. For purposes of this subsection, trauma means a major single-system or multisystem injury requiring immediate medical or surgical intervention or treatment to prevent death or permanent disability.

(5) The Diagnostic Related Group inpatient hospital fee schedule shall be established by the following methodology:

(a) The Diagnostic Related Group reimbursement amount required under the Nebraska Workers' Compensation Act shall be equal to the Current Medicare Weight multiplied by the Workers' Compensation Factor for each hospital;

(b) The Stop-Loss Threshold amount shall be the Diagnostic Related Group reimbursement amount calculated in subdivision (5)(a) of this section multiplied by two and one-half;

(c) For charges over the Stop-Loss Threshold amount of the schedule, the hospital shall be reimbursed the Diagnostic Related Group reimbursement amount calculated in subdivision (5)(a) of this section plus sixty percent of the charges over the Stop-Loss Threshold amount; and

(d) For charges less than the Stop-Loss Threshold amount of the schedule, the hospital shall be reimbursed the lower of the hospital's billed charges or the Diagnostic Related Group reimbursement amount calculated in subdivision (5)(a) of this section.

(6) For charges for all other stays or services that are not on the Diagnostic Related Group inpatient hospital fee schedule or are not contracted for under subdivision (1)(d) of section 48-120, the hospital shall be reimbursed under the schedule of fees established by the compensation court pursuant to subdivision (1)(b) of section 48-120.

(7) Each hospital shall assign and include a Diagnostic Related Group on each workers' compensation claim submitted. The workers' compensation insurer, risk management pool, or self-insured employer may audit the Diagnostic Related Group assignment of the hospital.

(8) The chief executive officer of each hospital shall sign and file with the administrator of the compensation court by October 15 of each year, in the form and manner prescribed by the administrator, a sworn statement disclosing the Current Medicare Factor of the hospital in effect on October 1 of such year and each item and amount making up such factor.

(9) Each hospital, workers' compensation insurer, risk management pool, and self-insured employer shall report to the administrator of the compensation court by October 15 of each year, in the form and manner prescribed by the administrator, the total number of claims submitted for each Diagnostic Related Group and the number of times billed charges exceeded the Stop-Loss Threshold amount for each Diagnostic Related Group.

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

Sec. 3. Section 48-125, Revised Statutes Cumulative Supplement, 2008, is amended to read:

48-125 ~~(1)~~ (1)(a) Except as hereinafter provided, all amounts of

compensation payable under the Nebraska Workers' Compensation Act shall be payable periodically in accordance with the methods of payment of wages of the employee at the time of the injury or death. Such payments shall be sent directly to the person entitled to compensation or his or her designated representative except as otherwise provided in section 48-149.

(b) Fifty percent shall be added for waiting time for all delinquent payments after thirty days' notice has been given of disability or after thirty days from the entry of a final order, award, or judgment of the compensation court, except that for any award or judgment against the state in excess of one hundred thousand dollars which must be reviewed by the Legislature as provided in section 48-1,102, fifty percent shall be added for waiting time for delinquent payments thirty days after the effective date of the legislative bill appropriating any funds necessary to pay the portion of the award or judgment in excess of one hundred thousand dollars. ~~Such payments shall be sent directly to the person entitled to compensation or his or her designated representative except as otherwise provided in section 48-149.~~

(2) Whenever the employer refuses payment of compensation or medical payments subject to section 48-120, or when the employer neglects to pay compensation for thirty days after injury or neglects to pay medical payments subject to such section after thirty days' notice has been given of the obligation for medical payments, and proceedings are held before the Nebraska Workers' Compensation Court, a reasonable attorney's fee shall be allowed the employee by the compensation court in all cases when the employee receives an award. Attorney's fees allowed shall not be deducted from the amounts ordered to be paid for medical services nor shall attorney's fees be charged to the medical providers. If the employer files an application for review before the compensation court from an award of a judge of the compensation court and fails to obtain any reduction in the amount of such award, the compensation court shall allow the employee a reasonable attorney's fee to be taxed as costs against the employer for such review, and the Court of Appeals or Supreme Court shall in like manner allow the employee a reasonable sum as attorney's fees for the proceedings in the Court of Appeals or Supreme Court. If the employee files an application for a review before the compensation court from an order of a judge of the compensation court denying an award and obtains an award or if the employee files an application for a review before the compensation court from an award of a judge of the compensation court when the amount of compensation due is disputed and obtains an increase in the amount of such award, the compensation court may allow the employee a reasonable attorney's fee to be taxed as costs against the employer for such review, and the Court of Appeals or Supreme Court may in like manner allow the employee a reasonable sum as attorney's fees for the proceedings in the Court of Appeals or Supreme Court. A reasonable attorney's fee allowed pursuant to this section shall not affect or diminish the amount of the award.

(3) When an attorney's fee is allowed pursuant to this section, there shall further be assessed against the employer an amount of interest on the final award obtained, computed from the date compensation was payable, as provided in section 48-119, until the date payment is made by the employer, at a rate equal to the rate of interest allowed per annum under section 45-104.01, as such rate may from time to time be adjusted by the Legislature. Interest shall apply only to those weekly compensation benefits awarded which have accrued as of the date payment is made by the employer. If the employer pays or tenders payment of compensation, the amount of compensation due is disputed, and the award obtained is greater than the amount paid or tendered by the employer, the assessment of interest shall be determined solely upon the difference between the amount awarded and the amount tendered or paid.

Sec. 4. Section 48-136, Revised Statutes Cumulative Supplement, 2008, is amended to read:

48-136 The interested parties shall have the right to settle all matters of compensation between themselves with the consent of the workers' compensation insurer, if any, and in accordance with the Nebraska Workers' Compensation Act. ~~A copy of such settlement, duly verified by all parties, shall be filed with the Nebraska Workers' Compensation Court and no No such settlement shall be binding unless the settlement is in accordance with such act.~~

Sec. 5. Section 48-138, Reissue Revised Statutes of Nebraska, is amended to read:

48-138 The amounts of compensation payable periodically under the law by agreement of the parties with the approval of the Nebraska Workers' Compensation Court may be commuted to one or more lump-sum payments, except compensation due for death, permanent disability, or claimed permanent disability which may be commuted only upon the order or decision of the compensation court pursuant to as provided in section 48-139. ~~If + PROVIDED,~~

that ~~when~~ commutation is agreed upon pursuant to this section or ~~approved by order pursuant to~~ section 48-139, the lump sum to be paid shall be fixed at an amount which will equal the total sum of the probable future payments, capitalized at their present value upon the basis of interest calculated at five percent per annum with annual rests.

The fee of the clerk of the compensation court for filing, docketing, and indexing an agreement submitted for approval 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. 6. Section 48-139, Reissue Revised Statutes of Nebraska, 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 ~~or agreement therefor~~ shall be submitted to the Nebraska Workers' Compensation Court in the following manner: 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;

(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 ~~such a lump-sum settlement, or agreement~~ and a duplicate original of such application, both signed and verified by both parties, shall be filed with the clerk of the Nebraska Workers' Compensation Court 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, and such other matters as may be required by the compensation court. The application may provide for payment of future medical, surgical, or hospital expenses incurred by the employee. The compensation court may 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) If the compensation court finds such lump-sum settlement or agreement 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. If such ~~agreement or~~ 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 ~~or agreement~~ approved by order of the compensation court shall be final and conclusive unless procured by fraud. Upon paying the amount approved by the compensation court, the employer ~~(1)~~ (i) 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, and ~~(2)~~ (ii) shall be entitled to a duly executed release. Upon filing the release, ~~or other proof of payment,~~ the liability of the employer under any agreement, award, finding, or decree shall be discharged of record.

(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. 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. 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;

(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) 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 agreement 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. 7. Section 48-140, Reissue Revised Statutes of Nebraska, is amended to read:

48-140 All settlements Any lump-sum settlement by agreement of the parties with the approval of the Nebraska Workers' Compensation Court and all pursuant to section 48-139 shall be final and not subject to readjustment if the settlement is in conformity with the Nebraska Workers' Compensation Act, unless the settlement is procured by fraud. All awards of compensation made by the compensation court, except those amounts payable periodically, shall be final and not subject to readjustment. PROVIDED, no settlement shall be final unless it is in conformity with the Nebraska Workers' Compensation Act and approved by order of the compensation court pursuant to section 48-139.

Sec. 8. Section 48-141, Reissue Revised Statutes of Nebraska, is amended to read:

48-141 All amounts paid by an employer or by an insurance company carrying such risk, as the case may be, and received by the employee or his or her dependents by lump-sum payments, approved by order pursuant to section 48-139, shall be final and not subject to readjustment if the lump-sum settlement is in conformity with the Nebraska Workers' Compensation Act, unless the settlement is procured by fraud, but the amount of any agreement or award payable periodically may be modified as follows: (1) At any time by agreement of the parties with the approval of the Nebraska Workers' Compensation Court; or (2) if the parties cannot agree, then at any time after six months from the date of the agreement or award, an application may be made by either party on the ground of increase or decrease of incapacity due solely to the injury or that the condition of a dependent has changed as to age or marriage or by reason of the death of the dependent. In such case, the same procedure shall be followed as in sections 48-173 to 48-185 in case of disputed claim for compensation.

Sec. 9. Section 48-144.03, Revised Statutes Cumulative Supplement, 2008, is amended to read:

48-144.03 (1) Notwithstanding policy provisions that stipulate a workers' compensation insurance policy to be a contract with a fixed term of coverage that expires at the end of the term, coverage under a workers' compensation insurance policy shall continue in full force and effect until notice is given in accordance with this section.

(2) No cancellation of a workers' compensation insurance policy within the policy period shall be effective unless notice of the cancellation is given by the workers' compensation insurer to the Nebraska Workers' Compensation Court and to the employer. No such cancellation shall be effective until thirty days after the giving of such notices, except that the cancellation may be effective ten days after the giving of such notices if such cancellation is based on (a) notice from the employer to the insurer to cancel the policy, (b) nonpayment of premium due the insurer under any policy written by the insurer for the employer, (c) failure of the employer

to reimburse deductible losses as required under any policy written by the insurer for the employer, or (d) failure of the employer, if covered pursuant to section 44-3,158, to comply with sections 48-443 to 48-445.

(3) No workers' compensation insurance policy shall expire or lapse at the end of the policy period unless notice of nonrenewal is given by the workers' compensation insurer to the compensation court and to the employer. No workers' compensation insurance policy shall expire or lapse until thirty days after the giving of such notices, except that a policy may expire or lapse ten days after the giving of such notices if the nonrenewal is based on (a) notice from the employer to the insurer to not renew the policy, (b) nonpayment of premium due the insurer under any policy written by the insurer for the employer, (c) failure of the employer to reimburse deductible losses as required under any policy written by the insurer for the employer, or (d) failure of the employer, if covered pursuant to section 44-3,158, to comply with sections 48-443 to 48-445.

(4) Notwithstanding other provisions of this section, if the employer has secured workers' compensation insurance coverage with another workers' compensation insurer, then the cancellation or nonrenewal shall be effective as of the effective date of such other insurance coverage.

(5) The notices required by this section shall state the reason for the cancellation or nonrenewal of the policy.

(6) The notices required by this section shall be provided in writing and shall be deemed given upon the mailing of such notices by certified mail, except that notices from insurers to the compensation court may be provided by electronic means if such electronic means is approved by the administrator of the compensation court. If notice is provided by electronic means pursuant to such an approval, it shall be deemed given upon receipt and acceptance by the compensation court.

Sec. 10. Section 48-168, Revised Statutes Cumulative Supplement, 2008, is amended to read:

48-168 (1) The Nebraska Workers' Compensation Court shall not be bound by the usual common-law or statutory rules of evidence or by any technical or formal rules of procedure, other than as herein provided, but may make the investigation in such manner as in its judgment is best calculated to ascertain the substantial rights of the parties and to carry out justly the spirit of the Nebraska Workers' Compensation Act.

(2)(a) The Nebraska Workers' Compensation Court may establish procedures whereby a dispute may be submitted by the parties, by the provider of medical, surgical, or hospital services pursuant to section 48-120, by a vocational rehabilitation counselor certified pursuant to section 48-162.01, or by the compensation court on its own motion for informal dispute resolution by a staff member of the compensation court or outside mediator. Any party who requests such informal dispute resolution shall not be precluded from filing a petition pursuant to section 48-173 if otherwise permitted. If informal dispute resolution is ordered by the compensation court on its own motion, the compensation court may state a date for the case to return to court. Such date shall be no longer than ninety days after the date the order was signed unless the court grants an extension upon request of the parties. No settlement or agreement reached as the result of an informal dispute resolution proceeding shall be final or binding unless such settlement or agreement is in conformity with the Nebraska Workers' Compensation Act. Any such settlement shall be voluntarily entered into by the parties.

~~(b) Until January 1, 2008, the Nebraska Workers' Compensation Court shall establish procedures for informal dispute resolution and arbitration for a dispute regarding the fees owed for medical, surgical, or hospital services provided pursuant to section 48-120. If the provider of medical, surgical, or hospital services and the workers' compensation insurer, risk management pool, or self-insured employer are unable to reach an agreement on the fees to be paid for such services: (i) They may agree to submit the dispute to an attorney staff member of the compensation court for resolution of the dispute through the informal dispute resolution process and for arbitration, if the dispute is unresolved in the informal dispute resolution process; or (ii) the parties may agree to submit the dispute directly to arbitration. A decision by the attorney staff member for the court as the result of an arbitration proceeding shall be final and binding and not subject to appeal.~~

(b)(i) Except as permitted in subdivision (b)(ii) of this subsection, a mediator shall not make a report, assessment, evaluation, recommendation, finding, or other communication regarding a mediation to a judge of the compensation court that may make a ruling on the dispute that is the subject of the mediation.

(ii) A mediator may disclose:

(A) Whether the mediation occurred or has terminated, whether a

settlement was reached, and attendance; and

(B) A mediation communication evidencing abuse, neglect, abandonment, or exploitation of an individual to a public agency responsible for protecting individuals against such mistreatment.

(iii) A communication made in violation of subdivision (b) (i) of this subsection shall not be considered by a judge of the compensation court.

(c) Informal dispute resolution ~~and arbitration~~ proceedings shall be regarded as settlement negotiations and no admission, representation, or statement made in informal dispute resolution ~~or arbitration~~ proceedings, not otherwise discoverable or obtainable, shall be admissible as evidence or subject to discovery. A staff member or mediator shall not be subject to process requiring the disclosure of any matter discussed during informal dispute resolution ~~or arbitration~~ proceedings. Any information from the files, reports, notes of the staff member or mediator, or other materials or communications, oral or written, relating to an informal dispute resolution ~~or arbitration~~ proceeding obtained by a staff member or mediator is privileged and confidential and may not be disclosed without the written consent of all parties to the proceeding. No staff member or mediator shall be held liable for civil damages for any statement or decision made in the process of dispute resolution ~~or arbitration~~ unless such person acted in a manner exhibiting willful or wanton misconduct.

(d) The compensation court may adopt and promulgate rules and regulations regarding informal dispute resolution ~~and arbitration~~ proceedings that are considered necessary to effectuate the purposes of this section.

Sec. 11. Original sections 48-138, 48-139, 48-140, and 48-141, Reissue Revised Statutes of Nebraska, and sections 48-106, 48-120.04, 48-125, 48-136, 48-144.03, and 48-168, Revised Statutes Cumulative Supplement, 2008, are repealed.

Sec. 12. Since an emergency exists, this act takes effect when passed and approved according to law.