

LEGISLATIVE BILL 216

Approved by the Governor May 25, 1999

Introduced by Vrtiska, 1; Hilgert, 7

AN ACT relating to workers' compensation; to amend sections 48-115, 48-119, 48-120, 48-120.02, 48-121, 48-125, 48-126.01, 48-134.01, 48-145, 48-146, 48-147, 48-151, 48-156, 48-162.01, 48-163, 48-166, and 48-1,114, Reissue Revised Statutes of Nebraska; to change provisions relating to volunteer firefighters and ambulance personnel, dispute resolution, an annual report, quorum requirements, court term, medical and rehabilitation services, self-insurers, and rule adoption; to define and redefine terms; to harmonize provisions; to provide operative dates; to repeal the original sections; and to declare an emergency.

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

Section 1. Section 48-115, Reissue Revised Statutes of Nebraska, is amended to read:

48-115. The terms employee and worker are used interchangeably and have the same meaning throughout the Nebraska Workers' Compensation Act. Such terms include the plural and all ages and both sexes. For purposes of the act, employee or worker and shall be construed to mean:

(1) Every person in the service of the state or of any governmental agency created by it, including the Nebraska National Guard and members of the military forces of the State of Nebraska, under any appointment or contract of hire, expressed or implied, oral or written;

(2) Every person in the service of an employer who is engaged in any trade, occupation, business, or profession as described in section 48-106 under any contract of hire, expressed or implied, oral or written, including aliens and also including minors. Minors for the purpose of making election of remedies under the Nebraska Workers' Compensation Act shall have the same power of contracting and electing as adult employees.

As used in subdivisions (1) through (11) of this section, the terms employee and worker shall not be construed to include any person whose employment is not in the usual course of the trade, business, profession, or occupation of his or her employer.

If an employee subject to the Nebraska Workers' Compensation Act suffers an injury on account of which he or she or, in the event of his or her death, his or her dependents would otherwise have been entitled to the benefits provided by such act, the employee or, in the event of his or her death, his or her dependents shall be entitled to the benefits provided under such act, if the injury or injury resulting in death occurred within this state, or if at the time of such injury (a) the employment was principally localized within this state, (b) the employer was performing work within this state, or (c) the contract of hire was made within this state; ~~For the purposes of the Nebraska Workers' Compensation Act, (a) volunteer~~

(3) Volunteer firefighters of any fire department of any rural or suburban fire protection district, city, ~~or~~ village, or nonprofit corporation, which fire department is regularly organized under the laws of the State of Nebraska. Such volunteers ~~and~~ shall be deemed employees of such rural or suburban fire protection district, city, ~~or~~ village, or nonprofit corporation while in the performance of their duties as members of such department and shall be considered as having entered and as acting in the regular course and scope of their employment when traveling from any place from which they have been called to active duty to a fire station or other place where firefighting equipment that their company or unit is to use is located or to any emergency activities that the volunteer firefighters may be officially called to participate in directed to do by the chief of the fire department or some person authorized to act for such chief. ~~(b) members~~

Members of such volunteer fire department, before they are entitled to benefits under the Nebraska Workers' Compensation Act, shall be recommended by the chief of the fire department or some person authorized to act for such chief for membership therein to the board of directors of the rural or suburban fire protection district or nonprofit corporation, the mayor and city commission, the mayor and council, or the chairperson and board of trustees, as the case may be, and upon confirmation shall be deemed employees of the rural or suburban fire protection district, city, or village, (c) members such entity. Members of such fire department after confirmation to membership may be removed by a majority vote of such board of directors, commission, council,

~~or board~~ the entity's board of directors or governing body and thereafter shall not be considered employees of such ~~rural or suburban fire protection district, city, or village,~~ (d) firefighters entity. Firefighters of any fire department of any rural or suburban fire protection district, nonprofit corporation, city, or village shall be considered as acting in the performance and within the course and scope of their duties in fighting fire or saving property or life employment when performing activities outside of the corporate limits of their respective districts, cities, or villages, but only if directed to do so by the chief of the fire department or some person authorized to act for such chief;

(4) Members ~~any members~~ of the Nebraska Emergency Management Agency, any city, village, county, or interjurisdictional emergency management organization, or any state emergency response team, which agency, organization, or team is regularly organized under the laws of the State of Nebraska. Such members ~~and~~ shall be deemed employees of such agency, organization, or team while in the performance of their duties as members of such agency, organization, or team; ~~and~~ (f) any

(5) Any person fulfilling conditions of probation, or community service as defined in section 29-2277, pursuant to any order of any court of this state who shall be working for a governmental body, or agency as defined in section 29-2277, pursuant to any condition of probation, or community service as defined in section 29-2277. Such person ~~and~~ shall be deemed an employee of the governmental body or agency for the purposes of the Nebraska Workers' Compensation Act; ~~and~~ (g) volunteer

(6) Volunteer ambulance drivers and attendants and out-of-hospital emergency care providers who are members of an emergency medical service for any county, city, ~~or village,~~ rural or suburban fire protection district, nonprofit corporation, or any combination of such ~~county, city, or village~~ entities under the authority of section 13-303. Such volunteers shall be deemed employees of ~~the county, city, or village~~ such entity or combination thereof while in the performance of their duties as ambulance drivers or attendants or out-of-hospital emergency care providers and shall be considered as having entered into and as acting in the regular course and scope of their employment when traveling from any place from which they have been called to active duty to a hospital or other place where the ambulance they are to use is located or to any emergency in which activities that the volunteer ambulance drivers or attendants or out-of-hospital emergency care providers may be officially called to participate, ~~but such volunteer ambulance drivers or attendants or out-of-hospital emergency care providers shall be considered as acting in the performance and within the scope of their duties outside of the corporate limits of their respective county, city, or village only if officially directed to do so,~~ (h) before directed to do by the chief or some person authorized to act for such chief of the volunteer ambulance service or out-of-hospital emergency care service. Before such volunteer ambulance drivers or attendants or out-of-hospital emergency care providers ~~shall be~~ are entitled to benefits under the Nebraska Workers' Compensation Act, they shall be ~~confirmed to perform such duties by~~ recommended by the chief or some person authorized to act for such chief of the volunteer ambulance service or out-of-hospital emergency care service for membership therein to the county board or board of directors of the rural or suburban fire protection district or nonprofit corporation, the governing body of the county, city, or village, or combination thereof, as the case may be, and upon such confirmation shall be deemed employees of such entity the county, city, or village or combination thereof. Members of such volunteer ambulance or out-of-hospital emergency care service after confirmation to membership and may be removed by majority vote of such county board or governing body of the city or village, the entity's board of directors or governing body and thereafter shall not be considered employees of such entity. Volunteer ambulance drivers and attendants and out-of-hospital emergency care providers for any county, city, village, rural or suburban fire protection district, nonprofit corporation, or any combination thereof shall be considered as acting in the performance and within the course and scope of their employment when performing activities outside of the corporate limits of their respective county, city, village, or district, but only if directed to do so by the chief or some person authorized to act for such chief;

(7) Members ~~(i) members~~ of a law enforcement reserve force appointed in accordance with section 81-1438. Such members shall be deemed employees of the county or city for which they were appointed; ~~and~~ (j) any

(8) Any offender committed to the Department of Correctional Services who is employed pursuant to section 81-1827. Such offender shall be deemed an employee of the Department of Correctional Services solely for purposes of the Nebraska Workers' Compensation Act; ~~and~~

~~(2) Every person in the service of an employer who is engaged in any trade, occupation, business, or profession as described in section 48-106 under any contract of hire, expressed or implied, oral or written, including aliens and also including minors, who for the purpose of making election of remedies under the Nebraska Workers' Compensation Act shall have the same power of contracting and electing as adult employees.~~

~~As used in subdivisions (1) and (2) of this section, the terms employee and worker shall not be construed to include any person whose employment is not in the usual course of the trade, business, profession, or occupation of his or her employer.~~

~~If an employee subject to the Nebraska Workers' Compensation Act suffers an injury on account of which he or she or, in the event of his or her death, his or her dependents would otherwise have been entitled to the benefits provided by such act, the employee or, in the event of his or her death, his or her dependents shall be entitled to the benefits provided under such act, if the injury or injury resulting in death occurred within this state, or if at the time of such injury (a) the employment was principally localized within this state, (b) the employer was performing work within this state, or (c) the contract of hire was made within this state.~~

~~(3)(a) (9)(a) Except as provided in subdivision (3)(b) (9)(b) of this section, every executive officer of a corporation elected or appointed under the provisions or authority of the charter, articles of incorporation, or bylaws of such corporation. Such executive officer shall be an employee of such corporation under the Nebraska Workers' Compensation Act, except that an executive officer of a Nebraska corporation who owns twenty-five percent or more of the common stock of such corporation may waive his or her right to coverage. Such waiver shall be in writing and filed with the secretary of the corporation and the Nebraska Workers' Compensation Court. Such waiver, as prescribed by the compensation court, shall include a statement in substantially the following form: Notice. I am aware that health and accident insurance policies frequently exclude coverage for personal injuries caused by accident or occupational disease arising out of and in the course of employment. Before waiving my rights to coverage under the Nebraska Workers' Compensation Act, I certify that I have carefully examined the terms of my health and accident coverage. Such waiver shall become effective from the date of receipt by the compensation court and shall remain in effect until the waiver is terminated by the officer in writing and filed with the secretary of the corporation and the compensation court. The termination of the corporate executive officer's waiver shall be effective upon receipt of the termination by the compensation court. It shall not be permissible to terminate a waiver prior to one year after the waiver has become effective.~~

~~(b) An executive officer of a Nebraska nonprofit corporation who receives annual compensation of one thousand dollars or less from the nonprofit corporation shall not be construed to be an employee of such nonprofit corporation under the Nebraska Workers' Compensation Act unless such executive officer elects to bring himself or herself within the provisions of the Nebraska Workers' Compensation Act. Such election shall be in writing and filed with the secretary of the nonprofit corporation and shall remain in effect until the election is terminated, in writing, by the officer and the termination is filed with the secretary of the nonprofit corporation; -~~

~~(4) (10) Each individual employer, partner, limited liability company member, or self-employed person who is actually engaged in the individual employer's, partnership's, limited liability company's, or self-employed person's business on a substantially full-time basis may elect who elects to bring himself or herself within the provisions of the Nebraska Workers' Compensation Act. Such election is made - if he or she (a) files with his or her current workers' compensation insurer written notice of election to have the same rights as an employee only for purposes of workers' compensation insurance coverage acquired by and for such individual employer, partner, limited liability company member, or self-employed person or (b) gives notice of such election and such insurer collects a premium for such coverage acquired by and for such individual employer, partner, limited liability company member, or self-employed person. This election shall be effective from the date of receipt by the insurer for the current policy and subsequent policies issued by such insurer until such time as such employer, partner, limited liability company member, or self-employed person files a written statement withdrawing such election with the current workers' compensation insurer or until such coverage by such insurer is terminated, whichever occurs first. When so included, the individual employer, partner, limited liability company member, or self-employed person shall have the same rights as an employee only with respect to the benefits provided under the Nebraska Workers' Compensation Act. If any individual employer, partner,~~

limited liability company member, or self-employed person who is actually engaged in the individual employer's, partnership's, limited liability company's, or self-employed person's business on a substantially full-time basis has not elected to bring himself or herself within the provisions of the Nebraska Workers' Compensation Act pursuant to this subdivision and any health, accident, or other insurance policy issued to or renewed by such person after July 10, 1984, contains an exclusion of coverage, if the insured is otherwise entitled to workers' compensation coverage, such exclusion shall be null and void as to such person; and -

~~(5)~~ (11) An individual lessor of a commercial motor vehicle leased to a motor carrier and driven by such individual lessor, ~~may elect who elects~~ to bring himself or herself within the provisions of the Nebraska Workers' Compensation Act. Such election is made if he or she agrees in writing with the motor carrier to have the same rights as an employee only for purposes of workers' compensation coverage maintained by the motor carrier. For an election under this subdivision, the motor carrier's principal place of business must be in this state and the motor carrier must be authorized to self-insure liability under the Nebraska Workers' Compensation Act. Such an election shall (a) be effective from the date of such written agreement until such agreement is terminated, (b) be enforceable against such self-insured motor carrier in the same manner and to the same extent as claims arising under the Nebraska Workers' Compensation Act by employees of such self-insured motor carrier, and (c) not be deemed to be a contract of insurance for purposes of Chapter 44. Section 48-111 shall apply to the individual lessor and the self-insured motor carrier with respect to personal injury or death caused to such individual lessor by accident or occupational disease arising out of and in the course of performing services for such self-insured motor carrier in connection with such lease while such election is effective.

Sec. 2. Section 48-119, Reissue Revised Statutes of Nebraska, is amended to read:

48-119. No compensation shall be allowed for the first seven calendar days ~~after disability begins~~ of disability, except as provided in section 48-120, but if disability extends beyond the period of seven calendar days, compensation shall begin on the eighth calendar day ~~after the injury,~~ PROVIDED, HOWEVER, of disability, except that if such disability continues for six weeks or longer, compensation shall be computed from the date of the injury disability began. For purposes of this section, a partial day of disability shall be deemed a calendar day of disability.

Sec. 3. Section 48-120, Reissue Revised Statutes of Nebraska, is amended to read:

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

The compensation court may establish schedules of maximum fees for such services. If the compensation court establishes such a schedule, it shall publish and furnish such schedule to the public. The compensation court shall review such schedule at least biennially and adopt appropriate changes when necessary. The compensation court may contract with any person, firm, corporation, organization, or government agency to secure adequate data to establish such fees. The provider or supplier of such services shall not collect or attempt to collect from any employer, insurer, government, or injured employee or dependent or the estate of any injured or deceased employee any amount in excess of the maximum fee established by the compensation court for any such service. The compensation court shall establish and charge a fee to recover the cost of published fee schedules. Notwithstanding any other provision of this section, the compensation court may exclude from the application of such schedules those services performed under a managed care plan certified pursuant to section 48-120.02.

(2)(a) The employee ~~shall have~~ has the right to select a physician who has maintained the employee's medical records prior to an injury and has a documented history of treatment with the employee prior to an injury or a

physician who has maintained the medical records of an immediate family member of the employee prior to an injury and has a documented history of treatment with an immediate family member of the employee prior to an injury. For purposes of this subsection, immediate family member ~~shall mean~~ means the employee's spouse, children, parents, stepchildren, and stepparents. The employer shall notify the employee following an injury of such right of selection in a form and manner and within a timeframe established by the compensation court. If the employer fails to notify the employee of such right of selection or fails to notify the employee of such right of selection in a form and manner and within a timeframe established by the compensation court, then the employee ~~shall have~~ has the right to select a physician. If the employee fails to exercise such right of selection in a form and manner and within a timeframe established by the compensation court following notice by the employer pursuant to this subsection, then the employer ~~shall have~~ has the right to select the physician. If selection of the initial physician is made by the employee or employer pursuant to this subsection following notice by the employer pursuant to this subsection, the ~~The~~ employee or employer ~~may~~ shall not change the initial selection of physician made pursuant to this subsection unless such change is agreed to by the employee and employer or is ordered by the compensation court pursuant to subsection (6) of this section. If compensability is denied by the insurer, risk management pool, or self-insured employer, (i) the employee ~~shall have~~ has the right to select a physician and shall not be made to enter a managed care plan and (ii) the employer ~~shall be~~ is liable for medical, surgical, and hospital services subsequently found to be compensable. If the employer has exercised the right to select a physician pursuant to this subsection and if the compensation court subsequently orders reasonable medical services previously refused to be furnished to the employee by the physician selected by the employer, the compensation court shall allow the employee to select another physician to furnish further medical services. If the employee selects a physician located in a community not the home or place of work of the employee and a physician is available in the local community or in a closer community, no travel expenses shall be required to be paid by the employer or his or her insurer.

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

(c) If the injured employee unreasonably refuses or neglects to avail himself or herself of medical or surgical treatment furnished by the employer, except as herein and otherwise provided, the employer ~~shall not be~~ is not liable for an aggravation of such injury due to such refusal and neglect and the compensation court or judge thereof may suspend, reduce, or limit the compensation otherwise payable under the Nebraska Workers' Compensation Act.

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

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

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

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

(4) All physicians and other providers of medical services attending injured employees shall comply with all the rules and regulations adopted and promulgated by the Nebraska Workers' Compensation Court and shall make such reports as may be required by it at any time and at such times as required by it upon the condition or treatment of any injured employee or upon any other matters concerning cases in which they are employed. Generally, all medical and hospital information relevant to the particular injury shall, on demand, be made available to the employer, the employee, the carrier, and the compensation court. The party requesting such medical and hospital

information shall pay the cost thereof. No such relevant information developed in connection with treatment or examination for which compensation is sought shall be considered a privileged communication for purposes of a workers' compensation claim. When a physician or other provider of medical services willfully fails to make any report required of him or her under this section, the compensation court may order the forfeiture of his or her right to all or part of payment due for services rendered in connection with the particular case.

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

(6) The Nebraska Workers' Compensation Court shall have the authority to determine the necessity, character, and sufficiency of any medical services furnished or to be furnished and shall have authority to order a change of physician, hospital, rehabilitation facility, or other medical services when it deems such change is desirable or necessary. Any dispute regarding medical, surgical, or hospital services furnished or to be furnished under this section may be submitted by the parties, the supplier of such service, or the compensation court on its own motion for informal dispute resolution by a staff member of the compensation court or an outside mediator pursuant to section 48-168. In addition, any party or the compensation court on its own motion may submit such a dispute for a medical finding by an independent medical examiner pursuant to section 48-134.01. Issues submitted for informal dispute resolution or for a medical finding by an independent medical examiner may include, but are not limited to, the reasonableness and necessity of any medical treatment previously provided or to be provided to the injured employee. The compensation court may adopt and promulgate rules and regulations regarding informal dispute resolution or the submission of disputes to an independent medical examiner that are considered necessary to effectuate the purposes of this section.

(7) For the purpose of this section, physician has the same meaning as in section 48-151. ~~shall mean any person licensed to practice medicine and surgery, osteopathic medicine, chiropractic, podiatry, or dentistry.~~

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

(9) Notwithstanding any other provision of this section, an insurer, a risk management pool, or a self-insured employer may contract for medical, surgical, hospital, and rehabilitation services to be provided through a managed care plan certified pursuant to section 48-120.02. Once liability for medical, surgical, and hospital services has been accepted or determined, the employer may require that employees subject to the contract ~~shall~~ receive medical, surgical, and hospital services in the manner prescribed in the contract, except that an employee may receive services from a physician selected by the employee pursuant to subsection (2) of this section if the physician so selected agrees to refer the employee to the managed care plan for any other treatment that the employee may require and if the physician so selected agrees to comply with all the rules, terms, and conditions of the managed care plan. If compensability is denied by the insurer, risk management pool, or self-insured employer, the employee may leave the managed care plan and the employer ~~shall be~~ is liable for medical, surgical, and hospital services previously provided. The insurer, risk management pool, or self-insured employer shall give notice to employees subject to the contract of eligible service providers and such other information regarding the contract and manner of receiving medical, surgical, and hospital services under the managed care plan as the compensation court may prescribe.

Sec. 4. Section 48-120.02, Reissue Revised Statutes of Nebraska, is amended to read:

48-120.02. (1) Any person or entity may make written application to the Nebraska Workers' Compensation Court to have a plan certified that provides management of quality treatment to injured employees for injuries and diseases compensable under the Nebraska Workers' Compensation Act. Any such person or entity having a relationship with a workers' compensation insurer or any such person or entity having a relationship with an employer for which a

plan is being proposed for its own employees shall make full disclosure of such relationship to the compensation court under rules and regulations to be adopted and promulgated by the compensation court. Each application for certification shall be accompanied by a reasonable fee prescribed by the compensation court. A plan may be certified to provide services in a limited geographic area. A certificate is valid for the period the compensation court prescribes unless revoked or suspended. Application for certification shall be made in the form and manner and shall set forth information regarding the proposed plan for providing services as the compensation court may prescribe. The information shall include, but not be limited to:

(a) A list of the names of all providers of medical, surgical, and hospital services under the managed care plan, together with ~~appropriate evidence of compliance with any licensing or certification requirements for those providers to practice in this state~~ a statement that all licensing, certification, or registration requirements for the providers are current and in good standing in this state or the state in which the provider is practicing; and

(b) A description of the places and manner of providing services under the plan.

(2) The compensation court shall certify a managed care plan if the compensation court finds that the plan:

(a) Proposes to provide quality services that meet uniform treatment standards which may be prescribed by the compensation court and all medical, surgical, and hospital services that may be required by the Nebraska Workers' Compensation Act in a manner that is timely, effective, and convenient for the employee;

(b) Is reasonably geographically convenient to employees it serves;

(c) Provides appropriate financial incentives to reduce service costs and utilization without sacrificing the quality of service;

(d) Provides adequate methods of peer review, utilization review, and dispute resolution to prevent inappropriate, excessive, or not medically necessary treatment and excludes participation in the plan by those individuals who violate treatment standards;

(e) Provides a procedure for the resolution of medical disputes;

(f) Provides aggressive case management for injured employees and provides a program for early return to work and cooperative efforts by the employees, the employer, and the managed care plan to promote workplace health and safety consultative and other services;

(g) Provides a timely and accurate method of reporting to the compensation court necessary information regarding medical, surgical, and hospital service cost and utilization to enable the compensation court to determine the effectiveness of the plan;

(h) Authorizes employees to receive medical, surgical, and hospital services from a physician who is not a member of the managed care plan if such physician has been selected by the employee pursuant to subsection (2) of section 48-120 and if such physician agrees to refer the employee to the managed care plan for any other treatment that the employee may require and agrees to comply with all the rules, terms, and conditions of the managed care plan;

(i) Authorizes necessary emergency medical treatment for an injury which is provided by a provider of medical, surgical, and hospital services who is not a part of the managed care plan;

(j) Does not discriminate against or exclude from participation in the plan any category of providers of medical, surgical, or hospital services and includes an adequate number of each category of providers of medical, surgical, and hospital services to give employees convenient geographic accessibility to all categories of providers and adequate flexibility to choose providers of medical, surgical, and hospital services from among those who provide services under the plan;

(k) Provides an employee the right to change medical, surgical, or hospital service providers under the plan at least once; and

(l) Complies with any other requirement the compensation court determines is necessary to provide quality medical, surgical, and hospital services to injured employees.

The compensation court may accept findings, licenses, ~~or~~ certifications, or registrations of other state agencies as satisfactory evidence of compliance with a particular requirement of this subsection.

(3) An employee shall exhaust the dispute resolution procedure of the certified managed care plan prior to filing a petition or otherwise seeking relief from the compensation court on an issue related to managed care. If an employee has exhausted the dispute resolution procedure of the managed care plan, the employee may seek a medical finding by an independent

medical examiner pursuant to section 48-134.01. No petition may be filed with the compensation court pursuant to section 48-173 solely on the issue of the reasonableness and necessity of medical treatment unless a medical finding on such issue has been rendered by an independent medical examiner pursuant to section 48-134.01. If the compensation court subsequently orders reasonable medical services previously refused to be furnished to the employee by a physician who is a member of the managed care plan, the compensation court shall allow the employee to select another physician to furnish further medical services if the physician so selected complies with all rules, terms, and conditions of the managed care plan and refers the employee to the managed care plan for any other treatment that the employee may require.

(4) The compensation court may refuse to certify or may revoke or suspend the certification of a managed care plan that unfairly restricts direct access within the managed care plan to any category of provider of medical, surgical, or hospital services. Direct access within the managed care plan is unfairly restricted if direct access is denied and the treatment or service sought is within the scope of practice of the profession to which direct access is sought and is appropriate under the standards of treatment adopted by the managed care plan or, in instances where the compensation court has adopted standards of treatment, the standards adopted by the compensation court.

(5) The compensation court may refuse to certify or may revoke or suspend the certification of a managed care plan if the compensation court finds that the plan for providing medical, surgical, and hospital services fails to meet the requirements of this section or service under the plan is not being provided in accordance with the terms of a certified plan.

(6) The compensation court may adopt and promulgate rules and regulations necessary to implement this section.

Sec. 5. Section 48-121, Reissue Revised Statutes of Nebraska, is amended to read:

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

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

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

(3) For disability resulting from permanent injury of the ~~following~~ classes listed in this subdivision, the compensation shall be in addition to the amount paid for temporary disability, except that ~~+ PROVIDED,~~ the compensation for temporary disability shall cease as soon as the extent of the permanent disability is ascertainable. For disability resulting from permanent injury of the following classes, compensation shall be: ~~+ viz:~~ For the loss of a thumb, sixty-six and two-thirds percent of daily wages during sixty weeks. For the loss of a first finger, commonly called the index finger, sixty-six and two-thirds percent of daily wages during thirty-five weeks. For the loss of a second finger, sixty-six and two-thirds percent of daily wages during thirty weeks. For the loss of a third finger, sixty-six and two-thirds percent of daily wages during twenty weeks. For the loss of a fourth finger, commonly called the little finger, sixty-six and two-thirds percent of daily wages during fifteen weeks. The loss of the first phalange of the thumb or of any finger shall be considered to be equal to the loss of one-half of such thumb or finger and compensation shall be for one-half of the periods of time above specified, and the compensation for the loss of one-half of the first phalange shall be for one-fourth of the periods of time above specified. The loss of more than one phalange shall be considered as the loss of the entire finger or thumb, except ~~+ PROVIDED,~~ that in no case shall the amount received for more than one finger exceed the amount provided in this

schedule for the loss of a hand. For the loss of a great toe, sixty-six and two-thirds percent of daily wages during thirty weeks. For the loss of one of the toes other than the great toe, sixty-six and two-thirds percent of daily wages during ten weeks. The loss of the first phalange of any toe shall be considered equal to the loss of one-half of such toe, and compensation shall be for one-half of the periods of time above specified. The loss of more than one phalange shall be considered as the loss of the entire toe. For the loss of a hand, sixty-six and two-thirds percent of daily wages during one hundred seventy-five weeks. For the loss of an arm, sixty-six and two-thirds percent of daily wages during two hundred twenty-five weeks. For the loss of a foot, sixty-six and two-thirds percent of daily wages during one hundred fifty weeks. For the loss of a leg, sixty-six and two-thirds percent of daily wages during two hundred fifteen weeks. For the loss of an eye, sixty-six and two-thirds percent of daily wages during one hundred twenty-five weeks. For the loss of an ear, sixty-six and two-thirds percent of daily wages during twenty-five weeks. For the loss of hearing in one ear, sixty-six and two-thirds percent of daily wages during fifty weeks. For the loss of the nose, sixty-six and two-thirds percent of daily wages during fifty weeks.

In any case in which there is a loss or loss of use of more than one member or parts of more than one member set forth in this subdivision, but not amounting to total and permanent disability, compensation benefits shall be paid for the loss or loss of use of each such member or part thereof, with the periods of benefits to run consecutively. The total loss or permanent total loss of use of both hands, or both arms, or both feet, or both legs, or both eyes, or hearing in both ears, or of any two thereof, in one accident, shall constitute total and permanent disability and be compensated for according to subdivision (1) of this section. In all other cases involving a loss or loss of use of both hands, both arms, both feet, both legs, both eyes, or hearing in both ears, or of any two thereof, total and permanent disability shall be determined in accordance with the facts. Amputation between the elbow and the wrist shall be considered as the equivalent of the loss of a hand, and amputation between the knee and the ankle shall be considered as the equivalent of the loss of a foot. Amputation at or above the elbow shall be considered as the loss of an arm, and amputation at or above the knee shall be considered as the loss of a leg. Permanent total loss of the use of a finger, hand, arm, foot, leg, or eye shall be considered as the equivalent of the loss of such finger, hand, arm, foot, leg, or eye. In all cases involving a permanent partial loss of the use or function of any of the members mentioned in this subdivision, the compensation shall bear such relation to the amounts named in such subdivision as the disabilities bear to those produced by the injuries named therein. If the employer and the employee are unable to agree upon the amount of compensation to be paid in cases not covered by the schedule, the amount of compensation shall be settled according to sections 48-173 to 48-185. Compensation under this subdivision shall not be more than the maximum weekly income benefit specified in section 48-121.01 nor less than the minimum weekly income benefit specified in section 48-121.01, ~~except that~~ ~~PROVIDED,~~ that if at the time of the injury the employee received wages of less than the minimum weekly income benefit specified in section 48-121.01, then he or she shall receive the full amount of such wages per week as compensation.

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

(5) The employee shall be entitled to compensation from his or her employer for temporary disability while undergoing physical or medical rehabilitation and while undergoing vocational rehabilitation whether ~~the~~ such vocational rehabilitation is voluntarily offered by the employer and accepted by the employee or is ordered by the Nebraska Workers' Compensation Court or any judge of the compensation court.

Sec. 6. Section 48-125, Reissue Revised Statutes of Nebraska, is amended to read:

48-125. (1) 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, ~~except that~~ ~~PROVIDED,~~ 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. 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. 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.

(2) 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, 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 at the time 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. 7. Section 48-126.01, Reissue Revised Statutes of Nebraska, is amended to read:

48-126.01. In determining the compensation to be paid any member of the military forces of this state, any member of a law enforcement reserve force, any member of a volunteer fire department in any rural or suburban fire protection district, city, ~~or~~ village, or nonprofit corporation, any member of the Nebraska Emergency Management Agency, any city, village, county, or interjurisdictional emergency management organization, or any state emergency response team, or any member of a volunteer emergency medical service, which military forces, law enforcement reserve force, fire department, emergency management agency, organization, or team, or volunteer emergency medical service is ~~regularly~~ organized under the laws of the State of Nebraska, or any person fulfilling conditions of probation, or community service as defined in section 29-2277, pursuant to any order of any court of this state who shall be working for a governmental body, or agency as defined in section 29-2277, pursuant to any condition of probation, or community service as defined in section 29-2277, for injuries resulting in disability or death received in the performance of his or her duties as a member of such military forces, reserve force, department, agency, organization, team, or service, or pursuant to an order of any court, the wages of such a member or person shall be taken to be those received by him or her from his or her regular employer, and he or she shall receive such proportion thereof as he or she is entitled to under the provisions of section 48-121.

If such member or person is not regularly employed by some other person, for the purpose of such determination, it shall be deemed and assumed that he or she is receiving income from his or her business or from other employment equivalent to wages in an amount one and one-half times the maximum compensation rate for total disability.

If the wages received for the performance of duties as a member of such military forces, reserve force, department, agency, organization, team,

or service exceed the wages received from a regular employer, such member shall be entitled to a rate of compensation based upon wages received as a member of such military forces, reserve force, department, agency, organization, team, or service.

Sec. 8. Section 48-134.01, Reissue Revised Statutes of Nebraska, is amended to read:

48-134.01. (1) The Nebraska Workers' Compensation Court may develop and implement an independent medical examiner system consistent with the requirements of this section. As part of such system, the compensation court by a majority vote of the judges thereof may create, maintain, and periodically validate a list of ~~health care providers~~ physicians that it finds to be the most qualified and to be highly experienced and competent in their specific fields of expertise and in the treatment of work-related injuries to serve as independent medical examiners from each of the health care specialties that the compensation court finds most commonly used by injured employees. The compensation court may establish a fee schedule for services rendered by independent medical examiners and may adopt and promulgate any rules and regulations considered necessary to carry out the purposes of this section.

(2) An independent medical examiner shall render medical findings on the medical condition of an employee and related issues as specified under this section. The independent medical examiner shall not be the employee's treating ~~health care provider~~ physician and shall not have treated the employee with respect to the injury for which the claim is being made or the benefits are being paid.

(3) If the parties to a dispute cannot agree on an independent medical examiner of their own choosing, the compensation court shall assign an independent medical examiner from the list of qualified examiners to render medical findings in any dispute relating to the medical condition of a claimant and related issues, including, but not limited to, whether the injured employee is able to perform any gainful employment temporarily or permanently, what physical restrictions, if any, would be imposed on the employee's employment, whether the injured employee has reached maximum medical improvement, the existence and extent of any permanent physical impairment, ~~and~~ the reasonableness and necessity of any medical treatment previously provided, or to be provided, to the injured employee, and any other medical questions which may pertain to causality and relatedness of the medical condition to the employment.

(4) The compensation court may adopt and promulgate rules and regulations pertaining to the procedures before the independent medical examiner, including the parties' ability to propound questions relating to the medical condition of the employee and related issues to be submitted to the independent medical examiner. In addition to the review of records and information, the independent medical examiner may examine the employee as often as the examiner determines necessary to render medical findings on the questions propounded by the parties or by the compensation court.

(5) The independent medical examiner shall submit a written report to the compensation court, the employer, and the employee stating the examiner's medical findings on the issues raised and providing a description of findings sufficient to explain the basis of those findings. The fee for the examination and report shall be paid by the employer.

(6) The written report of the independent medical examiner's findings shall be admissible in a proceeding before the compensation court and may be received into evidence by the compensation court on its own motion.

(7) Any ~~health care provider~~ physician acting without malice and within the scope of the ~~provider's~~ physician's duties as an independent medical examiner shall be immune from civil liability for making any report or other information available to the compensation court or for assisting in the origination, investigation, or preparation of the report or other information so provided.

Sec. 9. Section 48-145, Reissue Revised Statutes of Nebraska, is amended to read:

48-145. To secure the payment of compensation under the Nebraska Workers' Compensation Act:

(1) Every employer in the occupations described in section 48-106 shall either (a) insure and keep insured his or her liability under such act in some corporation, association, or organization authorized and licensed to transact the business of workers' compensation insurance in this state or, in the case of an employer who is a lessor of one or more commercial vehicles leased to a self-insured motor carrier, be a party to an effective agreement with the self-insured motor carrier under section 48-115.02 or (b) as a self-insurer furnish to the State Treasurer an annual amount equal to two and

~~one-half percent of the prevailing premium rate which would be paid for like employment to any corporation, association, or organization, for carrying such risk as provided in this section~~ prospective-loss costs for like employment but in no event less than twenty-five dollars. Prospective-loss costs is defined in section 48-151. The compensation court is the sole judge as to the prospective-loss costs that shall be used. He or she shall also furnish to the Nebraska Workers' Compensation Court satisfactory proof of his or her financial ability to pay direct the compensation in the amount and manner when due as provided for in the Nebraska Workers' Compensation Act. In the latter case the compensation court may in its discretion require the deposit of an acceptable security, indemnity, trust, or bond to secure the payment of compensation liabilities as they are incurred. The agreement or document creating a trust for use under this section shall contain a provision that the trust may only be terminated upon the consent and approval of the compensation court. Any beneficial interest in the trust principal shall be only for the benefit of the past or present employees of the self-insurer and any persons to whom the self-insurer has agreed to pay benefits under the Nebraska Workers' Compensation Act under subdivision ~~(5)~~ (11) of section 48-115 and section 48-115.02. Any limitation on the termination of a trust and all other restrictions on the ownership or transfer of beneficial interest in the trust assets contained in such agreement or document creating the trust shall be enforceable, except that any limitation or restriction shall be enforceable only if authorized and approved by the compensation court and specifically delineated in the agreement or document. The compensation court may in its discretion withdraw such approval as a self-insurer at any time;

(2) All money which a self-insurer is required to pay to the State Treasurer, under subdivision (1) of this section, shall be computed and tabulated under oath as of January 1 and paid to the State Treasurer immediately thereafter. The Nebraska Workers' Compensation Court, any judge thereof, or any representative of the compensation court is empowered to audit any such payroll at its discretion; ~~the compensation court shall be the sole judge as to what is the prevailing premium rate;~~ and

(3) Every employer who fails, neglects, or refuses to comply with the conditions set forth in subdivision (1) or (2) of this section shall be required to respond in damages to an employee for personal injuries, or when personal injuries result in the death of an employee, then to his or her dependents. All money paid by an employer to the State Treasurer, under subdivisions (1) and (2) of this section, shall be credited to the General Fund of the State of Nebraska, except that subdivisions (1) and (2) of this section shall not apply to the State of Nebraska.

Sec. 10. Section 48-146, Reissue Revised Statutes of Nebraska, is amended to read:

48-146. (1) No policy of insurance against liability arising under the Nebraska Workers' Compensation Act shall be issued and no agreement pursuant to section 44-4304 providing group self-insurance coverage of workers' compensation liability by a risk management pool shall have any force or effect unless it contains the agreement of the insurer or risk management pool that it will promptly pay to the person entitled to the same all benefits conferred by such act, and all installments of the compensation that may be awarded or agreed upon, and that the obligation shall not be affected by the insolvency or bankruptcy of the employer or his or her estate or discharge therein or by any default of the insured after the injury, or by any default in the giving of any notice required by such policy, or otherwise. Such agreement shall be construed to be a direct promise by the insurer or risk management pool to the person entitled to compensation enforceable in his or her name. Every policy for the insurance of the compensation herein provided, or against liability thereof, or agreement forming any risk management pool shall be deemed to be made subject to the Nebraska Workers' Compensation Act. No corporation, association, or organization shall enter into any such policy of insurance unless copies of such forms have been filed with and approved by the Department of Insurance. All policies insuring the payment of compensation under the Nebraska Workers' Compensation Act and agreements pursuant to section 44-4304 providing group self-insurance coverage of workers' compensation liability by a risk management pool shall contain a clause to the effect (a) that as between the employer and the insurer or risk management pool the notice to or knowledge of the occurrence of the injury on the part of the insured shall be deemed notice or knowledge, as the case may be, on the part of the insurer or risk management pool, (b) that jurisdiction of the insured for the purpose of such act shall be jurisdiction of the insurer or risk management pool, and (c) that the insurer or risk management pool shall in all things be bound by the awards, judgments, or decrees rendered against such insured. All such policies insuring the payment of

compensation and all such agreements providing such group self-insurance coverage shall include within their terms the payment of compensation to all employees, officers, or workers who are within the scope and purview of the Nebraska Workers' Compensation Act.

(2) Any security, indemnity, trust, or bond provided by a self-insurer pursuant to section 48-145 shall be deemed a surety for the purposes of the payment of valid claims of the self-insurer's employees and the persons to whom the self-insurer has agreed to pay benefits under the Nebraska Workers' Compensation Act pursuant to subdivision ~~(5)~~ (11) of section 48-115 and section 48-115.02 as generally provided in this chapter.

Sec. 11. Section 48-147, Reissue Revised Statutes of Nebraska, is amended to read:

48-147. Nothing in the Nebraska Workers' Compensation Act shall affect any existing contract for employers liability insurance, or affect the organization of any mutual or other insurance company, or any arrangement existing between employers and employees, providing for payment to such employees, their families, dependents, or representatives, sick, accident, or death benefits in addition to the compensation provided for by such act; but liability for compensation under such act shall not be reduced or affected by any insurance of the injured employee, or any contribution or other benefit whatsoever, due to or received by the person entitled to such compensation, and the person so entitled shall, irrespective of any insurance or other contract, have the right to recover the same directly from the employer, and in addition thereto, the right to enforce in his or her own name in the manner provided in section 48-146 the liability of any insurer who may, in whole or in part, have insured the liability for such compensation. Payment in whole or in part of such compensation by either the employer or the insurer, as the case may be, shall, to the extent thereof, be a bar to recovery against the other of the amount so paid. No agreement by an employee to pay any portion of premium paid by his or her employer or to contribute to a benefit fund or department maintained by such employer for the purpose of providing compensation as required by the Nebraska Workers' Compensation Act shall be valid, and any employer who makes a deduction for such purpose from the pay of any employee entitled to the benefits of such act shall be guilty of a Class II misdemeanor. Nothing in this section invalidates or prohibits agreements pursuant to subdivision ~~(5)~~ (11) of section 48-115 or section 48-115.02.

Sec. 12. Section 48-151, Reissue Revised Statutes of Nebraska, is amended to read:

48-151. Throughout the Nebraska Workers' Compensation Act, the following words and phrases shall be considered to have the following meaning, respectively, unless the context clearly indicates a different meaning in the construction used:

(1) ~~The term physician shall include surgeon and in either case shall mean one licensed to practice his or her profession and who is in good standing in his or her profession at the time~~ Physician means any person licensed to practice medicine and surgery, osteopathic medicine, chiropractic, podiatry, or dentistry in the State of Nebraska or in the state in which the physician is practicing;

(2) ~~The word accident shall be construed to mean~~ Accident means an unexpected or unforeseen injury happening suddenly and violently, with or without human fault, and producing at the time objective symptoms of an injury. The claimant ~~shall have~~ has the burden of proof to establish by a preponderance of the evidence that such unexpected or unforeseen injury was in fact caused by the employment. There ~~shall be~~ is no presumption from the mere occurrence of such unexpected or unforeseen injury that the injury was in fact caused by the employment;

(3) ~~The term occupational~~ Occupational disease shall mean means only a disease which is due to causes and conditions which are characteristic of and peculiar to a particular trade, occupation, process, or employment and ~~shall exclude~~ excludes all ordinary diseases of life to which the general public is exposed;

(4) ~~The terms injury~~ Injury (4) and personal injuries ~~shall~~ mean only violence to the physical structure of the body and such disease or infection as naturally results therefrom. The terms ~~shall~~ include disablement resulting from occupational disease arising out of and in the course of the employment in which the employee was engaged and which was contracted in such employment. The terms ~~shall~~ include an aggravation of a preexisting occupational disease, the employer being liable only for the degree of aggravation of the preexisting occupational disease. The terms ~~shall not be construed to do not~~ include disability or death due to natural causes but occurring while the employee is at work, ~~nor to mean~~ and do not include an injury, disability, or death that is the result of a natural progression of any preexisting

condition;

(5) Death, when mentioned as a basis for the right to compensation, ~~shall mean~~ means only death resulting from such violence and its resultant effects or from occupational disease;

(6) Without otherwise affecting either the meaning or the interpretation of the abridged clause, personal injuries arising out of and in the course of employment, it is hereby declared not to cover workers except while engaged in, on, or about the premises where their duties are being performed or where their service requires their presence as a part of such service at the time of the injury and during the hours of service as such workers, and not to cover workers who on their own initiative leave their line of duty or hours of employment for purposes of their own. Property maintained by an employer ~~shall be~~ is considered the premises of such employer for purposes of determining whether the injury arose out of employment;

(7) Willful negligence ~~shall consist~~ consists of (a) a deliberate act, (b) such conduct as evidences reckless indifference to safety, or (c) intoxication at the time of the injury, such intoxication being without the consent, knowledge, or acquiescence of the employer or the employer's agent;

(8) Intoxication ~~shall include~~ includes, but is not ~~be~~ limited to, being under the influence of a controlled substance not prescribed by a physician; ~~and~~

(9) Prospective-loss costs means prospective-loss costs as defined in section 44-5014 and prepared, filed, or distributed by an advisory organization which has been issued a certificate of authority pursuant to section 44-5023; and

(10) Whenever in the Nebraska Workers' Compensation Act the singular is used, the plural ~~shall be~~ is considered included; when the masculine gender is used, the feminine ~~shall be~~ is considered included.

Sec. 13. Section 48-156, Reissue Revised Statutes of Nebraska, is amended to read:

48-156. A majority of the judges of the Nebraska Workers' Compensation Court shall constitute a quorum to adopt rules and regulations, as provided in sections 48-163 and 48-164, to transact business, except when the statute or a rule adopted by the compensation court permits one judge thereof to act, and three judges shall constitute a quorum for the review of any disputed claim for compensation. The act or decision of a majority of the judges constituting such quorum shall in all such cases be deemed the act or decision of the compensation court, except that a majority vote of all the judges shall be required to adopt rules and regulations.

Sec. 14. Section 48-162.01, Reissue Revised Statutes of Nebraska, is amended to read:

48-162.01. (1) One of the primary purposes of the Nebraska Workers' Compensation Act ~~shall be~~ is restoration of the injured employee to gainful employment. To this end the Nebraska Workers' Compensation Court may employ one or more specialists in physical, medical, and vocational rehabilitation to be appointed by the presiding judge. Salaries, other benefits, and expenses incurred for purposes of vocational rehabilitation may be paid from the Vocational Rehabilitation Fund created under section 48-162.02.

(2) Such specialists shall continuously study the problems of rehabilitation, both physical and vocational, and shall investigate and maintain a directory of all rehabilitation facilities and individual service providers and counselors, both private and public, which have been approved by the Nebraska Workers' Compensation Court. The compensation court shall approve as qualified such facilities, institutions, physicians, and other individual service providers and counselors as are capable of rendering competent rehabilitation service to seriously injured employees. No facility or institution shall be considered as qualified unless it is specifically equipped to provide rehabilitation services for persons suffering from either some specialized type of disability or some general type of disability within the field of occupational injury and is staffed with trained and qualified personnel and, with respect to physical rehabilitation, unless it is supervised by a physician qualified to render such service. No physician shall be considered qualified unless he or she has had the experience and training specified by the compensation court. No individual service provider or counselor shall be considered qualified unless he or she has satisfied the standards for certification established by the compensation court and has been certified by the compensation court.

(3) An employee who has suffered an injury covered by the Nebraska Workers' Compensation Act ~~shall be~~ is entitled to prompt medical and physical rehabilitation services. When as a result of the injury an employee is unable to perform suitable work for which he or she has previous training or experience, he or she ~~shall be~~ is entitled to such vocational rehabilitation

services, including job placement and retraining, as may be reasonably necessary to restore him or her to suitable employment.

If entitlement to vocational rehabilitation services is claimed by the employee, the employee and the employer or his or her insurer shall attempt to agree on the choice of a vocational rehabilitation counselor from the directory of vocational rehabilitation counselors established pursuant to subsection (2) of this section. If they are unable to agree on a vocational rehabilitation counselor, the employee or employer or his or her insurer shall notify the compensation court, and the compensation court shall select a counselor from the directory of vocational rehabilitation counselors established pursuant to subsection (2) of this section. Only one such vocational rehabilitation counselor may provide vocational rehabilitation services at any one time, and any change in the choice of a vocational rehabilitation counselor shall be approved by the compensation court. The vocational rehabilitation counselor so chosen or selected shall evaluate the employee and, if necessary, develop and implement a vocational rehabilitation plan. It ~~shall be~~ is a rebuttable presumption that any vocational rehabilitation plan developed by such vocational rehabilitation counselor and approved by a vocational rehabilitation specialist of the compensation court is an appropriate form of vocational rehabilitation. The fee for the evaluation and for the development and implementation of the vocational rehabilitation plan shall be paid by the employer or his or her insurer. The compensation court may establish a fee schedule for services rendered by a vocational rehabilitation counselor. Any loss-of-earning-power evaluation performed by a vocational rehabilitation counselor shall be performed by a counselor from the directory established pursuant to subsection (2) of this section and chosen or selected according to the procedures described in this subsection. It ~~shall be~~ is a rebuttable presumption that any opinion expressed as the result of such a loss-of-earning-power evaluation is correct.

The following priorities shall be used in developing and evaluating a rehabilitation plan. No higher priority may be utilized unless all lower priorities have been determined by the rehabilitation counselor to be unlikely to result in a job placement for the injured employee that is consistent with the priorities listed in this section. If a lower priority is clearly inappropriate for the employee, the next higher priority shall be utilized. The priorities are, listed in order from lower to higher priority:

- (a) Return to the previous job with the same employer;
- (b) Modification of the previous job with the same employer;
- (c) A new job with the same employer;
- (d) A job with a new employer; or
- (e) A period of formal retraining which is designed to lead to employment in another career field.

If physical or medical rehabilitation services are not voluntarily offered and accepted, the Nebraska Workers' Compensation Court or any judge thereof on its or his or her own motion, or upon application of the employee or employer, and after affording the parties an opportunity to be heard by the compensation court or judge thereof, may refer the employee to a qualified facility, institution, physician, or other individual service provider for evaluation and report of the practicability of, need for, and kind of service or treatment necessary and appropriate to render him or her fit for a remunerative occupation, and the costs of such evaluation and report involving physical or medical rehabilitation shall be borne by the employer or his or her insurer. Upon receipt of such report and after affording the parties an opportunity to be heard, the compensation court or judge thereof may order that the physical or medical services and treatment recommended in the report or other necessary physical or medical rehabilitation treatment or service be provided at the expense of the employer or his or her insurer.

Vocational rehabilitation training costs shall be paid from the Vocational Rehabilitation Fund.

(4) When physical or medical rehabilitation requires residence at or near the facility or institution away from the employee's customary residence, whether within or without this state, the reasonable costs of his or her board, lodging, and travel shall be paid for by the employer or his or her insurer in addition to any other benefits payable under the Nebraska Workers' Compensation Act, including weekly compensation benefits for temporary disability. When vocational rehabilitation requires residence at or near the facility or institution away from the employee's customary residence, whether within or without this state, the reasonable costs of his or her board, lodging, and travel shall be paid from the Vocational Rehabilitation Fund and weekly compensation benefits for temporary disability shall be paid by the employer or his or her insurer.

(5) The Nebraska Workers' Compensation Court may cooperate on a

reciprocal basis with federal and state agencies for vocational education or vocational, physical, or medical rehabilitation or with any public or private agency.

(6) If the injured employee without reasonable cause refuses to undertake or fails to cooperate with the rehabilitation, training, or educational program determined by the compensation court or judge thereof to be suitable for him or her or refuses to be evaluated under subsection (3) of this section or fails to cooperate in such evaluation, the compensation court or judge thereof may suspend, reduce, or limit the compensation otherwise payable under the Nebraska Workers' Compensation Act. The compensation court or judge thereof may also modify a previous finding, order, award, or judgment relating to physical, medical, or vocational rehabilitation services as necessary in order to accomplish the goal of restoring the injured employee to gainful and suitable employment, or as otherwise required in the interest of justice.

Sec. 15. Section 48-163, Reissue Revised Statutes of Nebraska, is amended to read:

48-163. (1) The Nebraska Workers' Compensation Court, by a majority vote of the judges thereof, may adopt and promulgate all reasonable rules and regulations necessary for carrying out the intent and purpose of the Nebraska Workers' Compensation Act and shall administer and enforce all of the provisions of such act, except such as are committed to the Supreme Court.

(2) No rule or regulation to carry out the act shall be adopted and promulgated except after public hearing conducted by a quorum of the compensation court on the question of adopting and promulgating such rule or regulation. Notice of such hearing shall be given at least thirty days prior thereto by publication in a newspaper having general circulation in the state. Draft copies of all such rules and regulations shall be available to the public at the compensation court at the time of giving notice. The compensation court shall establish and maintain a list of subscribers who wish to receive notice of public hearing on the question of adopting and promulgating any rule or regulation and shall provide notice to such subscribers. ~~at a cost to be assessed against each subscriber.~~ The compensation court shall distribute a current copy of existing rules and regulations and any updates to those rules and regulations once adopted to the State Library and to each county law library or the largest public library in each county.

(3) The compensation court or any judge thereof may, upon the motion of either party or upon its or his or her own motion, require the production of any books, papers, payrolls, medical reports, X-rays, photographs or plates, or any facts or matters which may be necessary to assist in a determination of the rights of either party in any matter pending before such compensation court or any judge thereof.

(4) The court may expedite the hearing of a disputed case when there is an emergency.

Sec. 16. Section 48-166, Reissue Revised Statutes of Nebraska, is amended to read:

48-166. On or before January 1 of each year, the Nebraska Workers' Compensation Court shall issue an annual report for the past fiscal year which shall include (1) a statement of the number and amounts of pertinent information regarding settlements and awards made by the compensation court, (2) the causes of the accidents leading to the injuries for which the settlements and awards were made, (3) a statement of the total expense of the compensation court, (4) any other matters which the compensation court deems proper to include, and (5) any recommendations it may desire to make.

Sec. 17. Section 48-1,114, Reissue Revised Statutes of Nebraska, is amended to read:

48-1,114. Every employer in the occupations described in section 48-106 who qualifies as a self-insurer and is issued a permit to self-insure shall remit to the State Treasurer for credit to the Compensation Court Cash Fund an annual amount equal to one and one-quarter percent of the prevailing premium rate which would be paid by such employer for a policy of workers' compensation insurance prospective-loss costs for like employment but in no event less than one hundred dollars. Prospective-loss costs is defined in section 48-151. The compensation court is the sole judge as to the prospective-loss costs that shall be used.

Sec. 18. Sections 1, 7, 10, 11, 18, 19, and 21 of this act become operative on their effective date. The other sections of this act become operative three calendar months after adjournment of this legislative session.

Sec. 19. Original sections 48-115, 48-126.01, 48-146, and 48-147, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 20. Original sections 48-119, 48-120, 48-120.02, 48-121,

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48-125, 48-134.01, 48-145, 48-151, 48-156, 48-162.01, 48-163, 48-166, and 48-1,114, Reissue Revised Statutes of Nebraska, are repealed.

Sec. 21. Since an emergency exists, this act takes effect when passed and approved according to law.