

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 719

Introduced by Morfeld, 46.

Read first time January 05, 2022

Committee: Business and Labor

1 A BILL FOR AN ACT relating to the Nebraska Workers' Compensation Act; to
2 amend sections 48-120, 48-121, 48-121.01, 48-122, 48-122.01,
3 48-122.03, 48-126, 48-134, and 48-134.01, Reissue Revised Statutes
4 of Nebraska; to require payment for interpreter services; to change
5 provisions relating to the right to select a physician, compensation
6 schedules, maximum and minimum weekly income benefits, and
7 calculation of wages; to require annual cost-of-living adjustments
8 to benefits as prescribed; to define terms; to require payment of
9 benefits to a personal representative; to harmonize provisions; and
10 to repeal the original sections.

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

1 Section 1. Section 48-120, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 48-120 (1)(a) The employer is liable for all reasonable medical,
4 surgical, and hospital services, including plastic surgery or
5 reconstructive surgery but not cosmetic surgery when the injury has
6 caused disfigurement, appliances, supplies, prosthetic devices, and
7 medicines as and when needed, which are required by the nature of the
8 injury and which will relieve pain or promote and hasten the employee's
9 restoration to health and employment, and includes damage to or
10 destruction of artificial members, dental appliances, teeth, hearing
11 instruments, and eyeglasses, but, in the case of dental appliances,
12 hearing instruments, or eyeglasses, only if such damage or destruction
13 resulted from an accident which also caused personal injury entitling the
14 employee to compensation therefor for disability or treatment, subject to
15 the approval of and regulation by the Nebraska Workers' Compensation
16 Court, not to exceed the regular charge made for such service in similar
17 cases. If the employee cannot readily understand or communicate in
18 English or another language spoken by a service provider, the employer
19 shall be liable for all reasonable costs of interpretation services
20 related to such medical, surgical, or hospital services. The interpreter
21 shall be selected by the employee or the employee's representative from
22 the interpreter register created in Rule 6-702 of the Nebraska Supreme
23 Court Rules.

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

1 establish and charge a fee to recover the cost of published fee
2 schedules.

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

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

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

24 (2)(a)(i) ~~(2)(a)~~ The employee has the right to select a physician
25 who has maintained the employee's medical records prior to an injury and
26 has a documented history of treatment with the employee prior to an
27 injury or a physician who has maintained the medical records of an
28 immediate family member of the employee prior to an injury and has a
29 documented history of treatment with an immediate family member of the
30 employee prior to an injury. If there is no such physician, the employee
31 may select a physician within a timeframe established by the compensation

1 court. For purposes of this subsection, immediate family member means the
2 employee's spouse, children, parents, stepchildren, and stepparents.

3 (ii) The employer shall notify the employee following an injury of
4 such right of selection in a form and manner and within a timeframe
5 established by the compensation court. If the employee cannot readily
6 understand or communicate in English or another language spoken by the
7 employer, then the employer shall, at no cost to such employee, provide
8 such notice to the employee in a language understood by the employee. If
9 the employer fails to notify the employee of such right of selection, ~~or~~
10 fails to notify the employee of such right of selection in a form and
11 manner and within a timeframe established by the compensation court, or
12 fails to notify the employee of such right of selection in the manner
13 required by this subdivision, then the employee has the right to select a
14 physician. If the employee fails to exercise such right of selection in a
15 form and manner and within a timeframe established by the compensation
16 court following notice by the employer pursuant to this subsection, then
17 the employer has the right to select the physician.

18 (iii) If selection of the initial physician is made by the employee
19 or employer pursuant to this subsection following notice by the employer
20 pursuant to this subsection, the employee or employer shall not change
21 the initial selection of physician made pursuant to this subsection
22 unless such change is agreed to by the employee and employer or is
23 ordered by the compensation court pursuant to subsection (6) of this
24 section.

25 (iv) If compensability is denied by the workers' compensation
26 insurer, risk management pool, or self-insured employer, (A) ~~(i)~~ the
27 employee has the right to select a physician and shall not be made to
28 enter a managed care plan and (B) ~~(ii)~~ the employer is liable for
29 medical, surgical, and hospital services subsequently found to be
30 compensable.

31 (v) If the employer has exercised the right to select a physician

1 pursuant to this subsection and if the compensation court subsequently
2 orders reasonable medical services previously refused to be furnished to
3 the employee by the physician selected by the employer, the compensation
4 court shall allow the employee to select another physician to furnish
5 further medical services.

6 (vi) If the employee selects a physician located in a community not
7 the home or place of work of the employee and a physician is available in
8 the local community or in a closer community, no travel expenses shall be
9 required to be paid by the employer or his or her workers' compensation
10 insurer.

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

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

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

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

29 (f) The employer is not responsible for medical services furnished
30 or ordered by any physician or other person selected by the employee in
31 disregard of this section. Except as otherwise provided by the Nebraska

1 Workers' Compensation Act, the employer is not liable for medical,
2 surgical, or hospital services or medicines if the employee refuses to
3 allow them to be furnished by the employer.

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

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

28 (5) Whenever the compensation court deems it necessary, in order to
29 assist it in resolving any issue of medical fact or opinion, it shall
30 cause the employee to be examined by a physician or physicians selected
31 by the compensation court and obtain from such physician or physicians a

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

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

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

30 (8) The compensation court shall order the employer to make payment
31 directly to the supplier of any services provided for in this section or

1 reimbursement to anyone who has made any payment to the supplier for
2 services provided in this section. No such supplier or payor may be made
3 or become a party to any action before the compensation court.

4 (9) Notwithstanding any other provision of this section, a workers'
5 compensation insurer, risk management pool, or self-insured employer may
6 contract for medical, surgical, hospital, and rehabilitation services to
7 be provided through a managed care plan certified pursuant to section
8 48-120.02. Once liability for medical, surgical, and hospital services
9 has been accepted or determined, the employer may require that employees
10 subject to the contract receive medical, surgical, and hospital services
11 in the manner prescribed in the contract, except that an employee may
12 receive services from a physician selected by the employee pursuant to
13 subsection (2) of this section if the physician so selected agrees to
14 refer the employee to the managed care plan for any other treatment that
15 the employee may require and if the physician so selected agrees to
16 comply with all the rules, terms, and conditions of the managed care
17 plan. If compensability is denied by the workers' compensation insurer,
18 risk management pool, or self-insured employer, the employee may leave
19 the managed care plan and the employer is liable for medical, surgical,
20 and hospital services previously provided. The workers' compensation
21 insurer, risk management pool, or self-insured employer shall give notice
22 to employees subject to the contract of eligible service providers and
23 such other information regarding the contract and manner of receiving
24 medical, surgical, and hospital services under the managed care plan as
25 the compensation court may prescribe.

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

28 48-121 The following schedule of compensation is hereby established
29 for injuries resulting in disability:

30 (1) For total disability, the compensation during such disability
31 shall be eighty ~~sixty-six and two-thirds~~ percent of the wages received at

1 the time of injury, but such compensation shall not be more than the
2 maximum weekly income benefit specified in section 48-121.01 nor less
3 than the minimum weekly income benefit specified in section 48-121.01,
4 ~~except that if at the time of injury the employee receives wages of less~~
5 ~~than the minimum weekly income benefit specified in section 48-121.01,~~
6 ~~then he or she shall receive the full amount of such wages per week as~~
7 ~~compensation.~~ Nothing in this subdivision shall require payment of
8 compensation after disability shall cease;

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

20 (3) For disability resulting from permanent injury of the classes
21 listed in this subdivision, the compensation shall be in addition to the
22 amount paid for temporary disability, except that the compensation for
23 temporary disability shall cease as soon as the extent of the permanent
24 disability is ascertainable. For disability resulting from permanent
25 injury of the following classes, compensation shall be: For the loss of a
26 thumb, seventy-five ~~sixty-six and two-thirds~~ percent of daily wages
27 during sixty weeks. For the loss of a first finger, commonly called the
28 index finger, seventy-five ~~sixty-six and two-thirds~~ percent of daily
29 wages during thirty-five weeks. For the loss of a second finger, seventy-
30 five ~~sixty-six and two-thirds~~ percent of daily wages during thirty weeks.
31 For the loss of a third finger, seventy-five ~~sixty-six and two-thirds~~

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

1 percent of daily wages during fifty weeks.

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

26 If, in the compensation court's discretion, compensation benefits
27 payable for a loss or loss of use of more than one member or parts of
28 more than one member set forth in this subdivision, resulting from the
29 same accident or illness, do not adequately compensate the employee for
30 such loss or loss of use and such loss or loss of use results in at least
31 a thirty percent loss of earning capacity, the compensation court shall,

1 upon request of the employee, determine the employee's loss of earning
2 capacity consistent with the process for such determination under
3 subdivision (1) or (2) of this section, and in such a case the employee
4 shall not be entitled to compensation under this subdivision.

5 If the employer and the employee are unable to agree upon the amount
6 of compensation to be paid in cases not covered by the schedule, the
7 amount of compensation shall be settled according to sections 48-173 to
8 48-185. Compensation under this subdivision shall not be more than the
9 maximum weekly income benefit specified in section 48-121.01 nor less
10 than the minimum weekly income benefit specified in section 48-121.01,
11 ~~except that if at the time of the injury the employee received wages of~~
12 ~~less than the minimum weekly income benefit specified in section~~
13 ~~48-121.01, then he or she shall receive the full amount of such wages per~~
14 ~~week as compensation;~~

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

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

30 (6)(a) Beginning in 2023, weekly income benefits under this section
31 lasting longer than twelve months shall be adjusted to account for

1 increases in the cost of living.

2 (b) For purposes of this subsection, COLA percentage means the
3 greater of:

4 (i) One percent; or

5 (ii) The percentage change, for the most recent twelve-month period
6 for which information is available, in the Consumer Price Index for Urban
7 Wage Earners and Clerical Workers, as prepared by the United States
8 Department of Labor, Bureau of Labor Statistics.

9 (c) On January 1, 2023, and on each January 1 thereafter, the
10 Nebraska Workers' Compensation Court shall determine the COLA percentage
11 that will apply for such calendar year.

12 (d) If a person receives a weekly income benefit under this section
13 that lasts longer than twelve months, the person's weekly income benefit
14 shall be automatically adjusted at the end of each twelve-month period.
15 The adjusted amount shall equal the then-current weekly income benefit
16 amount multiplied by the COLA percentage in effect for that calendar
17 year. The adjusted amount shall be computed to the next higher whole
18 dollar amount. Such adjusted amount shall apply for the next twelve-month
19 period.

20 (e) The cost-of-living adjustment provided for in this subsection
21 shall not result in a weekly income benefit that is more than the maximum
22 weekly income benefit specified in section 48-121.01 that is in effect at
23 the time the adjustment is made.

24 Sec. 3. Section 48-121.01, Reissue Revised Statutes of Nebraska, is
25 amended to read:

26 48-121.01 (1)(a)(i) Commencing July 1, 1991, the maximum weekly
27 income benefit under sections 48-121 and 48-122 shall be two hundred
28 sixty-five dollars.

29 (ii) Commencing June 1, 1994, the maximum weekly income benefit
30 under sections 48-121 and 48-122 shall be three hundred ten dollars.

31 (iii) Commencing January 1, 1995, the maximum weekly income benefit

1 ~~under sections 48-121 and 48-122 shall be three hundred fifty dollars.~~

2 (1)(a) This subdivision applies until January 1, 2023. (b)
3 Commencing January 1, 1996, and each January 1 thereafter, the maximum
4 weekly income benefit under sections 48-121 and 48-122 shall be one
5 hundred percent, computed to the next higher whole dollar, of the state
6 average weekly wage determined pursuant to section 48-121.02, except that
7 for the purposes of calendar years commencing after 1996, the Governor
8 may not later than November 15, 1996, and not later than each November 15
9 thereafter, conduct a public hearing after not less than thirty days'
10 notice to consider whether he or she should issue an order to suspend the
11 effectiveness of the change in the maximum weekly income benefit
12 otherwise required by this subdivision for the ensuing calendar year.

13 (b) Commencing January 1, 2023, and each January 1 thereafter, the
14 maximum weekly income benefit under sections 48-121 and 48-122 shall be
15 two hundred percent, computed to the next higher whole dollar, of the
16 state average weekly wage determined pursuant to section 48-121.02,
17 except that for the purposes of calendar years commencing after 2023, the
18 Governor may not later than November 15, 2023, and not later than each
19 November 15 thereafter, conduct a public hearing after not less than
20 thirty days' notice to consider whether the Governor should issue an
21 order to suspend the effectiveness of the change in the maximum weekly
22 income benefit otherwise required by this subdivision for the ensuing
23 calendar year.

24 (c) In making a order to make his or her decision under subdivision
25 (1)(a) or (b) of this section, the Governor shall consider such factors
26 as recent trends in economic conditions in the state, general wage
27 levels, workers' compensation benefit levels, and workers' compensation
28 premium levels. After the November 15 such hearing but not later than
29 November 30 immediately thereafter, the Governor may issue an order to
30 suspend the effectiveness of the change in the maximum weekly income
31 benefit otherwise required by this subdivision (1)(a) or (b) of this

1 section for the ensuing calendar year.

2 (2) The minimum weekly income benefit under sections 48-121 and
3 48-122 shall be fifty percent, computed to the next higher whole dollar,
4 of the state average weekly wage determined pursuant to section
5 48-121.02, except that if at the time of injury an employee receives
6 wages of less than such amount, the minimum weekly income benefit for
7 such employee shall be the full amount of such wages per week ~~forty-nine~~
8 ~~dollars.~~

9 Sec. 4. Section 48-122, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 48-122 (1) If death results from injuries and the deceased employee
12 leaves one or more dependents dependent upon his or her earnings for
13 support at the time of injury, the compensation, subject to section
14 48-123, shall be not more than the maximum weekly income benefit
15 specified in section 48-121.01 nor less than the minimum weekly income
16 benefit specified in section 48-121.01, ~~except that if at the time of~~
17 ~~injury the employee receives wages of less than the minimum weekly income~~
18 ~~benefit specified in section 48-121.01, then the compensation shall be~~
19 ~~the full amount of such wages per week, payable in the amount and to the~~
20 persons enumerated in section 48-122.01 subject to the maximum limits
21 specified in this section and section 48-122.03.

22 (2) When death results from injuries suffered in employment, if
23 immediately prior to the accident the rate of wages was fixed by the day
24 or hour, or by the output of the employee, the weekly wages shall be
25 taken to be computed upon the basis of a workweek of a minimum of five
26 days, if the wages are paid by the day, or upon the basis of a workweek
27 of a minimum of forty hours, if the wages are paid by the hour, or upon
28 the basis of a workweek of a minimum of five days or forty hours,
29 whichever results in the higher weekly wage, if the wages are based on
30 the output of the employee.

31 (3) Upon the death of an employee, resulting through personal

1 injuries as defined in section 48-151, whether or not there are
2 dependents entitled to compensation, the reasonable expenses of burial,
3 not exceeding eleven thousand dollars, without deduction of any amount
4 previously paid or to be paid for compensation or for medical expenses,
5 shall be paid to his or her dependents, or if there are no dependents,
6 then to his or her personal representative. Beginning in 2023, the
7 Nebraska Workers' Compensation Court shall annually adjust the dollar
8 limitation in this subsection. The adjusted limitation shall be equal to
9 the then current limitation adjusted by the greater of one percent or the
10 percentage change, for the preceding year, in the Consumer Price Index
11 for All Urban Consumers, as prepared by the United States Department of
12 Labor, Bureau of Labor Statistics. Any adjustment shall be effective on
13 July 1. The adjustment shall not exceed two and three-quarters percent
14 per annum. If the amount so adjusted is not a multiple of one hundred
15 dollars, the amount shall be rounded to the nearest multiple of one
16 hundred dollars.

17 (4) Compensation under the Nebraska Workers' Compensation Act to
18 alien dependents who are not residents of the United States shall be the
19 same in amount as is provided in each case for residents, except that at
20 any time within one year after the death of the injured employee the
21 employer may at his or her option commute all future installments of
22 compensation to be paid to such alien dependents. The amount of the
23 commuted payment shall be determined as provided in section 48-138.

24 (5)(a)(i) Except as provided in subdivision (5)(a)(ii) of this
25 section, the consular officer of the nation of which the employee, whose
26 injury results in death, is a citizen shall be regarded as the sole legal
27 representative of any alien dependents of the employee residing outside
28 of the United States and representing the nationality of the employee.

29 (ii) At any time prior to the final settlement, a nonresident alien
30 dependent may file with the Nebraska Workers' Compensation Court a power
31 of attorney designating any suitable person residing in this state to act

1 as attorney in fact in proceedings under the Nebraska Workers'
2 Compensation Act. If the compensation court determines that the interests
3 of the nonresident alien dependent will be better served by such person
4 than by the consular officer, the compensation court shall appoint such
5 person to act as attorney in fact in such proceedings. In making such
6 determination the court shall consider, among other things, whether a
7 consular officer's jurisdiction includes Nebraska and the responsiveness
8 of the consular officer to attempts made by an attorney representing the
9 employee to engage such consular officer in the proceedings.

10 (b) Such consular officer or appointed person shall have in behalf
11 of such nonresident alien dependents the exclusive right to institute
12 proceedings for, adjust, and settle all claims for compensation provided
13 by the Nebraska Workers' Compensation Act and to receive the distribution
14 to such nonresident alien dependents of all compensation arising
15 thereunder.

16 (c) A person appointed under subdivision (5)(a)(ii) of this section
17 shall furnish a bond satisfactory to the compensation court conditioned
18 upon the proper application of any money received as compensation under
19 the Nebraska Workers' Compensation Act. Before the bond is discharged,
20 such appointed person shall file with the compensation court a verified
21 account of receipts and disbursements of such money.

22 (d) For purposes of this section, consular officer means a consul
23 general, vice consul general, or vice consul or the representative of any
24 such official residing within the State of Nebraska.

25 (6) The changes made to this section by Laws 2019, LB418, apply to
26 cases under the Nebraska Workers' Compensation Act that are pending on
27 September 1, 2019, and to cases filed on or after such date.

28 Sec. 5. Section 48-122.01, Reissue Revised Statutes of Nebraska, is
29 amended to read:

30 48-122.01 (1) Compensation under section 48-122 shall be payable in
31 the amount and to the following persons subject to the maximum limits

1 specified in sections 48-122 and 48-122.03:

2 (a) ~~(1)~~ If there is a widow or widower and no children of the
3 deceased, as defined in section 48-124, to such widow or widower,
4 ~~seventy-five sixty-six and two-thirds~~ percent of the average weekly wage
5 of the deceased, during widowhood or widowerhood;

6 (b) ~~(2)~~ To the widow or widower, if there is a child or children
7 living with the widow or widower, ~~sixty-nine sixty~~ percent of the average
8 weekly wage of the deceased, or ~~sixty fifty-five~~ percent, if such child
9 is not or such children are not living with a widow or widower, and, in
10 addition thereto, ~~twenty-four fifteen~~ percent for each child. When there
11 are two or more such children, the indemnity benefits payable on account
12 of such children shall be divided among such children, share and share
13 alike;

14 (c) ~~(3)~~ Two years' indemnity benefits in one lump sum shall be
15 payable to a widow or widower upon remarriage;

16 (d) ~~(4)~~ To the children, if there is no widow or widower, ~~seventy-~~
17 ~~five sixty-six and two-thirds~~ percent of such wage for one child, and ~~an~~
18 ~~additional twenty-four fifteen~~ percent for ~~two or more children each~~
19 ~~additional child~~, divided among such children, share and share alike;

20 (e) ~~(5)~~ The income benefits payable on account of any child under
21 this section shall cease when he or she dies, marries, or reaches the age
22 of nineteen, or when a child over such age ceases to be physically or
23 mentally incapable of self-support, or if actually dependent ceases to be
24 actually dependent, or, if enrolled as a full-time student in any
25 accredited educational institution, ceases to be so enrolled or reaches
26 the age of twenty-five. A child who originally qualified as a dependent
27 by virtue of being less than nineteen years of age may, upon reaching age
28 nineteen, continue to qualify if he or she satisfies the tests of being
29 physically or mentally incapable of self-support, actual dependency, or
30 enrollment in an educational institution;

31 (f) ~~(6)~~ To each parent, if actually dependent, ~~thirty-four twenty-~~

1 ~~five~~ percent;

2 ~~(g) (7)~~ To the brothers, sisters, grandparents, and grandchildren,
3 if actually dependent, thirty-four ~~twenty-five~~ percent to each such
4 dependent. If there should be more than one of such dependents, the total
5 income benefits payable on account of such dependents shall be divided
6 share and share alike;

7 ~~(h) (8)~~ The income benefits of each beneficiary under subdivisions
8 ~~(1)(f) and (g) (6) and (7)~~ of this section shall be paid until he or she,
9 if a parent or grandparent, dies, marries, or ceases to be actually
10 dependent, or, if a brother, sister, or grandchild, dies, marries, or
11 reaches the age of nineteen or if over that age ceases to be physically
12 or mentally incapable of self-support, or ceases to be actually
13 dependent; ~~and~~

14 ~~(i) (9)~~ A person ceases to be actually dependent when his or her
15 income from all sources exclusive of workers' compensation income
16 benefits is such that, if it had existed at the time as of which the
17 original determination of actual dependency was made, it would not have
18 supported a finding of dependency. In any event, if the present annual
19 income of an actual dependent person including workers' compensation
20 income benefits at any time exceeds the total annual support received by
21 the person from the deceased employee, the workers' compensation benefits
22 shall be reduced so that the total annual income is no greater than such
23 amount of annual support received from the deceased employee. In all
24 cases, a person found to be actually dependent shall be presumed to be no
25 longer actually dependent three years after each time as of which the
26 person was found to be actually dependent. This presumption may be
27 overcome by proof of continued actual dependency as defined in this
28 subdivision and section 48-124; ~~and -~~

29 (j) If there is no spouse, child, or other dependent entitled to
30 benefits under this section, twenty-five thousand dollars to the personal
31 representative of the estate of the deceased.

1 (2)(a) Beginning in 2023, weekly income benefits under this section
2 lasting longer than twelve months shall be adjusted to account for
3 increases in the cost of living.

4 (b) For purposes of this subsection, COLA percentage means the
5 greater of:

6 (i) One percent; or

7 (ii) The percentage change, for the most recent twelve-month period
8 for which information is available, in the Consumer Price Index for Urban
9 Wage Earners and Clerical Workers, as prepared by the United States
10 Department of Labor, Bureau of Labor Statistics.

11 (c) On January 1, 2023, and on each January 1 thereafter, the
12 Nebraska Workers' Compensation Court shall determine the COLA percentage
13 that will apply for such calendar year.

14 (d) If a person receives a weekly income benefit under this section
15 that lasts longer than twelve months, the person's weekly income benefit
16 shall be automatically adjusted at the end of each twelve-month period.
17 The adjusted amount shall equal the then-current weekly income benefit
18 amount multiplied by the COLA percentage in effect for that calendar
19 year. The adjusted amount shall be computed to the next higher whole
20 dollar amount. Such adjusted amount shall apply for the next twelve-month
21 period.

22 (e) The cost-of-living adjustment provided for in this subsection
23 shall not result in a weekly income benefit that is more than the maximum
24 weekly income benefit specified in section 48-122 that is in effect at
25 the time the adjustment is made.

26 (f) The maximum limitation in section 48-122.03 shall not limit
27 increases in the weekly income benefit resulting from the cost-of-living
28 adjustment provided for in this subsection.

29 Sec. 6. Section 48-122.03, Reissue Revised Statutes of Nebraska, is
30 amended to read:

31 48-122.03 (1) The maximum weekly income benefits payable for all

1 beneficiaries in case of death shall not exceed two hundred seventy-five
2 percent of the average weekly wage of the deceased, subject to the
3 maximum limits in section 48-122. The maximum aggregate limitation shall
4 not operate in case of payment of two years' income benefits to the widow
5 or widower upon remarriage, as provided under subdivision (1)(c) ~~(3)~~ of
6 section 48-122.01, to prevent the immediate recalculation and payments of
7 benefits to the remaining beneficiaries as provided under section
8 48-122.02. The classes of beneficiaries specified in subdivisions (1)(a),
9 (b), and (d) ~~(1), (2), and (4)~~ of section 48-122.01 shall have priority
10 over all other beneficiaries in the apportionment of income benefits.

11 (2)(a) If there is a widow or widower and a child or children and
12 the maximums specified in section 48-122 and this section prevent full
13 payment under either maximum, the compensation shall be apportioned
14 between the widow or widower and the child or children on a pro rata
15 basis.

16 (b) If there is more than one child living with the widow or widower
17 and no child or children living separately, the apportionment shall be on
18 the pro rata basis of one hundred sixty percent to the widow or widower
19 and forty fifteen percent divided among the children.

20 (c) If there is more than one child not living with the widow or
21 widower and no child or children living with her or him, the
22 apportionment shall be on the pro rata basis of one hundred forty-six
23 fifty-five percent to the widow or widower and fifty-four ~~twenty~~ percent
24 divided among the children.

25 (d) If one or more children are living with and one or more children
26 are not living with her or him, the apportionment shall be on the pro
27 rata basis of one hundred forty-six ~~fifty-five~~ percent to the widow or
28 widower and fifty-four ~~twenty~~ percent divided among the children.

29 (3) If the provisions of this section should prevent payment to
30 other beneficiaries of the income benefits to the full extent otherwise
31 provided for, the gross remaining amount of income benefits payable to

1 such other beneficiaries shall be apportioned by class, proportionate to
2 the interest of each class in the remaining amount. Parents shall be
3 considered to be in one class and those specified in subdivision (1)(g)
4 ~~(7)~~ of section 48-122.01 in another class.

5 Sec. 7. Section 48-126, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 48-126 (1) Wherever in the Nebraska Workers' Compensation Act the
8 term wages is used, it shall be construed to mean the money rate at which
9 the service rendered is recompensed under the contract of hiring in force
10 at the time of the accident.

11 (2) Wages ~~It~~ shall not include gratuities received from the employer
12 or others, nor shall it include board, lodging, or similar advantages
13 received from the employer, unless the money value of such advantages
14 shall have been fixed by the parties at the time of hiring, except that
15 if the workers' compensation insurer shall have collected a premium based
16 upon the value of such board, lodging, and similar advantages, then the
17 value thereof shall become a part of the basis of determining
18 compensation benefits.

19 (3) In occupations involving seasonal employment or employment
20 dependent upon the weather, the employee's weekly wages shall be taken to
21 be one-fiftieth of the total wages which he or she has earned from all
22 occupations during the year immediately preceding the accident, unless it
23 be shown that during such year, by reason of exceptional causes, such
24 method of computation does not fairly represent the earnings of the
25 employee. In such a case, the period for calculation shall be extended so
26 far as to give a basis for the fair ascertainment of his or her average
27 weekly earnings.

28 (4)(a) In continuous employments, if immediately prior to the
29 accident the rate of wages was fixed by the day or hour or by the output
30 of the employee, his or her weekly wages shall be taken to be his or her
31 average weekly income for the period of time ordinarily constituting his

1 or her week's work, and using as the basis of calculation his or her
2 earnings during as much of the preceding six months as he or she worked
3 for the same employer, except as provided in sections 48-121 and 48-122.
4 The calculation shall also include ~~be made with reference to the average~~
5 ~~earnings for a working day of ordinary length and exclusive of earnings~~
6 ~~from overtime, except that if the insurance company's policy of insurance~~
7 ~~provides for the collection of a premium based upon such overtime, then~~
8 ~~such overtime shall become a part of the basis of determining~~
9 ~~compensation benefits.~~

10 Sec. 8. Section 48-134, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 48-134 (1) After an employee has given notice of an injury, as
13 provided in section 48-133, and from time to time thereafter during the
14 continuance of his or her disability, he or she shall, if so requested by
15 the employer or the insurance company carrying such risk, submit himself
16 or herself to an examination by a physician or surgeon legally authorized
17 to practice medicine under the laws of the state in which he or she
18 practices, furnished and paid for by the employer, or the insurance
19 company carrying such risk, as the case may be. The employee shall have
20 the right to have a physician provided and paid for by himself or herself
21 present at the examination. The unreasonable refusal of the employee to
22 submit to such examination shall deprive him or her of the right to
23 compensation under the Nebraska Workers' Compensation Act during the
24 continuance of such refusal, and the period of such refusal shall be
25 deducted from the period during which compensation would otherwise be
26 payable.

27 (2) If the employee cannot readily understand or communicate in
28 English or another language spoken by the examining physician or surgeon,
29 the employer shall permit an interpreter to be present at the
30 examination. The employer shall be liable for all reasonable costs of
31 interpretation services related to such examination. The interpreter

1 shall be selected by the employee or the employee's representative from
2 the interpreter register created in Rule 6-702 of the Nebraska Supreme
3 Court Rules.

4 Sec. 9. Section 48-134.01, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 48-134.01 (1) The Nebraska Workers' Compensation Court may develop
7 and implement an independent medical examiner system consistent with the
8 requirements of this section. As part of such system, the compensation
9 court by a majority vote of the judges thereof may create, maintain, and
10 periodically validate a list of physicians that it finds to be the most
11 qualified and to be highly experienced and competent in their specific
12 fields of expertise and in the treatment of work-related injuries to
13 serve as independent medical examiners from each of the health care
14 specialties that the compensation court finds most commonly used by
15 injured employees. The compensation court may establish a fee schedule
16 for services rendered by independent medical examiners and may adopt and
17 promulgate any rules and regulations considered necessary to carry out
18 the purposes of this section.

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

25 (3) If the parties to a dispute cannot agree on an independent
26 medical examiner of their own choosing, the compensation court shall
27 assign an independent medical examiner from the list of qualified
28 examiners to render medical findings in any dispute relating to the
29 medical condition of a claimant and related issues, including, but not
30 limited to, whether the injured employee is able to perform any gainful
31 employment temporarily or permanently, what physical restrictions, if

1 any, would be imposed on the employee's employment, whether the injured
2 employee has reached maximum medical improvement, the existence and
3 extent of any permanent physical impairment, the reasonableness and
4 necessity of any medical treatment previously provided, or to be
5 provided, to the injured employee, and any other medical questions which
6 may pertain to causality and relatedness of the medical condition to the
7 employment.

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

17 (5) If the employee cannot readily understand or communicate in
18 English or another language spoken by the independent medical examiner,
19 then an interpreter shall be present during any examination. The employer
20 shall be liable for all reasonable costs of interpretation services
21 related to any independent medical examination. The interpreter shall be
22 selected by the employee or the employee's representative from the
23 interpreter register created in Rule 6-702 of the Nebraska Supreme Court
24 Rules.

25 (6) ~~(5)~~ The independent medical examiner shall submit a written
26 report to the compensation court, the employer, and the employee stating
27 the examiner's medical findings on the issues raised and providing a
28 description of findings sufficient to explain the basis of those
29 findings. The fee for the examination and report shall be paid by the
30 employer.

31 (7) ~~(6)~~ The written report of the independent medical examiner's

1 findings shall be admissible in a proceeding before the compensation
2 court and may be received into evidence by the compensation court on its
3 own motion.

4 (8) ~~(7)~~ Any physician acting without malice and within the scope of
5 the physician's duties as an independent medical examiner shall be immune
6 from civil liability for making any report or other information available
7 to the compensation court or for assisting in the origination,
8 investigation, or preparation of the report or other information so
9 provided.

10 Sec. 10. Original sections 48-120, 48-121, 48-121.01, 48-122,
11 48-122.01, 48-122.03, 48-126, 48-134, and 48-134.01, Reissue Revised
12 Statutes of Nebraska, are repealed.