

LEGISLATIVE BILL 1005

Approved by the Governor April 16, 1986

Introduced by Banking, Commerce & Insurance Committee,
DeCamp, 40, Chairperson; Haberman, 44;
Beyer, 3; Pappas, 42; Higgins, 9;
Schmit, 23

AN ACT relating to insurance; to amend sections 44-2824, 44-2825, 44-2827, 44-2829, 44-2832, and 44-2833, Reissue Revised Statutes of Nebraska, 1943; to change provisions relating to the Nebraska Hospital-Medical Liability Act, health care providers, claims, and liability limits; to provide for the legal defense of a fund; to provide operative dates; and to repeal the original sections.

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

Section 1. That section 44-2824, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-2824. (1) To be qualified under the Nebraska Hospital-Medical Liability Act, a health care provider or such health care provider's employer, employee, or partner shall:

(a) File with the director proof of financial responsibility, pursuant to section 44-2827, in the amount of ~~one~~ two hundred thousand dollars for each occurrence. In the case of physicians or nurse anesthetists and their employers, employees, or partners, an aggregate liability amount of ~~three~~ six hundred thousand dollars for all occurrences or claims made in any policy year for each named insured ~~may~~ shall be provided. In the case of hospitals and their employees, an aggregate liability amount of one million dollars for all occurrences or claims made in any policy year ~~may~~ shall be provided. Such policy may be written on either an occurrence or a claims-made basis. Such qualification shall remain effective only as long as insurance coverage as required remains effective; and

(b) Pay the surcharge and any special surcharge levied on all health care providers pursuant to sections 44-2829 to 44-2831.

(2) Subject to the requirements in subsection (4) of this section, the qualification of a health care provider shall be either on an occurrence or claims-made

basis and shall be the same as the insurance coverage provided by the insured's policy.

(3) The director shall have authority to permit qualification of health care providers who have retired or ceased doing business if such health care providers have primary insurance coverage under subsection (1) of this section.

(4) Any claim or cause of action against a health care provider shall be subject to the facts and circumstances relating to the health care provider's qualification under the Nebraska Hospital-Medical Liability Act in effect at the time of the occurrence of the alleged wrongful acts and shall not be affected by the fact that the health care provider was or was not qualified under the Nebraska Hospital-Medical Liability Act at the time the action was instituted. A health care provider who is not qualified under the act at the time of the alleged occurrence giving rise to a claim shall not, for purposes of that claim, qualify under the act notwithstanding subsequent filing of proof of financial responsibility and payment of a required surcharge.

(5) Qualification of a health care provider under the Nebraska Hospital-Medical Liability Act shall continue only as long as the health care provider meets the requirements for qualification. A health care provider who has once qualified under the Nebraska Hospital-Medical Liability Act and who fails to renew or continue his or her qualification in the manner provided by law and by the rules and regulations of the Department of Insurance shall cease to be qualified under such act.

Sec. 2. That section 44-2825, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-2825. (1) The total amount recoverable under the Nebraska Hospital-Medical Liability Act from any and all health care providers and the Excess Liability Fund for any occurrence resulting in any injury or death of a patient may not exceed five hundred thousand dollars for any occurrence on or before December 31, 1984, and one million dollars for any occurrence after December 31, 1984.

(2) A health care provider qualified under the Nebraska Hospital-Medical Liability Act shall not be liable to any patient or his or her representative who is covered by such act for an amount in excess of ~~one~~ two hundred thousand dollars for all claims or causes of action arising from any occurrence during the period

that the Nebraska Hospital-Medical Liability Act is effective with reference to such patient.

(3) Subject to the overall limits from all sources as provided in subsection (1) of this section, any amount due from a judgment or settlement which is in excess of the total liability of all liable health care providers shall be paid from the Excess Liability Fund pursuant to sections 44-2831 to 44-2833.

Sec. 3. That section 44-2827, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-2827. Financial responsibility of a health care provider may be established only by filing with the director proof that the health care provider is insured pursuant to sections 44-2837 to 44-2839 or by a policy of professional liability insurance in a company authorized to do business in Nebraska. Such insurance shall be in the amount of ~~one~~ two hundred thousand dollars per occurrence and, in cases involving physicians or nurse anesthetists, but not with respect to hospitals, an aggregate liability of at least ~~three~~ six hundred thousand dollars for all occurrences or claims made in any policy year ~~may~~ shall be provided. In the case of hospitals and their employees, an aggregate liability amount of one million dollars for all occurrences or claims made in any policy year ~~may~~ shall be provided. Such filing shall state the amount of the premium charged for the policy of insurance.

Sec. 4. That section 44-2829, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-2829. (1) There is hereby created an Excess Liability Fund to be collected and received by the director for the exclusive use and purposes stated in the Nebraska Hospital-Medical Liability Act. Such fund and any income from it shall be held by the State Treasurer in trust, deposited in a separate account, and invested and reinvested pursuant to law.

(2) To create the fund, an annual surcharge shall be levied on all health care providers in Nebraska who have qualified under sections 44-2824 and 44-2827. The surcharge for each health care provider shall be as determined by the director subject to the following limitations:

(a) The annual surcharge shall not exceed fifty per cent of the annual premium paid by such health care provider for maintenance of current financial responsibility as provided in sections 44-2827 and 44-2837 to 44-2839; and

(b) The charge shall not exceed the amount necessary to maintain the fund in the amount stated in section 44-2830.

(3) Such surcharge and any primary insurance premiums due under sections 44-2837 to 44-2839 shall be due and payable within thirty days after the health care provider has qualified in Nebraska pursuant to section 44-2824 and shall be payable annually thereafter in such amounts as may be determined by the director insofar as the surcharge is concerned and by the risk manager insofar as primary liability coverage is concerned.

(4) The net premiums payable for primary insurance provided by the risk manager pursuant to sections 44-2837 to 44-2839 shall be deposited in the fund at least annually by the risk manager.

(5) If the annual premium surcharge or premiums for primary insurance under sections 44-2837 to 44-2839 are not paid within the time specified in subsection (3) of this section, the qualification of the health care provider under section 44-2824 shall be suspended until the annual premiums are paid. Such suspension shall not be effective as to patients claiming against the health care provider unless, at least thirty days before the effective date of the suspension, a written notice giving the date upon which the suspension becomes effective has been provided by the director to the health care provider.

(6) The Director of Insurance, as administrator of the fund, shall be responsible for legal defense of the fund. The director, using money from the fund as deemed necessary, appropriate, or desirable, may purchase the services of persons, firms, and corporations to aid in protecting the fund against claims. The Department of Justice shall not be responsible for legal defense of the fund. All expenses of collecting, protecting, and administering the fund shall be paid from the fund.

Sec. 5. That section 44-2832, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-2832. (1) The Director of Administrative Services shall issue a warrant drawn on the fund in the amount of each claim submitted by the director. All claims against the fund shall be made on a voucher or other appropriate request by the director after he or she has received:

(a) A certified copy of a final judgment in excess of ~~one~~ two hundred thousand dollars against a health care provider and in excess of the amount

recoverable from all health care providers;

(b) A certified copy of a court-approved settlement in excess of ~~one~~ two hundred thousand dollars against a health care provider and in excess of the amount recoverable from all health care providers; or

(c) In case of claims based on primary insurance issued by the risk manager under sections 44-2837 to 44-2839, a certified copy of a final judgment or court-approved settlement requiring payment from the fund.

(2) The amount paid from the fund for excess liability when added to the payments by all health care providers may not exceed the maximum amount recoverable pursuant to subsection (1) of section 44-2825. The amount paid from the fund on account of a primary insurance policy issued by the risk manager to a health care provider under sections 44-2837 to 44-2839 may not exceed ~~one~~ two hundred thousand dollars for any one occurrence covered by such policy under any circumstances.

Sec. 6. That section 44-2833, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

44-2833. (1) If the insurer of a health care provider shall agree to settle its liability on a claim against its insured by payment of its policy limits of ~~one~~ two hundred thousand dollars and the claimant shall demand an amount in excess thereof for a complete and final release and if no other health care provider is involved, the procedures prescribed in this section shall be followed.

(2) A petition shall be filed by the claimant with the court in which the action is pending against the health care provider or, if no action is pending, in one of the district courts of the State of Nebraska, seeking approval of an agreed settlement, if any, or demanding payment of damages from the Excess Liability Fund.

(3) A copy of such petition shall be served on the director, the health care provider, and the health care provider's insurer and shall contain sufficient information to inform the parties concerning the nature of the claim and the additional amount demanded. The health care provider and his or her insurer shall have a right to intervene and participate in the proceedings.

(4) The director, with the consent of the health care provider, may agree to a settlement with the claimant from the Excess Liability Fund. Either the director or the health care provider may file written

objections to the payment of the amount demanded. The agreement or objections to the payment demanded shall be filed within twenty days after the petition is filed.

(5) After the petition, agreement, and objections, if any, have been filed, the judge of the court in which such petition is filed shall set the matter for trial as soon as practicable. The court shall give notice of the trial to the claimant, the health care provider, and the director.

(6) At the trial, the director, the claimant, and the health care provider may introduce relevant evidence to enable the court to determine whether or not the petition should be approved if it has been submitted on agreement without objections. If the director, the health care provider, and the claimant shall be unable to agree on the amount, if any, to be paid out of the Excess Liability Fund, the amount of claimant's damages, if any, in excess of the ~~one~~ two hundred thousand dollars already paid by the insurer of the health care provider shall be determined at trial.

(7) The court shall determine the amount for which the fund is liable and render a finding and judgment accordingly. In approving a settlement or determining the amount, if any, to be paid from the Excess Liability Fund in such a case, the court shall consider the liability of the health care provider as admitted and established by evidence.

(8) Any settlement approved by the court may not be appealed. Any judgment of the court fixing damages recoverable in any such contested proceeding shall be appealable pursuant to the rules governing appeals in any other civil case.

Sec. 7. Sections 1, 2, 3, 5, 6, and 8 of this act shall become operative on January 1, 1987. The remaining sections of this act shall become operative on their effective date.

Sec. 8. That original sections 44-2824, 44-2825, 44-2827, 44-2832, and 44-2833, Reissue Revised Statutes of Nebraska, 1943, are repealed.

Sec. 9. That original section 44-2829, Reissue Revised Statutes of Nebraska, 1943, is repealed.