

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1133

Introduced by Wayne, 13.

Read first time January 22, 2020

Committee: Judiciary

1 A BILL FOR AN ACT relating to the Nebraska Hospital-Medical Liability
2 Act; to amend sections 44-2824, 44-2827, 44-2830, 44-2831.01,
3 44-2832, and 44-2833, Reissue Revised Statutes of Nebraska, and
4 section 44-2825, Revised Statutes Cumulative Supplement, 2018; to
5 increase caps on medical malpractice liability; to change provisions
6 relating to proof of financial responsibility and the Excess
7 Liability Fund; to harmonize provisions; and to repeal the original
8 sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 44-2824, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 44-2824 (1) To be qualified under the Nebraska Hospital-Medical
4 Liability Act, a health care provider or such health care provider's
5 employer, employee, partner, or limited liability company member shall:

6 (a) File with the director proof of financial responsibility,
7 pursuant to section 44-2827 or 44-2827.01, in the amount of five million
8 ~~hundred thousand~~ dollars for each occurrence. In the case of physicians
9 or certified registered nurse anesthetists and their employers,
10 employees, partners, or limited liability company members an aggregate
11 liability amount of ten ~~one~~ million dollars for all occurrences or claims
12 made in any policy year for each named insured shall be provided. In the
13 case of hospitals and their employees, an aggregate liability amount of
14 thirty ~~three~~ million dollars for all occurrences or claims made in any
15 policy year or risk-loss trust year shall be provided. Such policy may be
16 written on either an occurrence or a claims-made basis. Any risk-loss
17 trust shall be established and maintained only on an occurrence basis.
18 Such qualification shall remain effective only as long as insurance
19 coverage or risk-loss trust coverage as required remains effective; and

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

22 (2) Subject to the requirements in subsections (1) and (4) of this
23 section, the qualification of a health care provider shall be either on
24 an occurrence or claims-made basis and shall be the same as the insurance
25 coverage provided by the insured's policy.

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

30 (4) A health care provider who is not qualified under the act at the
31 time of the alleged occurrence giving rise to a claim shall not, for

1 purposes of that claim, qualify under the act notwithstanding subsequent
2 filing of proof of financial responsibility and payment of a required
3 surcharge.

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

11 Sec. 2. Section 44-2825, Revised Statutes Cumulative Supplement,
12 2018, is amended to read:

13 44-2825 (1) The total amount recoverable under the Nebraska
14 Hospital-Medical Liability Act from any and all health care providers and
15 the Excess Liability Fund for any occurrence resulting in any injury or
16 death of a patient may not exceed (a) five hundred thousand dollars for
17 any occurrence on or before December 31, 1984, (b) one million dollars
18 for any occurrence after December 31, 1984, and on or before December 31,
19 1992, (c) one million two hundred fifty thousand dollars for any
20 occurrence after December 31, 1992, and on or before December 31, 2003,
21 (d) one million seven hundred fifty thousand dollars for any occurrence
22 after December 31, 2003, and on or before December 31, 2014, and (e) two
23 million two hundred fifty thousand dollars for any occurrence after
24 December 31, 2014, and (f) ten million dollars for any occurrence after
25 December 31, 2020.

26 (2) A health care provider qualified under the act shall not be
27 liable to any patient or his or her representative who is covered by the
28 act for an amount in excess of five million ~~hundred thousand~~ dollars for
29 all claims or causes of action arising from any occurrence during the
30 period that the act is effective with reference to such patient.

31 (3) Subject to the overall limits from all sources as provided in

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

5 Sec. 3. Section 44-2827, Reissue Revised Statutes of Nebraska, is
6 amended to read:

7 44-2827 Financial responsibility of a health care provider may be
8 established only by filing with the director proof that the health care
9 provider is insured pursuant to sections 44-2837 to 44-2839 or by a
10 policy of professional liability insurance in a company authorized to do
11 business in Nebraska. Such insurance shall be in the amount of five
12 million ~~hundred thousand~~ dollars per occurrence and, in cases involving
13 physicians or certified registered nurse anesthetists, but not with
14 respect to hospitals, an aggregate liability of at least ten ~~one~~ million
15 dollars for all occurrences or claims made in any policy year shall be
16 provided. In the case of hospitals and their employees, an aggregate
17 liability amount of thirty ~~three~~ million dollars for all occurrences or
18 claims made in any policy year shall be provided. The filing shall state
19 the premium charged for the policy of insurance.

20 Sec. 4. Section 44-2830, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 44-2830 If the fund shall exceed the sum of forty-five ~~four~~ million
23 ~~five hundred thousand~~ dollars at the end of any calendar year after the
24 payment of all claims and expenses and after adding all reversions to the
25 fund, and if no reinsurance is involved, the director shall reduce the
26 surcharge required by section 44-2829 in order to maintain the fund at an
27 approximate level of fifty ~~five~~ million dollars. Beginning on January 1,
28 1985, and on January 1 of each succeeding year, the director shall adjust
29 the amount of the surcharge to maintain the fund at a level which is
30 sufficient to pay all anticipated claims for the next year and to
31 maintain an adequate reserve for future claims. Prior to making such an

1 adjustment, the director shall conduct a public hearing concerning the
2 proposed adjustment and shall give due regard to the size of the existing
3 fund, the number and size of potential claims against the fund, the
4 number of participating providers, changes in the cost of living, and
5 sound actuarial principles. If the fund is reinsured, the director shall
6 determine a lesser level at which the fund shall be maintained because of
7 the reinsurance carried and may reduce the surcharge to provide for the
8 reinsurance and maintain the fund at the lesser level determined by him
9 or her to be reasonable under the circumstances.

10 Sec. 5. Section 44-2831.01, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 44-2831.01 (1)(a) ~~(1)~~ Any health care provider who has furnished
13 proof of financial responsibility prior to January 1, 2005, under
14 sections 44-2824 and 44-2827 shall be qualified under section 44-2824 for
15 the remainder of the policy year or risk-loss trust year.

16 (b) ~~(2)~~ The increases in coverage requirements made by Laws 2004, LB
17 998, in sections 44-2824 and 44-2827 shall apply to policies issued or
18 renewed and risk-loss trust years which commence after January 1, 2005.

19 (c) ~~(3)~~ The changes made to sections 44-2825, 44-2832, and 44-2833
20 by Laws 2004, LB 998, apply commencing with policies issued or renewed
21 and risk-loss trust years which commence after January 1, 2005.

22 (2)(a) Any health care provider who has furnished proof of financial
23 responsibility prior to January 1, 2020, under sections 44-2824 and
24 44-2827 shall be qualified under section 44-2824 for the remainder of the
25 policy year or risk-loss trust year.

26 (b) The increases in coverage requirements made by this legislative
27 bill, in sections 44-2824 and 44-2827 shall apply to policies issued or
28 renewed and risk-loss trust years which commence after January 1, 2020.

29 (c) The changes made to sections 44-2825, 44-2832, and 44-2833 by
30 this legislative bill, apply commencing with policies issued or renewed
31 and risk-loss trust years which commence after January 1, 2020.

1 Sec. 6. Section 44-2832, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 44-2832 (1) The Director of Administrative Services shall issue a
4 warrant drawn on the fund in the amount of each claim submitted by the
5 director. All claims against the fund shall be made on a voucher or other
6 appropriate request by the director after he or she has received:

7 (a) A certified copy of a final judgment in excess of five million
8 ~~hundred thousand~~ dollars against a health care provider and in excess of
9 the amount recoverable from all health care providers;

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

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

16 (2) The amount paid from the fund for excess liability when added to
17 the payments by all health care providers may not exceed the maximum
18 amount recoverable pursuant to subsection (1) of section 44-2825. The
19 amount paid from the fund on account of a primary insurance policy issued
20 by the risk manager to a health care provider under sections 44-2837 to
21 44-2839 may not exceed five million ~~hundred thousand~~ dollars for any one
22 occurrence covered by such policy under any circumstances.

23 Sec. 7. Section 44-2833, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 44-2833 (1) If the insurer of a health care provider shall agree to
26 settle its liability on a claim against its insured by payment of its
27 policy limits of five million ~~hundred thousand~~ dollars and the claimant
28 shall demand an amount in excess thereof for a complete and final release
29 and if no other health care provider is involved, the procedures
30 prescribed in this section shall be followed.

31 (2) A motion shall be filed by the claimant with the court in which

1 the action is pending against the health care provider or, if no action
2 is pending, the claimant shall file a complaint in one of the district
3 courts of the State of Nebraska, seeking approval of an agreed
4 settlement, if any, or demanding payment of damages from the Excess
5 Liability Fund.

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

12 (4) The director, with the consent of the health care provider, may
13 agree to a settlement with the claimant from the Excess Liability Fund.
14 Either the director or the health care provider may file written
15 objections to the payment of the amount demanded. The agreement or
16 objections to the payment demanded shall be filed within twenty days
17 after the motion or complaint is filed.

18 (5) After the motion or complaint, agreement, and objections, if
19 any, have been filed, the judge shall set the matter for trial as soon as
20 practicable. The court shall give notice of the trial to the claimant,
21 the health care provider, and the director.

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

31 (7) The court shall determine the amount for which the fund is

1 liable and render a finding and judgment accordingly. In approving a
2 settlement or determining the amount, if any, to be paid from the Excess
3 Liability Fund in such a case, the court shall consider the liability of
4 the health care provider as admitted and established by evidence.

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

9 Sec. 8. Original sections 44-2824, 44-2827, 44-2830, 44-2831.01,
10 44-2832, and 44-2833, Reissue Revised Statutes of Nebraska, and section
11 44-2825, Revised Statutes Cumulative Supplement, 2018, are repealed.