

E AND R AMENDMENTS TO LB68

Introduced by Ballard, 21, Chairman Enrollment and Review

1 1. Strike the original sections and all amendments thereto and
2 insert the following new sections:

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

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

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

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

25 (2) Subject to the requirements in subsections (1) and (4) of this
26 section, the qualification of a health care provider shall be either on
27 an occurrence or claims-made basis and shall be the same as the insurance

1 coverage provided by the insured's policy.

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

6 (4) A health care provider who is not qualified under the act at the
7 time of the alleged occurrence giving rise to a claim shall not, for
8 purposes of that claim, qualify under the act notwithstanding subsequent
9 filing of proof of financial responsibility and payment of a required
10 surcharge.

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

18 Sec. 2. Section 44-2825, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 44-2825 (1) The total amount recoverable under the Nebraska
21 Hospital-Medical Liability Act from any and all health care providers and
22 the Excess Liability Fund for any occurrence resulting in any injury or
23 death of a patient may not exceed (a) five hundred thousand dollars for
24 any occurrence on or before December 31, 1984, (b) one million dollars
25 for any occurrence after December 31, 1984, and on or before December 31,
26 1992, (c) one million two hundred fifty thousand dollars for any
27 occurrence after December 31, 1992, and on or before December 31, 2003,
28 (d) one million seven hundred fifty thousand dollars for any occurrence
29 after December 31, 2003, and on or before December 31, 2014, and (e) two
30 million two hundred fifty thousand dollars for any occurrence after
31 December 31, 2014.

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

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

12 (4) Nothing in the Nebraska Hospital-Medical Liability Act shall be
13 construed to require the Excess Liability Fund to serve as primary
14 coverage or to provide a defense for or on behalf of a qualified health
15 care provider for claims filed against such provider after such claims
16 have exhausted the provider's per incident or annual aggregate limit of
17 liability amount as set forth in sections 44-2824 and 44-2827, whether
18 paid by a professional liability insurer or directly by such provider.

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

21 44-2827 Financial responsibility of a health care provider may be
22 established only by filing with the director proof that the health care
23 provider is insured pursuant to sections 44-2837 to 44-2839 or by a
24 policy of professional liability insurance in a company authorized to do
25 business in Nebraska. Such insurance shall be in the amount of eight
26 hundred thousand ~~five hundred thousand~~ dollars per occurrence, ~~and, in~~
27 ~~cases involving physicians or certified registered nurse anesthetists,~~
28 ~~but not with respect to hospitals, an aggregate liability of at least one~~
29 ~~million dollars for all occurrences or claims made in any policy year~~
30 ~~shall be provided. In the case of hospitals and their employees, an~~
31 aggregate liability amount of three million dollars for all occurrences

1 or claims made in any policy year shall be provided. The filing shall
2 state the premium charged for the policy of insurance.

3 Sec. 4. Section 44-2831.01, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 44-2831.01 (1) Any health care provider who has furnished proof of
6 financial responsibility prior to January 1, 2025 ~~2005~~, under sections
7 44-2824 and 44-2827 shall be qualified under section 44-2824 for the
8 remainder of the policy year or risk-loss trust year.

9 (2) The increases in coverage requirements made by Laws 2004, LB
10 998, in sections 44-2824 and 44-2827 shall apply to policies issued or
11 renewed and risk-loss trust years that ~~which~~ commence after January 1,
12 2005, and before January 1, 2025.

13 (3) The changes made to sections 44-2825, 44-2832, and 44-2833 by
14 Laws 2004, LB 998, apply commencing with policies issued or renewed and
15 risk-loss trust years that ~~which~~ commence after January 1, 2005, and
16 before January 1, 2025.

17 (4) The increases in coverage requirements made by this legislative
18 bill in sections 44-2824 and 44-2827 shall apply to policies issued or
19 renewed and risk-loss trust years that commence on or after January 1,
20 2025.

21 (5) The changes made to sections 44-2825, 44-2832, and 44-2833 by
22 this legislative bill apply commencing with policies issued or renewed
23 and risk-loss trust years that commence on or after January 1, 2025.

24 Sec. 5. Section 44-2832, Reissue Revised Statutes of Nebraska, is
25 amended to read:

26 44-2832 (1) The Director of Administrative Services shall issue a
27 warrant drawn on the fund in the amount of each claim submitted by the
28 director. All claims against the fund shall be made on a voucher or other
29 appropriate request by the director after he or she has received:

30 (a) A certified copy of a final judgment in excess of eight hundred
31 thousand ~~five hundred thousand~~ dollars against a health care provider and

1 in excess of the amount recoverable from all health care providers;

2 (b) A certified copy of a court-approved settlement in excess of
3 eight hundred thousand ~~five hundred thousand~~ dollars against a health
4 care provider and in excess of the amount recoverable from all health
5 care providers; or

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

9 (2) The amount paid from the fund for excess liability when added to
10 the payments by all health care providers may not exceed the maximum
11 amount recoverable pursuant to subsection (1) of section 44-2825. The
12 amount paid from the fund on account of a primary insurance policy issued
13 by the risk manager to a health care provider under sections 44-2837 to
14 44-2839 may not exceed eight hundred thousand ~~five hundred thousand~~
15 dollars for any one occurrence covered by such policy under any
16 circumstances.

17 Sec. 6. Section 44-2833, Reissue Revised Statutes of Nebraska, is
18 amended to read:

19 44-2833 (1) If the insurer of a health care provider shall agree to
20 settle its liability on a claim against its insured by payment of its
21 policy limits of eight hundred thousand ~~five hundred thousand~~ dollars and
22 the claimant shall demand an amount in excess thereof for a complete and
23 final release and if no other health care provider is involved, the
24 procedures prescribed in this section shall be followed.

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

31 (3) A copy of such motion or complaint shall be served on the

1 director, the health care provider, and the health care provider's
2 insurer and shall contain sufficient information to inform the parties
3 concerning the nature of the claim and the additional amount demanded.
4 The health care provider and his or her insurer shall have a right to
5 intervene and participate in the proceedings.

6 (4) The director, with the consent of the health care provider, may
7 agree to a settlement with the claimant from the Excess Liability Fund.
8 Either the director or the health care provider may file written
9 objections to the payment of the amount demanded. The agreement or
10 objections to the payment demanded shall be filed within twenty days
11 after the motion or complaint is filed.

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

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

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

30 (8) Any settlement approved by the court may not be appealed. Any
31 judgment of the court fixing damages recoverable in any such contested

1 proceeding shall be appealable pursuant to the rules governing appeals in
2 any other civil case.

3 Sec. 7. This act becomes operative on January 1, 2025.

4 Sec. 8. Original sections 44-2824, 44-2825, 44-2827, 44-2831.01,
5 44-2832, and 44-2833, Reissue Revised Statutes of Nebraska, are repealed.