

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 68

Introduced by Slama, 1.

Read first time January 05, 2023

Committee: Banking, Commerce and Insurance

1 A BILL FOR AN ACT relating to the Nebraska Hospital-Medical Liability
2 Act; to amend sections 44-2824, 44-2825, 44-2827, 44-2831.01,
3 44-2832, and 44-2833, Reissue Revised Statutes of Nebraska; to
4 increase limits on and change provisions relating to medical
5 malpractice liability; to change provisions relating to proof of
6 financial responsibility and the Excess Liability Fund; to provide
7 for applicability; to harmonize provisions; to provide an operative
8 date; and to repeal the original 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 one million
8 ~~five hundred thousand~~ dollars for each occurrence. ~~An~~ ~~In the case of~~
9 ~~physicians or certified registered nurse anesthetists and their~~
10 ~~employers, employees, partners, or limited liability company members an~~
11 aggregate liability amount of three ~~one~~ million dollars for all
12 occurrences or claims made in any policy year or risk-loss trust year for
13 each named insured shall be provided. ~~In the case of hospitals and their~~
14 ~~employees, an aggregate liability amount of three million dollars for all~~
15 ~~occurrences or claims made in any policy year or risk-loss trust year~~
16 ~~shall be provided.~~ Such policy may be written on either an occurrence or
17 a claims-made basis. Any risk-loss trust shall be established and
18 maintained only on an occurrence basis. Such qualification shall remain
19 effective only as long as insurance coverage or risk-loss trust coverage
20 as required remains effective; and

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

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

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

31 (4) A health care provider who is not qualified under the act at the

1 time of the alleged occurrence giving rise to a claim shall not, for
2 purposes of that claim, qualify under the act notwithstanding subsequent
3 filing of proof of financial responsibility and payment of a required
4 surcharge.

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

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

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

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 one million ~~five hundred thousand~~ dollars
29 for 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 one
12 million ~~five hundred thousand~~ dollars per occurrence and, ~~in cases~~
13 ~~involving physicians or certified registered nurse anesthetists, but not~~
14 ~~with respect to hospitals, an aggregate liability of at least 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 three million dollars for all occurrences or claims
18 made in any policy year shall be provided. The filing shall state the
19 premium charged for the policy of insurance.

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

22 44-2831.01 (1) Any health care provider who has furnished proof of
23 financial responsibility prior to January 1, 2024 ~~2005~~, under sections
24 44-2824 and 44-2827 shall be qualified under section 44-2824 for the
25 remainder of the policy year or risk-loss trust year.

26 (2) The increases in coverage requirements made by Laws 2004, LB
27 998, in sections 44-2824 and 44-2827 shall apply to policies issued or
28 renewed and risk-loss trust years that ~~which~~ commence after January 1,
29 2005, and before January 1, 2024.

30 (3) The changes made to sections 44-2825, 44-2832, and 44-2833 by
31 Laws 2004, LB 998, apply commencing with policies issued or renewed and

1 risk-loss trust years ~~that which~~ commence after January 1, 2005, and
2 before January 1, 2024.

3 (4) The increases in coverage requirements made by this legislative
4 bill in sections 44-2824 and 44-2827 shall apply to policies issued or
5 renewed and risk-loss trust years that commence on or after January 1,
6 2024.

7 (5) The changes made to sections 44-2825, 44-2832, and 44-2833 by
8 this legislative bill apply commencing with policies issued or renewed
9 and risk-loss trust years that commence on or after January 1, 2024.

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

12 44-2832 (1) The Director of Administrative Services shall issue a
13 warrant drawn on the fund in the amount of each claim submitted by the
14 director. All claims against the fund shall be made on a voucher or other
15 appropriate request by the director after he or she has received:

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

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

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

25 (2) The amount paid from the fund for excess liability when added to
26 the payments by all health care providers may not exceed the maximum
27 amount recoverable pursuant to subsection (1) of section 44-2825. The
28 amount paid from the fund on account of a primary insurance policy issued
29 by the risk manager to a health care provider under sections 44-2837 to
30 44-2839 may not exceed one million ~~five hundred thousand~~ dollars for any
31 one occurrence covered by such policy under any circumstances.

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

3 44-2833 (1) If the insurer of a health care provider shall agree to
4 settle its liability on a claim against its insured by payment of its
5 policy limits of one million ~~five hundred thousand~~ dollars and the
6 claimant shall demand an amount in excess thereof for a complete and
7 final release and if no other health care provider is involved, the
8 procedures prescribed in this section shall be followed.

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

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

21 (4) The director, with the consent of the health care provider, may
22 agree to a settlement with the claimant from the Excess Liability Fund.
23 Either the director or the health care provider may file written
24 objections to the payment of the amount demanded. The agreement or
25 objections to the payment demanded shall be filed within twenty days
26 after the motion or complaint is filed.

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

31 (6) At the trial, the director, the claimant, and the health care

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

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

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

18 Sec. 7. This act becomes operative on January 1, 2024.

19 Sec. 8. Original sections 44-2824, 44-2825, 44-2827, 44-2831.01,
20 44-2832, and 44-2833, Reissue Revised Statutes of Nebraska, are repealed.