

LEGISLATURE OF NEBRASKA
NINETY-EIGHTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 146

Introduced by D. Pederson, 42

Read first time January 10, 2003

Committee: Judiciary

A BILL

1 FOR AN ACT relating to the Nebraska Hospital-Medical Liability Act;
2 to amend section 44-2829, Reissue Revised Statutes of
3 Nebraska, and sections 44-2840 and 44-2842, Revised
4 Statutes Supplement, 2002; to change provisions relating
5 to surcharges, notice, and termination of proceedings;
6 and to repeal the original sections.
7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 44-2829, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 44-2829. (1) There is hereby created an Excess Liability
4 Fund to be collected and received by the director for the exclusive
5 use and purposes stated in the Nebraska Hospital-Medical Liability
6 Act. Such fund and any income from it shall be held by the State
7 Treasurer in trust, deposited in a separate account, and invested
8 and reinvested pursuant to law.

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

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

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

20 (3) Such surcharge and any primary insurance premiums due
21 under sections 44-2837 to 44-2839 shall be due and payable within
22 thirty days after the health care provider has qualified in
23 Nebraska pursuant to section 44-2824 and shall be payable annually
24 thereafter in such amounts as may be determined by the director
25 insofar as the surcharge is concerned and by the risk manager
26 insofar as primary liability coverage is concerned. The insurer
27 which provides professional liability insurance to the provider
28 shall collect the surcharge from the health care provider and remit

1 it to the fund within thirty days after receipt.

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

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

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

24 Sec. 2. Section 44-2840, Revised Statutes Supplement,
25 2002, is amended to read:

26 44-2840. (1) Provision is hereby made for the
27 establishment of medical review panels to review all malpractice
28 claims against health care providers covered by the Nebraska

1 Hospital-Medical Liability Act in advance of filing such actions.

2 (2) No action against a health care provider may be
3 commenced in any court of this state before the claimant's proposed
4 complaint has been presented to a medical review panel established
5 pursuant to section 44-2841 and an opinion has been rendered by the
6 panel.

7 (3) The proceedings for action by the medical review
8 panel shall be initiated by the patient or his or her
9 representative by notice in writing with copy of a proposed
10 complaint served upon the director personally or by registered or
11 certified mail. Such notice shall designate the claimant's choice
12 of the physician to serve on the panel, claimant's suggestion of an
13 attorney to serve, and the court where the action shall be filed,
14 if necessary.

15 (4) The claimant may affirmatively waive his or her right
16 to a panel review, and in such case the claimant may proceed to
17 file his or her action directly in court. If the claimant waives
18 the panel review, the claimant shall serve a copy of the complaint
19 upon the director personally or by registered or certified mail at
20 the time the action is filed in court.

21 ~~(5) The exercise of the waiver authorized by this section~~
22 ~~shall not be subject to attack for the sole reason that the~~
23 ~~claimant served the director with the notice prescribed by~~
24 ~~subsection (3) of this section prior to July 10, 1984, if the~~
25 ~~requirements of sections 44-2840 to 44-2847 have not been fulfilled~~
26 ~~on such date.~~

27 Sec. 3. Section 44-2842, Revised Statutes Supplement,
28 2002, is amended to read:

1 44-2842. (1) The evidence to be considered by the
2 medical review panel shall be promptly submitted by the respective
3 parties in written form only. If any party to the proceedings
4 fails to submit his or her evidence within a reasonable time after
5 notice from the panel requesting such evidence, the panel may
6 proceed to decide the matter on the evidence previously submitted.
7 The determination of reasonable time shall be made by the panel.
8 The evidence submitted may consist of medical charts, X-rays,
9 laboratory test results, excerpts of treatises, depositions of
10 witnesses including parties, and any other form of evidence
11 allowable by the medical review panel.

12 (2) Depositions of parties and witnesses may be taken
13 prior to the convening of the panel and prior to the commencement
14 of the action, but in such event the attorney for the medical care
15 provider shall be furnished with a copy of the complaint which the
16 claimant proposes to file at least ten days before any deposition
17 is taken. The patient shall have the right to request and receive
18 all medical and hospital records relating to his or her case which
19 would be admissible in evidence in a court of law. The chairperson
20 of the panel shall advise the panel relative to any legal question
21 involved in the review proceeding and shall prepare the opinion of
22 the panel. A copy of the evidence shall be sent to each member of
23 the panel.

24 (3) Either party, after submission of all evidence and
25 upon ten days' notice to the other side, shall have the right to
26 convene the panel at a time and place agreeable to the members of
27 the panel. At such time either party shall have the right to
28 present argument concerning any matters relevant to issues to be

1 decided by the panel before the issuance of its report. The
2 chairperson of the panel shall preside at all meetings, which
3 meetings shall be informal.

4 (4) If the members of the medical review panel have not
5 convened within six months of the initiation of the proceeding, the
6 judge shall ~~have authority to order the panel to convene~~ terminate
7 the proceeding at the request of either party.

8 Sec. 4. Original section 44-2829, Reissue Revised
9 Statutes of Nebraska, and sections 44-2840 and 44-2842, Revised
10 Statutes Supplement, 2002, are repealed.