

LEGISLATURE OF NEBRASKA  
NINETY-EIGHTH LEGISLATURE  
SECOND SESSION  
**LEGISLATIVE BILL 998**

Introduced by D. Pederson, 42; Brown, 6; Combs, 32; Engel, 17;  
Johnson, 37

Read first time January 12, 2004

Committee: Judiciary

A BILL

1 FOR AN ACT relating to the Nebraska Hospital-Medical Liability Act;  
2 to amend section 44-2824, Reissue Revised Statutes of  
3 Nebraska, and sections 44-2827, 44-2829, and 44-2831,  
4 Revised Statutes Supplement, 2003; to change financial  
5 responsibility requirements as prescribed; to change  
6 surcharge provisions; and to repeal the original  
7 sections.

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

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

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

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

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

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

1 policy.

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

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

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

19 Sec. 2. Section 44-2827, Revised Statutes Supplement,  
20 2003, is amended to read:

21 44-2827. ~~(1)~~ Financial responsibility of a health care  
22 provider may be established only by filing with the director proof  
23 that the health care provider is insured pursuant to sections  
24 44-2837 to 44-2839 or by a policy of professional liability  
25 insurance in a company authorized to do business in Nebraska. Such  
26 insurance shall be in the amount of ~~two~~ five hundred thousand  
27 dollars per occurrence and, in cases involving physicians or nurse  
28 anesthetists, but not with respect to hospitals, an aggregate

1 liability of at least ~~six hundred thousand~~ one million dollars for  
2 all occurrences or claims made in any policy year shall be  
3 provided. In the case of hospitals and their employees, an  
4 aggregate liability amount of ~~one~~ three million dollars for all  
5 occurrences or claims made in any policy year shall be provided.

6 ~~(2) The filing required in subsection (1) of this section~~  
7 ~~shall be made by the insurer providing the professional liability~~  
8 ~~insurance to the health care provider and shall include the~~  
9 ~~following information:~~

10 ~~(a) Name of the health care provider;~~

11 ~~(b) Address of the health care provider;~~

12 ~~(c) Whether the coverage is on an occurrence basis or a~~  
13 ~~claims-made basis or whether the coverage is a reporting~~  
14 ~~endorsement that covers for future reports of past occurrences;~~

15 ~~(d) Coverage dates applying to the insurance;~~

16 ~~(e) Requested effective dates of qualification;~~

17 ~~(f) Premium paid by the health care provider for the~~  
18 ~~underlying insurance coverage necessary to qualify;~~

19 ~~(g) Surcharge paid by the health care provider pursuant~~  
20 ~~to sections 44-2829 to 44-2831; and~~

21 ~~(h) Any other information required by the director.~~

22 ~~(3) The information reported to the director under~~  
23 ~~subsection (2) of this section shall not be subject to public~~  
24 ~~disclosure, except that in response to a request regarding a~~  
25 ~~specific health care provider for a specific date or range of~~  
26 ~~dates, the director shall disclose whether the health care provider~~  
27 ~~is qualified under the Nebraska Hospital-Medical Liability Act.~~

28 ~~(4) The director shall adopt and promulgate notice~~

1 ~~requirements for insurers to use in notifying policyholders of~~  
2 ~~their eligibility and the cost for qualification under the act.~~  
3 The filing shall state the premium charged for the policy of  
4 insurance.

5           Sec. 3.     Section 44-2829, Revised Statutes Supplement,  
6 2003, is amended to read:

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

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

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

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

24           (3) Such surcharge and any primary insurance premiums due  
25 under sections 44-2837 to 44-2839 shall be due and payable within  
26 thirty days after the health care provider has qualified in  
27 Nebraska pursuant to section 44-2824 and shall be payable annually  
28 thereafter in such amounts as may be determined by the director

1 insofar as the surcharge is concerned and by the risk manager  
2 insofar as primary liability coverage is concerned. ~~The insurer~~  
3 ~~which provides professional liability insurance to the health care~~  
4 ~~provider shall collect the surcharge from the provider and remit it~~  
5 ~~to the Department of Insurance for credit to the fund within thirty~~  
6 ~~days after receipt.~~

7 (4) The net premiums payable for primary insurance  
8 provided by the risk manager pursuant to sections 44-2837 to  
9 44-2839 shall be deposited in the fund at least annually by the  
10 risk manager.

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

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

1                   Sec. 4.    Section 44-2831, Revised Statutes Supplement,  
2    2003, is amended to read:

3                   44-2831.   (1) The director may, at any time, analyze the  
4    fund to determine if the amount in such fund is inadequate to pay  
5    in full all claims allowed or to be allowed during the calendar  
6    year. Upon such determination, the director shall have the power  
7    to levy a special surcharge on all health care providers who have  
8    qualified under the Nebraska Hospital-Medical Liability Act, which  
9    special surcharge shall be an amount sufficient to permit full  
10   payment of all claims allowed against the fund during a calendar  
11   year. The special surcharge shall be levied against all health  
12   care providers who have qualified under the Nebraska  
13   Hospital-Medical Liability Act on the date of the special surcharge  
14   or at any time during the preceding twelve months and shall be in  
15   an amount proportionate to the surcharge each health care provider  
16   has paid to the fund. Such special surcharge shall be due and  
17   payable within thirty days after the same is levied. ~~Such special~~  
18   ~~surcharge shall be collected by the health care provider's current~~  
19   ~~insurer if the health care provider is currently qualified or by~~  
20   ~~the health care provider's most recent insurer that provided~~  
21   ~~qualifying underlying coverage if the health care provider is no~~  
22   ~~longer qualified.~~

23                   (2) The director shall have authority to cause all or any  
24    part of the potential liability of the Excess Liability Fund to be  
25    reinsured, if such reinsurance is available, on a fair and  
26    reasonable basis. The cost of such reinsurance shall be paid by  
27    the fund and the fact of the reinsurance shall be taken into  
28    account in determining the surcharge as provided in sections

1 44-2829 and 44-2830, but in no event shall the surcharge exceed  
2 fifty percent of the annual premium paid by a health care provider  
3 for maintenance of current financial responsibility.

4           Sec. 5.     Original section 44-2824, Reissue Revised  
5 Statutes of Nebraska, and sections 44-2827, 44-2829, and 44-2831,  
6 Revised Statutes Supplement, 2003, are repealed.