BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

IN THE MATTER OF THE NEBRASKA HOSPITAL-MEDICAL LIABILITY ACT SURCHARGE FOR 2019	)))	SURCHARGE DETERMINATION FOR THE YEAR 2019

The Nebraska Department of Insurance, via it's appointed hearing officer Robert E. Harkins, conducted a public hearing on November 8, 2018, as required by Neb. Rev. Stat. § 44-2830, to consider adjusting the amount of the surcharge for the year 2019. Pursuant to § 44-2830, the Director is to adjust the amount of the surcharge provided for under § 44-2829 on January 1 of each succeeding year to maintain the Excess Liability Fund at a level which is sufficient to pay all anticipated claims for the next year and to maintain an adequate reserve for future claims. On the basis of the public hearing giving due regard to the size of the existing Fund, the number and size of potential claims against the Fund, the number of participating providers, change in the cost of living, and sound actuarial principles, I recommend to the Director, as the Administrator of the Excess Liability Fund, that he sets the surcharge for the year 2019, effective January 1, 2019, at forty-five percent (45%) for all health care providers.

Dated this 8th day of November, 2018.

Robert E. Harkins

ROBERT E. HARKINS
HEARING OFFICER

I, Bruce R. Ramge, Director of the Nebraska Department of Insurance and Administrator for the Excess Liability Fund, agree to the recommendation of the hearing officer and hereby adopt his findings and set the surcharge for the year 2019, effective January 1, 2019, at forty-five percent (45%) for all health care providers.

Dated this 8 day of November, 2018.

Bruce R Ramge

BRUCE R. RAMGE
Director of Insurance for the State of Nebraska and Administrator of the Excess Liability Fund

Nebraska Department of Insurance
Medical-Hospital Excess Liability Fund

2018 Surcharge Rate Hearing – Actuarial Testimony
Thursday, November 8, 2018

I am Gordon Hay, Senior Casualty Actuarial Examiner within the Department. I am a Fellow of the Casualty Actuarial Society, Member of the American Academy of Actuaries, and Chartered Property and Casualty Underwriter. I am qualified by education and experience to make and review rates for property/casualty insurance products, including the surcharge rate for the Excess Liability Fund (the Fund).

The surcharge rate is 40% for 2018. I recommend an increase, to 45% for 2019. My actuarially indicated rate for 2019 is 53.2%, similar to last year's 52%. The Year-to-date 2018 loss ratio is down from recent full report years, but severity trend and reinsurance cost continue to push the Fund's costs upward.

From the 2013 to 2016 hearings, I argued that expected annual revenue shortfalls between $0.6 Million and 2.4 Million (combined 2014-2017 near $6.5 Million) were mitigated by the Fund's current size combined with its potential for capital gains. In the 2017 hearing, we observed more numerous new claims, and higher (less sustainable) operating losses. Despite an improvement in Year-to-date 2018, the multi-year operating summary as of June 2018 is not materially better:

The Fund's Recent Actual Costs exceeded the Fund's Revenue -- Exhibit II, Col. (18):

- Exhibit II shows underwriting costs under the current $500,000 underlying limit per occurrence, with totals for the most recent 4.5 years.
- Column (18) shows recent years' operating ratios. Costs in Col's. (6) and (10), minus investment income in Col. (14), are compared to Fund earned premium, now net of reinsurance, in Col. (17).
- Surcharge rates increased incrementally from 18% in 2013-2014 to 22% in 2016. The increase to 26% in 2017 was to offset reinsurance cost. The increase to 40% in 2018 was due to deteriorating operating results. Year-to-date 2018 produced an estimated 1.1% operating gain, but poor 2014-2017 results still drove a 4.5 year operating ratio of 179%. This is slightly better than 184% last year, from report years 2013 through June 2017.
- The Fund's estimated operating deficits by report year are $4.2 Million in 2014, $2.3 Million in 2015, $4.8 Million in 2016 and $4.4 Million in 2017. The early estimate for YTD 2018 is a $0.8 Million operating profit, but the 4.5 year total is a $15 Million loss. Similar numbers last year caused us to raise the surcharge rate from 26% to 40%.

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Indicated Surcharge Rate -- Exhibit II, Col. (16):

- To test the prospective adequacy of the current 40% surcharge rate, I estimated the Fund's expected costs for 2019 as a percent of the underlying primary earned premium. Col. (5) shows underlying primary earned premium.
- In Column (8) note that the annual rate of change in severity is 6%, versus 5% last year.
- After 1/1/2015, the per-occurrence cap increased from $1.75 Million to $2.25 Million, causing an estimated 8.1% increase in the cost of Excess Fund coverage. The new cap applied to occurrences beginning 1/1/2015.
- The reinsurance cost in column (11) is due to our Common Loss treaty covering $20 Million excess of a retained $4.5 Million per common loss. A common loss is a catastrophic mass tort with at least two plaintiffs and with costs to the Fund exceeding $4.5 Million. This treaty is subject to renegotiation at each January 1 renewal date, and at January 1, 2018 the annual premium increased from $800,000 to $900,000.
- Column (16) shows my 2019 forecast for the Fund's costs, net of investment income, is 53.2% of underlying primary premium. My 2015, 2016 and 2017 forecasts were respectively 28.8%, 30.0% and 52.0%.
- The projected underwriting ratios in Column (16) for 2016-2017 developed favorably since June 2017. The full year 2018 will provide some relief, if the second half is good and the 32.3% Year-to-date 2018 ratio does not develop adversely.

Closed Claims and Closed Claim Severity Trend -- Exhibit III:

- The first graph shows that closed claim counts since 2000 would have been more stable if the current underlying $500,000 per occurrence requirement applied from the Fund's inception – especially, almost all the mass tort claims reported in 2002 and closed in 2005 were smaller than the new threshold. At the current $500,000 threshold, we should expect between 10 and 20 Fund cases annually to close with payment.
- The second graph shows average closed-with-payment severities for calendar years 2000-2017. The actual history (simple line) is comparable to values adjusted to reflect the current $500,000 threshold (dashes). My 6.0% annual severity trend selection is an amount that roughly accounts for the "slope" over time in the adjusted averages.
- This 6.0% trend contributes to the indicated surcharge rate – see Exhibit II Col. (8).

The Size of the Existing Fund:

- The Fund's operating reserve is about $17 Million lower than it was at June, 2015. In some detail, assets at 6/30/2015 were $93.99 Million, estimated liabilities were $20.46 Million and the operating reserve was $73.53 Million. At 6/30/2016 the Fund's assets were $90.40 Million, estimated liabilities were $20.53 Million and the operating reserve was $69.87 Million. At 6/30/2017, assets were $92.3 Million and estimated liabilities were $35.4 Million, so the operating reserve decreased to $56.9 Million. At 6/30/2018, assets were $87.04 Million and estimated liabilities were $29.89 Million, so the operating reserve, at $57.15 Million, is similar to June 2017. Of the $17 Million total decrease, $13 Million happened in the fiscal year ending June, 2017.

- The Fund invests in long-term bonds. Realized and unrealized gains/losses were relatively insignificant prior to 2008, when a $3.0 Million loss was followed by gains totaling $18.4 Million through 2012 -- Exhibit II Column (13). 2013 generated a $1.7 Million capital loss. 2014 brought a $2.5 Million gain, 2015 a 0.5 Million loss, 2016 a $2.2 Million gain and 2017 a $53 Thousand loss. YTD June 2018 brought a 1.19 Million gain. Generally, bonds' market value rose as interest rates decreased since the 2008 crisis through 2012, but realized gains are variable, and not recently a large contributor to the Fund's financial strength. As always, future interest rates are relevant, but unpredictable.
- Investment income was fairly steady, between $1.5 Million and $1.7 Million annually, in the 2013-2016 period, but dropped to $1.25 Million in 2017.
- To the nearest million, I expect $20 Million of 2019 underlying annual premium, which is down from previous years, but similar to 2017. Contributing factors are a highly competitive market for primary coverage and continuing consolidation among health care providers.

Number of Participating Providers – Exhibit IV:

- The residual market wrote 1 provider in YTD 2018, 9 in 2017, 12 in 2016, 16 in 2015, 20 in 2014 and 16 in 2013. Small numbers are evidence of a competitive voluntary market.
- The numbers of providers participating in the Excess Fund grew from 2010, when the surcharge rate was 35%, through 2014 when the surcharge rate was 18%. The 20% rate in 2011-12 and 18% rate in 2013-14 appear to have encouraged participation, but most of the 2013 increase is due to refined recording of hospitals premium transaction details. With the surcharge rate at 20% in 2015, the number of participants was down 7%. The 2016 surcharge rate was 22%, and participation dropped less than 1%. The 2017 surcharge rate was 26%, and participating providers actually increased 5%.

Summary and Recommendation:

Assuming 2019 underlying earned premium near $20 Million, the Fund's expected costs net of investment income are 53.2% of that, or $10.64 Million. This excludes any provision for risk or profit to the Fund, future interest rate increases, faster decline in primary premium volume if the primary market softens further, or increased pressure on the health care system due to the Affordable Care Act and Medicaid Expansion. The Fund's reinsurance for catastrophic mass torts costs $900,000 in 2018, subject to renegotiation on renewal at January 1, 2019.

At the proposed 45% rate, I expect the Fund to generate $9.0 Million revenue, about 15% less than the Fund's expected $10.6 Million net costs. So, despite the rate increase, I still expect a $1.6 Million operating deficit for 2019.

I foresaw no need for the Fund to recoup actual 2013, 2014 or 2015 deficits, but I was concerned about the $13 Million drawdown in the Fund's operating balance from July 1, 2016 to June 30, 2017. The $57.2 operating balance is materially unchanged since June 2016. The next opportunity to review the surcharge rate will be third quarter, 2019. With continuing pressure evident from claim severity and the 2018 reinsurance cost increase, I recommend increasing the surcharge rate to 45%.

Nebraska Department of Insurance
Nebraska Medical-Hospital Liability Act
Historical Costs to the Fund (000's)
With Forecast for 2019 Based on Data as of 6/30/2018

	Excess Fund and Underlying Primary Premium					Fund Costs Net of Investment Income Related to Underlying Primary Earned Premium													Fund Claims Made Net Operating Ratio	
	Direct Written Premium			Direct Earned Premium		Projected Underwriting Cost Ratio							Investment Income Considered							
Report Year	Excess Fund Claims Made Written Premium	Historical Surcharge Factor	Underlying Primary Claims Made Written Premium	Earned Premium at Actual Surcharge Rate	Estimated Underlying Primary Earned Premium	Report Year Ultimate Loss and ALAE (Claims Made, Net of Reins)	Ratio to Underlying Direct Earned Premium	With 6% Annual Severity Trend, to 2019	Cost of Increasing Cap from $1.75M to $2.25M Effective 1/1/2015	Admin-istrative Expenses	Reins-urance Cost (See Note)	Projected Under-writing Cost Ratio	Investment Activity Total	Realized & Unrealized Gain/Loss on Long-Term Investments	Investment Income (Minus Investment Expenses)	Ratio to Primary Earned Premium	Projected Underwriting Cost Ratio Minus Investment Income Ratio	Fund's Claims Made Net Earned Premium	Operating Ratio = [Fund Costs minus Investment Income] / [Net Earned Premium]
	(1)	(2)	(3) = (1) / (2)	(4)	(5)	(6)	(7) = (6) / (5)	(8)	(9) 8.1% from Study as of June 2013	(10)	(11)	(12) = [(8) + (9) + (10) + (11)] / (5)	(12)	(13)	(14) = (12) - (13)	(15) = (14) / (5)	(16) = (11) - (15)	(17)	(18) = [(6) + (10) - (14)] / (17)
2001	2,943	20%	14,713																
2002	5,357	35%	15,305	4,214	14,256	13,069	91.7%												
2003	8,867	50%	17,733	6,919	15,442	6,767	43.8%												
2004	9,287	50%	18,575	9,321	17,951	8,002	44.6%	18,628		399									
2005	11,692	50%	23,384	10,679	19,508	12,163	62.3%	26,714		398			3,699	854	2,845	14.6%			
2006	11,326	45%	25,170	11,461	22,784	11,100	48.7%	23,000	1,863	490	900	115.2%	2,593	(519)	3,112	13.7%	101.6%	11,461	74.0%
2007	10,040	40%	25,101	10,513	23,914	7,276	30.4%	14,221	1,152	352	900	69.5%	2,581	674	1,907	8.0%	61.5%	10,513	54.4%
2008	8,534	35%	24,384	9,446	24,145	3,870	16.0%	7,137	578	289	900	36.9%	(498)	(3,023)	2,525	10.5%	26.4%	9,446	17.3%
2009	8,706	35%	24,874	8,638	23,268	4,574	19.7%	4,574	371	280	900	26.3%	9,682	7,832	1,850	8.0%	18.4%	8,638	34.8%
2010	8,890	35%	25,401	8,783	24,008	5,620	23.4%	9,777	792	302	900	49.0%	8,341	5,754	2,587	10.8%	38.3%	8,783	38.0%
2011	4,961	20%	24,807	6,878	23,854	9,818	41.2%	16,114	1,305	216	900	77.7%	2,868	910	1,959	8.2%	69.5%	6,878	117.4%
2012	4,880	20%	24,402	4,917	22,552	5,346	23.7%	8,277	670	180	900	44.5%	5,961	3,866	2,095	9.3%	35.2%	4,917	69.8%
2013	4,560	18%	25,335	4,627	21,973	6,942	31.6%	10,140	821	258	900	55.2%	7	(1,674)	1,682	7.7%	47.5%	4,627	119.3%
2014	4,340	18%	24,110	4,338	22,340	9,848	**44.1%**	13,572	1,099	262	900	70.9%	4,032	2,460	1,572	7.0%	**63.8%**	4,338	**196.8%**
2015	4,352	20%	21,761	4,408	21,925	8,009	**36.5%**	10,412	506	390	900	55.7%	1,186	(481)	1,668	7.6%	**48.1%**	4,408	**152.7%**
2016	4,737	22%	21,531	4,414	19,738	9,633	**48.8%**	11,814	-	377	900	66.3%	3,742	2,247	1,496	7.6%	**58.7%**	3,721	**228.8%**
2017	5,269	26%	20,264	4,985	19,882	9,397	**47.3%**	10,872	-	428	900	61.4%	1,193	(53)	1,246	6.3%	**55.1%**	4,105	**209.0%**
2018	2,985	40%	7,462	2,895	9,436	2,383	**25.3%**	2,639	-	227	450	35.1%	(167)	(1,188)	1,021	10.8%	**24.3%**	2,365	**67.2%**
4.5 Yrs	21,682		95,126	21,041	93,320	39,270	**42.1%**	49,308	1,605	1,685	4,050	**60.7%**	9,986	2,985	7,002	7.5%	**53.2%**	18,937	**179.3%**

Notes: Earned premium for each half-year reflects 1/4th weight on current, 1/2 weight on previous and 1/4th weight on second previous half-year's written premium.

Column (16): The surcharge rate equals the ratio of Fund revenue to Underlying Primary Premium. Column (16) is the indicated surcharge rate for policies effective in 2019. Assuming anticipated 2019 cost levels and investment activity similar to recent years, the indicated surcharge rate is 53.2%, which (like 52% last year) would exceed the 50% statutory maximum.

Column (18) compares the Fund's historical costs in (6) and (10), minus investment income in (15) to the Fund's net earned premium in (17). The 2014 - 2018 net operating ratio is 179.3%. The main difference between net earned premium in (17) and direct earned premium in (4) is ceded reinsurance, which was new in 2016.

Written Premium is based on coverage effective in the period. Primary carrier written premium is estimated above from Excess Fund written premium and then-current surcharge rates.

In column (8), the trend period is from the year's average earned date (i.e. June 30, except March 31st for YTD 2018), to average earning date for coverage effective in 2019 (i.e. Dec. 31, 2019).

The Fund purchased a Common Loss reinsurance treaty effective May 1, 2016. The treaty provides $20 Million of limit excess of a $4.5 Million retention for situations involving multiple plaintiffs whose claims arise from shared underlying circumstances. The annual cost was initially $800,000, but increased to $900,000 effective 1/1/2018. The treaty renews again on 1/1/2019, but I have built no change into my 2019 indicated surcharge rate.

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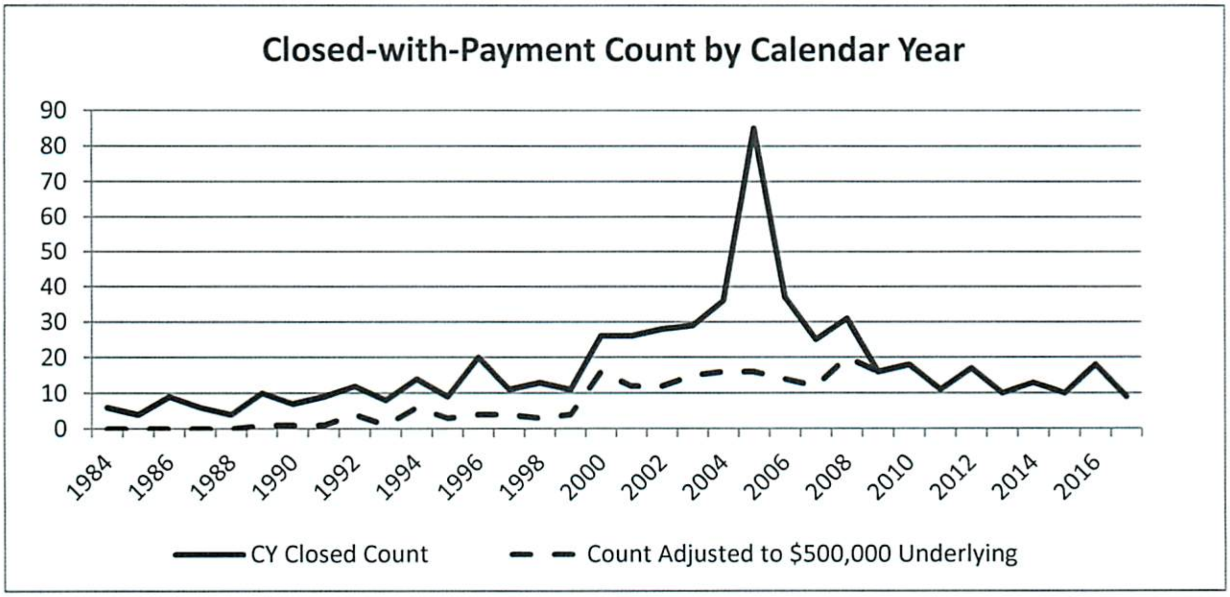
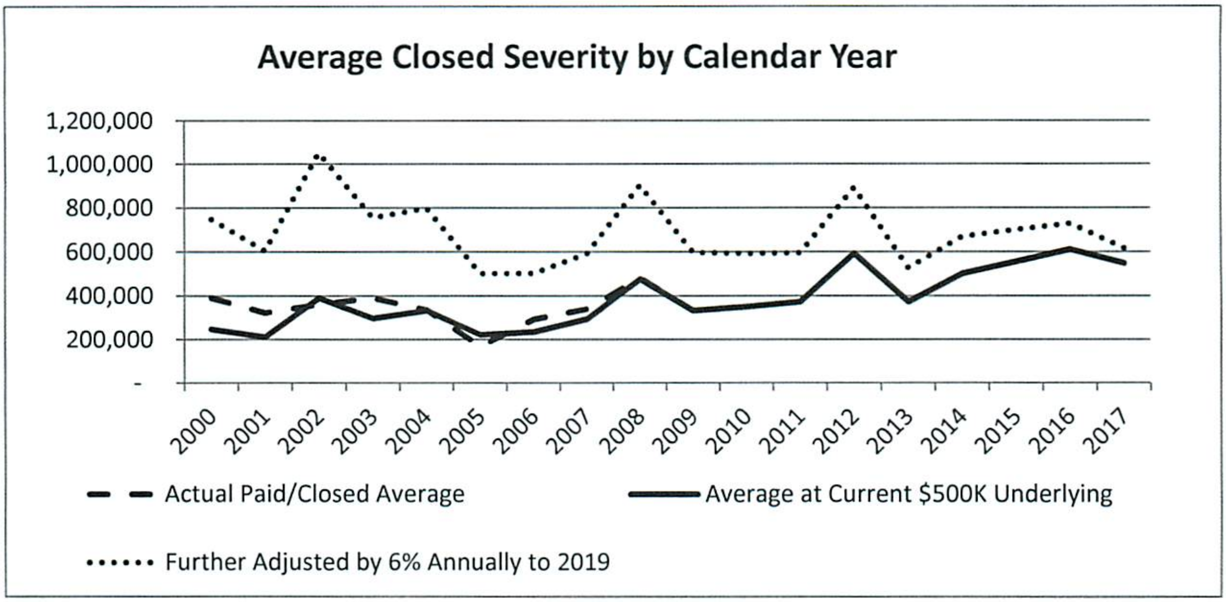
Nebraska Medical-Hospital Liability Act

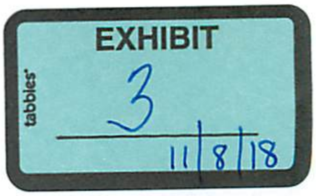
Closed Claims and Closed Claim Severity Trend

Claim Counts More Stable After Underlying Coverage Increased to $500K Per Occurrence:



Paid/Closed Claims Severity Trend Is Approximately 3.0 Percent Annually:





Nebraska Department of Insurance
Nebraska Medical-Hospital Liability Act
History through June 2018
Number of Participating Providers

Cal. Year	CRNA	Osteopath	Hospital	Intern	MD	PC	Total
2008	233	93	95	33	2,712	424	3,590
2009	246	108	103	1	2,987	453	3,898
2010	229	109	111	2	2,989	448	3,888
2011	274	128	127	3	2,928	455	3,915
2012	317	152	120	2	3,040	448	4,079
2013	358	178	117	4	3,844	460	4,961
2014	419	190	171	1	3,845	464	5,093
2015	385	177	144	1	3,596	456	4,759
2016	363	176	142	1	3,592	458	4,732
2017	354	167	148	2	3,856	458	4,985
2018 YTD	248	97	66	1	1,821	258	2,491

Excess Fund Written Premium

Cal. Year	CRNA	Osteopath	Hospital	Intern	MD	PC	Total
2008	108,788	163,244	2,456,068	997	5,184,444	937,244	8,850,785
2009	97,081	175,271	2,550,457	2,146	5,112,396	930,941	8,868,293
2010	100,611	197,001	2,549,868	2,126	5,315,605	936,359	9,101,569
2011	61,396	107,972	1,374,883	639	2,974,530	524,917	5,044,337
2012	68,176	119,946	1,449,010	599	2,871,772	528,489	5,037,992
2013	86,932	123,171	997,403	1,535	3,078,257	334,990	4,622,286
2014	90,194	120,733	1,006,985	1,116	2,857,525	374,192	4,450,744
2015	90,289	120,578	1,199,562	278	2,765,193	271,464	4,447,364
2016	106,869	125,436	1,178,338	351	2,841,385	547,730	4,800,108
2017	125,062	133,048	1,435,253	1,006	3,155,126	507,603	5,357,099
2018 YTD	73,383	98,677	466,820	337	2,228,963	143,514	3,011,694

Average Annual Excess Fund Surcharge

Cal. Year	CRNA	Osteopath	Hospital	Intern	MD	PC	Total
2008	467	1,755	25,853	30	1,912	2,210	2,465
2009	395	1,623	24,762	2,146	1,712	2,055	2,275
2010	439	1,807	22,972	1,063	1,778	2,090	2,341
2011	224	844	10,826	213	1,016	1,154	1,288
2012	215	789	12,075	299	945	1,180	1,235
2013	243	692	8,525	384	801	728	932
2014	215	635	5,889	1,116	743	806	874
2015	235	681	8,330	278	769	595	935
2016	294	713	8,298	351	791	1,196	1,014
2017	353	797	9,698	503	818	1,108	1,075
2018 YTD	296	1,017	7,073	337	1,224	556	1,209

NOTES: In 2013, the premium for UNM policy 14501275 is allocated to individual providers (mostly MD's) where it was previously grouped as a single Professional Corporation.
In 2013, the premium for Creighton policy 20662046 is allocated to individual providers (mostly MD's) where it was previously grouped under a single MD.
These changes added hundreds to the 2013 count of MD's and reduced the PC average premium.

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