

BEFORE THE DEPARTMENT OF INSURANCE
STATE OF NEBRASKA

IN THE MATTER OF THE NEBRASKA) SURCHARGE DETERMINATION
HOSPITAL-MEDICAL LIABILITY ACT) FOR THE YEAR 2021
SURCHARGE FOR 2021)

The Director of Insurance for the State of Nebraska, as Administrator of the Excess Liability Fund, conducted a public hearing on November 19, 2020, as required by Neb. Rev. Stat. § 44-2830, to consider adjusting the amount of the surcharge for the year 2021. 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, the Director, hereby sets the surcharge for the year 2021, effective January 1, 2021, at fifty percent (50%) for all health care providers.

Dated this 19 day of November, 2020.



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

2020 Actuarial Testimony Recommends a Rate to Be Effective 1/1/2021 Hearing Scheduled: Thursday, November 19, 2020

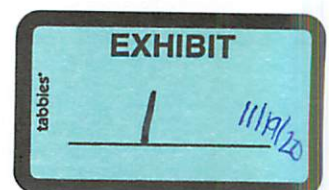
I am Gordon Hay, Senior Casualty Actuarial Examiner within the Department. I am a Fellow of the Casualty Actuarial Society, Member of the American Academy of Actuaries, and Chartered Property and Casualty Underwriter. I am qualified by education and experience to make and review rates for property/casualty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

The 2020 surcharge rate is 50%, and I recommend continuing at that statutory maximum rate. My actuarially indicated rates have been increasing annually, from 52% (2018) to 53.2% (2019), 62.9% (2020) and now 74.3% for 2021. The first driving force is increasing numbers of newly reported claims, particularly in 2019-2020. The second driving force is adverse re-evaluations during fiscal years ending June 2017-2018 of previously known claims.

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 acceptable given the Fund's size combined with its potential for capital gains. Starting with the 2017 hearing, I have observed more numerous new claims, so even with the maximum statutory rate, higher (less sustainable) operating losses are no longer surprising. At June 2020, the number of reported claims is up sharply from June 2019. Look below for more specifics.

The Fund's Costs Are Consistently Exceeding 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.
- Surcharge rates (Column 2) increased incrementally from 18% in 2013-2014 to 22% in 2016, and to 26% in 2017 to fund reinsurance cost. More aggressive increases to 40% and 45% in 2018 and 2019 were due to adverse operating results as recognized in 2017.
- Column (18) shows recent years' operating ratios, based on current estimates. 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).
- Since our annual net operating ratio peaked in report year 2015 at 297.3%, the Fund's revenue has generally increased faster than losses. Our net operating ratios are getting better, but report year 2019 is still high at 174.1% and the 2020 year-to-date at 153.8% includes just the year's first half.



- After rate increases that seemed aggressive for 2018-2019, the 2020 rate is capped at the statutory maximum and as of June 2020, the 4.5 year operating ratio is still 194.4%. This is down slightly from last year's 200.6%.
- In the 18 months ending June 2020, the Fund's Claims Made earned premium was \$10.7 Million, generating a \$7.2 Million operating loss.

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

- To test the prospective adequacy of the current 50% surcharge rate, I estimated the Fund's expected costs for 2021 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 and 6% the previous 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 the \$1,000,000 annual premium for 2020 is up \$100,000 from 2019.
- Column (16) shows my 2021 indicated rate, equal to my forecast for the Fund's costs, net of investment income. My previous forecasts have increased from 28.8% to 30.0%, 52.0%, 53.2%, to last year's 62.9%, and finally this year's 74.3%.

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 2005 threshold. At that current \$500,000 threshold, we have been observing between 10 and 20 closed-with-payment Fund cases annually.
- The second graph shows average closed-with-payment severities for calendar years 2000-2019. 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 has decreased \$24.6 Million since June 2015, from \$73.5 Million to \$48.9 Million. Assets decreased from \$94.0 Million to \$90.5 Million and liabilities increased from \$20.5 Million to \$41.6 Million.

- Of the \$24.6 Million, fiscal years ending June 2017 and June 2019 respectively contributed decreases of \$13 Million and \$12 Million, and the primary reason in each case was recognition of claims costs.
- The Fund's investments are required by law to be managed by the State of Nebraska Investment Council, which allocates the Fund's assets to bonds. Investment income has been fairly steady, between \$1.5 Million and \$1.7 Million annually, in 2013-2019, except for just \$1.25 Million in 2017. Year-to-date 2020 is on the high side at \$1.1 Million.
- Realized and unrealized investment gains/losses have been significant since 2008, when that year's \$3.0 Million loss preceded gains through 2012 totaling \$18.4 Million. See Exhibit II Column (13). A sequence of gains and losses in 2013-2018 produced a net gain of \$2.1 Million. 2019 and year-to-date 2020 produced an unusual gain of \$6.9 Million. Generally, long-term bonds' market values rise when interest rates decrease, and vice versa, so future interest rates are unpredictable but important.
- To the nearest million, I expect \$19 Million of 2021 underlying written premium, which is similar to 2019 but down from previous years. Contributing factors are a highly competitive (unprofitable) market for primary coverage and continuing consolidation among health care providers.

Number of Participating Providers – Exhibit IV:

- The residual market wrote no providers in Years-to-date June 2020 or 2019. Previous years' totals were 4 in 2019, 6 in 2018, 8 in 2017 and 10 in 2016. Small numbers are evidence of a competitive voluntary market.
- The numbers of providers participating in the Excess Fund is about 5,500. This number was about 800 lower in last year's testimony, and the change was to individually count qualified providers employed by a large hospital system whose 2018 and 2019 surcharges were summarized and allocated to a single provider. So the increase is not a trend, but a data quality improvement. The current 50% surcharge rate appears not to be discouraging participation.

Summary and Recommendation:

Assuming 2021 underlying earned premium near \$19 Million, the Fund's expected costs net of investment income are 74.3% of that, or \$14.12 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 \$1,000,000 in 2020, subject to renegotiation on renewal at January 1, 2021.

At the maximum 50% rate, I expect the Fund to generate \$9.5 Million revenue, about 33% less than the expected \$14.12 Million net costs, for an expected 2021 operating deficit of \$4.62 Million.

The Fund's operating balance at June 2020 was \$48.9 Million. This was up \$3.1 Million from June 2019, because the \$1.9 Million operating loss was more than offset by bond valuations'

\$5.02 Million increase. Since June 2015, the Fund's operating balance is down \$24.6 Million due \$32.3 Million in operating losses partially offset by bond valuations' \$7.7 Million increase.

The actuarially projected costs for 2021 business materially exceed the statutory maximum surcharge rate, as they did in last year's hearing for 2020 business. For 2018 and 2019, the indicated surcharge rates slightly exceeded the 50% maximum. I continue to recommend ways to restore the Fund's financial strength, and meanwhile, I recommend retaining the 50% maximum surcharge rate.

**Nebraska Department of Insurance
Nebraska Medical-Hospital Liability Act
Historical Costs to the Fund (000's)
With Forecast for 2021 Based on Data as of June 30, 2020**

Report Year	Excess Fund and Underlying Primary Premium					Fund Costs Net of Investment Income Related to Underlying Primary Earned Premium										Fund Claims Made			
	Direct Written Premium			Direct Earned Premium		Projected Underwriting Cost Ratio						Investment Income Considered				Net Operating Ratio			
	Excess Fund Claims Made	Historical Surcharge Factor	Underlying Primary Claims Made	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 2021	Cost of Increasing Cap from \$1.75M to \$2.25M Effective 1/1/2015	Administrative Expenses	Reinsurance Cost (See Note)	Projected Underwriting 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)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(12)	(13)	(14)	(15)	(16)	(17)	(18) = [(6) + (10) - (14)] / (17)
			= (1) / (2)				= (6) / (5)	8.1% from Study as of June 2013			= [(8) + (9) + (10) + (11)] / (5)			= (12) - (13)	= (14) / (5)	= (11) - (15)			
2003	8,867	50%	17,733	6,919	15,442	7,278	47.1%												
2004	9,287	50%	18,575	9,321	17,951	8,002	44.6%												
2005	11,692	50%	23,384	10,679	19,508	12,163	62.3%												
2006	11,326	45%	25,170	11,461	22,784	11,100	48.7%												
2007	10,040	40%	25,101	10,513	23,914	7,276	30.4%												
2008	8,534	35%	24,384	9,446	24,145	3,870	16.0%	8,501	689	289	1,000	43.4%	(498)	(3,023)	2,525	10.5%	32.9%	9,446	17.3%
2009	8,706	35%	24,874	8,638	23,268	4,574	19.7%	9,478	768	280	1,000	49.5%	9,682	7,832	1,850	8.0%	41.6%	8,638	34.8%
2010	8,890	35%	25,401	8,783	24,008	5,620	23.4%	10,987	890	302	1,000	54.9%	8,341	5,754	2,587	10.8%	44.1%	8,783	38.0%
2011	4,961	20%	24,807	6,878	23,854	9,818	41.2%	18,107	1,467	216	1,000	87.2%	2,868	910	1,959	8.2%	78.9%	6,878	117.4%
2012	4,880	20%	24,402	4,917	22,552	5,613	24.9%	9,767	791	180	1,000	52.0%	5,961	3,866	2,095	9.3%	42.8%	4,917	75.2%
2013	4,560	18%	25,335	4,627	21,973	6,963	31.7%	11,428	926	258	1,000	61.9%	7	(1,674)	1,682	7.7%	54.3%	4,627	119.7%
2014	4,340	18%	24,110	4,338	22,340	10,691	47.9%	16,555	1,341	262	1,000	85.8%	4,032	2,460	1,572	7.0%	78.7%	4,338	216.3%
2015	4,352	20%	21,761	4,408	21,925	9,306	42.4%	13,595	661	390	1,000	71.4%	1,186	(481)	1,668	7.6%	63.8%	4,408	182.1%
2016	4,738	22%	21,534	4,415	19,740	12,184	61.7%	16,792	-	377	1,000	92.0%	3,742	2,247	1,496	7.6%	84.5%	3,721	297.3%
2017	5,217	26%	20,064	4,972	19,833	8,440	42.6%	10,972	-	428	1,000	62.5%	1,561	315	1,246	6.3%	56.2%	4,092	186.3%
2018	7,956	40%	19,891	6,532	18,463	10,953	59.3%	13,434	-	391	1,000	80.3%	814	(772)	1,586	8.6%	71.7%	5,332	183.0%
2019	8,484	45%	18,854	8,154	18,187	13,546	74.5%	15,675	-	350	1,000	93.6%	5,130	3,635	1,495	8.2%	85.4%	7,124	174.1%
2020	3,737	50%	7,475	4,278	8,978	6,413	71.4%	7,103	-	166	500	86.5%	4,358	3,253	1,105	12.3%	74.2%	3,558	153.8%
4.5 Yrs	30,132		87,818	28,351	85,201	51,536	60.5%	63,978	0	1,713	4,500	82.4%	15,605	8,678	6,928	8.1%	74.3%	23,828	194.4%

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.

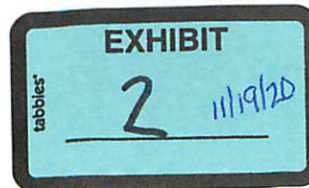
Column (16): The surcharge rate equals the ratio of Fund revenue to Underlying Primary Premium. Column (16) is the indicated surcharge rate for policies effective in 2021. If future cost levels and investment activity are like the past 4.5 years, our 2021 indicated surcharge rate is 74.3%, versus 53.2% for 2020 or 52% for 2019. For 2021, the 50% statutory maximum surcharge rate is not adequate.

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 2016 - 2020 net operating ratio is 194.4%. 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.

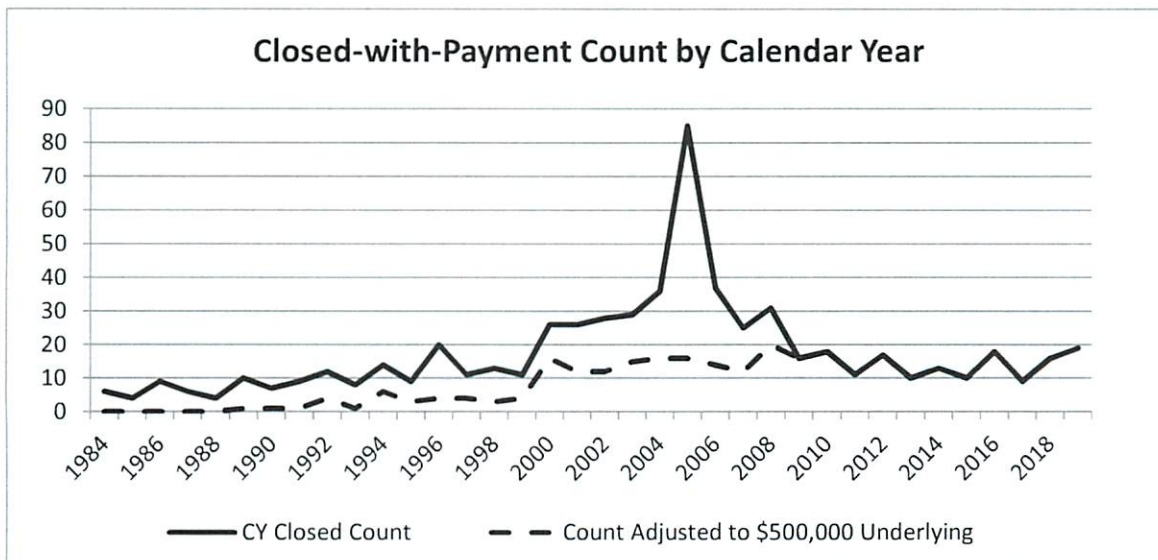
In column (8), the trend period is from the year's average earned date (i.e. June 30, except March 31st for YTD 2020), to average earning date for coverage effective in 2021 (i.e. Dec. 31, 2021).

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, increased to \$900,000 effective 1/1/2018 and \$1,000,000 effective 1/1/2020. The treaty expires again on 1/1/2021: indicated 2021 surcharge rate assumes no further change.

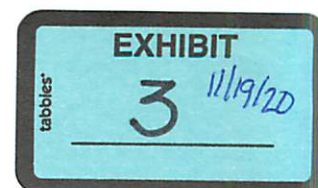
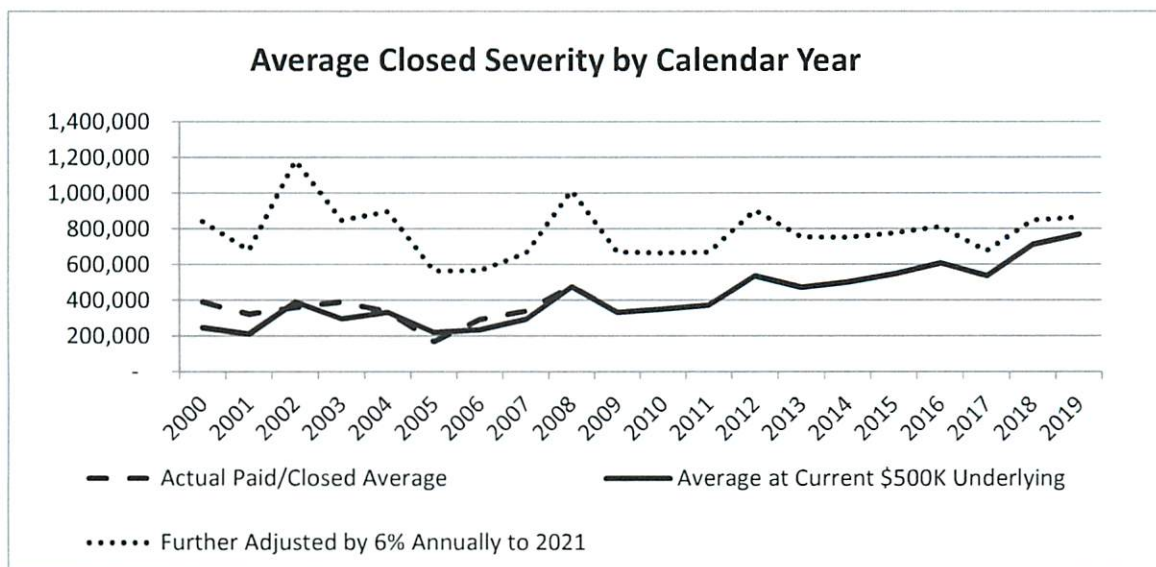


Nebraska Medical-Hospital Liability Act Closed Claims and Closed Claim Severity Trend

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



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



Nebraska Department of Insurance
Nebraska Medical-Hospital Liability Act
History through June 30, 2020
Number of Participating Providers

Cal. Year		CRNA	Osteopath	Hospital	Intern	MD	PC	Total
2016		299	160	140	2	3,340	435	4,376
2017		331	163	132	1	3,322	430	4,380
2018		446	222	131	8	4,157	427	5,389
2019		475	246	141	7	4,193	431	5,493
2020	YTD Actual	218	98	68	-	1,476	243	2,104
2020	YE Proj.	472	303	140	7	4,309	429	5,659

Excess Fund Written Premium

Cal. Year		CRNA	Osteopath	Hospital	Intern	MD	PC	Total
2016		97,814	112,696	1,176,810	2,934	2,582,956	541,167	4,514,376
2017		119,565	125,623	1,411,501	1,396	2,880,497	502,453	5,041,034
2018		133,922	238,088	1,498,121	4,894	4,842,157	746,174	7,463,357
2019		161,631	280,204	1,527,086	3,617	5,365,275	786,361	8,124,464
2020	YTD Actual	85,842	148,676	637,048	-	2,573,334	178,405	3,623,306
2020	YE Proj.	178,771	421,439	1,897,862	3,617	6,210,856	930,876	9,643,421

Average Annual Excess Fund Surcharge

Cal. Year		CRNA	Osteopath	Hospital	Intern	MD	PC	Total
2016		327	702	8,433	1,203	773	1,245	1,032
2017		361	770	10,676	988	867	1,167	1,151
2018		300	1,075	11,470	638	1,165	1,749	1,385
2019		341	1,139	10,824	516	1,280	1,824	1,479
2020	YTD Actual	393	1,517	9,409		1,743	733	1,722
2020	YE Proj.	379	1,393	13,561	516	1,441	2,169	1,704

Note: This Exhibit excludes Residual Primary policies and Excess Tail Coverages

