

Title 210 - NEBRASKA DEPARTMENT OF INSURANCE

Chapter 32 - NEBRASKA HOSPITAL-MEDICAL LIABILITY ACT EXCESS LIABILITY FUND RESIDUAL MALPRACTICE INSURANCE AUTHORITY

001. Authority. This rule is promulgated pursuant to the authority granted under Neb.Rev.Stat. Sections §44-2854.01, §44-2821(4), §44-2829 and §44-2837, as amended.

002. Purpose. The purpose of this rule is to implement and administer those provisions of the Nebraska Hospital-Medical Liability Act pertaining to the surcharge levied on qualified health care providers under the Excess Liability Fund, notices provided by the Excess Liability Fund to qualified health care providers, administration and management of the residual malpractice insurance authority, notification to patients by qualified health care providers and such other matters as may be necessary to promote the efficient operation of the Act in accordance with its terms.

003. Definitions.

003.01 The definitions set forth in the Nebraska Hospital-Medical Liability Act, Neb.Rev.Stat. §44-2801 et. seq., as amended, shall be adopted and applied unless the context otherwise requires.

003.02 Act shall mean Nebraska Hospital-Medical Liability Act;

003.03 Cancellation shall mean termination of the qualification of a health care provider due to cessation of professional liability insurance by:

003.03A The professional liability insurer pursuant to Section Neb.Rev.Stat. §44-2836(5)(b);

003.03B The Residual Malpractice Authority of insurance coverage provided pursuant to ~~Sections~~ Neb.Rev.Stat. §§44-2837 to through 44-2839; or

003.03C The health care provider.

003.04 Expiration of qualification shall mean that the qualification of the health care provider has ended as a result of not renewing his or her qualification;

003.05 Initial qualification shall mean first time qualification or qualification following an interruption in qualification;

003.06 Qualification shall mean that the health care provider has complied with all of the requirements of ~~Section~~ Neb.Rev.Stat. §44-2824;

003.07 Renewed qualification shall mean renewal of an existing qualification so that qualification is continuous and uninterrupted;

003.08 Suspension shall mean suspension of a health care provider's qualification pursuant to ~~Section~~ Neb.Rev.Stat. §44-2829 for failure to pay the surcharge premium or primary insurance premiums under ~~Sections~~ Neb.Rev.Stat. §§44-2837 to through 44-2839.

004. Qualification. In order to qualify under the Act, a health care provider must file with the Director proof of financial responsibility pursuant to ~~Section~~ Neb.Rev.Stat. §44-2827 and pay the surcharge and any special surcharge levied on all health care providers pursuant to ~~Sections~~ Neb.Rev.Stat. §§44-2829 to through 44-2831 and shall post notice of qualification under the Act in accordance with Section 009.

004.01 Proof of Financial Responsibility. Financial Responsibility of a health care provider may be established only by filing with the Director proof that the health care provider is currently insured pursuant to ~~Sections~~ Neb.Rev.Stat. §§44-2837 to through 44-2839 or by a policy of professional liability insurance in a company authorized to do business in Nebraska.

The use of deductibles on a policy of professional liability insurance utilized to establish proof of financial responsibility is acceptable with the provision that the insurer must pay any settlement or judgment and then may be reimbursed by the insured for the deductible set out in the policy. The full premium, without credit for the deductible, must be reported on the proof of financial responsibility and the applicable surcharge will be based upon that full premium.

004.01A The following constitutes acceptable proof of financial responsibility:

004.01A(1) certificate of professional liability insurance;

004.01 A(2) copy of professional liability insurance policy or declarations page

004.01A(3) written statement or binder from insurance company representative or agent

004.01B Proof of financial responsibility shall provide the following information:

004.01 B(1) name of each qualified health care provider and insurer;

004.01 B(2) limits of coverage;

004.01 B(3) policy inception and expiration date;

004.01 B(4) premium for insurance coverage for limits required to qualify under the act without credit for deductibles, if applicable;

004.01 B(5) any retroactive dates, if applicable;

004.01 B(6) whether qualification is on an occurrence or a claims-made basis; and

004.01 B(7) deductible amount, if any.

004.02 Qualification Effective Date.

004.02A Initial Qualification. An initial qualification is effective upon the date the health care provider's proof of financial responsibility is received by the Director on the condition that the Director also receives the required surcharge not later than 30 days thereafter. In no event shall a health care provider's qualification become effective prior to the effective date of the professional liability insurance coverage filed by the health care provider. If the Director does not receive the surcharge for an initial qualification within such 30 day period, the qualification shall not become effective until the surcharge is received by the Director along with current proof of financial responsibility.

004.02B Renewed Qualification. A health care provider's qualification expires on the date his or her proof of financial responsibility expires unless the Director receives proof of renewed financial responsibility on or before that date. The health care provider will be given a grace period of 30 days following the expiration of his or her proof of financial responsibility to submit proof of renewed financial responsibility. Qualification does not continue past the expiration date of the health care provider's proof of financial responsibility if the Director does not receive the proof of renewed financial responsibility within the 30 day grace period.

004.03 Cancellation of Qualification. In the event the professional liability insurance policy filed by the health care provider to qualify under the Act is terminated by cancellation pursuant to ~~Section~~ Neb.Rev.Stat. §44-2836, the health care provider's qualification under the Act also terminates automatically

on the effective date of the cancellation without notice from the Excess Liability Fund unless the Director receives a replacement proof of financial responsibility on or before the cancellation date. The Director shall endeavor to notify the health care provider of the effect of the cancellation of primary coverage on his or her qualification under the Act within five (5) business days of receipt by the Director of notice of such cancellation.

004.04 Suspension of Qualification. If the annual premium surcharge is not paid in accordance with the ~~Sub~~Section 005.01 time period, the qualification of the health care provider shall be suspended until the annual surcharge premium is paid. Such suspension shall not be effective as to patients claiming against the health care provider unless, at least 30 days before the effective date of the suspension, a written notice giving the date upon which suspension becomes effective has been provided by the Director to the health care provider. During the period that the suspension is effective, the health care provider is not qualified under the Act and is not provided coverage by the Excess Liability Fund. Notification of suspension to the health care provider must be given in accordance with ~~Sub~~Section 006.02.

005. Surcharge premium.

005.01 As required by ~~Section~~ Neb.Rev.Stat. §44-2829 of the Act, all health care providers who have qualified under the Act shall contribute to the Excess Liability Fund. The surcharge is due and payable within 30 days after the health care provider has provided proof of financial responsibility to the Director and annual thereafter in such amounts as may be determined by the Director.

005.02 As required by ~~Section~~ Neb.Rev.Stat. §44-2830, effective on January 1 of each year, the Director shall adjust the amount of the surcharge 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. Prior to making such adjustment, the Director shall conduct a public hearing concerning the proposed adjustment and shall give due regard to the size of the existing Fund, the number and size of potential claims against the Fund, the number of participating providers, and other pertinent factors utilizing sound actuarial principles. Any decrease in the annual surcharge percentage shall not operate to entitle a health care provider to a refund of any portion of the previously paid surcharge.

006. Notification of health care providers. The Excess Liability Fund shall provide the following notices to health care providers as appropriate.

006.01 Expiration Notice. If the Director has not received renewed proof of

financial responsibility from a health care provider on or before the date such health care provider's professional liability insurance policy expires, the Excess Liability Fund shall cause a notice to be sent to the health care provider advising that if such proof is not received by the Director within 30 days, the qualification will expire on the date of the expiring proof of responsibility as set forth in Sub~~S~~section(s) 004.02B.

006.02 Suspension Notice. If the Director has not received the health care provider's required surcharge premium within 30 days after the health care provider has provided proof of financial responsibility in accordance with 004.02B, the Excess Liability Fund shall cause a notice to be sent to the health care provider pursuant to ~~Section~~ Neb.Rev.Stat. §44-2829 advising that the Excess Liability Fund has not received the required surcharge; that the health care provider's qualification under the Act shall be suspended on a stated effective date not less than 30 days after the date of notice if the required surcharge is not paid and further stating that the suspension shall continue until the surcharge is paid.

006.03 Notice Acknowledging Qualification. Within five business days of receipt of the proof of financial responsibility and the required surcharge premium, the Excess Liability Fund shall notify the health care provider:

006.03A Whether the provider is qualified; and

006.03B If the provider is qualified, the qualification effective and expiration dates.

006.04 Manner of Notice. All notices provided in Sub~~S~~section(s) 006 shall be sent by United States Mail, postage pre-paid to the health care providers last known address. Proof of mailing of the notices required by Sub~~S~~sections 006.01 and 006.02 shall be maintained. All notification periods shall begin to run on the date of mailing the notice.

007. Form of coverage. The coverage provided to a qualified health care provider under the Excess Liability Fund shall be either on an occurrence or on a claims-made basis and shall be the same as the insurance coverage provided by the insured's policy with the exception of the retroactive date. If the health care provider is no longer qualified under the Act and his or her professional liability insurance coverage was on a claims-made policy, the health care provider will no longer receive coverage under the Excess Liability Fund unless the health care provider purchases extended reporting endorsement coverage from the Fund. This coverage extends the time in which a claim may be made for incidents which occurred during the period of qualification under the Act. If the health care provider changes insurers and his or her professional liability insurance coverage was on a claims- made policy, the health care provider will no longer receive

coverage under the Excess Liability Fund for prior acts unless the health care provider purchases extended reporting endorsement coverage from the insurer being replaced and the Fund. If the replacing insurer provides prior acts coverage back to the initial qualification date, extended reporting endorsement coverage is not needed.

008. Residual malpractice insurance authority. If, after diligent effort, a health care provider has been unable to obtain malpractice liability insurance and has been declined by at least two insurers authorized and writing medical malpractice liability insurance in the State of Nebraska, provided there are two such companies, the health care provider may apply for such coverage through the residual malpractice insurance authority. The application shall be made on a form prepared by the residual malpractice insurance authority which has been filed with and approved by the Department of Insurance. The application shall be accompanied by evidence of the two declinations in the form of letters from the declining insurer. If the application is accepted, the coverage shall be issued at the rates established by the Nebraska Department Insurance.

Qualification through the Residual Malpractice Insurance Authority shall be subject to the provisions of SubSection 004.02B regarding renewed qualification; SubSection 004.04 regarding suspension of qualification;

Section 005 regarding surcharge premium and Section 006 regarding notification to health care providers. Qualification under the Residual Malpractice Insurance Authority shall be on an occurrence form basis. As a condition for participating in the Residual Malpractice Insurance Authority, the health care provider must also maintain qualification in the Excess Liability Fund.

009. Patient notification. A qualified health care provider shall provide notice to his or her patients that he or she has qualified under the Act by continuously posting in his or her waiting room or other suitable location a sign stating:

(Name of Health Care Provider) has qualified under the provisions of the Nebraska Hospital-Medical Liability Act. Patients will be subject to the terms and conditions of the Act unless they file a refusal to be bound by that Act with the Director of Insurance of the State of Nebraska.

In addition to the foregoing information, the sign may include the following language:

This notice is being provided as required by the Nebraska Hospital-Medical Liability Act, ~~Section Neb.Rev.Stat. §44-2821(4), R.R.S. Neb. 1943~~ as amended.

The sign to be posted will measure at least 8 1/2" x 11" and shall be printed in substantially similar size and style of type as that used in the attached notice.

010. Confidentiality. Certain records of the Excess Liability Fund and the residual

malpractice insurance authority shall be confidential and shall not be subject to disclosure as public records. These records include, but are not limited to the following:

010.01 Medical records in any form concerning any person and records of elections filed under Neb.Rev.Stat. §44-2821;

010.02 Any and all records regarding claims filed under the Act;

010.03 Any and all records which represent the work product of an attorney or of the Excess Liability Fund which are related to preparation for litigation under the Act.

010.04 Any records regarding specific case reserves;

010.05 Any examination or actuarial work papers; and

010.06 Any underwriting records of a professional liability insurer or the Residual Malpractice Insurance Authority.

011. Severability clause. The invalidity of any one or more provisions of this Rule shall not affect any other provision of this Rule or any part thereof, and in case of any such invalidity, this rule shall be construed as if such invalid provisions had not been inserted.

012. Operative date. This rule shall become operative on September 1, 1989.

NOTICE

has qualified under

(Name of Health Care Provider)

the provisions of the Nebraska Hospital-Medical Liability Act
~~(L.B. 434, 84th Nebraska Legislature~~ (Neb.Rev.Stat. §§44-

2801 through 44-2855). Patients will be subject to the terms and provisions of that act unless they file a refusal to be bound by the act with the Director of Insurance of the State of Nebraska and notify the above health care provider of the election as soon as is reasonable under the circumstances that such patient has so elected.

' Heading must be 90 point boldface type.

2 Text must be 32 point boldface type.