CHAPTER 26.1-14
MEDICAL MALPRACTICE INSURANCE

26.1-14-01. Purpose. There is a nationwide crisis in the field of medical malpractice insurance and physicians practicing medicine within the state of North Dakota are finding, or will find, it increasingly difficult, if not impossible, to obtain medical malpractice insurance. The purpose of this chapter is to provide for the payment of indemnities to persons suffering injury arising out of the rendering of or the failure to render professional services by physicians and to provide means whereby physicians may obtain insurance against liability therefor, subject to the limitations and immunities provided in this chapter.

26.1-14-02. Definitions. As used in this chapter, unless the context or subject matter otherwise requires:

1. "Company" means the North Dakota medical malpractice mutual insurance company.

2. "Physician" means physician and surgeon (M.D.) and osteopathic physician and surgeon (D.O.).

3. "Practice of medicine" means the practice of medicine, surgery, and obstetrics and has the same meaning specified in subsection 2 of section 43-17-01.

26.1-14-03. Authority. An incorporated mutual insurance company is authorized to be known as the North Dakota medical malpractice mutual insurance company. The company is subject to and governed by this chapter and is not subject to the laws of this state relating to insurance and insurance companies except as specifically provided in this chapter. The company has all the powers, privileges, and immunities granted by and is subject to all the obligations imposed upon a mutual insurance company under chapters 26.1-12 and 10-33. If a provision of chapter 26.1-12 or 10-33 and a provision of this chapter are both by their terms applicable, the provision of this chapter controls.

26.1-14-04. Board of directors - Articles of incorporation - Bylaws - Insuring powers.

1. The company will be governed by a board of directors consisting of eleven members. The commissioner shall appoint the initial board within thirty days of notification by the state board of medical examiners of its decision for implementation of this chapter from fifteen nominees proposed by that board. The initial board shall serve for an initial term of seven months. Thereafter, the directors must be elected by the members of the company in accordance with the articles of incorporation and bylaws.

2. At least seven members of the board of directors must be licensed physicians and at least two members of the board must have had insurance underwriting or claims handling experience.

3. Within thirty days after appointment by the commissioner, the initial board of directors shall prepare and file articles of incorporation and bylaws in accordance with this chapter and chapter 26.1-12.

4. Upon filing the articles of incorporation and bylaws with the commissioner, the articles and bylaws are operative and the commissioner shall issue a certificate of authority subject only to verification by the commissioner that the required initial surplus of the company has been paid and all deposits have been completed.

5. The certificate of authority authorizes the company to issue policies of casualty insurance as follows:

a. Insurance against liability of physicians for injury arising out of the rendering of or failure to render professional services by the insured.

b. Insurance against the liability of any person for whose act or omissions a physician is responsible under subdivision a, or with whom the physician is associated, including partners, employees, employers, associates, consultants, a professional service corporation whose stock is owned by an insured, or a professional service limited liability company whose membership interests are owned by the insured.

c. Insurance against other liabilities for injury by persons employed in, by property used in, or by activities incidental to, the practice of medicine by the named insured, when issued as incidental coverage with or supplemental to insurance specified in subdivision a.

26.1-14-05. Initial policyholders surplus - Tax - Membership fee.

1. If physicians practicing medicine within North Dakota find it difficult to obtain medical malpractice insurance, the state board of medical examiners, by a majority vote of its membership, may elect to initiate and implement this chapter. Before fifteen days from the date the election to implement this chapter is made, the board shall certify to the state treasurer a list of all licensed physicians as shown in the latest record of the board.

2. A special one-time tax for the privilege of practicing medicine in North Dakota will be levied on licensed physicians listed by the state treasurer in accordance with subsection 1 in the amount of five hundred dollars per licensed physician, to be levied, assessed, and collected by the state treasurer. The tax does not apply to any physician who submits a statement, sworn to under penalties of perjury, stating that the physician has permanently terminated the practice of medicine in the state of North Dakota. The state treasurer shall prescribe the form of the statement.

3. The legislative assembly appropriates and dedicates the entire proceeds of the tax provided by this chapter as the initial policyholders surplus of the company, and the treasurer and director of the office of management and budget shall promptly pay over the proceeds of the tax to the company.

4. The board of directors of the company may establish membership fees in amounts as it deems reasonable to be paid by members of the company. Any physician who has paid the tax specified in subsection 2 must be credited the amount of the tax paid against the liability for any membership fee.

5. Upon payment of the specified membership fee, a physician may be insured by the company for any and all hazards customarily insured by the company, subject to any limitation of coverage specified by the company in accordance with policy limitations, exclusions, conditions, deductibles, and loss-sharing requirements.

26.1-14-06. Minimum surplus. The minimum surplus to be maintained by the company must be three hundred thousand dollars.

26.1-14-07. Management and administration of the company.

1. If, in the judgment of the board of directors, the affairs of the company thereby may be administered suitably and efficiently, the company may enter into a contract, not to exceed five years in duration, whereby the affairs of the company may be administered by a licensed insurer or a licensed nonprofit health service plan, subject to any continuing direction by the board of directors as specified in the articles of incorporation, the bylaws, and the contract.

2. The basis of compensation to the administering licensed insurer or plan in any contract described in this section must be reimbursement of expenses reasonably allocable to the business of the company plus an appropriate and reasonable additional allowance as specified in the contract. Any additional allowance, if based upon premium volume or size of membership, must contain a reasonable aggregate dollar maximum. The amount of the fee may not be made dependent on the underwriting or investment profits of the company.

3. Upon the execution of any contract, the company shall promptly file a copy with the commissioner. The contract becomes effective thirty days from the date of the filing unless the commissioner, prior to the effective date, disapproves the contract as illegal, unduly onerous, or not in the best interest of the company and states the reasons for the findings.

26.1-14-08. Rates and rate filing. The rates and premiums to be charged for insurance by the company are subject to chapter 26.1-25 except that the commissioner may not disapprove or terminate the effectiveness of any rate filing made by or on behalf of the company on the grounds that the rates or premiums are excessive.

26.1-14-09. Reserves for malpractice claims.

1. The reserve maintained by the company for outstanding losses under insurance against injury arising out of the rendering of or the failure to render professional services by an insured for all policies written during the eight years immediately preceding the date of the reserve determination must be seventy percent of the earned premiums of each of the eight years less all losses and loss expense payments made under policies written in the corresponding years.

2. In any event, the reserves for each of the eight years may not be less than the aggregate of estimated unpaid losses and loss expenses for claims incurred under liability policies written in the corresponding year computed on an individual case basis as to cases known and reported, plus reserves in an amount estimated in the aggregate to provide for the payment of all losses or claims incurred on or prior to the date of valuation but not previously reported, including an amount estimated to provide for the expenses of adjustment, settlement, or litigation of the losses or claims.

26.1-14-10. Dividends to policyholders. Every policy issued by the company must include a provision that the company periodically will ascertain and apportion any divisible surplus under the policy which may accrue on policy anniversaries or other dividend dates specified in the contract. This provision must provide that no apportionment or payment of any divisible surplus may take place until the expiration of at least eight years from the termination of the policy period for which the dividend applies. This provision also must provide that the dividends may be paid only as directed by the board of directors from divisible surplus after due consideration of the financial condition and operating needs of the company.

26.1-14-11. Limited liability of insureds.

1. Any person insured by the company for liability because of injury arising out of the rendering of or the failure to render professional services in limits equal to or greater than five hundred thousand dollars for each claim or suit covered, subject to an aggregate limit of liability for all claims insured in a single policy period equal to or in excess of one million dollars, is immune from all liability in excess of these limits, and further is immune from any liability for sums owing by the company under the terms of the policy regardless of whether or not the company has paid the sums. The immunity established by this section applies to an insured individual, professional service corporations, or professional service limited liability companies notwithstanding any other provision of the law.

2. This section does not relieve an insured from the insured's personal share of liability not in excess of the five hundred thousand dollar and one million dollar limitations specified in subsection 1 for a loss, expense, or damage not insured by the company by reason of noncoverage, exclusions, deductibles, loss-sharing provisions, or conditions in the applicable policy of the company.

26.1-14-12. Terms of coverage - Classifications.

1. The terms and conditions of all policies issued by the company to physicians must be essentially uniform in terms and coverage.

2. Notwithstanding subsection 1, the company may prescribe reasonable classifications of physicians' and insureds' activities and exposures based on good-faith determination of relative exposures and hazards among classifications and may vary the limits, coverages, exclusions, conditions, and loss-sharing provisions among classifications. Additionally, the company may describe, in the case of an individual physician within a class, reasonable variations in the terms of coverage including deductibles in loss-sharing provisions, based upon the insured's prior loss experience and current professional training and capability.

26.1-14-13. Exemption from taxation. The property, income, premiums, and activities of the company are exempt from all taxes and assessments and from any fees specified for licenses and certifications of the insurance laws except for the tax imposed by section 26.1-03-17 and any assessment made by the insurance guaranty association in the event that an affirmative election is held in accordance with section 26.1-14-15.

26.1-14-14. Services to the company. Any licensed nonprofit health service plan by appropriate action of the board of directors or board of trustees may enter into a contract with the company in accordance with section 26.1-14-07 for the furnishing of services to the company. In the performance of the services under any contract, the contracting health service plan is subject to the provisions of this chapter applying to the company.

26.1-14-15. Optional membership in insurance guaranty association. The company may not be a member insurer under chapter 26.1-42.1 unless the board of directors by appropriate resolution, certified to and filed with the commissioner on or before December thirty-first following the issuance of its certificate of authority, elects to become a member. If there is an affirmative election, the company becomes a member of the insurance guaranty association effective July first of the following year. The election is irrevocable. In absence of a timely election, no policyholder, claimant, or creditor of the company may receive any payment by the insurance guaranty association.