

Nebraska Medical Liability Act

NHA 2023 Spring Forum

Presented by Derek Briscoe

- **General Liability and WC claim TPA 1995-1998**
- **Multi lines production expansion territory Dallas 1999-2003**
- **Medical Professional Liability carrier business development, MMIC 2003-2013**
- **Health care Risk Management consultant 2014-2021 Harry Koch Company / FNIC**
- **Health care Risk Management consultant 2021-present USI / NHA Benefits & P/C Solutions**

Hospital Medical Professional Liability

- Volatile, long developing line of coverage
- Mid 70's change from occurrence policy to claims made policy
- Transition from St. Paul to PIAA Regional carriers in 80s
- Tort reform enacted in Nebraska 1976 with hard cap on damages

Claims made vs. Occurrence coverage



- **Retroactive date (s)
- Extended reporting endorsement, aka “tail coverage”



History of Nebraska Tort reform enacted in 1976

Key definitions

- Hard Cap on damages
- Attachment point (required underlying limits)
- Follow form coverage w admitted carrier
- Surcharge (annual remittance to State fund / 50% max)

Year	Cap on Damages	Attachment for Drs	Hospitals
1976	\$500K	\$100K/\$300K	\$100K/\$1M
1985	\$1M	\$100K/\$300K	\$100K/\$1M
1987	\$1M	\$200K/\$600K	\$200K/\$1M
1993	\$1.25M	\$200K/\$600K	\$200K/\$1M
2004	\$1.75M	\$500K/\$1M	\$500K/\$3M
2014	\$2.25M	\$500K/\$1M	\$500K/\$3M

Nebraska Excess Liability, Patient Compensation Fund

Who can qualify?

MD, DO, CRNA, & Facilities

-all other providers and employees share limits with hospital or entity

How does it work?

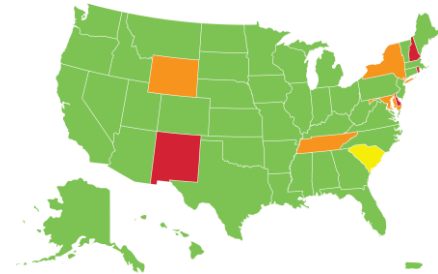
- Providers qualify by remitting surcharge to the Nebraska Dept of Insurance with proof of underlying coverage
- In event of a major claim >\$500K, carrier pays \$500K, State would pay excess up to cap \$2.25M.
- No remittance, no cap protection
- Notice of qualification must be posted in waiting room
- Patients can opt out with written notice to Department of Insurance
- If tail underlying policy, **MUST** tail with the fund as well or no fund protection
- 24/7 coverage is mandatory. *If you have moonlighters, your policy could be drawn in.*

MPL Combined Ratios

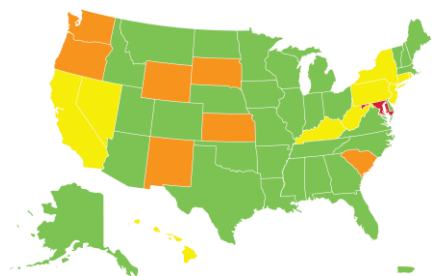
Nebraska

Date Range	CR
2011-2012	<95%
2013-2014	<95%
2015-2016	105%-115%
2017-2018	>115%
2019-2020	>115%

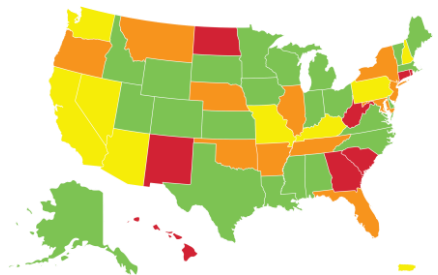
2011-12



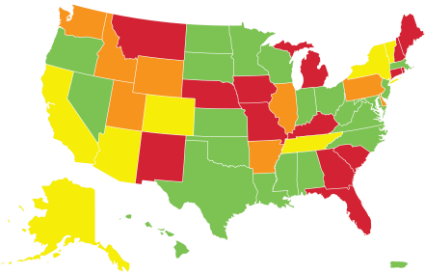
2013-14



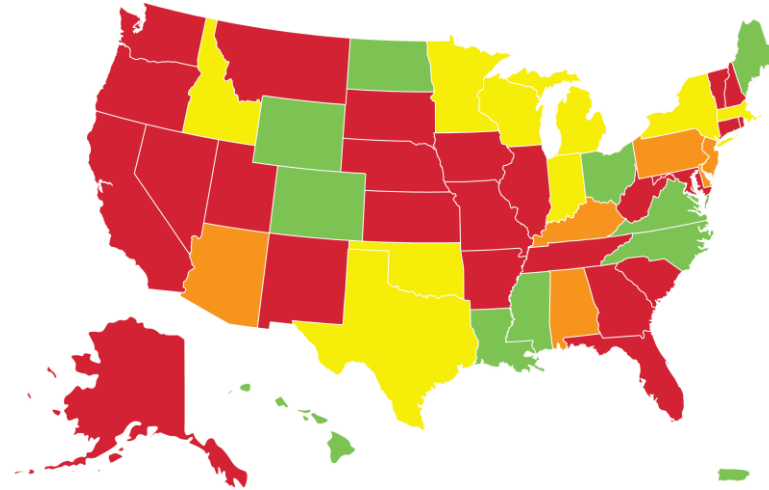
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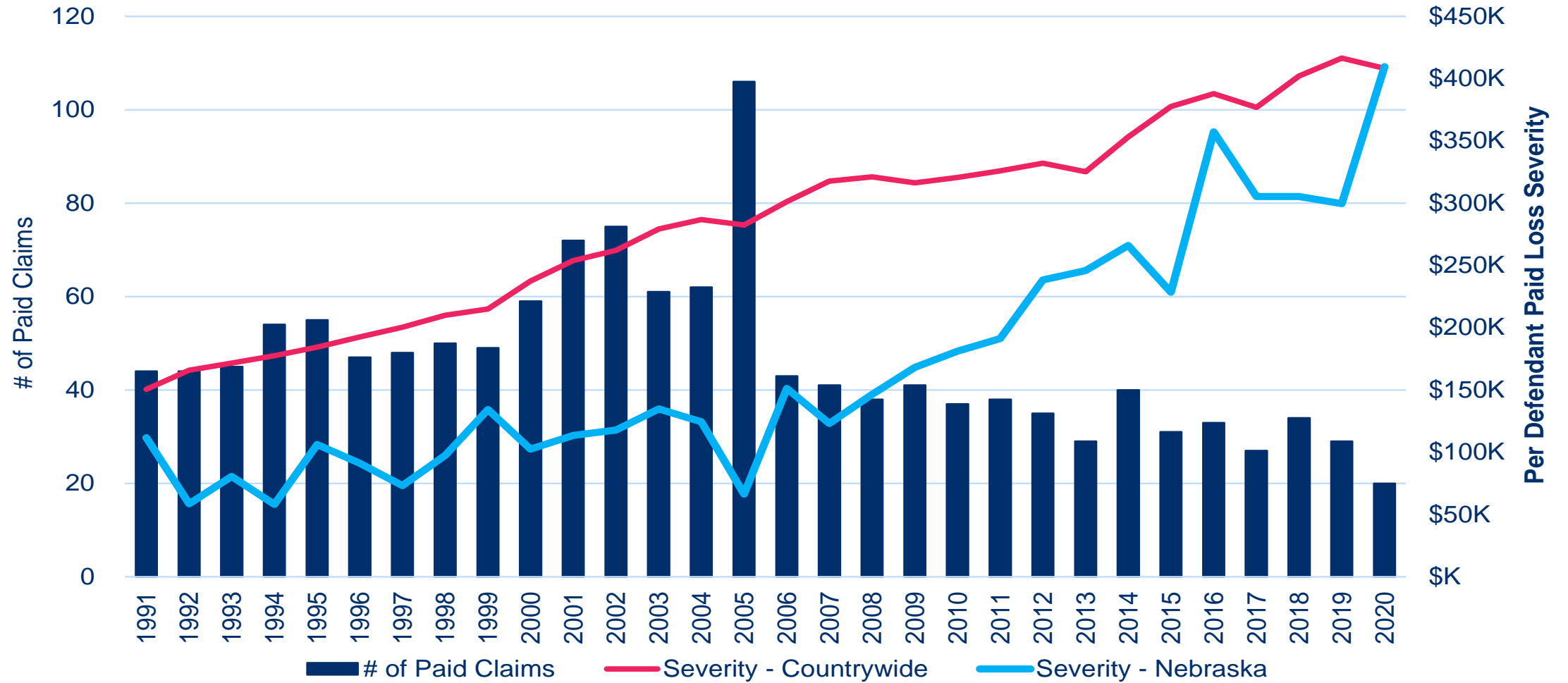
2017-18



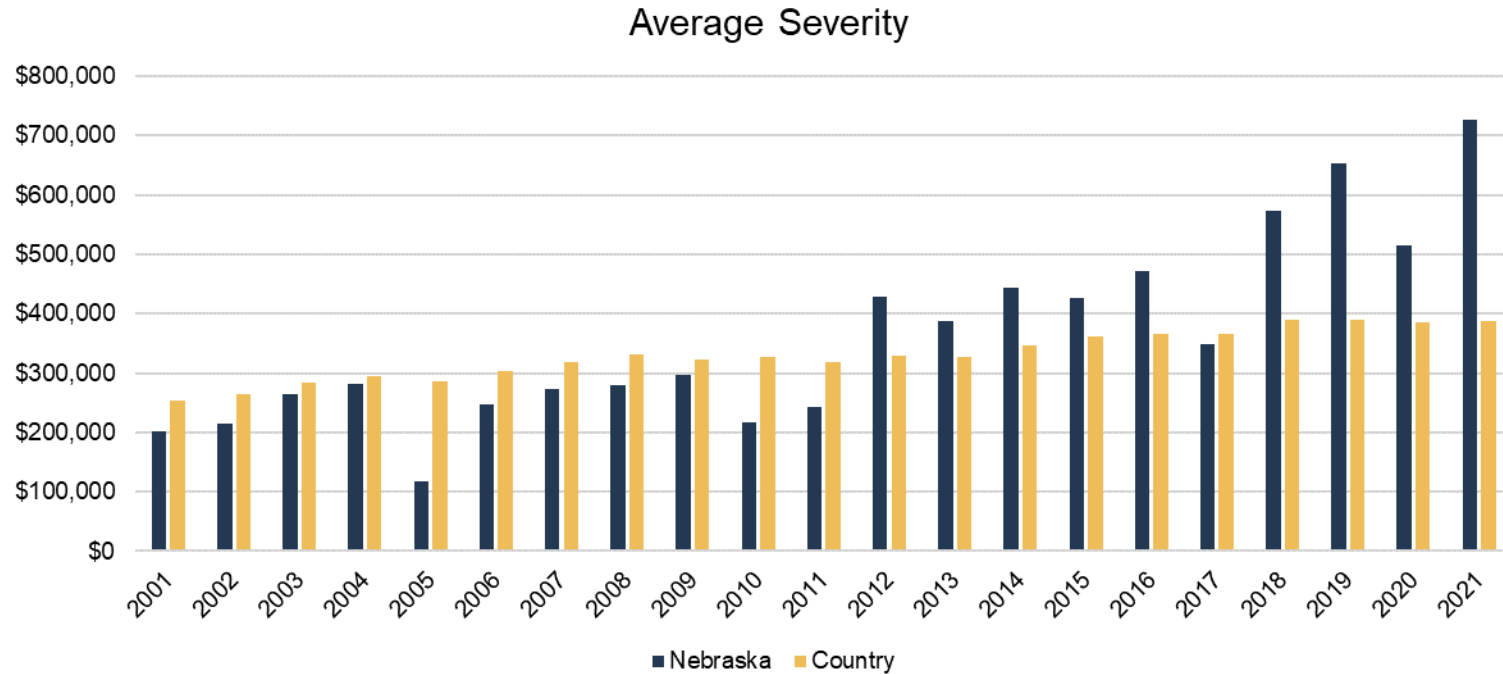
2019-20



Nebraska: NPDB Closed Claims by Year



Nebraska: Unlimited Average Severity



Average Severity		
Closed Year	Nebraska	Country
2001	\$202,022	\$254,402
2002	\$215,142	\$265,135
2003	\$263,672	\$283,987
2004	\$282,045	\$295,277
2005	\$118,701	\$287,273
2006	\$246,944	\$302,506
2007	\$273,175	\$318,604
2008	\$280,647	\$332,092
2009	\$296,487	\$322,294
2010	\$216,336	\$328,266
2011	\$242,707	\$318,407
2012	\$428,750	\$329,243
2013	\$387,438	\$328,250
2014	\$443,537	\$346,254
2015	\$426,577	\$362,905
2016	\$472,438	\$366,970
2017	\$349,464	\$365,288
2018	\$572,717	\$389,299
2019	\$653,421	\$388,988
2020	\$514,833	\$384,748
2021	\$727,679	\$388,268

Appendix C. History of Surcharge Rates

<u>Hospital Surcharge</u>	<u>Time Period</u>	<u>Surcharge for Physicians & Others</u>
15%	Original	50%
10%	1/1/1981	25%
1%	1-1-82 - 12-31-84	1%
50%	1-1-85 - 12-31-87	50%
50%	1/1/1988	45%
45%	1/1/1989	45%
40%	1/1/1990	40%
35%	1/1/1991	35%
40%	1-1-92 - 12-31-93	40%
30%	1-1-94 - 12-31-94	30%
15%	1-1-95 - 12-31-95	30%
10%	1-1-96 - 12-31-96	10%
5%	1-1-97 - 12-31-00	5%
20%	1-1-01 - 12-31-01	20%
35%	1-1-02 - 12-31-02	35%
50%	1-1-03 – 12-31-05	50%
45%	1-1-06 – 12-31-06	45%
40%	1-1-07 – 12-31-07	40%
35%	1-1-08 – 12-31-10	35%
20% (corrected from 2010 Rep't)	1-1-11 – 12-31-2012	20%
18%	1-1-13 – 12-31-2014	18%
20%	1-1-15 – 12-31-2015	20%
22%	1-1-16 – 12-31-2016	22%
26%	1-1-17 – 12/31/2017	26%
40%	1-1-18 – 12/31/2018	40%
45%	1-1-19 – 12-31-2019	45%
50%	1-1-20 – until revised	50%

The Economics of the PCF

Most recent annual report 12/31/2021

- Financial assets y/e 2021 \$101M
- 5-year loss ratio 138%
- Investment income in 2020 \$7M vs 2021 \$580K
- Aggressive carrier pricing on underlying coverage
- Surcharge 50% max statutorily
- Data driven calculations vs judgements

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
				= (2) - (3)			= (3) + (6)	= (7) / (1)
Report Year	Net Claims Made Earned Premium (000's)	Actuarial Estimated Ultimate Net Claims-Made Incurred	Cum. RY Net Paid Indemnity and Expense	Actuarial Estimated Net Claims Made Reserve	Adjusters' Net Estimated Claims Made Case Reserves	Best Estimate Net Claims Made Reserve	Best Estimate Ultimate Net Claims Made Incurred	Estimated Ultimate Net Indemnity and Claims Expense Ratio
2012	4,948	5,613	5,613	-	-	-	5,613	113.4%
2013	4,684	6,963	6,463	500	500	500	6,963	148.6%
2014	4,474	10,390	10,179	210	200	204	10,384	232.1%
2015	4,500	9,000	8,982	18	-	-	8,982	199.6%
2016	3,979	11,285	11,251	34	-	-	11,251	282.7%
2017	4,492	7,711	6,230	1,481	1,450	1,462	7,693	171.2%
2018	5,560	9,280	5,379	3,901	3,891	3,895	9,274	166.8%
2019	7,415	10,618	4,659	5,958	5,050	5,413	10,073	135.8%
2020	7,935	10,714	355	10,359	10,245	10,291	10,646	134.2%
2021	9,880	11,256	-	11,256	10,950	11,072	11,072	112.1%
5 Yrs	35,284	49,578	16,623	32,955	31,586	32,134	48,757	138.2%
10 Yrs	57,869	92,829	59,111	33,717	32,286	32,838	91,949	158.9%

***** 2025 attachment point increasing to \$800K / \$3M *****

Tort reform in border States

Thirty-five states have tort reform and have placed a cap on noneconomic damages. These caps range from \$250,000 to \$2,350,000 with the median cap of \$465,900.

Only 7-8 states have placed a cap on total economic damages. These caps range from \$500,000 to \$2,350,000 with the median cap of \$1,050,000.

- IA \$2M cap on noneconomic damages recently passed
- KS \$350K on noneconomic damages, ruled unconstitutional
- SD \$500K on noneconomic damages
- CO \$300K on noneconomic damages

- Other States with various hard caps
 - NE, NM, VA, MD, LA, IN
- States where caps have been ruled unconstitutional
 - AL, FL, GA, KS, IL, NH, OK, OR, WA

Other MPL issues to consider

- Issues of constitutionality
- Telemedicine
- Border patients
- Early intervention programs

THANK YOU!!

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The logo for NHA Nebraska Hospitals, featuring the letters 'NHA' in a large, bold, white font on the left, followed by a vertical white line, and the words 'NEBRASKA HOSPITALS' in a smaller, white, all-caps font on the right. The entire logo is set against a dark blue rectangular background.The logo for NHA Benefits, featuring the letters 'NHA' in a large, bold, blue font on the left, followed by the word 'BENEFITS' in a smaller, blue, all-caps font. Below 'BENEFITS' is the text 'POWERED BY' in a smaller, blue, all-caps font, followed by the 'USI' logo in a blue box. Below the entire logo is the text 'Employee Benefits | P&C Insurance Solutions' in a smaller, blue, all-caps font.