

ASSEMBLY BILL NO. 308—ASSEMBLYMEN HETTRICK,
CHRISTENSEN, MABEY, HARDY, ANGLE, CARPENTER,
GANSERT, GOICOECHEA, GRADY, HOLCOMB, MARVEL,
SHERER AND WEBER

MARCH 21, 2005

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning actions against
residential facilities for groups based upon
professional negligence. (BDR 3-1007)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in **bolded italics** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to health care; establishing a limitation on the
amount of noneconomic damages that may be awarded in
an action against a residential facility for groups based
upon professional negligence; making various changes
concerning the introduction of evidence of payment by
collateral sources in such an action; making various
changes concerning the payment of future damages in
such an action; limiting attorneys' fees in such an action;
and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 42 of NRS is hereby amended by adding
thereto the provisions set forth as sections 2 to 6, inclusive, of this
act.

Sec. 2. *As used in sections 2 to 6, inclusive, of this act, unless
the context otherwise requires, the words and terms defined in
sections 3 and 4 of this act have the meanings ascribed to them in
those sections.*

Sec. 3. *“Professional negligence” means a negligent act or
omission to act by a residential facility for groups in the rendering*



1 of professional services, which act or omission is the proximate
2 cause of a personal injury or wrongful death. The term does not
3 include services that are outside the scope of services for which
4 the residential facility for groups is licensed or services for which
5 any restriction has been imposed by the State Board of Health.

6 **Sec. 4.** "Residential facility for groups" has the meaning
7 ascribed to it in NRS 449.017.

8 **Sec. 5.** 1. In an action for injury or death against a
9 residential facility for groups based upon professional negligence,
10 the injured plaintiff may recover noneconomic damages, but the
11 amount of noneconomic damages awarded in such an action must
12 not exceed \$350,000.

13 2. As used in this section, "noneconomic damages" includes
14 damages to compensate for pain, suffering, inconvenience,
15 physical impairment, disfigurement and other nonpecuniary
16 damages.

17 **Sec. 6.** 1. In an action for injury or death against a
18 residential facility for groups based upon professional negligence,
19 if the defendant so elects, the defendant may introduce evidence of
20 any amount payable as a benefit to the plaintiff as a result of the
21 injury or death pursuant to the United States Social Security Act,
22 any state or federal income disability or workers' compensation
23 act, any health, sickness or income-disability insurance, accident
24 insurance that provides health benefits or income-disability
25 coverage, and any contract or agreement of any group,
26 organization, partnership or corporation to provide, pay for or
27 reimburse the cost of medical, hospital, dental or other health care
28 services. If the defendant elects to introduce such evidence, the
29 plaintiff may introduce evidence of any amount that the plaintiff
30 has paid or contributed to secure his right to any insurance
31 benefits concerning which the defendant has introduced evidence.

32 2. A source of collateral benefits introduced pursuant to
33 subsection 1 may not:

34 (a) Recover any amount against the plaintiff; or

35 (b) Be subrogated to the rights of the plaintiff against a
36 defendant.

37 3. In an action for injury or death against a residential
38 facility for groups based upon professional negligence, a district
39 court shall, at the request of either party, enter a judgment
40 ordering that money damages or its equivalent for future damages
41 of the judgment creditor be paid in whole or in part by periodic
42 payments rather than by a lump-sum payment if the award equals
43 or exceeds \$50,000 in future damages.

44 4. In entering a judgment ordering the payment of future
45 damages by periodic payments pursuant to subsection 3, the court



1 shall make a specific finding as to the dollar amount of periodic
2 payments that will compensate the judgment creditor for such
3 future damages. As a condition to authorizing periodic payments
4 of future damages, the court shall require a judgment debtor who
5 is not adequately insured to post security adequate to assure full
6 payment of such damages awarded by the judgment. Upon
7 termination of periodic payments of future damages, the court
8 shall order the return of this security, or so much as remains, to
9 the judgment debtor.

10 5. A judgment ordering the payment of future damages by
11 periodic payments entered pursuant to subsection 3 must specify
12 the recipient or recipients of the payments, the dollar amount of
13 the payments, the interval between payments, and the number of
14 payments or the period of time over which payments will be made.
15 Such payments must only be subject to modification in the event of
16 the death of the judgment creditor. Money damages awarded for
17 loss of future earnings must not be reduced or payments
18 terminated by reason of the death of the judgment creditor, but
19 must be paid to persons to whom the judgment creditor owed a
20 duty of support, as provided by law, immediately before his death.
21 In such cases, the court that rendered the original judgment may,
22 upon petition of any party in interest, modify the judgment to
23 award and apportion the unpaid future damages in accordance
24 with this subsection.

25 6. If the court finds that the judgment debtor has exhibited a
26 continuing pattern of failing to make the periodic payments as
27 specified pursuant to subsection 5, the court shall find the
28 judgment debtor in contempt of court and, in addition to the
29 required periodic payments, shall order the judgment debtor to pay
30 the judgment creditor all damages caused by the failure to make
31 such periodic payments, including, but not limited to, court costs
32 and attorneys' fees.

33 7. Following the occurrence or expiration of all obligations
34 specified in the judgement for periodic payments, any obligation of
35 the judgment debtor to make further payments ceases and any
36 security given pursuant to subsection 4 reverts to the judgment
37 debtor.

38 8. As used in this section:

39 (a) "Future damages" includes damages for future medical
40 treatment, care or custody, loss of future earnings, loss of bodily
41 function, or future pain and suffering of the judgment creditor.

42 (b) "Periodic payments" means the payment of money or
43 delivery of other property to the judgment creditor at regular
44 intervals.



1 **Sec. 7.** Chapter 7 of NRS is hereby amended by adding thereto
2 a new section to read as follows:

3 1. *An attorney shall not contract for or collect a fee*
4 *contingent on the amount of recovery for representing a person*
5 *seeking damages in connection with an action for injury or death*
6 *against a residential facility for groups based upon professional*
7 *negligence in excess of:*

8 (a) *Forty percent of the first \$50,000 recovered;*

9 (b) *Thirty-three and one-third percent of the next \$50,000*
10 *recovered;*

11 (c) *Twenty-five percent of the next \$500,000 recovered; and*

12 (d) *Fifteen percent of the amount of recovery that exceeds*
13 *\$600,000.*

14 2. *The limitations set forth in subsection 1 apply to all forms*
15 *of recovery, including, without limitation, settlement, arbitration*
16 *and judgment.*

17 3. *For the purposes of this section, "recovered" means the net*
18 *sum recovered by the plaintiff after deducting any disbursements*
19 *or costs incurred in connection with the prosecution or settlement*
20 *of the claim. Costs of medical care incurred by the plaintiff and*
21 *general and administrative expenses incurred by the office of the*
22 *attorney are not deductible disbursements or costs.*

23 4. *As used in this section:*

24 (a) *"Professional negligence" has the meaning ascribed to it*
25 *in section 3 of this act.*

26 (b) *"Residential facility for groups" has the meaning ascribed*
27 *to it in NRS 449.017.*

28 **Sec. 8.** The amendatory provisions of this act apply only to a
29 cause of action that accrues on or after October 1, 2005.

