

SENATE BILL NO. 426—COMMITTEE ON JUDICIARY

MARCH 25, 2013

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning medical and dental malpractice claims. (BDR 3-600)

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 malpractice; revising provisions for the award of noneconomic damages in professional negligence actions; revising provisions relating to the time for commencing certain actions for professional negligence; repealing certain limitations on the amounts attorneys may contract for or collect in professional negligence actions; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that in an action for injury or death against a provider of health care based upon professional negligence, the injured plaintiff may be awarded noneconomic damages in an amount that does not exceed \$350,000. (NRS 41A.035) **Section 1** of this bill provides that the limit on the amount of noneconomic damages must be adjusted by the Consumer Price Index (All Items) each fiscal year.

Existing law also provides that an action against a provider of health care, for injuries or death occurring on or after October 1, 2002, may not be commenced more than 3 years after the date of the injury or 1 year after the date the plaintiff discovers or should have discovered the injury. (NRS 41A.097) **Section 2** of this bill increases the statute of limitations for such an action to 4 years after the date of the injury or 2 years after the date the plaintiff discovers or should have discovered the injury.

Existing law establishes certain limitations on the amount an attorney may contract for or collect on a contingency fee in actions for injury or death against a provider of health care based on professional negligence. (NRS 7.095) **Section 3** of this bill repeals the limitations on the amounts that may be contracted for or collected in professional negligence actions.



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

Section 1. NRS 41A.035 is hereby amended to read as follows:

41A.035 *1. In an action for injury or death against a provider of health care based upon professional negligence, the injured plaintiff may recover noneconomic damages, but the amount of noneconomic damages awarded in such an action must not exceed a base amount of \$350,000 ~~+~~, which must be adjusted as provided in subsection 2.*

2. The monetary amount set forth in subsection 1 for the amount of noneconomic damages must be adjusted on July 1 of each year for the fiscal year beginning that day and ending June 30 in a rounded dollar amount corresponding to the change in the Consumer Price Index (All Items) published by the United States Department of Labor for the preceding calendar year. On April 1 of each year, the Office of Court Administrator shall determine the amount of the change required by this subsection, establish the adjusted amounts to take effect on July 1 of that year and notify each district court of the adjusted amounts.

3. As used in this section, "Office of Court Administrator" means the Office of Court Administrator created pursuant to NRS 1.320.

Sec. 2. NRS 41A.097 is hereby amended to read as follows:

41A.097 *1. Except as otherwise provided in subsection ~~1.3.1~~ 2, an action for injury or death against a provider of health care may not be commenced more than 4 years after the date of injury or 2 years after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs first, for ~~+~~ injury to or the wrongful death of a person:*

(a) ~~Injury to or the wrongful death of a person occurring before October 1, 2002, based~~ Based upon alleged professional negligence of the provider of health care;

(b) ~~Injury to or the wrongful death of a person occurring before October 1, 2002, from~~ From professional services rendered without consent; or

(c) ~~Injury to or the wrongful death of a person occurring before October 1, 2002, from~~ From error or omission in practice by the provider of health care.

2. ~~Except as otherwise provided in subsection 3, an action for injury or death against a provider of health care may not be commenced more than 3 years after the date of injury or 1 year after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs first, for:~~



~~—(a) Injury to or the wrongful death of a person occurring on or after October 1, 2002, based upon alleged professional negligence of the provider of health care;~~

~~—(b) Injury to or the wrongful death of a person occurring on or after October 1, 2002, from professional services rendered without consent; or~~

~~—(c) Injury to or the wrongful death of a person occurring on or after October 1, 2002, from error or omission in practice by the provider of health care.~~

~~—3.1~~ This time limitation is tolled for any period during which the provider of health care has concealed any act, error or omission upon which the action is based and which is known or through the use of reasonable diligence should have been known to the provider of health care.

~~14.1~~ 3. For the purposes of this section, the parent, guardian or legal custodian of any minor child is responsible for exercising reasonable judgment in determining whether to prosecute any cause of action limited by subsection 1. ~~for 2.1~~ If the parent, guardian or custodian fails to commence an action on behalf of that child within the prescribed period of limitations, the child may not bring an action based on the same alleged injury against any provider of health care upon the removal of the child's disability, except that in the case of:

(a) Brain damage or birth defect, the period of limitation is extended until the child attains 10 years of age.

(b) Sterility, the period of limitation is extended until 2 years after the child discovers the injury.

Sec. 3. NRS 7.095 is hereby repealed.

Sec. 4. The amendatory provisions of:

1. Section 1 of this act apply to an award of noneconomic damages that is made on or after October 1, 2013.

2. Section 2 of this act apply to a cause of action that accrues on or after October 1, 2013.

3. Section 3 of this act apply to a contract that is executed on or after October 1, 2013.

TEXT OF REPEALED SECTION

7.095 Limitations on contingent fees for representation of persons in certain actions against providers of health care.

1. An attorney shall not contract for or collect a fee contingent on the amount of recovery for representing a person seeking



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damages in connection with an action for injury or death against a provider of health care based upon professional negligence in excess of:

- (a) Forty percent of the first \$50,000 recovered;
- (b) Thirty-three and one-third percent of the next \$50,000 recovered;
- (c) Twenty-five percent of the next \$500,000 recovered; and
- (d) Fifteen percent of the amount of recovery that exceeds \$600,000.

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

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

4. As used in this section:

(a) "Professional negligence" means a negligent act or omission to act by a provider of health care in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death. The term does not include services that are outside the scope of services for which the provider of health care is licensed or services for which any restriction has been imposed by the applicable regulatory board or health care facility.

(b) "Provider of health care" means a physician licensed under chapter 630 or 633 of NRS, dentist, registered nurse, dispensing optician, optometrist, registered physical therapist, podiatric physician, licensed psychologist, chiropractor, doctor of Oriental medicine, medical laboratory director or technician, licensed dietitian or a licensed hospital and its employees.

