

ASSEMBLY BILL NO. 174—ASSEMBLYWOMEN THOMAS; DURAN,
MONROE-MORENO AND SUMMERS-ARMSTRONG

FEBRUARY 24, 2021

Referred to Committee on Health and Human Services

SUMMARY—Authorizes certain persons to consent to health care on behalf of an incapacitated patient. (BDR 40-741)

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; authorizing certain persons to consent or withhold consent to health care on behalf of an incapacitated patient; prohibiting a medical facility from refusing to allow certain persons inside the facility under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law authorizes an adult to execute a power of attorney enabling the agent named in the power of attorney to make decisions concerning health care for the adult if that adult becomes incapable of giving informed consent concerning such decisions. (NRS 162A.790) Existing law additionally authorizes a patient to: (1) designate a caregiver; or (2) have a caregiver designated for him or her upon admission to a hospital. (NRS 449A.312, 449A.315) Existing law establishes the persons who are authorized to make an anatomical gift of a body or part of a decedent, which include a parent or guardian and other persons with an interest in the decedent. (NRS 451.556) **Section 3** of this bill establishes, in order of priority, the persons who are authorized to consent or withhold consent to health care on behalf of a patient who is unconscious or otherwise lacks the capacity to provide or withhold such consent. Those persons are, in order of priority: (1) an agent named in a power of attorney for health care; (2) a caregiver designated by or for the patient; and (3) the family members and other persons who would be authorized to make an anatomical gift of the patient if the patient were deceased. **Section 3** prohibits a medical facility from refusing to allow such a person inside the facility solely because circumstances exist under which the public is prohibited from entering the facility. **Sections 1, 2 and 4-7** of this bill make conforming changes to existing law to account for the authority to provide or withhold consent to health care established by **section 3**.



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

1 **Section 1.** NRS 439.591 is hereby amended to read as follows:
2 439.591 1. Except as otherwise provided in subsection 2 of
3 NRS 439.538, a patient must not be required to participate in a
4 health information exchange. Before a patient's health care records
5 may be retrieved from a health information exchange, the patient *or*
6 *a person authorized to provide consent to health care pursuant to*
7 *section 3 of this act* must be fully informed and consent, in the
8 manner prescribed by the Director.

9 2. A patient must be notified in the manner prescribed by the
10 Director of any breach of the confidentiality of electronic health
11 records of the patient or a health information exchange.

12 3. A patient who consents to the retrieval of his or her
13 electronic health record from a health information exchange may at
14 any time request that a health care provider access and provide the
15 patient with his or her electronic health record in accordance with
16 the provisions of 45 C.F.R. § 164.526.

17 **Sec. 2.** NRS 439B.410 is hereby amended to read as follows:

18 439B.410 1. Except as otherwise provided in subsection 4,
19 each hospital in this State has an obligation to provide emergency
20 services and care, including care provided by physicians and nurses,
21 and to admit a patient where appropriate, regardless of the financial
22 status of the patient.

23 2. Except as otherwise provided in subsection 4, it is unlawful
24 for a hospital or a physician working in a hospital emergency room
25 to:

26 (a) Refuse to accept or treat a patient in need of emergency
27 services and care; or

28 (b) Except when medically necessary in the judgment of the
29 attending physician:

30 (1) Transfer a patient to another hospital or health facility
31 unless, as documented in the patient's records:

32 (I) A determination has been made that the patient is
33 medically fit for transfer;

34 (II) Consent to the transfer has been given by the
35 receiving physician, hospital or health facility;

36 (III) The patient has been provided with an explanation of
37 the need for the transfer; and

38 (IV) Consent to the transfer has been given by the patient
39 , ~~for~~ the patient's legal representative ~~or~~ *or another person*
40 *authorized to provide consent pursuant to section 3 of this act;* or



(2) Provide a patient with orders for testing at another hospital or health facility when the hospital from which the orders are issued is capable of providing that testing.

3. A physician, hospital or other health facility which treats a patient as a result of a violation of subsection 2 by a hospital or a physician working in the hospital is entitled to recover from that hospital an amount equal to three times the charges for the treatment provided that was billed by the physician, hospital or other health facility which provided the treatment, plus reasonable attorney's fees and costs.

4. This section does not prohibit the transfer of a patient from one hospital to another:

(a) When the patient is covered by an insurance policy or other contractual arrangement which provides for payment at the receiving hospital;

(b) After the county responsible for payment for the care of an indigent patient has exhausted the money which may be appropriated for that purpose pursuant to NRS 428.050, 428.285 and 450.425; or

(c) When the hospital cannot provide the services needed by the patient.

➤ No transfer may be made pursuant to this subsection until the patient's condition has been stabilized to a degree that allows the transfer without an additional risk to the patient.

5. As used in this section:

(a) "Emergency services and care" means medical screening, examination and evaluation by a physician or, to the extent permitted by a specific statute, by a person under the supervision of a physician, to determine if an emergency medical condition or active labor exists and, if it does, the care, treatment and surgery by a physician necessary to relieve or eliminate the emergency medical condition or active labor, within the capability of the hospital. As used in this paragraph:

(1) "Active labor" means, in relation to childbirth, labor that occurs when:

(I) There is inadequate time before delivery to transfer the patient safely to another hospital; or

(II) A transfer may pose a threat to the health and safety of the patient or the unborn child.

(2) "Emergency medical condition" means the presence of acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in:

(I) Placing the health of the patient in serious jeopardy;

(II) Serious impairment of bodily functions; or



(III) Serious dysfunction of any bodily organ or part.

(b) "Medically fit" means that the condition of the patient has been sufficiently stabilized so that the patient may be safely transported to another hospital, or is such that, in the determination of the attending physician, the transfer of the patient constitutes an acceptable risk. Such a determination must be based upon the condition of the patient, the expected benefits, if any, to the patient resulting from the transfer and whether the risks to the patient's health are outweighed by the expected benefits, and must be documented in the patient's records before the transfer.

6. If an allegation of a violation of the provisions of subsection 2 is made against a hospital licensed pursuant to the provisions of chapter 449 of NRS, the Division of Public and Behavioral Health of the Department shall conduct an investigation of the alleged violation. Such a violation, in addition to any criminal penalties that may be imposed, constitutes grounds for the denial, suspension or revocation of such a license, or for the imposition of any sanction prescribed by NRS 449.163.

7. If an allegation of a violation of the provisions of subsection 2 is made against:

(a) A physician licensed to practice medicine pursuant to the provisions of chapter 630 of NRS, the Board of Medical Examiners shall conduct an investigation of the alleged violation. Such a violation, in addition to any criminal penalties that may be imposed, constitutes grounds for initiating disciplinary action or denying licensure pursuant to the provisions of subsection 3 of NRS 630.3065.

(b) An osteopathic physician licensed to practice osteopathic medicine pursuant to the provisions of chapter 633 of NRS, the State Board of Osteopathic Medicine shall conduct an investigation of the alleged violation. Such a violation, in addition to any criminal penalties that may be imposed, constitutes grounds for initiating disciplinary action pursuant to the provisions of subsection 1 of NRS 633.131.

Sec. 3. Chapter 449A of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise specifically provided by law, a person or class of persons designated pursuant to subsection 2 may consent or withhold consent to health care on behalf of a patient who:

(a) Is at least 18 years of age;

(b) Is unconscious or has otherwise been determined by an attending physician, attending physician assistant or attending advanced practice registered nurse to lack the capacity to consent or withhold consent; and



(c) *Has no effective declaration concerning the care.*

2. *Authority to consent or withhold consent pursuant to subsection 1 may be exercised by the following persons, in order of priority:*

(a) *An agent named in a power of attorney to make decisions concerning health care for the patient pursuant to NRS 162A.790;*

(b) *A caregiver designated pursuant to NRS 449A.312 or 449A.315;*

(c) *The spouse of the patient;*

(d) *The adult children of the patient;*

(e) *The parents of the patient;*

(f) *The adult siblings of the patient;*

(g) *The adult grandchildren of the patient;*

(h) *The grandparents of the patient;*

(i) *An adult who exhibits special care and concern for the patient;*

(j) *A guardian of the person of the patient; and*

(k) *Any other person who would have the authority to dispose of the body of the patient if the patient were deceased.*

3. *If there is more than one member of a class listed in subsection 2 entitled to consent or withhold consent to health care, consent may be given or withheld by a member of the class unless that member knows of an objection by another member of the class. If an objection is known, consent may be provided only by a majority of the members of the class who are reasonably available.*

4. *A decision to consent or withhold consent to health care must be made in good faith. A consent or withholding of consent is not valid if it conflicts with the expressed intention of the patient.*

5. *A decision of a provider of health care acting in good faith that a consent or withholding of consent is valid or invalid is conclusive.*

6. *If a patient described in subsection 1 is suffering from a life-threatening condition, a medical facility shall not prohibit a person who is authorized pursuant to subsection 2 to consent or withhold consent to health care from entering or being present inside the facility solely because circumstances exist under which the public is prohibited from entering the facility, including, without limitation:*

(a) *An emergency or disaster proclaimed by the Governor or Legislature pursuant to NRS 414.070; or*

(b) *A public health emergency or other health event declared by the Governor pursuant to NRS 439.970.*

7. *As used in this section, "provider of health care" has the meaning ascribed to it in NRS 629.031.*



Sec. 4. NRS 41A.110 is hereby amended to read as follows:

41A.110 Except as otherwise provided in subsection 3 of NRS 442.253, a physician licensed to practice medicine under the provisions of chapter 630 or 633 of NRS, or a dentist licensed to practice dentistry under the provisions of chapter 631 of NRS, has conclusively obtained the consent of a patient *or a person authorized to provide consent pursuant to section 3 of this act* for a medical, surgical or dental procedure, as appropriate, if the physician or dentist has done the following:

1. Explained to the patient *or person, as applicable*, in general terms, without specific details, the procedure to be undertaken;

2. Explained to the patient *or person, as applicable*, alternative methods of treatment, if any, and their general nature;

3. Explained to the patient *or person, as applicable*, that there may be risks, together with the general nature and extent of the risks involved, without enumerating such risks; and

4. Obtained the signature of the patient *or person, as applicable*, to a statement containing an explanation of the procedure, alternative methods of treatment and risks involved, as provided in this section.

Sec. 5. NRS 41A.120 is hereby amended to read as follows:

41A.120 In addition to the provisions of chapter 129 of NRS and any other instances in which a consent is implied or excused by law, a consent to any medical, surgical or dental procedure will be implied if:

1. In competent medical judgment, the proposed medical, surgical or dental procedure is reasonably necessary and any delay in performing such a procedure could reasonably be expected to result in death, disfigurement, impairment of faculties or serious bodily harm; and

2. A person authorized to consent *pursuant to section 3 of this act* is not readily available.

Sec. 6. NRS 630.306 is hereby amended to read as follows:

630.306 1. The following acts, among others, constitute grounds for initiating disciplinary action or denying licensure:

(a) Inability to practice medicine with reasonable skill and safety because of illness, a mental or physical condition or the use of alcohol, drugs, narcotics or any other substance.

(b) Engaging in any conduct:

(1) Which is intended to deceive;

(2) Which the Board has determined is a violation of the standards of practice established by regulation of the Board; or

(3) Which is in violation of a provision of chapter 639 of NRS, or a regulation adopted by the State Board of Pharmacy



pursuant thereto, that is applicable to a licensee who is a practitioner, as defined in NRS 639.0125.

(c) Administering, dispensing or prescribing any controlled substance, or any dangerous drug as defined in chapter 454 of NRS, to or for himself or herself or to others except as authorized by law.

(d) Performing, assisting or advising the injection of any substance containing liquid silicone into the human body, except for the use of silicone oil to repair a retinal detachment.

(e) Practicing or offering to practice beyond the scope permitted by law or performing services which the licensee knows or has reason to know that he or she is not competent to perform or which are beyond the scope of his or her training.

(f) Performing, without first obtaining the informed consent of the patient , *a person authorized to provide consent to health care pursuant to section 3 of this act* or , *if the patient is an emancipated minor*, the patient's ~~family,~~ *parent or guardian*, any procedure or prescribing any therapy which by the current standards of the practice of medicine is experimental.

(g) Continual failure to exercise the skill or diligence or use the methods ordinarily exercised under the same circumstances by physicians in good standing practicing in the same specialty or field.

(h) Having an alcohol or other substance use disorder.

(i) Making or filing a report which the licensee or applicant knows to be false or failing to file a record or report as required by law or regulation.

(j) Failing to comply with the requirements of NRS 630.254.

(k) Failure by a licensee or applicant to report in writing, within 30 days, any disciplinary action taken against the licensee or applicant by another state, the Federal Government or a foreign country, including, without limitation, the revocation, suspension or surrender of a license to practice medicine in another jurisdiction. The provisions of this paragraph do not apply to any disciplinary action taken by the Board or taken because of any disciplinary action taken by the Board.

(l) Failure by a licensee or applicant to report in writing, within 30 days, any criminal action taken or conviction obtained against the licensee or applicant, other than a minor traffic violation, in this State or any other state or by the Federal Government, a branch of the Armed Forces of the United States or any local or federal jurisdiction of a foreign country.

(m) Failure to be found competent to practice medicine as a result of an examination to determine medical competency pursuant to NRS 630.318.

(n) Operation of a medical facility at any time during which:

(1) The license of the facility is suspended or revoked; or



(2) An act or omission occurs which results in the suspension or revocation of the license pursuant to NRS 449.160.

➔ This paragraph applies to an owner or other principal responsible for the operation of the facility.

(o) Failure to comply with the requirements of NRS 630.373.

(p) Engaging in any act that is unsafe or unprofessional conduct in accordance with regulations adopted by the Board.

(q) Knowingly or willfully procuring or administering a controlled substance or a dangerous drug as defined in chapter 454 of NRS that is not approved by the United States Food and Drug Administration, unless the unapproved controlled substance or dangerous drug:

(1) Was procured through a retail pharmacy licensed pursuant to chapter 639 of NRS;

(2) Was procured through a Canadian pharmacy which is licensed pursuant to chapter 639 of NRS and which has been recommended by the State Board of Pharmacy pursuant to subsection 4 of NRS 639.2328;

(3) Is cannabis being used for medical purposes in accordance with chapter 678C of NRS; or

(4) Is an investigational drug or biological product prescribed to a patient pursuant to NRS 630.3735 or 633.6945.

(r) Failure to supervise adequately a medical assistant pursuant to the regulations of the Board.

(s) Failure to comply with the provisions of NRS 630.3745.

(t) Failure to obtain any training required by the Board pursuant to NRS 630.2535.

(u) Failure to comply with the provisions of NRS 454.217 or 629.086.

2. As used in this section, "investigational drug or biological product" has the meaning ascribed to it in NRS 454.351.

Sec. 7. NRS 630A.370 is hereby amended to read as follows:

630A.370 The following acts, among others, constitute grounds for initiating disciplinary action or denying the issuance of a license or certificate:

1. Inability to practice homeopathic medicine or to practice as an advanced practitioner of homeopathy or as a homeopathic assistant, as applicable, with reasonable skill and safety because of an illness, a mental or physical condition or an alcohol or other substance use disorder.

2. Engaging in any:

(a) Professional conduct which is intended to deceive or which the Board by regulation has determined is unethical.

(b) Medical practice harmful to the public or any conduct detrimental to the public health, safety or morals which does not



1 constitute gross or repeated malpractice or professional
2 incompetence.

3 3. Administering, dispensing or prescribing any controlled
4 substance, except as authorized by law.

5 4. Performing, assisting or advising an unlawful abortion or in
6 the injection of any liquid substance into the human body to cause
7 an abortion.

8 5. Practicing or offering to practice beyond the scope permitted
9 by law, or performing services which the homeopathic physician,
10 advanced practitioner of homeopathy or homeopathic assistant
11 knows or has reason to know he or she is not competent to perform.

12 6. Performing any procedure without first obtaining the
13 informed consent of the patient , *a person authorized to provide*
14 *consent to health care pursuant to section 3 of this act* or , *if the*
15 *patient is an emancipated minor*, the patient's ~~family~~ *parent or*
16 *guardian* or prescribing any therapy which by the current standards
17 of the practice of homeopathic medicine is experimental.

18 7. Continued failure to exercise the skill or diligence or use the
19 methods ordinarily exercised under the same circumstances by
20 homeopathic physicians, advanced practitioners of homeopathy and
21 homeopathic assistants in good standing who practice homeopathy
22 and electrodiagnosis, as applicable.

23 8. Operation of a medical facility, as defined in NRS 449.0151,
24 at any time during which:

25 (a) The license of the facility is suspended or revoked; or

26 (b) An act or omission occurs which results in the suspension or
27 revocation of the license pursuant to NRS 449.160.

28 ➔ This subsection applies to an owner or other principal responsible
29 for the operation of the facility.

