

ASSEMBLY BILL NO. 209—ASSEMBLYMEN GONZÁLEZ;
ANDERSON, CARTER, THOMAS, TORRES AND WATTS

FEBRUARY 21, 2023

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to certain providers of health care. (BDR 3-833)

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

~

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

AN ACT relating to providers of health care; prohibiting a provider of health care from taking certain actions to prevent, hinder or delay a person from bringing a civil action against the provider of health care for professional negligence; removing or repealing various requirements and restrictions concerning certain civil actions against certain providers of health care; prohibiting a provider of health care from providing any health care service to a person unless the provider of health care has obtained or otherwise carries a policy of professional liability insurance; providing a civil penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law defines "provider of health care" for the purposes of provisions of existing law governing civil actions against a provider of health care for professional negligence to include a physician, physician assistant, dentist, licensed nurse, dispensing optician, optometrist, registered physical therapist, podiatric physician, licensed psychologist, chiropractic physician, doctor of Oriental medicine, medical laboratory director or technician, licensed dietitian, a person licensed to engage in radiation therapy or radiologic imaging, a licensed hospital and certain other entities. (NRS 41A.015, 41A.017) **Sections 1 and 4** of this bill impose certain prohibitions on such a provider of health care.

Section 1 prohibits a provider of health care from knowingly making any false or misleading statement to, or withholding any material information from, a person who has received any health care service from the provider for the purpose of preventing, hindering or delaying the person from bringing an action against the



provider of health care for professional negligence. **Section 1** provides for a civil penalty not to exceed \$10,000 for each violation of that prohibition.

Section 4 prohibits a provider of health care from providing any health care service to a person in this State unless the provider of health care has obtained or otherwise carries a policy of professional liability insurance in an amount of not less than \$1,000,000 for each occurrence and \$3,000,000 in the aggregate. **Section 5** of this bill revises provisions requiring a provider of health care to obtain a policy of professional liability insurance before providing voluntary health care service to impose that requirement only if the provider is not otherwise required to obtain or otherwise carry a policy of professional liability insurance pursuant to **section 4**. (NRS 629.470)

Existing law sets forth various requirements and restrictions relating to civil actions against a provider of health care for professional negligence. Existing law: (1) limits the amount of noneconomic damages that a plaintiff may recover in such an action to \$350,000; (2) provides that each defendant is severally, and not jointly, liable for damages awarded in such an action; (3) requires the dismissal of such an action unless it is filed with an affidavit from a medical expert meeting certain requirements; (4) requires the parties to such an action to participate in a settlement conference; (5) sets forth certain restrictions regarding the time in which such actions may be brought; (6) limits the amount of a contingent fee that an attorney representing a plaintiff in such an action may contract for or collect; (7) authorizes certain evidence to be introduced in such an action regarding certain collateral benefits of a plaintiff; and (8) requires certain damages awarded in such an action to be paid by periodic payments, rather than by a lump sum payment. (NRS 7.095, 41A.035-41A.081, 41A.097, 42.021) **Section 7** of this bill repeals those requirements and restrictions. **Section 2** of this bill makes a conforming change to eliminate a reference to provisions repealed by **section 7**. Similarly, existing law, with certain exceptions, limits to \$50,000 the amount of damages for which certain providers of health care may be held liable for acts or omissions in rendering care or assistance to a patient in a hospital which was necessitated by a traumatic injury and for which the patient entered the hospital through its emergency room or trauma center, so long as the care or assistance is rendered in good faith and in a manner not amounting to gross negligence or reckless, willful or wanton conduct. (NRS 41.503) **Section 7** repeals that limitation.

In a civil action against a provider of health care for professional negligence, existing law creates a rebuttable presumption that an injury or death was caused by the negligence of the provider of health care if the injury or death occurred in certain specified circumstances. However, under existing law, that rebuttable presumption does not apply in an action in which the plaintiff submits certain affidavits from a medical expert or designates an expert witness to establish that a provider of health care deviated from the accepted standard of care. (NRS 41A.100) **Section 3** of this bill eliminates those exceptions to the applicability of the rebuttable presumption.

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

Section 1. Chapter 41A of NRS is hereby amended by adding thereto a new section to read as follows:

1. A provider of health care shall not knowingly make any false or misleading statement to, or withhold any material information from, a person who has received any health care



1 *service from the provider of health care for the purpose of*
2 *preventing, hindering or delaying the person from bringing an*
3 *action against the provider of health care for professional*
4 *negligence.*

5 *2. A provider of health care who violates subsection 1 is liable*
6 *for a civil penalty not to exceed \$10,000 for each violation. The*
7 *Attorney General or any district attorney of this State may recover*
8 *the penalty in a civil action brought in the name of the State of*
9 *Nevada in any court of competent jurisdiction.*

10 **Sec. 2.** NRS 41A.003 is hereby amended to read as follows:

11 41A.003 As used in this chapter, unless the context otherwise
12 requires, the words and terms defined in NRS ~~41A.007 to~~ **41A.015**
13 **and** 41A.017 ~~[, inclusive,]~~ have the meanings ascribed to them in
14 those sections.

15 **Sec. 3.** NRS 41A.100 is hereby amended to read as follows:

16 41A.100 1. Liability for personal injury or death is not
17 imposed upon any provider of health care based on alleged
18 negligence in the performance of that care unless evidence
19 consisting of expert medical testimony, material from recognized
20 medical texts or treatises or the regulations of the licensed medical
21 facility wherein the alleged negligence occurred is presented to
22 demonstrate the alleged deviation from the accepted standard of care
23 in the specific circumstances of the case and to prove causation of
24 the alleged personal injury or death, except that such evidence is not
25 required and a rebuttable presumption that the personal injury or
26 death was caused by negligence arises where evidence is presented
27 that the provider of health care caused the personal injury or death
28 occurred in any one or more of the following circumstances:

29 (a) A foreign substance other than medication or a prosthetic
30 device was unintentionally left within the body of a patient
31 following surgery;

32 (b) An explosion or fire originating in a substance used in
33 treatment occurred in the course of treatment;

34 (c) An unintended burn caused by heat, radiation or chemicals
35 was suffered in the course of medical care;

36 (d) An injury was suffered during the course of treatment to a
37 part of the body not directly involved in the treatment or proximate
38 thereto; or

39 (e) A surgical procedure was performed on the wrong patient or
40 the wrong organ, limb or part of a patient's body.

41 2. Expert medical testimony provided pursuant to subsection 1
42 may only be given by a provider of health care who practices or has
43 practiced in an area that is substantially similar to the type of
44 practice engaged in at the time of the alleged negligence.



~~{3. The rebuttable presumption pursuant to subsection 1 does not apply in an action in which a plaintiff submits an affidavit pursuant to NRS 41A.071, or otherwise designates an expert witness to establish that the specific provider of health care deviated from the accepted standard of care.~~

~~— 4. Nothing in this section shall be construed to preclude any party to the suit from designating and presenting expert testimony as to the legal or proximate cause of any alleged personal injury or death.}~~

Sec. 4. Chapter 629 of NRS is hereby amended by adding thereto a new section to read as follows:

1. In addition to complying with any other applicable requirements and limitations set forth by specific statute, a provider of health care shall not provide any health care service to a person in this State unless the provider of health care has obtained or otherwise carries a policy of professional liability insurance which insures the provider of health care against any liability arising from the provision of the health care service in an amount of not less than \$1,000,000 for each occurrence and \$3,000,000 in the aggregate.

2. As used in this section, “provider of health care” has the meaning ascribed to it in NRS 41A.017.

Sec. 5. NRS 629.470 is hereby amended to read as follows:

629.470 Each provider of health care who provides voluntary health care service pursuant to NRS 629.400 to 629.490, inclusive, *and who is not otherwise required to obtain or otherwise carry a policy of professional liability insurance pursuant to section 4 of this act*, shall obtain or otherwise carry, before providing such service, a policy of professional liability insurance which insures the provider of health care against any liability arising from the provision of voluntary health care service by the provider of health care pursuant to NRS 629.400 to 629.490, inclusive.

Sec. 6. The amendatory provisions of this act apply to a cause of action that accrues on or after October 1, 2023.

Sec. 7. NRS 7.095, 41.503, 41A.007, 41A.011, 41A.035, 41A.045, 41A.061, 41A.071, 41A.081, 41A.097, 42.021, 632.238 and 634.1295 are hereby repealed.

LEADLINES OF REPEALED SECTIONS

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



41.503 Hospital care or assistance necessitated by traumatic injury; presumption regarding follow-up care.

41A.007 “Economic damages” defined.

41A.011 “Noneconomic damages” defined.

41A.035 Limitation on amount of award for noneconomic damages.

41A.045 Several liability of defendants for damages; abrogation of joint and several liability.

41A.061 Dismissal of action for failure to bring to trial; effect of dismissal; adoption of court rules to expedite resolution of actions.

41A.071 Dismissal of action filed without affidavit of medical expert.

41A.081 Settlement conference: Persons required to participate; powers and duties of judge; failure to participate.

41A.097 Limitation of actions; tolling of limitation.

42.021 Actions based on professional negligence of providers of health care: Introduction of certain evidence relating to collateral benefits; restrictions on source of collateral benefits; payment of future damages by periodic payments.

632.238 Advanced practice registered nurse: Authority of Board to require maintenance of professional liability insurance.

634.1295 Duty of chiropractic physician who does not maintain professional liability insurance to provide certain written disclosures; regulations.

