

ASSEMBLY BILL NO. 404—COMMITTEE ON JUDICIARY

MARCH 27, 2023

Referred to Committee on Judiciary

**SUMMARY**—Revises provisions governing civil actions against a provider of health care for professional negligence. (BDR 3-709)

**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 civil actions; excluding certain health care professionals from the definition of “provider of health care” for certain purposes; increasing the limitation on the amount of noneconomic damages a plaintiff may recover in a civil action against a provider of health care for professional negligence; revising the statute of limitations for bringing an action against a provider of health care for injury or death based upon professional negligence, professional services rendered without consent or error or omission in practice; repealing various requirements and restrictions concerning a civil action against a provider of health care for professional negligence; and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

Existing law sets forth various requirements and restrictions relating to civil actions against a provider of health care for professional negligence. (Chapter 41A of NRS) Existing law defines “provider of health care” for the purposes of those provisions 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.017) **Section 1** of this bill excludes from that definition an agency to provide nursing in the home, a facility for intermediate care, a facility for skilled nursing, a facility for hospice care and a nursing pool, thereby specifically excluding such persons from the provisions of existing law imposing certain



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requirements and restrictions on civil actions brought against a provider of health care for professional negligence.

Existing law limits the amount of noneconomic damages that a plaintiff may recover in a civil action brought against a provider of health care for professional negligence to \$350,000, regardless of the number of plaintiffs, defendants or theories upon which liability may be based. (NRS 41A.035) **Section 2** of this bill instead limits the amount of noneconomic damages that a plaintiff may recover in such an action to \$2,500,000 and, beginning on January 1, 2025, requires that amount to be adjusted each year based on the percentage increase in the Consumer Price Index (All Items) for the immediately preceding calendar year.

Existing law requires an action for injury or death against a provider of health care based on professional negligence, professional services rendered without consent or error or omission in practice, to be commenced: (1) for an injury that occurred on or after October 1, 2002, not more than 3 years after the date of injury or 1 year after the plaintiff discovers or should have discovered the injury; and (2) if the injury occurred before October 1, 2002, not more than 4 years after the date of injury or 2 years after the plaintiff discovers or should have discovered the injury. (NRS 41A.097) **Section 3** of this bill revises those provisions to require all such actions to be brought not more than 4 years after the date of injury or 2 years after the plaintiff discovers or should have discovered the injury. **Section 4** of this bill provides that the changes in **section 3** apply retroactively to any injury or death that occurred before October 1, 2023, even if the statute of limitations that was in effect at the time of the injury or death has expired. Therefore, a civil action against a provider of health care that would otherwise be time-barred by the former statute of limitations is revived by this bill, so long as the revised statute of limitations set forth in **section 4** has not expired.

**Section 6** of this bill repeals provisions that: (1) limit the amount of a contingent fee that an attorney representing a plaintiff in a civil action against a provider of health care for professional negligence may contract for or collect; (2) limit to \$50,000 the amount of civil damages for which a licensed physician or dentist, a hospital or certain employees of a hospital may be held liable for certain acts or omissions in rendering care or assistance at a hospital necessitated by traumatic injury demanding immediate medical attention; (3) provide that each defendant in a civil action against a provider of health care for professional negligence is severally, and not jointly, liable for damages awarded in the action; and (4) authorize the introduction of certain evidence relating to collateral benefits, restrict certain sources of collateral benefits and provide for payment of future damages by periodic payments.

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

**Section 1.** NRS 41A.017 is hereby amended to read as follows:

41A.017 **1.** “Provider of health care” means a physician licensed pursuant to chapter 630 or 633 of NRS, physician assistant, dentist, licensed nurse, dispensing optician, optometrist, registered physical therapist, podiatric physician, licensed psychologist, chiropractic physician, doctor of Oriental medicine, holder of a license or a limited license issued under the provisions of chapter 653 of NRS, medical laboratory director or technician, licensed



dietitian or a licensed hospital, clinic, surgery center, physicians' professional corporation or group practice that employs any such person and its employees.

**2. The term does not include:**

(a) *An agency to provide nursing in the home, as defined in NRS 449.0015.*

(b) *A facility for hospice care, as defined in NRS 449.0033.*

(c) *A facility for intermediate care, as defined in NRS 449.0038.*

(d) *A facility for skilled nursing, as defined in NRS 449.0039.*

(e) *A nursing pool, as defined in NRS 449.0153.*

**Sec. 2.** 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 ~~[\$350,000, regardless of the number of plaintiffs, defendants or theories upon which liability may be based.]~~ **\$2,500,000.**

**2.** *The maximum amount of noneconomic damages set forth in subsection 1 must be adjusted on January 1 of each year beginning on January 1, 2025, in a rounded dollar amount corresponding to the percentage of increase in the Consumer Price Index (All Items) published by the United States Department of Labor for the immediately preceding calendar year. The Attorney General shall determine the amount of the increase required by this subsection and establish the adjusted amounts to take effect on January 1 of that year.*

**Sec. 3.** NRS 41A.097 is hereby amended to read as follows:

41A.097 **1.** Except as otherwise provided in subsection ~~3.]~~ **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:

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

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

(c) Injury to or the wrongful death of a person ~~foccurring before October 1, 2002,]~~ 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.]~~ 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.

~~[4.]~~ 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 . ~~[or 2.]~~ 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. 4.** The amendatory provisions of section 3 of this act apply to any injury or death that occurred before October 1, 2023, regardless of any statute of limitations that was in effect at the time the injury or death occurred, including, without limitation, any civil action that would have been barred by the statute of limitations that was in effect before October 1, 2023.

**Sec. 5.** The amendatory provisions of sections 1, 2 and 6 of this act apply to a cause of action that accrues on or after October 1, 2023.

**Sec. 6.** NRS 7.095, 41.503, 41A.045 and 42.021 are hereby repealed.



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LEADLINES OF REPEALED SECTIONS

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

**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.

