

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; increasing the amount of civil damages for which certain providers of health care may be liable for acts or omissions in rendering care or assistance necessitated by certain traumatic injuries; 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; imposing liability on a hospital for the professional negligence of a provider of health care who renders professional services at the hospital; 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 provisions which limit the amount of a contingent fee for which an attorney representing a plaintiff in a civil action against a provider of health care for professional negligence may contract for or collect; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

- 1 Existing law limits to \$50,000 the amount of civil damages for which a licensed
- 2 physician or dentist, a hospital or certain employees of a hospital may be held liable
- 3 for certain acts or omissions in rendering care or assistance at a hospital



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necessitated by a traumatic injury demanding immediate medical attention. (NRS 41.503) **Section 1** of this bill increases that amount to \$250,000 and, beginning on January 1, 2026, 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 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 1.5** 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 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: (1) for an action in which certain hospitals or employees, agents or affiliates of certain hospitals are a party, \$2,000,000; and (2) for any other action, \$550,000. **Section 2** requires, beginning on January 1, 2026, that those amounts be adjusted each year based on the percentage increase in the Consumer Price Index (All Items) for the immediately preceding calendar year.

Existing law provides that each defendant in a civil action for injury or death against a provider of health care based upon professional negligence is severally, and not jointly, liable for damages awarded in the action. (NRS 41A.045) **Section 2.5** of this bill: (1) deems a provider of health care who renders professional services at a hospital to be an agent of the hospital; and (2) provides that the hospital is vicariously liable for any professional negligence of the provider of health care in connection with the rendering of such services at the hospital.

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 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.



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

1 **Section 1.** NRS 41.503 is hereby amended to read as follows:
2 41.503 1. Except as otherwise provided in subsection 2 and
3 NRS 41.504, 41.505 and 41.506:

4 (a) A hospital which has been designated as a center for the
5 treatment of trauma by the Administrator of the Division of Public
6 and Behavioral Health of the Department of Health and Human
7 Services pursuant to NRS 450B.237 and which is a nonprofit
8 organization;

9 (b) A hospital other than a hospital described in paragraph (a);

10 (c) An employee of a hospital described in paragraph (a) or (b)
11 who renders care or assistance to patients;

12 (d) A physician or dentist licensed under the provisions of
13 chapter 630, 631 or 633 of NRS who renders care or assistance in a
14 hospital described in paragraph (a) or (b), whether or not the care or
15 assistance was rendered gratuitously or for a fee; and

16 (e) A physician or dentist licensed under the provisions of
17 chapter 630, 631 or 633 of NRS:

18 (1) Whose liability is not otherwise limited pursuant to NRS
19 41.032 to 41.0337, inclusive; and

20 (2) Who renders care or assistance in a hospital of a
21 governmental entity that has been designated as a center for the
22 treatment of trauma by the Administrator of the Division of Public
23 and Behavioral Health of the Department of Health and Human
24 Services pursuant to NRS 450B.237, whether or not the care or
25 assistance was rendered gratuitously or for a fee,

26 ➤ that in good faith renders care or assistance necessitated by a
27 traumatic injury demanding immediate medical attention, for which
28 the patient enters the hospital through its emergency room or trauma
29 center, may not be held liable for more than ~~[\$50,000]~~ \$250,000
30 in civil damages, exclusive of interest computed from the date of
31 judgment, to or for the benefit of any claimant arising out of any act
32 or omission in rendering that care or assistance if the care or
33 assistance is rendered in good faith and in a manner not amounting
34 to gross negligence or reckless, willful or wanton conduct.

35 2. The limitation on liability provided pursuant to this section
36 does not apply to any act or omission in rendering care or
37 assistance:

38 (a) Which occurs after the patient is stabilized and is capable of
39 receiving medical treatment as a nonemergency patient, unless
40 surgery is required as a result of the emergency within a reasonable
41 time after the patient is stabilized, in which case the limitation on
42 liability provided by subsection 1 applies to any act or omission in



rendering care or assistance which occurs before the stabilization of the patient following the surgery; or

(b) Unrelated to the original traumatic injury.

3. If:

(a) A physician or dentist provides follow-up care to a patient to whom the physician or dentist rendered care or assistance pursuant to subsection 1;

(b) A medical condition arises during the course of the follow-up care that is directly related to the original traumatic injury for which care or assistance was rendered pursuant to subsection 1; and

(c) The patient files an action for malpractice based on the medical condition that arises during the course of the follow-up care,

➤ there is a rebuttable presumption that the medical condition was the result of the original traumatic injury and that the limitation on liability provided by subsection 1 applies with respect to the medical condition that arises during the course of the follow-up care.

4. *The maximum amount of civil damages set forth in subsection 1 must be adjusted on January 1 of each year beginning on January 1, 2026, in a rounded dollar amount corresponding to the percentage 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 amount to take effect on January 1 of that year.*

5. For the purposes of this section:

(a) “Reckless, willful or wanton conduct,” as it applies to a person to whom subsection 1 applies, shall be deemed to be that conduct which the person knew or should have known at the time the person rendered the care or assistance would be likely to result in injury so as to affect the life or health of another person, taking into consideration to the extent applicable:

(1) The extent or serious nature of the prevailing circumstances;

(2) The lack of time or ability to obtain appropriate consultation;

(3) The lack of a prior medical relationship with the patient;

(4) The inability to obtain an appropriate medical history of the patient; and

(5) The time constraints imposed by coexisting emergencies.

(b) “Traumatic injury” means any acute injury which, according to standardized criteria for triage in the field, involves a significant risk of death or the precipitation of complications or disabilities.



Sec. 1.5. 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 :

(a) For an action in which a hospital, other than a critical access hospital, or an employee, agent or affiliate of such a hospital is a party, \$2,000,000.

(b) For any other action, \$550,000.

2. The maximum amounts of noneconomic damages set forth in paragraphs (a) and (b) of subsection 1 must be adjusted on January 1 of each year beginning on January 1, 2026, 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.

3. As used in this section:

(a) “Affiliate” means a person who, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with a hospital.



(b) *“Critical access hospital” means a hospital which has been certified as a critical access hospital by the Secretary of Health and Human Services pursuant to 42 U.S.C. § 1395i-4(e).*

Sec. 2.5. NRS 41A.045 is hereby amended to read as follows:

41A.045 1. In an action for injury or death against a provider of health care based upon professional negligence, each defendant is liable to the plaintiff for economic damages and noneconomic damages severally only, and not jointly, for that portion of the judgment which represents the percentage of negligence attributable to the defendant.

2. ~~{This section is}~~ *The provisions of subsection 1 are intended to abrogate joint and several liability of a provider of health care in an action for injury or death against the provider of health care based upon professional negligence.*

3. *Notwithstanding the provisions of this section, if a provider of health care renders professional services at a hospital:*

(a) *The provider of health care shall be deemed to be an agent of the hospital; and*

(b) *The hospital is vicariously liable for any professional negligence of the provider of health care in connection with the rendering of such services at the hospital.*

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 ~~{occurring 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 ~~{occurring before October 1, 2002,}~~ from professional services rendered without consent; or

(c) Injury to or the wrongful death of a person ~~{occurring 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 . ~~for 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:

1. Sections 1, 1.5, 2.5 and 6 of this act apply to a cause of action that accrues on or after October 1, 2023.

2. Section 2 of this act applies to a cause of action that accrues on or after January 1, 2024.

Sec. 6. NRS 7.095 is hereby repealed.

TEXT OF REPEALED SECTION

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



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

