

(Reprinted with amendments adopted on April 24, 2023)

FIRST REPRINT

A.B. 11

ASSEMBLY BILL NO. 11—COMMITTEE ON
HEALTH AND HUMAN SERVICES

(ON BEHALF OF THE PATIENT PROTECTION COMMISSION)

PREFILED NOVEMBER 16, 2022

Referred to Committee on Health and Human Services

SUMMARY—Revising provisions governing hospitals.
(BDR 40-382)

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; prohibiting a hospital or psychiatric hospital from employing a physician under certain circumstances; providing penalties for a violation of such prohibition; prohibiting a hospital from taking measures to restrict certain activity of a provider of health care who is employed by or serves as an independent contractor of the hospital; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law prescribes certain requirements governing the staffing of hospitals,
2 psychiatric hospitals and certain other health care facilities. (NRS 449.241-
3 449.2428) In 2010, the Attorney General issued an opinion explaining that, while it
4 is the longstanding practice in Nevada that a physician generally works as a
5 contractor for, rather than an employee of, a hospital, there is no provision of law
6 prohibiting a hospital from employing a physician. (Att’y Gen. Op. 2010-04
7 (March 5, 2010)) **Section 1** of this bill expressly prohibits a hospital or psychiatric
8 hospital from employing a physician for the purpose of practicing medicine,
9 homeopathic medicine or osteopathic medicine except where expressly authorized
10 by law.

11 Existing law authorizes a county hospital or hospital district, a private nonprofit
12 medical school, a nonprofit medical research institution or certain mental health
13 facilities operated by divisions of the Department of Health and Human Services to
14 employ a physician under certain circumstances. (NRS 433.264, 433B.150,
15 450.180, 450.640, 630.365) **Section 1** additionally authorizes a hospital or
16 psychiatric hospital to employ a physician: (1) who is participating in certain



17 graduate programs; or (2) if the hospital or psychiatric hospital is owned or
18 operated by the State Government.

19 Existing law exempts a medical facility from certain requirements of existing
20 law relating to the licensing and regulation of medical facilities if the facility: (1) is
21 conducted by and for the adherents of any church or religious denomination for
22 the purpose of providing care and treatment in accordance with the practices of the
23 religion of the church or denomination; or (2) is operated and maintained by the
24 United States Government or an agency thereof. (NRS 449.0301) **Section 2** of this
25 bill exempts these facilities from the provisions of **section 1**.

26 Existing law authorizes certain penalties to be imposed against certain medical
27 facilities that violate certain laws and regulations governing the operation of such
28 medical facilities. (NRS 449.160, 449.163, 449.220, 449.240) **Sections 3 and 4** of
29 this bill apply these same penalties to a hospital or psychiatric hospital that violates
30 **section 1**. Specifically: (1) **section 3** of this bill authorizes the Division of Public
31 and Behavioral Health of the Department of Health and Human Services to suspend
32 or revoke the license of a hospital or psychiatric hospital that violates **section 1**;
33 and (2) **section 4** authorizes the Division to impose certain other penalties on a
34 hospital or psychiatric hospital that violates **section 1**, including, without limitation,
35 the imposition of an administrative penalty of not more than \$5,000 per day for
36 each violation, together with interest at a rate not to exceed 10 percent per year.

37 **Sections 5-7 and 8** of this bill make conforming changes to indicate the proper
38 placement of **section 1** in the Nevada Revised Statutes.

39 Existing law makes it an unlawful employment practice to discriminate against
40 any employee because the employee has inquired about, discussed or voluntarily
41 disclosed his or her wages or the wages of another employee. (NRS 613.330)
42 **Section 7.3** of this bill prohibits a hospital from including in a contract with a
43 provider of health care any provision prohibiting the provider from discussing with
44 other persons his or her wages or salary or other information relating to working
45 conditions. **Section 7.3** also prohibits a hospital from taking any action to prevent a
46 provider of health care from: (1) discussing such topics; or (2) working for another
47 medical facility or office.

48 Existing law provides that a noncompetition covenant is void unless the
49 covenant: (1) is supported by valuable consideration; (2) does not impose any
50 restraint that is greater than is required for the protection for the employer; (3) does
51 not impose an undue hardship on the employee; and (4) imposes restrictions that
52 are appropriately related to the consideration for the covenant. (NRS 613.195)
53 **Section 7.8** of this bill prohibits a hospital from entering into a noncompetition
54 covenant with a provider of health care that prohibits the provider from providing
55 medical services at another medical facility or office during or after the term of the
56 employment or contract, as applicable. **Section 7.8** provides that any provision of a
57 noncompetition covenant that violates that prohibition is void. Additionally, the
58 provisions of **sections 7.3 and 7.8** would be subject to administrative enforcement
59 by the Labor Commissioner. (NRS 607.160)

60 **Section 8.5** of this bill requires the Joint Interim Standing Committee on Health
61 and Human Services to conduct a study on the employment of physicians by
62 corporations. **Section 8.5** authorizes the Standing Committee to request the drafting
63 of 1 legislative measure to amend or repeal **section 1** or make other changes
64 relating to the study at the 83rd Session of the Legislature.

65 **Section 10** of this bill makes this bill effective upon the passage of the bill by
66 the Legislature and approval of the bill by the Governor. **Section 9** of this bill
67 provides that **section 1** does not apply to any contract existing on the date on which
68 this bill becomes effective.



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

1 **Section 1.** Chapter 449 of NRS is hereby amended by adding
2 thereto a new section to read as follows:

3 1. *Except as otherwise provided in subsection 2, NRS*
4 *433.264, 433B.150, 450.180, 450.640 and 630.365 or any other*
5 *provision of law, a hospital or psychiatric hospital shall not*
6 *employ as an employee a physician for the purpose of engaging in*
7 *the practice of medicine, homeopathic medicine or osteopathic*
8 *medicine.*

9 2. *A hospital or psychiatric hospital may employ as an*
10 *employee a physician:*

11 (a) *Who is participating in a graduate program approved by*
12 *the Accreditation Council for Graduate Medical Education, or its*
13 *successor organization, for the purpose of engaging in the practice*
14 *of medicine, homeopathic medicine or osteopathic medicine; or*

15 (b) *If the hospital or psychiatric hospital is owned or operated*
16 *by the State Government.*

17 3. *A hospital or psychiatric hospital that employs or contracts*
18 *with a physician or other provider of health care shall ensure the*
19 *contract complies with the provisions of section 7.3 of this act and*
20 *NRS 613.195.*

21 4. *As used in this section:*

22 (a) *“Homeopathic medicine” has the meaning ascribed to it in*
23 *NRS 630A.040.*

24 (b) *“Osteopathic medicine” has the meaning ascribed to it in*
25 *NRS 633.081.*

26 (c) *“Practice of medicine” has the meaning ascribed to it in*
27 *NRS 630.020.*

28 **Sec. 2.** NRS 449.0301 is hereby amended to read as follows:

29 449.0301 The provisions of NRS 449.029 to 449.2428,
30 inclusive, *and section 1 of this act* do not apply to:

31 1. Any facility conducted by and for the adherents of any
32 church or religious denomination for the purpose of providing
33 facilities for the care and treatment of the sick who depend solely
34 upon spiritual means through prayer for healing in the practice of
35 the religion of the church or denomination, except that such a
36 facility shall comply with all regulations relative to sanitation and
37 safety applicable to other facilities of a similar category.

38 2. Foster homes as defined in NRS 424.014.

39 3. Any medical facility, facility for the dependent or facility
40 which is otherwise required by the regulations adopted by the Board
41 pursuant to NRS 449.0303 to be licensed that is operated and
42 maintained by the United States Government or an agency thereof.



1 **Sec. 3.** NRS 449.160 is hereby amended to read as follows:

2 449.160 1. The Division may deny an application for a
3 license or may suspend or revoke any license issued under the
4 provisions of NRS 449.029 to 449.2428, inclusive, *and section 1 of*
5 *this act* upon any of the following grounds:

6 (a) Violation by the applicant or the licensee of any of the
7 provisions of NRS 439B.410 or 449.029 to 449.245, inclusive, *and*
8 *section 1 of this act* or of any other law of this State or of the
9 standards, rules and regulations adopted thereunder.

10 (b) Aiding, abetting or permitting the commission of any illegal
11 act.

12 (c) Conduct inimical to the public health, morals, welfare and
13 safety of the people of the State of Nevada in the maintenance and
14 operation of the premises for which a license is issued.

15 (d) Conduct or practice detrimental to the health or safety of the
16 occupants or employees of the facility.

17 (e) Failure of the applicant to obtain written approval from the
18 Director of the Department of Health and Human Services as
19 required by NRS 439A.100 or as provided in any regulation adopted
20 pursuant to NRS 449.001 to 449.430, inclusive, *and section 1 of*
21 *this act* and 449.435 to 449.531, inclusive, and chapter 449A of
22 NRS if such approval is required.

23 (f) Failure to comply with the provisions of NRS 441A.315 and
24 any regulations adopted pursuant thereto or NRS 449.2486.

25 (g) Violation of the provisions of NRS 458.112.

26 2. In addition to the provisions of subsection 1, the Division
27 may revoke a license to operate a facility for the dependent if, with
28 respect to that facility, the licensee that operates the facility, or an
29 agent or employee of the licensee:

30 (a) Is convicted of violating any of the provisions of
31 NRS 202.470;

32 (b) Is ordered to but fails to abate a nuisance pursuant to NRS
33 244.360, 244.3603 or 268.4124; or

34 (c) Is ordered by the appropriate governmental agency to correct
35 a violation of a building, safety or health code or regulation but fails
36 to correct the violation.

37 3. The Division shall maintain a log of any complaints that it
38 receives relating to activities for which the Division may revoke the
39 license to operate a facility for the dependent pursuant to subsection
40 2. The Division shall provide to a facility for the care of adults
41 during the day:

42 (a) A summary of a complaint against the facility if the
43 investigation of the complaint by the Division either substantiates
44 the complaint or is inconclusive;



1 (b) A report of any investigation conducted with respect to the
2 complaint; and

3 (c) A report of any disciplinary action taken against the facility.

4 ➔ The facility shall make the information available to the public
5 pursuant to NRS 449.2486.

6 4. On or before February 1 of each odd-numbered year, the
7 Division shall submit to the Director of the Legislative Counsel
8 Bureau a written report setting forth, for the previous biennium:

9 (a) Any complaints included in the log maintained by the
10 Division pursuant to subsection 3; and

11 (b) Any disciplinary actions taken by the Division pursuant to
12 subsection 2.

13 **Sec. 4.** NRS 449.163 is hereby amended to read as follows:

14 449.163 1. In addition to the payment of the amount required
15 by NRS 449.0308, if a medical facility, facility for the dependent or
16 facility which is required by the regulations adopted by the Board
17 pursuant to NRS 449.0303 to be licensed violates any provision
18 related to its licensure, including any provision of NRS 439B.410 or
19 449.029 to 449.2428, inclusive, *and section 1 of this act* or any
20 condition, standard or regulation adopted by the Board, the
21 Division, in accordance with the regulations adopted pursuant to
22 NRS 449.165, may:

23 (a) Prohibit the facility from admitting any patient until it
24 determines that the facility has corrected the violation;

25 (b) Limit the occupancy of the facility to the number of beds
26 occupied when the violation occurred, until it determines that the
27 facility has corrected the violation;

28 (c) If the license of the facility limits the occupancy of the
29 facility and the facility has exceeded the approved occupancy,
30 require the facility, at its own expense, to move patients to another
31 facility that is licensed;

32 (d) Impose an administrative penalty of not more than \$5,000
33 per day for each violation, together with interest thereon at a rate not
34 to exceed 10 percent per annum; and

35 (e) Appoint temporary management to oversee the operation of
36 the facility and to ensure the health and safety of the patients of the
37 facility, until:

38 (1) It determines that the facility has corrected the violation
39 and has management which is capable of ensuring continued
40 compliance with the applicable statutes, conditions, standards and
41 regulations; or

42 (2) Improvements are made to correct the violation.

43 2. If the facility fails to pay any administrative penalty imposed
44 pursuant to paragraph (d) of subsection 1, the Division may:



1 (a) Suspend the license of the facility until the administrative
2 penalty is paid; and

3 (b) Collect court costs, reasonable attorney's fees and other
4 costs incurred to collect the administrative penalty.

5 3. The Division may require any facility that violates any
6 provision of NRS 439B.410 or 449.029 to 449.2428, inclusive, *and*
7 *section 1 of this act* or any condition, standard or regulation adopted
8 by the Board to make any improvements necessary to correct the
9 violation.

10 4. Any money collected as administrative penalties pursuant to
11 paragraph (d) of subsection 1 must be accounted for separately and
12 used to administer and carry out the provisions of NRS 449.001 to
13 449.430, inclusive, *and section 1 of this act*, 449.435 to 449.531,
14 inclusive, and chapter 449A of NRS to protect the health, safety,
15 well-being and property of the patients and residents of facilities in
16 accordance with applicable state and federal standards or for any
17 other purpose authorized by the Legislature.

18 **Sec. 5.** NRS 449.220 is hereby amended to read as follows:

19 449.220 1. The Division may bring an action in the name of
20 the State to enjoin any person, state or local government unit or
21 agency thereof from operating or maintaining any facility within the
22 meaning of NRS 449.029 to 449.2428, inclusive ~~§~~, *and section 1*
23 *of this act*:

24 (a) Without first obtaining a license therefor; or

25 (b) After his or her license has been revoked or suspended by
26 the Division.

27 2. It is sufficient in such action to allege that the defendant did,
28 on a certain date and in a certain place, operate and maintain such a
29 facility without a license.

30 **Sec. 6.** NRS 449.240 is hereby amended to read as follows:

31 449.240 The district attorney of the county in which the facility
32 is located shall, upon application by the Division, institute and
33 conduct the prosecution of any action for violation of any provisions
34 of NRS 449.029 to 449.245, inclusive ~~§~~, *and section 1 of this act*.

35 **Sec. 7.** NRS 449.241 is hereby amended to read as follows:

36 449.241 As used in NRS 449.241 to 449.2428, inclusive, *and*
37 *section 1 of this act*, unless the context otherwise requires, the
38 words and terms defined in NRS 449.2413 to 449.2418, inclusive,
39 have the meanings ascribed to them in those sections.

40 **Sec. 7.3.** Chapter 613 of NRS is hereby amended by adding
41 thereto a new section to read as follows:

42 *1. A hospital that employs or contracts with a provider of*
43 *health care shall not:*

44 *(a) Include in the contract for employment or services any*
45 *provision prohibiting the provider of health care from discussing*



1 *with other persons matters relating to the contract or his or her*
2 *experience at the hospital, including, without limitation:*

3 (1) *His or her wages or salary;*

4 (2) *Any harassment, violence or retaliation he or she or any*
5 *other person experienced at the hospital; or*

6 (3) *Any other information relating to the working*
7 *conditions at the hospital.*

8 (b) *Act to prevent a provider of health care from discussing*
9 *information described in paragraph (a) or providing medical*
10 *services at another medical facility or office during or after the*
11 *term of the employment or contract, as applicable.*

12 (c) *Retaliate against or impose discipline upon a provider of*
13 *health care who discusses information described in paragraph (a)*
14 *or provides medical services at another medical facility or office*
15 *during or after the term of the employment or contract, as*
16 *applicable.*

17 2. *The provisions of this section must not be construed to*
18 *prevent a hospital from taking any action necessary to prevent the*
19 *disclosure of information protected by the Health Insurance*
20 *Portability and Accountability Act of 1996, Public Law 104-191,*
21 *or that is otherwise confidential.*

22 3. *As used in this section:*

23 (a) *“Hospital” has the meaning ascribed to it in NRS 449.012.*

24 (b) *“Medical facility” has the meaning ascribed to it in*
25 *NRS 449.0151.*

26 (c) *“Provider of health care” has the meaning ascribed to it in*
27 *NRS 629.031.*

28 **Sec. 7.8.** NRS 613.195 is hereby amended to read as follows:

29 613.195 1. A noncompetition covenant is void and
30 unenforceable unless the noncompetition covenant:

31 (a) Is supported by valuable consideration;

32 (b) Does not impose any restraint that is greater than is required
33 for the protection of the employer for whose benefit the restraint is
34 imposed;

35 (c) Does not impose any undue hardship on the employee; and

36 (d) Imposes restrictions that are appropriate in relation to the
37 valuable consideration supporting the noncompetition covenant.

38 2. A noncompetition covenant may not restrict, and an
39 employer may not bring an action to restrict, a former employee of
40 an employer from providing service to a former customer or client
41 if:

42 (a) The former employee did not solicit the former customer or
43 client;

44 (b) The customer or client voluntarily chose to leave and seek
45 services from the former employee; and



1 (c) The former employee is otherwise complying with the
2 limitations in the covenant as to time, geographical area and scope
3 of activity to be restrained, other than any limitation on providing
4 services to a former customer or client who seeks the services of the
5 former employee without any contact instigated by the former
6 employee.

7 ↪ Any provision in a noncompetition covenant which violates the
8 provisions of this subsection is void and unenforceable.

9 3. A noncompetition covenant may not apply to an employee
10 who is paid solely on an hourly wage basis, exclusive of any tips or
11 gratuities.

12 4. *A noncompetition covenant may not restrict a provider of*
13 *health care employed by or contracted with a hospital in this State*
14 *from providing medical services at another medical facility or*
15 *office during or after the term of the employment or contract, as*
16 *applicable. This subsection does not prevent a hospital from taking*
17 *any action necessary to prevent the disclosure of information*
18 *protected by the Health Insurance Portability and Accountability*
19 *Act of 1996, Public Law 104-191, or that is otherwise confidential.*
20 *Any provision in a noncompetition covenant which violates the*
21 *provisions of this subsection is void and unenforceable.*

22 5. An employer in this State who negotiates, executes or
23 attempts to enforce a noncompetition covenant that is void and
24 unenforceable under this section does not violate the provisions of
25 NRS 613.200.

26 ~~5.1~~ 6. If the termination of the employment of an employee is
27 the result of a reduction of force, reorganization or similar
28 restructuring of the employer, a noncompetition covenant is only
29 enforceable during the period in which the employer is paying the
30 employee's salary, benefits or equivalent compensation, including,
31 without limitation, severance pay.

32 ~~6.1~~ 7. If an employer brings an action to enforce a
33 noncompetition covenant or an employee brings an action to
34 challenge a noncompetition covenant and the court finds the
35 covenant is supported by valuable consideration but contains
36 limitations as to time, geographical area or scope of activity to be
37 restrained that are not reasonable, imposes a greater restraint than is
38 necessary for the protection of the employer for whose benefit the
39 restraint is imposed or imposes undue hardship on the employee, the
40 court shall revise the covenant to the extent necessary and enforce
41 the covenant as revised. Such revisions must cause the limitations
42 contained in the covenant as to time, geographical area and scope of
43 activity to be restrained to be reasonable, to not impose undue
44 hardship on the employee and to impose a restraint that is not



1 greater than is necessary for the protection of the employer for
2 whose benefit the restraint is imposed.

3 ~~[7.]~~ 8. If an employer brings an action to enforce a
4 noncompetition covenant or an employee brings an action to
5 challenge a noncompetition covenant and the court finds that the
6 noncompetition covenant applies to an employee described in
7 subsection 3 , ~~[or]~~ that the employer has restricted or attempted to
8 restrict a former employee in the manner described in subsection 2
9 ~~[.]~~ *or that the noncompetition covenant violates subsection 4*, the
10 court shall award the employee reasonable attorney's fees and costs.
11 Nothing in this subsection shall be construed as prohibiting a court
12 from otherwise awarding attorney's fees to a prevailing party
13 pursuant to NRS 18.010.

14 ~~[8.]~~ 9. As used in this section:

15 (a) "Employer" means every person having control or custody of
16 any employment, place of employment or any employee.

17 (b) *"Hospital" has the meaning ascribed to it in NRS 449.012.*

18 (c) *"Medical facility" has the meaning ascribed to it in*
19 *NRS 449.0151.*

20 (d) "Noncompetition covenant" means an agreement between an
21 employer and employee which, upon termination of the employment
22 of the employee, prohibits the employee from pursuing a similar
23 vocation in competition with or becoming employed by a competitor
24 of the employer.

25 (e) *"Provider of health care" has the meaning ascribed to it in*
26 *NRS 629.031.*

27 **Sec. 8.** NRS 654.190 is hereby amended to read as follows:

28 654.190 1. The Board may, after notice and an opportunity
29 for a hearing as required by law, impose an administrative fine of
30 not more than \$10,000 for each violation on, recover reasonable
31 investigative fees and costs incurred from, suspend, revoke, deny
32 the issuance or renewal of or place conditions on the license of, and
33 place on probation or impose any combination of the foregoing on
34 any licensee who:

35 (a) Is convicted of a felony relating to the practice of
36 administering a nursing facility or residential facility or of any
37 offense involving moral turpitude.

38 (b) Has obtained his or her license by the use of fraud or deceit.

39 (c) Violates any of the provisions of this chapter.

40 (d) Aids or abets any person in the violation of any of the
41 provisions of NRS 449.029 to 449.2428, inclusive, *and section 1 of*
42 *this act*, as those provisions pertain to a facility for skilled nursing,
43 facility for intermediate care or residential facility for groups.



1 (e) Violates any regulation of the Board prescribing additional
2 standards of conduct for licensees, including, without limitation, a
3 code of ethics.

4 (f) Engages in conduct that violates the trust of a patient or
5 resident or exploits the relationship between the licensee and the
6 patient or resident for the financial or other gain of the licensee.

7 2. If a licensee requests a hearing pursuant to subsection 1, the
8 Board shall give the licensee written notice of a hearing pursuant to
9 NRS 233B.121 and 241.034. A licensee may waive, in writing, his
10 or her right to attend the hearing.

11 3. The Board may compel the attendance of witnesses or the
12 production of documents or objects by subpoena. The Board may
13 adopt regulations that set forth a procedure pursuant to which the
14 Chair of the Board may issue subpoenas on behalf of the Board.
15 Any person who is subpoenaed pursuant to this subsection may
16 request the Board to modify the terms of the subpoena or grant
17 additional time for compliance.

18 4. An order that imposes discipline and the findings of fact and
19 conclusions of law supporting that order are public records.

20 5. The expiration of a license by operation of law or by order
21 or decision of the Board or a court, or the voluntary surrender of a
22 license, does not deprive the Board of jurisdiction to proceed with
23 any investigation of, or action or disciplinary proceeding against, the
24 licensee or to render a decision suspending or revoking the license.

25 **Sec. 8.5.** 1. As part of its review of health and human
26 services during the 2023-2024 legislative interim, the Joint Interim
27 Standing Committee on Health and Human Services shall study the
28 employment of physicians by corporations, including, without
29 limitation, the benefits and drawbacks of such employment in
30 different situations.

31 2. The Joint Interim Standing Committee on Health and
32 Human Services may request the drafting of 1 legislative measure,
33 in addition to those requested pursuant to NRS 218D.160, to amend
34 or repeal section 1 of this act or make other changes relating to the
35 study conducted pursuant to this section at the 83rd Session of the
36 Nevada Legislature.

37 **Sec. 9.** 1. The provisions of section 1 of this act do not apply
38 to any contract existing on the effective date of this act between a
39 hospital or psychiatric hospital, as defined in NRS 449.2414, and a
40 physician. ☒

41 2. The provisions of section 7.3 and NRS 613.195, as amended
42 by section 7.8 of this act, do not apply to any contract existing on
43 the effective date of this act between a hospital, as defined in NRS
44 449.012, and a provider of health care, as defined in NRS 629.031,
45 but apply to any renewal of such a contract.



1 **Sec. 10.** This act becomes effective upon passage and
2 approval.

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