

Assembly Bill No. 11–Committee on
Health and Human Services

CHAPTER.....

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:

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

Existing law authorizes a county hospital or hospital district, a private nonprofit medical school, a nonprofit medical research institution or certain mental health facilities operated by divisions of the Department of Health and Human Services to employ a physician under certain circumstances. (NRS 433.264, 433B.150, 450.180, 450.640, 630.365) **Section 1** additionally authorizes a hospital or psychiatric hospital to employ a physician: (1) who is participating in certain graduate programs; or (2) if the hospital or psychiatric hospital is owned or operated by the State Government.

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

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



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

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

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

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

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

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

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

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

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

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



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

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

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

4. *As used in this section:*

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

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

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

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

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

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

2. Foster homes as defined in NRS 424.014.

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

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

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

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

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



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

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

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

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

(g) Violation of the provisions of NRS 458.112.

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

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

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

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

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

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

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

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

➤ The facility shall make the information available to the public pursuant to NRS 449.2486.

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

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



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

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

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

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

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

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

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

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

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

(2) Improvements are made to correct the violation.

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

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

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

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



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

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

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

(a) Without first obtaining a license therefor; or

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

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

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

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

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

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

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

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

(a) Include in the contract for employment or services any provision prohibiting the provider of health care from discussing with other persons matters relating to the contract or his or her experience at the hospital, including, without limitation:

(1) His or her wages or salary;

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

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



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

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

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

3. As used in this section:

(a) "Hospital" has the meaning ascribed to it in NRS 449.012.

(b) "Medical facility" has the meaning ascribed to it in NRS 449.0151.

(c) "Provider of health care" has the meaning ascribed to it in NRS 629.031.

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

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

(a) Is supported by valuable consideration;

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

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

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

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

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

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

(c) The former employee is otherwise complying with the limitations in the covenant as to time, geographical area and scope of activity to be restrained, other than any limitation on providing services to a former customer or client who seeks the services of the



former employee without any contact instigated by the former employee.

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

2. The provisions of section 7.3 and NRS 613.195, as amended by section 7.8 of this act, do not apply to any contract existing on the effective date of this act between a hospital, as defined in



NRS 449.012, and a provider of health care, as defined in NRS 629.031, but apply to any renewal of such a contract.

Sec. 10. This act becomes effective upon passage and approval.

