SENATE AND ASSEMBLY JOINT HEARING

MINUTES OF HEARING

MARCH 2, 1977

PRESENT: Senator Close
Senator Bryan
Senator Ashworth
Senator Dodge
Senator Foote
Senator Gojack
Senator Sheerin
Assemblyman Barengo
Assemblywoman Hayes
Assemblyman Coulter
Assemblyman Polish
Assemblyman Price
Assemblyman Ross
Assemblyman Sena
Assemblywoman Wagner

ABSENT: None

The meeting was called to order at 8:14 a.m. Senator Close was in the chair.

SB 185 Provides for retention of and access to certain medical records.

Elen Pope, Chairman of Licensed Practical Nurses Association stated that she had comments to make on four different bills SB 185, 187 and AB 268, 221. Her association has concern over the omission of the LPN and the definition of the provider of health care. As the LPN today provides many services of health care, they feel where it just states nurses it should state licensed nurse. She submitted her testimony in writing (see attachment A) for further consideration and action.

SB 189 Requires reduction of damages awarded in medical malpractice actions by amounts from certain collateral sources.

Acle Martelle, Deputy Administrator for Nevada State Welfare stated that their concern is that their division is left with the authority to collect monies paid to a medical provider that has been found fuilty of malpractice. They would recommend a minor addition to this bill. Something to the effect of "the provisions of this section do not abrogate the provisions of NRS 428.325", which currently allows them to seek legal recourse in collecting monies from a medical provider found guilty of malpractice.

Robert Holland, Deputy Attorney General for Nevada State Welfare. He stated this section provides that the Welfare Division has a lien in right of subrogation against any

third party between the Welfare Division and the recipient to recover medical benefits paid, where there is any kind of third party liability to pay for those medical benefits.

Senator Dodge stated that they had a problem in there with federal liens. He questioned if that extends to any other type of federal programs which they might be involved with. There is a specific section in there, but if there are other programs there ought to be some general provision in there not abrogating provisions for liens under Federal Aid programs.

Mr. Holland stated he was not familiar enough with other programs to answer the question. However, in the title 19 program there is a specific provision in the Social Security Act imposing the duty on the Welfare Division to seek out and recover these third party claims.

SB 191 Revises provisions relating to discipline of physicians.

Bryce Rhodes, Board of Medical Examiners stated that at the last hearing he was in the process of some comments regarding 191. They recommend that section 8, which repeals NRS 630.315 not be enacted. Section 630.315 provides that a written allegation of gross or repeated malpractice or professional incompetence be filed with the board. The board may require the physician to be examined by a physician designated by the board to determine his mental and physical condition. They feel that should stay in the law in order to protect the public health, safety and welfare. Such an examination might reveal that the physician does have impaired physical or mental capabilities due to indulgence in drugs or use of alcohol, or other reasons revealed by the examination. They also recommend that section 7 of SB 191 not be enacted. It is basically the same concept as regard to the examination, but provides that the board may not require such examination until the AG has completed an investigation and the board decides to go ahead with the administrative hearing. They feel this too may protect the public health and safety, however this may be way down the line. If such a suspension was made there should be a time limit on that suspension. This question was raised at the last hearing and it is his opinion, along with Mr. Isaeff, that if that suspension could be in effect for a period of 90 days that they could complete the investigation and have the matter on for a hearing and the public could be protected in the meantime. He gave a letter to the committee (see attachment B) to be entered into the records setting forth the recommendation of the board that NRS 630.315 be amended. Further to provide that in the event the board shall determine mental or physical examination is indicated that they may suspend the physician's license until there has been a hearing, provided that the suspension shall not be for a period of more then 90 dyas. It is also the recommendation of the board that a new section be added, "until

the order of revocation or suspension of the board is modified by judicial hearing that the court shall not stay the same by a temporary restraining order or a preliminary injunction". They submit that this follows through on the cases of the Nevada Supreme Court, that their should be no stay until there has been a modification or reversal by the court and that is a proper exercise of police power. To repeal that too would be for the protection of the public until there was a judicial review.

AB 265 Requires certain hospitals to establish internal risk management programs.

Fred Hillerry, Nevada Hospital Association stated that the study of medical malpractice in the state of Nevada indicated that the concept of risk management was new and seldom used in hospitals. Risk management as defined in other industries has not been implemented in our hospitals. However, a review of activities that regularly occur in hospitals will show that hospitals perhaps have more actual risk management than most other industries. For instance, they have medical audit otherwise known as patient care evaluation. This is the review of medical management of specific episodes of illness. From this criteria are established the standards for determining appropriate and effective patient care. This is required for joint commission on accreditation for hospitals. It is required in licensure for a hospital in the state of Nevada and it is also required for participation in the medicare and medicaid programs. This is reviewed on an annual basis by the bureau of health facilities. Another example of risk management in the hospital are the infection control committees. These are made up of a number of personnel within the hospital to develop policies for standardizing septic techniques for recognition of major infectious syndroms and for appropriate isolation procedures. They are to eliminate risks whenever an evaluation of an infection indicates a problem within the hospital. They are also involved in pre-employment screening and also imunization programs with personnel within the hospitals to avoid the risk of infections being spread. There are also tissue committees, made up of physicians within the hospital, that review and evaluate surgery performed in the hospital on the basis of pathological analysis. Hospitals are also very much involved in environmental standards which address two areas. One is the physical plant itself and the other is functional safety which occurs in the hospital. The physical plant has to be designed, constructed, equiped and furnished to protect lives and the physical safety of patients, personnel and visitors. The standards are developed by the American National Standards Institute which establishes standards for handicapped patients and personnel, Life Safety Codes of the National Fire Protection Association, OSHA, the Health Department and Sanitation concerns. Construction standards are developed by the

Board of Health and those are implemented and enforced by the Bureau of Health Facilities. Functional safety involving electrical safety, fire warning and safety systems from smoke alarms, smoke detectors, fire alarms, sprinkler systems. The handling and storage of flamable gases and liquids. Hospitals are required to have preventive maintenance programs to be sure that on an annual basis, certain reviews are to be done to guarantee again the safety of all. Hospitals also develop disaster plans for both internal and external disasters. Also, incident reports must be filed. There are also patient grievance procedures within the hospitals concerning the quality of care that is provided in the hospital. In-service education goes on continuously to keep the personnel involved and aware of the safety of the patients. There is criteria set down for a physician to practice on the staff, and which of these may do certain types of procedures. So we support the continued development and procedures and activities which will insure safety to patients and employees. The only thing they question is if legislation is needed which duplicates the requirements for licensure and accreditation. The Bureau of Health Facilities now require annual surveys to insure compliance, and the Joint Commission conducts at least bi-annual accreditation surveys.

Senator Dodge asked if all the larger hospitals followed these procedures and how many fell into this category.

Mr. Hillerry stated that they are all accredited by the Joint Commission. There are 6 large hospitals but he is not sure how many of the smaller ones are also accredited, but they are licensed by the Bureau of Health Facilities on an annual basis. He stated he is not really opposed to the bill but feels that it is already being done by other agencies and this would just create a duplication of paper. The maximum amount of time for accreditation is two years, therefore a survey is always done in something less than that time.

Senator Bryan asked if this servey was made available to the Bureau of Health Facilities, and if not would there be any objection to making it available?

Mr. Hillerry stated he did not think it was made available routinely. They would have no objection and in fact the Bureau of Health Facilities was recently involved in a follow-up survey for Federal concern because the Joint Commission accreditation automatically indicated the hospital was certified for medicare and medicaid, and the concern was because it was voluntary was it doing a good job. If the Insurance Commissioner felt they needed this to assure them that risk management functions are being performed in the hospitals they would be happy to provide them.

Mr. Price asked if they didn't feel that there would be much greater responsibility if it was spelled out in the law

rather then left to internal management investigation.

Mr. Hillerry stated that may be but they feel they are already doing that and do not need a legislative mandate.

AB 267 Amends various provisions of law relating to medical-legal screening panels.

Tom Cochran, Chairman of Southern Nevada Screening Panel stated he would like to add two small points to the remarks he made a the previous hearing. Where it reads, "at least ten days in advance of the malpractice hearing the respective administratores shall", he would ask that it be amended and insert the following "administrators or their designees". Also line 22 following "each profession or their designees". The reason for this is that as a matter of course the administrators do not select the panel. The chairman of the State Bar Inter-professional Committee has actually been designated as the person in the Southern part of the state and one of the attorneys in the north. This would avoid problems later, where someone could say we are not happy with the decision, and you weren't properly constituted.

AB 268 Specifies conditions under which persons under disability may recover damages for parents' or guardians' failure to bring medical malpractice action.

Dr. Bill Stephen, Immediate Past President, Nevada State Medical Association stated he would like to put in an overview of this package as well as specific comments to 268. The goal of SCR 21 is to legislate equitable relief for the abuses and inequities of professional liabilities. Those who reap large profits from malpractice may try to maintain the status quo, but would ask the Committee to remember those goals. The package is heavily spiced with disciplinary legislation which would in fact discipline the physician. He has reviewed a summary of all the new laws in the U.S. and is assured that if this package passes, the physicians in Nevada will be subjected to more disciplinary laws then any other state. Insofar as AB 268 is concerned Nevada is quite away behind the rest of the country in so far as the statute of limitations is concerned. It currently calls for no more then 4 years after the date of injury or 2 years after discovery. They would urge in lieu of changes in other state's laws to reduce this to 3 years after occurrence and 1 year after discovery. People are very cognizant of malpractice and the long statute of limitations Nevada currently has on its books. He would like to go back to 187 briefly as he feels there was an oversight relating to periodic payments. It currently calls for future damages to include medical treatment, care or custody. It was their understanding that the replacement of income was also to be periodically paid out, this would be patient oriented legislation. He also stated that there is a problem of reincurance with malpractice greater then regular malpractice insurance. The state JUA lacks reinsurance at

the moment. Re-insurance is a big business with Lloyds of London, there are some 40 possible solutions to malpractice legislative problems that have been brought up. The two the insurance companies would like most to get rid of are contingency fees and an absolute limit on liability. But Lloyds of London feel the most important to the patient, doctors and insurance companies were collateral sources and periodic payments.

Senator Dodge questioned if anyone had made any kind of analysis on the shortening of the statute as far as rates, where the insurance company would know it had a cutoff.

Dr. Stephan stated the National Association of Insurance Commissioners undertook a very extensive study and they did evaluate the statutes of limitations. There was no question that there was a relationship between overall costs in malpractice insurance cases and the statute of limitations. He stated that there are now 11 states that have passed collateral sources regulations and according to a printed report there were 10 states that had also passed a periodic payment. In response to Senator Gojack's request for statistics he said he would bring them in to the committee (see attachment C).

Andy Gross, Legislative Counsel Bureau stated he wished to make a brief statement here on the statute of limitations. On AB 268 line 6 and 7, "whichever occurs first". There are a number of states which have a limitation of 3 years from the date of occurance or 1 year from date of discovery but they don't then cap it as Nevada has done. In other words it could be one year from discovery and 10 years down the road, if you don't put a maximum cap on it and Nevada does have a maximum 4 year cap.

Acle Martelle stated they feel that the language in subsection 5 lines 22 thru 23 on page 2 is too broad, relative to personal liability that it appears to impose on the Welfare Administrator. They request that the language be changed to provide the the welfare administrator cannot be personally liable. They request this due to the large amount of children that are in the agencies custody. They will accept the designation of the Welare Division, but not the administrator personally.

Senator Bryan raised the question as to what actually was meant by a person under legal disability. It could be a minor, yet when warden is placed in the wording, it could omit a minor and therefore talking about someone institutionalized.

Senator Dodge said he was a little concerned over the removal of the personal liability. The administrator is only liable here if he has actual or constructive knowledge and then doesn't exercise reasonable judgment in protecting

that child. In fact if you as the actual administrator have the actual knowledge and don't do something, then you have extreme failure against that foster child.

Mr. Martelle stated this language is just too broad. He feels that the administrator should be responsible if he has actual knowledge, but does not feel that this is the way it is worded.

Senator Dodge stated then what they are trying to do here is where it states "public custodian", they would want the agency or division named rather than the administrator of the division.

Robert Byrd, Nevada Medical Insurance Liability Association stated that Dr. Stephan had suggested the shortening of the statute of limitations to 3 and 1, and as an insurance representative, he strongly concurs with that. There is some indication already that Nevada, being the small community that it is, is beginning to shorten the tail because of involvement in the medical field and becoming more familiar with health providers and more knowledgeable. He doesn't feel it would be detrimental to anyone in Nevada, and would give something to predicate rates more quickly.

Tom Cochran stated he would like to make a brief comment on this, just to say that the statute of limitations that we have at the present time is one of the shrortest with the absolute four year limitation, except for those of a minor involving brain damage. There are many times when people don't know and the statute of limitations must be designed to protect the citizens and the professions only secondary. He feels as it is presently stated is short enough. There are certain aspects of 189 that disturb him. Not because it allows reduction of the collateral sources, that is a point the doctors and attorneys and everyone involved agree on. There is one thing missing which is absolutely vital to it, it doesn't say a thing about these benefits being subrogable by the providing agencies. In title 42, section 2651 of the U.S. code which makes every medical and hospital service provided by the federal government subrogable to the Federal Government, except those services provided to a veteran resulting from a service connected disability. Medicare, service retirees, members of the armed forces, anybody who receives medical treatment under the auspices of the federal government, must repay the federal government for those injuries resulting from circumstances giving rise to a tort action against a third party. He has made copies of 42.2651 to distribute to the Committee (see attachment D). So they have the right to recover if they so choose. It also speaks there of welfare benefits paid NRS 428.325 which gives the State of Nevada or any of it's welfare agencies the absolute right of subrogation, for any medical, hospital care and treatment provided to any medically

indigent person. It also includes any payments received under any unemployment compensation act. However, in Nevada it specifically states under the unemployment Act that if he is physically unable he isn't entitled to unemployment benefits. So, therefore, he would have no right of recovery. It also states under a "National Health Program", and he feels we should wait and see what the federal government does with that. It is his opinion that if it is subrogable the portions of the damages ought to be recoverable in the malpractice action, because certainly the patient is going to have to pay back the government. So by putting "are not subrogable" would refine it.

Senator Dodge stated stated there had been a suggestion of "non-recoverable", would that language be appropriate?

Senator Bryan said he felt non-reimbursable might be clearer.

Mr. Cochran stated he would be agree with non-reimbursable because the right to subrogation or recovery, certainly indicates a reimbursable duty upon the receipient of the services.

Dr. Stephan stated that he doesn't think Mr. Cochran quite understood what the facts were. 93% of all malpractice actions are settled out of court. There is no admission of guilt or malpractice or liability. Where there is no proof of guilt then there is no reimbursement or subrogation possible. He hopes the bill will not be washed out for 7% of the cases. Also he does not see waiting on the National Insurance or even a state plan, it does not complicate anything by puting the verbage into the law at this time and may delay action at a future time.

Mr. Cochran stated he did not wish to be in opposition to the AMA legal department. However, they would like assurance that the cost of hopitalization at the Veterans Administration Hospital would be included as an item of special damages and that the Veterans Administration interest would be protected in any lawsuit or settlement.

SB 187 Provides for periodic payment of certain damages recovered in malpractice claims against health care providers.

George Bennett, Secretary, State Board of Pharmacy stated his only comment be that the Pharmacists also be included in this bill under the list of health care providers.

SB 189 Requires reduction of damages awarded in medical malpractice actions by amounts from certain collateral sources.

Dr. Dick Rottman, Insurance Commissioner stated he would like to call the Committee's attention to a possible inconsistency with regard to the current collateral source rule in the no fault bill. There you point out specifically

in that law that workers comp benefits, NIC benefits and Social Security should be primary. This in his judgment constitutes currently a modification of the collateral source rule and this type of wording is found in each of the no fault bills in existence throughout the country. In SB 187 he is somewhat unclear as to what amendments may come down on this. There are two possible areas under future damages section he would strongly urge consideration for, including future income. Also he was opposed to not including the insurer as a party to the action. He also feels the language providing adequate security is sufficient. Possibly one showing of adequate security is that the defendant or the insurance company, on behalf of the defendant could post with the State of Nevada through the insurance division, adequate security in terms of stocks and bonds. This is consistent with the way that security is currently posted. The insurance company would continue to pay but it would be sort of a lever over the insurance company's head.

Senator Close asked what would happen if the insurance company went broke?

Mr. Rottman stated that if you have an insolvent insuror who can no longer make payments you would then refer this to the Nevada Guaranty Association and they would take over the payments.

Senator Sheerin asked if this was provided in this bill?

Mr. Rottman stated it was not, however it is provided in the other statutes and is consistent with the normal turning over of claims that an insolvent insuror has to the Guaranty Association.

Senator Dodge asked if it would be feasible to put it into a trust account.

Mr. Rottman stated the problem with this would be that those securities could also drop and there is no other source for recovery. He thinks the mechanisim of permitting the defendant of putting up securities equivelent to the amount of future damages concept has worked in the past and would assist in attempting to cut down the overall obligation.

Senator Dodge asked what his opinion on page one, making the insurance company a party to the action was? Could the Committee delete that sentence and be in just as good a position, or could he suggest some other language in there on notification?

Mr. Rottman stated in his judgment the sentence could be deleted without any injustice to the bill.

Senator Sheering questioned on how are you going to get personal jurisdiction over these insurance companies unless you do make them a party to the action.

Mr. Rottman stated they could come in later.

As there was no further testimony, Senator Close stated it was their intent then to adjourn. The Senate Judiciary Committee would meet back in its committee room to take up the malpractice bills and start to take action on them. The Assembly Judiciary was to meet the following morning for that purpose. The public hearings were closed at this point in time, 9:45 a.m.

Respectfully submitted,

Linda Chandler

Linda Chandler, Secretary

NEVADA LICENSED PRACTICAL NURSES ASSOCIATION
member of
NATIONAL FEDERATION OF LICENSED PRACTICAL NURSES, INC.

March 2, 1977

Re: S.B. 185
S. B. 187
A. B. 268
A. B. 221

Committees on Judiciary

Mr Chairman &
Members of the Committees

I am Ellen Pope. Licensed Practical Nurse. I live at 1298 Lovelock Highway, Fallon, Nv. I am Chairman of the Legislative Committee of the Nevada LPN Association.

I have contacted members of my Association concerning bills in the Malpractice package. We are concerned about the omission of the LPN in the defination of "Provider of Health Care" and feel that the LPN should be included. At this time S. B. 185; S. B. 187 and A. B. 268 include "registered nurse"

The LPN today does provide many services of health care: He or she can be found in the emergency rooms across the state. We administer drugs-- we are in operating rooms- recovery rooms. In the newborn nursery- with the labor patient. We are change nurses in the extended care facilities. Public health Nurses, School Nurses and many more areas of acute care. We are licensed under the same act as the registered nurse. Chapter 632 of Nevada Revised Statutes.

In the bill A B 221 the language does not include even register nurse. It just says nurses and their or some persons who do call themselves nurses who are not graduates of accrediated schools and are not licsened in the state of Nevada. We feel that this must be changed to protect the patient.

The use of the term "licensed nurse" would include both levels of nursing but would protect the patient in as much as a nurse must be licensed and the bounderies of his or her actions are clearly defined in the rules and regulations of the Nevada Statutes.

Ellen Pope LPN

Ellen Pope LPN
Registration # 77-380

(Attachment A)

NEVADA LICENSED PRACTICAL NURSES ASSOCIATION
member of
NATIONAL FEDERATION OF LICENSED PRACTICAL NURSES, INC.

March 2, 1977

PROPOSED AMENDMENTS

S. B. 185 Page 1 Section 3 line 7 add:
Licensed Practical Nurse or change
"Registered nurse" to Licensed Nurse

S. B. 187 Page 1 Section 2 subsection 2 line 10 add:
Licensed Practical Nurse or change
"Registered Nurse" to Licensed Nurse

A. B. 268 Page 2 Section 6 line 36 add:
Licensed Practical Nurse or change
"Registered Nurse" to Licensed Nurse

A. B. 221 Page 1 Section 2 subsection 2 line 10
change "Nurse" to Licensed Nurse

STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL
CAPITOL COMPLEX
SUPREME COURT BUILDING
CARSON CITY 89710

ROBERT LIST
ATTORNEY GENERAL

February 24, 1977

The Honorable Melvin Close, Jr.
Nevada State Senator
Legislative Building
Carson City, Nevada 89710

Re: S.B. 185, 188, 190 and 191

Dear Senator Close:

As a followup to my recent testimony before the joint senate and assembly committees on judiciary regarding the above captioned bills, I should like to once again urge the committee to take swift action on these measures, most of which are designed to assist the Board of Medical Examiners and the Attorney General to more effectively play their respective roles in the quest for providing quality medical care to Nevada citizens.

I particularly believe the amendment which I submitted to the committee for S.B. 185 will insure proper regard for the privacy of the patient and I most respectfully urge that said amendment be included as a part of S.B. 185.

As you will recall, at the end of the last hearing on these bills, Senator Hilbrecht announced that S.B. 188 was not a part of the interim committee's recommendations. This was a correction to his earlier testimony that morning. I would like to take the opportunity once again to urge that S.B. 188 not be approved since it only works to the detriment of the public in its efforts to secure qualified expert witnesses in medical malpractice matters before the Board of Medical Examiners. Obviously there are differences between the type of medical practice in a rural Nevada community as opposed to our larger metropolitan areas. But I believe that these matters are matters of defense by any doctor who may be subject to a board hearing and it is fully within the knowledge and ability of the Board of Medical Examiners to take such a defense into proper consideration. S.B. 188 would actually only tie the Board members' hands.

(Attachment B)

You will recall that during my testimony I suggested that Section 1 of S.B. 190 be amended to cover all the areas which could lead to charges under Chapter 630 including gross malpractice, malpractice, professional incompetency and unprofessional conduct, rather than the simple term "malpractice" as it now appears in said section. As for Section 2 of S.B. 190, we would certainly encourage the amendment on line 20 of the bill of the figure "$2,000" to read "$5,000" or even higher, if the committee deems that appropriate. I also question the need for referring to the Board of Medical Examiners each malpractice claim as opposed to each settlement, award or judgment. A claim which has not yet resulted in any settlement, award or judgment, would probably only produce excessive paper work for the Board of Medical Examiners or serve as duplication of prior written allegations which have been made against the same doctor from another source.

Concerning S.B. 191, I personally would endorse the comments of Bryce Rhodes, Esq., the private attorney for the Nevada State Board of Medical Examiners. Most certainly I agree with his statement that NRS 630.315 should not be repealed but instead should be retained in the present law and indeed strengthened. If this section of the present law is retained, then Section 7 of S.B. 191 should be deleted, as being superfluous. In addition Section 7 allows the physical or mental examination at the wrong time in the proceedings. As Mr. Rhodes pointed out in cases of extreme danger to public health and safety the Board should have the authority to require such an examination at the earliest possible time, along with authority to summarily suspend a physician from the practice of medicine for 90 or 120 days. In addition, where written allegations are filed against a physician, the requirement of a physical or mental examination may indicate additional charges which should be brought.

In conclusion, I would like to urge the joint committees to amend S.B. 185 and Section 1 of S.B. 190 to make both these statutes effective on passage and approval. These two bills are critical to completing two investigations now pending in the Attorney General's Office which are being hindered by the lack of accessibility to patient records.

Thank you for this opportunity to expand upon my comments to the joint committees. If this office may be of any further assistance to you in the consideration of these matters, please advise.

Sincerely,

ROBERT LIST
Attorney General

By WILLIAM E. ISAEFF
William E. Isaeff
Deputy Attorney General

WEI:rab

cc: All members of the
Senate and Assembly
Judiciary Committees

Bryce Rhodes, Esq.

Submitted by: Dr. William Stephan
To: Joint Hearing on Medical Malpractice
Source: AMA's States Report on The Proffessional Liability Issue dated 10/76.

LAWS IN FORCE 1975-1976

Periodic Payments	Statute of Limitations	Collateral Sources	Limits on Awards
Alabama	Alabama	Arizona	Calif. (pain & suf)
Alaska	Arizona	Florida	Idaho*
California	California	Idaho	(Illinois)**
Delaware	Colorado	Illinois	Indiana
Florida	Delaware	Iowa	Louisiana
Illinois	Florida	Kansas	New Mexico
Kansas	Georgia	Nebraska	Ohio (pain & suf)
New Mexico	Hawaii	New Jersey	Oregon
New York ***	Idaho	New York	South Dakota
Washington	Indiana	Ohio	Virginia
Wisconsin	Iowa	Pennsylvania	Wisconsin
	Kansas	Rhode Island	
	Louisiana	Washington	
	Massachusetts		
	Michigan		
	Mississippi		
	Missouri		
	Nebraska		
	New Jersey		
	New Mexico		
	New York		
	North Dakota		
	Ohio		
	Oklahoma		
	Oregon		
	Pennsylvania		
	Rhode Island		
	Tennessee		
	Texas		
	Utah		
	Washington		
	Wyoming		

* Survived the Supreme Court
** Killed by the Supreme Court
*** Itemized awards

(Attachment C)

CHAPTER 32.—THIRD PARTY LIABILITY FOR HOSPITAL AND MEDICAL CARE

Sec.

§ 2651. Recovery by United States—Conditions; exceptions; persons liable; amount of recovery; subrogation; assignment

(a) In any case in which the United States is authorized or required by law to furnish hospital, medical, surgical, or dental care and treatment (including prostheses and medical appliances) to a person who is injured or suffers a disease, after the effective date of this Act, under circumstances creating a tort liability upon some third person (other than or in addition to the United States and except employers of seamen treated under the provisions of section 249 of this title) to pay damages therefor, the United States shall have a right to recover from said third person the reasonable value of the care and treatment so furnished or to be furnished and shall, as to this right be subrogated to any right or claim that the injured or diseased person, his guardian, personal representative, estate, dependents, or survivors has against such third person to the extent of the reasonable value of the care and treatment so furnished or to be furnished. The head of the department or agency of the United States furnishing such care or treatment may also require the injured or diseased person, his guardian, personal representative, estate, dependents, or survivors, as appropriate, to assign his claim or cause of action against the third person to the extent of that right or claim.

Enforcement procedure; intervention; joinder of parties; State or Federal court proceedings

(b) The United States may, to enforce such right, (1) intervene or join in any action or proceeding brought by the injured or diseased person, his guardian, personal representative, estate, dependents, or

(Attachment D)

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survivors, against the third person who is liable for the injury or disease; or (2) if such action or proceeding is not commenced within six months after the first day in which care and treatment is furnished by the United States in connection with the injury or disease involved, institute and prosecute legal proceedings against the third person who is liable for the injury or disease, in a State or Federal court, either alone (in its own name or in the name of the injured person, his guardian, personal representative, estate, dependents, or survivors) or in conjunction with the injured or diseased person, his guardian, personal representative, estate, dependents, or survivors.

Veterans' exception

(c) The provisions of this section shall not apply with respect to hospital, medical, surgical, or dental care and treatment (including prostheses and medical appliances) furnished by the Veterans' Administration to an eligible veteran for a service-connected disability under the provisions of chapter 17 of Title 38. Pub.L. 87-693, § 1, Sept. 25, 1962, 76 Stat. 593.

Library references: Contribution ⇐6; Subrogation ⇐11; C.J.S. Contribution § 4; C.J.S. Subrogation § 16.

Historical Note

References in Text. Effective date of this Act, referred to in subsec. (a), as the first day of the fourth month following September, 1962, see effective date note under this section.

Effective Date. Section 4 of Pub.L. 87-693 provided that: "This Act [enacting this chapter] becomes effective on the first day of the fourth month following the month [September, 1962] in which enacted."

Legislative History: For legislative history and purpose of Pub.L. 87-693, see 1962 U.S.Code Cong. and Adm.News, p. 2837.

§ 2652. Regulations—Determination and establishment of reasonable value of care and treatment

(a) The President may prescribe regulations to carry out this chapter, including regulations with respect to the determination and establishment of the reasonable value of the hospital, medical, surgical, or dental care and treatment (including prostheses and medical appliances) furnished or to be furnished.

Settlement, release and waiver of claims

(b) To the extent prescribed by regulations under subsection (a) of this section, the head of the department or agency of the United States concerned may (1) compromise, or settle and execute a release of, any claim which the United States has by virtue of the right established by section 2651 of this title; or (2) waive any such claim, in whole or in part, for the convenience of the Government, or if he determines that collection would result in undue hardship upon the person who suffered the injury or disease resulting in care or treatment described in section 2651 of this title.