

SENATE BILL NO. 48—COMMITTEE ON
HEALTH AND HUMAN SERVICES

(ON BEHALF OF THE DEPARTMENT OF
HEALTH AND HUMAN SERVICES)

PREFILED DECEMBER 20, 2014

Referred to Committee on Health and Human Services

SUMMARY—Revises provisions relating to health information exchanges. (BDR 40-323)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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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 public health; repealing provisions that provide for a statewide health information exchange system; authorizing the Director of the Department of Health and Human Services to establish or contract with a health information exchange to serve as the statewide health information exchange; providing for the certification of a health information exchange; providing for an administrative fine to be imposed for operating a health information exchange without obtaining a certification; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Under existing law, the Director of the Department of Health and Human
2 Services is required to: (1) establish a statewide health information exchange
3 system and a governing entity for the system; and (2) prescribe various regulations
4 relating to the operation of health information exchanges and the use and
5 transmission of electronic health records, health-related information and related
6 data. (NRS 439.587) **Sections 3-6, 8-10 and 12** of this bill eliminate the
7 requirement that the Director establish a statewide health information exchange
8 system, including the establishment of a governing entity for the system, and
9 eliminate various provisions relating to a statewide health information exchange
10 system. Although this bill eliminates a statewide system, the existing provisions
11 governing health information exchanges remain. **Section 2** of this bill excludes
12 health care providers who directly provide health-related information to other
13 health care providers by certain electronic means from the definition of “health



14 information exchange.” **Section 3** authorizes the Director to establish or contract
15 with not more than one health information exchange to serve as the statewide health
16 information exchange for certain purposes.

17 **Section 4** requires a person or governmental entity to receive a certification
18 from the Director before operating a health information exchange in this State and
19 establishes provisions governing the certification of health information exchanges.
20 **Section 4** also provides for the imposition of an administrative fine for operating a
21 health information exchange without a certification. **Section 11** of this bill,
22 however, gives a health information exchange that is already operating in this State
23 until July 1, 2016, to comply with this requirement.

24 **Sections 5 and 7** of this bill revise provisions relating to health records to
25 require the patient’s consent for the retrieval, rather than the transmission, of his or
26 her health records.

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

1 **Section 1.** NRS 439.581 is hereby amended to read as follows:
2 439.581 As used in NRS 439.581 to 439.595, inclusive, unless
3 the context otherwise requires, the words and terms defined in NRS
4 439.582 to ~~[439.586,]~~ **439.585**, inclusive, have the meanings
5 ascribed to them in those sections.

6 **Sec. 2.** NRS 439.584 is hereby amended to read as follows:
7 439.584 “Health information exchange” means an organization
8 that provides for the electronic movement of health-related
9 information across and among disparate organizations according to
10 nationally recognized standards. *The term does not include a health
11 care provider who directly transfers health-related information to
12 another health care provider electronically, including, without
13 limitation, information transferred via facsimile.*

14 **Sec. 3.** NRS 439.587 is hereby amended to read as follows:
15 439.587 1. The Director is the state authority for health
16 information technology. The Director shall:

17 (a) ~~[Establish a statewide health information exchange system,
18 including, without limitation, establishing or contracting with a
19 governing entity for the system pursuant to NRS 439.588, and
20 ensuring the system complies]~~ *Ensure that a health information
21 exchange complies* with the specifications and protocols for
22 exchanging electronic health records, health-related information and
23 related data prescribed pursuant to the provisions of the Health
24 Information Technology for Economic and Clinical Health Act of
25 2009, 42 U.S.C. §§ 300jj et seq. and 17901 et seq., and other
26 applicable federal and state law;

27 (b) Encourage the use of ~~[the statewide]~~ *a* health information
28 exchange ~~[system]~~ by health care providers, payers and patients;

29 (c) Prescribe by regulation standards for the electronic
30 transmittal of electronic health records, prescriptions, health-related



1 information, electronic signatures and requirements for electronic
2 equivalents of written entries or written approvals in accordance
3 with federal law;

4 (d) Prescribe by regulation rules governing the ownership,
5 management and use of electronic health records, health-related
6 information and related data in ~~[the statewide]~~ a health information
7 exchange ; ~~[system;]~~ and

8 (e) Prescribe by regulation, in consultation with the State Board
9 of Pharmacy, standards for the electronic transmission of prior
10 authorizations for prescription medication using a health
11 information exchange.

12 2. *The Director may establish or contract with not more than*
13 *one health information exchange to serve as the statewide health*
14 *information exchange to be responsible for compiling statewide*
15 *master indexes of patients, health care providers and payers. The*
16 *Director may by regulation prescribe the requirements for a*
17 *statewide health information exchange, including, without*
18 *limitation, the procedure by which any patient, health care*
19 *provider or payer master index created pursuant to any contract is*
20 *transferred to the State upon termination of the contract.*

21 3. The Director may enter into contracts, apply for and accept
22 available gifts, grants and donations, and adopt such regulations as
23 are necessary to carry out the provisions of NRS 439.581 to
24 439.595, inclusive.

25 **Sec. 4.** NRS 439.588 is hereby amended to read as follows:

26 439.588 1. ~~[The Director shall establish or contract with not~~
27 ~~more than one nonprofit entity to govern the statewide health~~
28 ~~information exchange system. The Director shall by regulation~~
29 ~~prescribe the requirements for that governing entity.~~

30 ~~—2. The governing entity established or contracted with pursuant~~
31 ~~to this section:~~

32 ~~—(a) Must comply with all federal and state laws governing such~~
33 ~~entities and health information exchanges.~~

34 ~~—(b) Must have a governing body which complies with all~~
35 ~~relevant requirements of federal law and which consists of~~
36 ~~representatives of health care providers, insurers, patients,~~
37 ~~employers and others who represent interests related to electronic~~
38 ~~health records and health information exchanges.~~

39 ~~—(c) Shall oversee and govern the exchange of electronic health~~
40 ~~records and health related information within the statewide health~~
41 ~~information exchange system.~~

42 ~~—(d) May, with the approval of the Director, hire or contract with~~
43 ~~a public or private entity to administer the statewide health~~
44 ~~information exchange system.~~



1 ~~—(e) May enter into contracts with any health information~~
2 ~~exchange which is certified by the Director pursuant to subsection 4~~
3 ~~to participate in the statewide health information exchange system.~~
4 ~~The governing entity shall not enter into a contract with a health~~
5 ~~information exchange that is not certified.~~

6 ~~—(f) Is accountable to the Director, in his or her capacity as the~~
7 ~~state authority for health information technology, for carrying out~~
8 ~~the provisions of a contract entered into pursuant to this section.~~

9 ~~—(g) May apply for and accept available gifts, grants and~~
10 ~~donations for the support of the governing entity and the statewide~~
11 ~~health information exchange system.~~

12 ~~—3. The governing body of the governing entity shall hold public~~
13 ~~meetings at such times as required by the Director. Such meetings~~
14 ~~must be conducted in accordance with the provisions of chapter 241~~
15 ~~of NRS.~~

16 ~~—4.] A person shall not operate a health information exchange~~
17 ~~in this State without first obtaining certification as provided in~~
18 ~~subsection 2.~~

19 2. The Director shall by regulation establish the manner in
20 which a health information exchange may apply for certification and
21 the requirements for granting such certification, which must include,
22 without limitation, that the health information exchange demonstrate
23 its financial and operational sustainability ~~[]~~, *adherence to the*
24 *privacy, security and patient consent standards adopted pursuant*
25 *to NRS 439.589 and capacity for interoperability with any other*
26 *health information exchange.*

27 3. *The Director may deny an application for certification or*
28 *may suspend or revoke any certification issued pursuant to*
29 *subsection 2 for failure to comply with the provisions of NRS*
30 *439.581 to 439.595, inclusive, or the regulations adopted pursuant*
31 *thereto or any applicable federal or state law.*

32 4. *When the Director intends to deny, suspend or revoke a*
33 *certification, he or she shall give reasonable notice to all parties by*
34 *certified mail. The notice must contain the legal authority,*
35 *jurisdiction and reasons for the action to be taken. A person who*
36 *wishes to contest the action of the Director must file an appeal*
37 *with the Director.*

38 5. *The Director shall adopt regulations establishing the*
39 *manner in which a person may file a complaint with the Director*
40 *regarding a violation of the provisions of this section.*

41 6. *The Director may impose an administrative fine against a*
42 *person who operates a health information exchange without*
43 *holding a certification in an amount established by the Director by*
44 *regulation. The Director shall afford any person so fined an*



1 *opportunity for a hearing pursuant to the provisions of*
2 *NRS 233B.121.*

3 *7. The Director may adopt such regulations as he or she*
4 *determines are necessary to carry out the provisions of this*
5 *section.*

6 **Sec. 5.** NRS 439.589 is hereby amended to read as follows:

7 439.589 1. The Director shall by regulation prescribe
8 standards:

9 (a) To ensure that electronic health records ~~[and the statewide]~~
10 *included in any* health information exchange ~~[system]~~ are secure;

11 (b) To maintain the confidentiality of electronic health records
12 and health-related information, including, without limitation,
13 standards to maintain the confidentiality of electronic health records
14 relating to a child who has received health care services without the
15 consent of a parent or guardian and which ensure that a child's right
16 to access such health care services is not impaired;

17 (c) To ensure the privacy of individually identifiable health
18 information, including, without limitation, standards to ensure the
19 privacy of information relating to a child who has received health
20 care services without the consent of a parent or guardian;

21 (d) For obtaining consent from a patient before ~~[transmitting]~~
22 *retrieving* the patient's health records ~~[to the]~~ *from a* health
23 information exchange, ~~[system,]~~ including, without limitation,
24 standards for obtaining such consent from a child who has received
25 health care services without the consent of a parent or guardian;

26 (e) For making any necessary corrections to information or
27 records included in ~~[the statewide]~~ *a* health information exchange ;
28 ~~[system;]~~ and

29 (f) For notifying a patient if the confidentiality of information
30 contained in an electronic health record of the patient is breached.

31 2. The standards prescribed pursuant to this section must
32 include, without limitation:

33 ~~[(a)] Training requirements for persons who work with electronic~~
34 ~~health records or the statewide health information exchange system;~~
35 ~~—(b)]~~ Requirements for the creation, maintenance and transmittal
36 of electronic health records;

37 ~~[(e)]~~ (b) Requirements for protecting confidentiality, including
38 control over, access to and the collection, organization and
39 maintenance of electronic health records, health-related information
40 and individually identifiable health information;

41 ~~[(d)]~~ (c) Requirements for the manner in which ~~[the statewide~~
42 ~~health information exchange system will remove or exclude health~~
43 ~~records or any portion thereof upon the request of a person about~~
44 ~~whom the record pertains and the requirements for a person to make~~
45 ~~such a request;~~



1 ~~—(e)~~ *a patient may revoke his or her consent for the provider to*
2 *retrieve the patient's health records from a health information*
3 *exchange;*

4 (d) A secure and traceable electronic audit system for
5 identifying access points and trails to electronic health records and
6 health information exchanges; and

7 ~~[(f)]~~ (e) Any other requirements necessary to comply with all
8 applicable federal laws relating to electronic health records, health-
9 related information, health information exchanges and the security
10 and confidentiality of such records and exchanges.

11 **Sec. 6.** NRS 439.590 is hereby amended to read as follows:

12 439.590 1. ~~[A health care provider, insurer or other payer that~~
13 ~~elects to participate in the statewide health information exchange~~
14 ~~system must agree to comply with all requirements prescribed by~~
15 ~~the Director and imposed by the governing entity established or~~
16 ~~contracted with pursuant to NRS 439.588.~~

17 ~~—2.— A health care provider may not be required to participate in~~
18 ~~the statewide health information exchange system and may not be~~
19 ~~subject to any disciplinary action for electing not to participate in~~
20 ~~the system.~~

21 ~~—3.— The Director may prohibit a person from participating in the~~
22 ~~statewide health information exchange system if the person does not~~
23 ~~comply with the provisions of NRS 439.581 to 439.595, inclusive,~~
24 ~~or the requirements prescribed by the Director and imposed by the~~
25 ~~governing entity established or contracted with pursuant to~~
26 ~~NRS 439.588.~~

27 ~~—4.]~~ Except as otherwise authorized by the Health Insurance
28 Portability and Accountability Act of 1996, Public Law 104-191, a
29 person shall not use, release or publish:

30 (a) Individually identifiable health information from an
31 electronic health record or ~~[the statewide]~~ *a* health information
32 exchange ~~[system]~~ for a purpose unrelated to the treatment, care,
33 well-being or billing of the person who is the subject of the
34 information; or

35 (b) Any information contained in an electronic health record or
36 ~~[the statewide]~~ *a* health information exchange ~~[system]~~ for a
37 marketing purpose.

38 ~~[5.]~~ 2. Individually identifiable health information obtained
39 from an electronic health record or ~~[the statewide]~~ *a* health
40 information exchange ~~[system]~~ concerning health care services
41 received by a child without the consent of a parent or guardian of
42 the child must not be disclosed to the parent or guardian of the child
43 without the consent of the child which is obtained in the manner
44 established pursuant to NRS 439.589.



1 ~~[6.]~~ 3. A person who accesses an electronic health record ~~[, the~~
2 ~~statewide health information exchange system]~~ or a health
3 information exchange without authority to do so is guilty of a
4 misdemeanor and liable for any damages to any person that result
5 from the unauthorized access.

6 ~~[7.]~~ 4. The Director shall adopt regulations establishing the
7 manner in which a person may file a complaint with the Director
8 regarding a violation of the provisions of this section. The Director
9 shall also post on the Internet website of the Department and publish
10 in any other manner the Director deems necessary and appropriate
11 information concerning the manner in which to file a complaint with
12 the Director and the manner in which to file a complaint of a
13 violation of the Health Insurance Portability and Accountability Act
14 of 1996, Public Law 104-191.

15 **Sec. 7.** NRS 439.591 is hereby amended to read as follows:

16 439.591 1. Except as otherwise provided in subsection 2 of
17 NRS 439.538, a patient must not be required to participate in a
18 health information exchange. Before a patient's health care records
19 may be ~~[transmitted electronically or included in]~~ *retrieved from* a
20 health information exchange, the patient must be fully informed and
21 consent, in the manner prescribed by the Director . ~~[, to the~~
22 ~~transmittal or inclusion.]~~

23 2. A patient must be notified in the manner prescribed by the
24 Director of any breach of the confidentiality of electronic health
25 records of the patient or a health information exchange.

26 3. A patient who consents to the ~~[inclusion]~~ *retrieval* of his or
27 her electronic health record ~~[in]~~ *from* a health information exchange
28 may at any time request access to his or her electronic health record
29 in accordance with the provisions of 45 C.F.R. § 164.526.

30 **Sec. 8.** NRS 439.592 is hereby amended to read as follows:

31 439.592 1. Except as otherwise prohibited by federal law:

32 (a) If a statute or regulation requires that a health care record,
33 prescription, medical directive or other health-related document be
34 in writing, or that such a record, prescription, directive or document
35 be signed, an electronic health record, an electronic signature or the
36 transmittal *or retrieval* of health information in accordance with
37 the provisions of NRS 439.581 to 439.595, inclusive, and the
38 regulations adopted pursuant thereto shall be deemed to comply
39 with the requirements of the statute or regulation.

40 (b) If a statute or regulation requires that a health care record or
41 information contained in a health care record be kept confidential,
42 maintaining , ~~[or]~~ *transmitting or retrieving* that information in an
43 electronic health record or ~~[the statewide]~~ *a* health information
44 exchange ~~[system]~~ in accordance with the provisions of NRS
45 439.581 to 439.595, inclusive, and the regulations adopted pursuant



1 thereto concerning the confidentiality of records shall be deemed to
2 comply with the requirements of the statute or regulation.

3 2. As used in this section, "health care record" has the meaning
4 ascribed to it in NRS 629.021.

5 **Sec. 9.** NRS 439.593 is hereby amended to read as follows:

6 439.593 A health care provider who with reasonable care relies
7 upon an apparently genuine electronic health record accessed
8 ~~[through the statewide]~~ *from a* health information exchange
9 ~~[system]~~ to make a decision concerning the provision of health care
10 to a patient is immune from civil or criminal liability for the
11 decision if:

12 1. The electronic health record is inaccurate;

13 2. The inaccuracy was not caused by the health care provider;

14 3. The inaccuracy resulted in an inappropriate health care
15 decision; and

16 4. The health care decision was appropriate based upon the
17 information contained in the inaccurate electronic health record.

18 **Sec. 10.** NRS 449.925 is hereby amended to read as follows:

19 449.925 1. A person who wishes to register an advance
20 directive must submit to the Secretary of State:

21 (a) An application in the form prescribed by the Secretary of
22 State;

23 (b) A copy of the advance directive; and

24 (c) The fee, if any, established by the Secretary of State pursuant
25 to NRS 449.955.

26 2. If the person satisfies the requirements of subsection 1, the
27 Secretary of State shall:

28 (a) Make an electronic reproduction of the advance directive and
29 post it to the Registry and, if the person consents pursuant to NRS
30 439.591, ~~[the statewide]~~ *a* health information exchange ~~[system]~~
31 established pursuant to NRS 439.581 to 439.595, inclusive ~~[;]~~ *, if*
32 *that health information exchange is connected to the Registry;*

33 (b) Assign a registration number and password to the registrant;
34 and

35 (c) Provide the registrant with a registration card that includes,
36 without limitation, the name, registration number and password of
37 the registrant.

38 3. The Secretary of State shall establish procedures for:

39 (a) The registration of an advance directive that replaces an
40 advance directive that is posted on the Registry;

41 (b) The removal from the Registry of an advance directive that
42 has been revoked following the revocation of the advance directive
43 or the death of the registrant; and

44 (c) The issuance of a duplicate registration card or the provision
45 of other access to the registrant's registration number and password



1 if a registration card issued pursuant to this section is lost, stolen,
2 destroyed or otherwise unavailable.

3 **Sec. 11.** 1. A health insurance exchange that is in operation
4 in this State before January 1, 2016, is exempt from the provisions
5 of NRS 439.588, as amended by section 4 of this act, until July 1,
6 2016.

7 2. A provisional certification issued pursuant to this section
8 shall be deemed to be a certification issued by the Director pursuant
9 to NRS 439.588 as amended by section 4 of this act.

10 **Sec. 12.** NRS 439.586 and 439.594 are hereby repealed.

11 **Sec. 13.** This act becomes effective upon passage and approval
12 for purposes of adopting regulations and on January 1, 2016, for all
13 other purposes.

TEXT OF REPEALED SECTIONS

439.586 “Statewide health information exchange system” defined. “Statewide health information exchange system” means the system established pursuant to NRS 439.581 to 439.595, inclusive, for the electronic movement, storage, analysis and exchange of electronic health records, health-related information and related data.

439.594 Immunity from liability for governing entity, administrator of system and health information exchange. The governing entity established or contracted with pursuant to NRS 439.588, a public or private entity with whom the governing entity contracts to administer the statewide health information system pursuant to NRS 439.588, and any health information exchange with which the governing entity contracts pursuant to NRS 439.588 that with reasonable care includes or causes to be included in the statewide health information exchange system apparently genuine health-related information that was provided to the governing entity, administrator or health information exchange, as applicable, is immune from civil and criminal liability for including the information in the statewide health information exchange system if reliance on that information by a health care provider results in an undesirable or adverse outcome if:

1. The information in the statewide health information exchange system mirrors the information that was provided to the governing entity, administrator or health information exchange;



2. The health care provider was informed of known risks associated with the quality and accuracy of information included in the statewide health information exchange system;

3. Any inaccuracy in the information included in the statewide health information exchange system was not caused by the governing entity, administrator or the health information exchange; and

4. The information in the statewide health information exchange system:

(a) Was incomplete, if applicable, because a health care provider elected not to participate in the system; or

(b) Was not available, if applicable, because of operational issues with the system, which may include, without limitation, maintenance or inoperability of the system.

