

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 revises the  
12 definition of “health information exchange” to mean a person who makes an  
13 electronic means of connecting disparate systems available for the secure transfer



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

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

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

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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~~  
8 ~~organization that provides for the electronic movement of}~~ **a person**  
9 **who makes available an electronic means of connecting disparate**  
10 **electronic systems on which** health-related information ~~{across and~~  
11 ~~among disparate organizations}~~ **is shared which:**

12 **1. Is made commercially available to health care providers**  
13 **and other covered entities by a covered entity or the business**  
14 **associate of a covered entity, as those terms are defined in 45**  
15 **C.F.R. § 160.103; and**

16 **2. Allows the secure transfer of clinical information**  
17 **concerning the health of a patient** according to nationally  
18 recognized standards ~~{}~~ **to any health care provider who provides**  
19 **services to the patient that elects to exchange health information**  
20 **in such a manner.**

21 **Sec. 3.** NRS 439.587 is hereby amended to read as follows:  
22 439.587 1. The Director is the state authority for health  
23 information technology. The Director shall:

24 (a) ~~{Establish a statewide health information exchange system,~~  
25 ~~including, without limitation, establishing or contracting with a~~  
26 ~~governing entity for the system pursuant to NRS 439.588, and~~  
27 ~~ensuring the system complies}~~ **Ensure that a health information**  
28 **exchange complies** with the specifications and protocols for  
29 exchanging electronic health records, health-related information and



1 related data prescribed pursuant to the provisions of the Health  
2 Information Technology for Economic and Clinical Health Act of  
3 2009, 42 U.S.C. §§ 300jj et seq. and 17901 et seq., and other  
4 applicable federal and state law;

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

7 (c) Prescribe by regulation standards for the electronic  
8 transmittal of electronic health records, prescriptions, health-related  
9 information, electronic signatures and requirements for electronic  
10 equivalents of written entries or written approvals in accordance  
11 with federal law;

12 (d) Prescribe by regulation rules governing the ownership,  
13 management and use of electronic health records, health-related  
14 information and related data ~~[in the statewide]~~ *retained or shared by*  
15 *a health information exchange ; [system;]* and

16 (e) Prescribe by regulation, in consultation with the State Board  
17 of Pharmacy, standards for the electronic transmission of prior  
18 authorizations for prescription medication using a health  
19 information exchange.

20 2. *The Director may establish or contract with not more than*  
21 *one health information exchange to serve as the statewide health*  
22 *information exchange to be responsible for compiling statewide*  
23 *master indexes of patients, health care providers and payers. The*  
24 *Director may by regulation prescribe the requirements for a*  
25 *statewide health information exchange, including, without*  
26 *limitation, the procedure by which any patient, health care*  
27 *provider or payer master index created pursuant to any contract is*  
28 *transferred to the State upon termination of the contract.*

29 3. The Director may enter into contracts, apply for and accept  
30 available gifts, grants and donations, and adopt such regulations as  
31 are necessary to carry out the provisions of NRS 439.581 to  
32 439.595, inclusive.

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

34 439.588 1. ~~[The Director shall establish or contract with not~~  
35 ~~more than one nonprofit entity to govern the statewide health~~  
36 ~~information exchange system. The Director shall by regulation~~  
37 ~~prescribe the requirements for that governing entity.~~

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

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

42 ~~—(b) Must have a governing body which complies with all~~  
43 ~~relevant requirements of federal law and which consists of~~  
44 ~~representatives of health care providers, insurers, patients,~~



~~employers and others who represent interests related to electronic health records and health information exchanges.~~

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

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

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

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

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

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

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

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

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

*4. When the Director intends to deny, suspend or revoke a certification, he or she shall give reasonable notice to all parties by certified mail. The notice must contain the legal authority, jurisdiction and reasons for the action to be taken. A health information exchange that wishes to contest the action of the Director must file an appeal with the Director.*



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

4       **6. The Director may impose an administrative fine against a**  
5 **health information exchange which operates in this State without**  
6 **holding a certification in an amount established by the Director by**  
7 **regulation. The Director shall afford a health information**  
8 **exchange so fined an opportunity for a hearing pursuant to the**  
9 **provisions of NRS 233B.121.**

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

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

14       439.589 1. The Director shall by regulation prescribe  
15 standards:

16       (a) To ensure that electronic health records ~~[and the statewide]~~  
17 **retained or shared by any** health information exchange ~~[system]~~ are  
18 secure;

19       (b) To maintain the confidentiality of electronic health records  
20 and health-related information, including, without limitation,  
21 standards to maintain the confidentiality of electronic health records  
22 relating to a child who has received health care services without the  
23 consent of a parent or guardian and which ensure that a child's right  
24 to access such health care services is not impaired;

25       (c) To ensure the privacy of individually identifiable health  
26 information, including, without limitation, standards to ensure the  
27 privacy of information relating to a child who has received health  
28 care services without the consent of a parent or guardian;

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

34       (e) For making any necessary corrections to information or  
35 records ~~[included in the statewide]~~ **retained or shared by a** health  
36 information exchange ; ~~[system,]~~ and

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

39       2. The standards prescribed pursuant to this section must  
40 include, without limitation:

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



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

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

10 ~~—(e)]~~ a patient may, through a health care provider who  
11 participates in the sharing of health records using a health  
12 information exchange, revoke his or her consent for a health care  
13 provider to retrieve the patient's health records from the health  
14 information exchange;

15 (d) A secure and traceable electronic audit system for  
16 identifying access points and trails to electronic health records and  
17 health information exchanges; and

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

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

23 439.590 1. ~~[A health care provider, insurer or other payer that~~  
24 ~~elects to participate in the statewide health information exchange~~  
25 ~~system must agree to comply with all requirements prescribed by~~  
26 ~~the Director and imposed by the governing entity established or~~  
27 ~~contracted with pursuant to NRS 439.588.~~

28 ~~—2.— A health care provider may not be required to participate in~~  
29 ~~the statewide health information exchange system and may not be~~  
30 ~~subject to any disciplinary action for electing not to participate in~~  
31 ~~the system.~~

32 ~~—3.— The Director may prohibit a person from participating in the~~  
33 ~~statewide health information exchange system if the person does not~~  
34 ~~comply with the provisions of NRS 439.581 to 439.595, inclusive,~~  
35 ~~or the requirements prescribed by the Director and imposed by the~~  
36 ~~governing entity established or contracted with pursuant to~~  
37 ~~NRS 439.588.~~

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

41 (a) Individually identifiable health information from an  
42 electronic health record or ~~[the statewide]~~ a health information  
43 exchange ~~[system]~~ for a purpose unrelated to the treatment, care,  
44 well-being or billing of the person who is the subject of the  
45 information; or



1 (b) Any information contained in an electronic health record or  
2 ~~{the statewide}~~ *retained by or retrieved from* a health information  
3 exchange ~~{system}~~ for a marketing purpose.

4 ~~{5.}~~ 2. Individually identifiable health information obtained  
5 from an electronic health record or ~~{the statewide}~~ a health  
6 information exchange ~~{system}~~ concerning health care services  
7 received by a child without the consent of a parent or guardian of  
8 the child must not be disclosed to the parent or guardian of the child  
9 without the consent of the child which is obtained in the manner  
10 established pursuant to NRS 439.589.

11 ~~{6.}~~ 3. A person who accesses an electronic health record ~~{, the~~  
12 ~~statewide health information exchange system}~~ or a health  
13 information exchange without authority to do so is guilty of a  
14 misdemeanor and liable for any damages to any person that result  
15 from the unauthorized access.

16 ~~{7.}~~ 4. The Director shall adopt regulations establishing the  
17 manner in which a person may file a complaint with the Director  
18 regarding a violation of the provisions of this section. The Director  
19 shall also post on the Internet website of the Department and publish  
20 in any other manner the Director deems necessary and appropriate  
21 information concerning the manner in which to file a complaint with  
22 the Director and the manner in which to file a complaint of a  
23 violation of the Health Insurance Portability and Accountability Act  
24 of 1996, Public Law 104-191.

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

26 439.591 1. Except as otherwise provided in subsection 2 of  
27 NRS 439.538, a patient must not be required to participate in a  
28 health information exchange. Before a patient's health care records  
29 may be ~~{transmitted electronically or included in}~~ *retrieved from*  
30 a health information exchange, the patient must be fully informed and  
31 consent, in the manner prescribed by the Director . ~~{, to the~~  
32 ~~transmittal or inclusion.}~~

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

36 3. A patient who consents to the ~~{inclusion}~~ *retrieval* of his or  
37 her electronic health record ~~{in}~~ *from* a health information exchange  
38 may at any time request *that a health care provider* access ~~{to}~~ *and*  
39 *provide the patient with* his or her electronic health record in  
40 accordance with the provisions of 45 C.F.R. § 164.526.

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

42 439.592 1. Except as otherwise prohibited by federal law:

43 (a) If a statute or regulation requires that a health care record,  
44 prescription, medical directive or other health-related document be  
45 in writing, or that such a record, prescription, directive or document



1 be signed, an electronic health record, an electronic signature or the  
2 transmittal *or retrieval* of health information in accordance with  
3 the provisions of NRS 439.581 to 439.595, inclusive, and the  
4 regulations adopted pursuant thereto shall be deemed to comply  
5 with the requirements of the statute or regulation.

6 (b) If a statute or regulation requires that a health care record or  
7 information contained in a health care record be kept confidential,  
8 maintaining , ~~for~~ transmitting *or retrieving* that information in an  
9 electronic health record or ~~the statewide~~ *by a* health information  
10 exchange ~~system~~ in accordance with the provisions of NRS  
11 439.581 to 439.595, inclusive, and the regulations adopted pursuant  
12 thereto concerning the confidentiality of records shall be deemed to  
13 comply with the requirements of the statute or regulation.

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

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

17 439.593 A health care provider who with reasonable care relies  
18 upon an apparently genuine electronic health record accessed  
19 ~~through the statewide~~ *from a* health information exchange  
20 ~~system~~ to make a decision concerning the provision of health care  
21 to a patient is immune from civil or criminal liability for the  
22 decision if:

- 23 1. The electronic health record is inaccurate;
- 24 2. The inaccuracy was not caused by the health care provider;
- 25 3. The inaccuracy resulted in an inappropriate health care  
26 decision; and
- 27 4. The health care decision was appropriate based upon the  
28 information contained in the inaccurate electronic health record.

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

30 449.925 1. A person who wishes to register an advance  
31 directive must submit to the Secretary of State:

32 (a) An application in the form prescribed by the Secretary of  
33 State;

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

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

37 2. If the person satisfies the requirements of subsection 1, the  
38 Secretary of State shall:

39 (a) Make an electronic reproduction of the advance directive and  
40 post it to the Registry and, if the person consents pursuant to NRS  
41 439.591, ~~the statewide~~ *a* health information exchange ~~system~~  
42 established pursuant to NRS 439.581 to 439.595, inclusive ~~;~~ *, if*  
43 *that health information exchange is connected to the Registry;*

44 (b) Assign a registration number and password to the registrant;  
45 and





1 (c) Provide the registrant with a registration card that includes,  
2 without limitation, the name, registration number and password of  
3 the registrant.

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

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

7 (b) The removal from the Registry of an advance directive that  
8 has been revoked following the revocation of the advance directive  
9 or the death of the registrant; and

10 (c) The issuance of a duplicate registration card or the provision  
11 of other access to the registrant's registration number and password  
12 if a registration card issued pursuant to this section is lost, stolen,  
13 destroyed or otherwise unavailable.

14 **Sec. 11.** A health information exchange that is in operation in  
15 this State before January 1, 2016, is exempt from the provisions of  
16 NRS 439.588, as amended by section 4 of this act, until July 1,  
17 2016.

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

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

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## TEXT OF REPEALED SECTIONS

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**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.

