

Amendment No. CA20

First Conference Committee Amendment to (BDR 40-305)
Senate Bill No. 536 Second Reprint

Proposed by: First Conference Committee

Amends: Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes

EXPLANATION: Matter in (1) ***blue bold italics*** is new language in the original bill; (2) ***green bold italic underlining*** is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) ~~orange double underlining~~ is deleted language in the original bill that is proposed to be retained in this amendment; and (6) ***green bold*** is newly added transitory language.

SLP/KCR



Date: 6/3/2007

S.B. No. 536—Makes various changes governing the privacy of certain health information. (BDR 40-305)



SENATE BILL NO. 536—COMMITTEE ON
HUMAN RESOURCES AND EDUCATION

(ON BEHALF OF THE LEGISLATIVE COMMITTEE ON HEALTH CARE)

MARCH 26, 2007

Referred to Committee on Human Resources and Education

SUMMARY—Makes various changes governing the privacy of certain health information. (BDR 40-305)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
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; exempting certain entities that comply with the provisions of federal law governing the electronic transmission of certain health information from provisions of state law that provide more stringent privacy requirements; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

The federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) protects the privacy of certain individually identifiable health information. (Public Law No. 104-191) HIPAA and the federal regulations to carry out that Act contain provisions which address the use and disclosure of individually identifiable health information by certain covered entities, including certain health plans, health care providers and health care clearinghouses. Among the federal requirements are provisions governing the electronic transmission of such health information. (42 U.S.C. §§ 1320d et seq.)

HIPAA further provides that if a state law imposes requirements or standards concerning the privacy of health information, the state law preempts HIPAA to the extent that the state law is more stringent than HIPAA. **Section 1** of this bill changes the effect of this state law preemption with respect to the electronic transmission of individually identifiable health information by exempting a covered entity that complies with HIPAA from any state law governing the privacy of health information which is more stringent. **Section 1** also requires a covered entity that makes individually identifiable health information available electronically to allow ~~any~~ a person **under certain circumstances** to opt out of having his individually identifiable health information disclosed electronically to other covered entities.

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

Section 1. Chapter 439 of NRS is hereby amended by adding thereto a new section to read as follows:

1. If a covered entity transmits electronically individually identifiable health information in compliance with the provisions of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, which govern the electronic transmission of such information, the covered entity is, for purposes of the electronic transmission, exempt from any state law that contains more stringent requirements or provisions concerning the privacy or confidentiality of individually identifiable health information.

2. A covered entity that makes individually identifiable health information available electronically pursuant to subsection 1 shall allow any person to opt out of having his individually identifiable health information disclosed electronically to other covered entities, except ~~last~~ :

(a) As required by the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

(b) As otherwise required by a state law.

(c) That a person who is a recipient of Medicaid or insurance pursuant to the Children's Health Insurance Program may not opt out of having his individually identifiable health information disclosed electronically.

3. As used in this section:

(a) "Covered entity" has the meaning ascribed to it in 45 C.F.R. § 160.103.

(b) "Individually identifiable health information" has the meaning ascribed to it in 45 C.F.R. § 160.103.

Sec. 2. (Deleted by amendment.)

Sec. 3. NRS 441A.220 is hereby amended to read as follows:

441A.220 All information of a personal nature about any person provided by any other person reporting a case or suspected case of a communicable disease, or by any person who has a communicable disease, or as determined by investigation of the health authority, is confidential medical information and must not be disclosed to any person under any circumstances, including pursuant to any subpoena, search warrant or discovery proceeding, except : ~~as follows:~~

1. As otherwise provided in section 1 of this act.

2. For statistical purposes, provided that the identity of the person is not discernible from the information disclosed.

~~2-3~~ *3. In a prosecution for a violation of this chapter.*

~~3-4~~ *4. In a proceeding for an injunction brought pursuant to this chapter.*

~~4-5~~ *5. In reporting the actual or suspected abuse or neglect of a child or elderly person.*

~~5-6~~ *6. To any person who has a medical need to know the information for his own protection or for the well-being of a patient or dependent person, as determined by the health authority in accordance with regulations of the Board.*

~~6-7~~ *7. If the person who is the subject of the information consents in writing to the disclosure.*

~~7-8~~ *8. Pursuant to subsection 2 of NRS 441A.320 or NRS 629.069.*

~~8-9~~ *9. If the disclosure is made to the Department of Health and Human Services and the person about whom the disclosure is made has been diagnosed as having acquired immunodeficiency syndrome or an illness related to the human immunodeficiency virus and is a recipient of or an applicant for Medicaid.*

~~9-1~~ 10. To a firefighter, police officer or person providing emergency medical services if the Board has determined that the information relates to a communicable disease significantly related to that occupation. The information must be disclosed in the manner prescribed by the Board.

~~10-1~~ 11. If the disclosure is authorized or required by specific statute.

Sec. 4. NRS 441A.230 is hereby amended to read as follows:

441A.230 Except as otherwise provided in this chapter ~~11~~ and section 1 of this act, a person shall not make public the name of, or other personal identifying information about, a person infected with a communicable disease who has been investigated by the health authority pursuant to this chapter ~~11~~ without the consent of the person.

Sec. 5. (Deleted by amendment.)

Sec. 6. NRS 442.330 is hereby amended to read as follows:

442.330 1. ~~Information~~ Except as otherwise provided in section 1 of this act, information obtained by the system from any source may be used only:

(a) To investigate the causes of birth defects and other adverse birth outcomes;

(b) To determine, evaluate and develop strategies to prevent the occurrence of birth defects and other adverse birth outcomes;

(c) To assist in the early detection of birth defects; and

(d) To assist in ensuring the delivery of services for children identified with birth defects.

2. The State Board of Health shall adopt regulations to ensure that ~~11~~, except as otherwise provided in subsection 3 and section 1 of this act:

(a) Access to information contained in the system is limited to persons authorized and approved by the State Health Officer or his representative who are employed by the Health Division or the University of Nevada School of Medicine.

(b) Any information obtained by the system that would reveal the identity of a patient remains confidential.

(c) ~~Except as otherwise provided in subsection 3, information~~ Information obtained by the system is used solely for the purposes set forth in subsection 1.

3. This section does not prohibit the publishing of statistical compilations relating to birth defects and other adverse birth outcomes that do not in any manner identify individual patients or individual sources of information.

Sec. 7. NRS 442.395 is hereby amended to read as follows:

442.395 ~~11~~ Except as otherwise provided in section 1 of this act, if a pregnant woman is referred to the Health Division by a provider of health care or other services for information relating to programs for the prevention and treatment of fetal alcohol syndrome, any report relating to the referral or other associated documentation is confidential and must not be used in any criminal prosecution of the woman.

Sec. 8. NRS 449.720 is hereby amended to read as follows:

449.720 1. Every patient of a medical facility, facility for the dependent or home for individual residential care has the right to:

~~11-1~~ (a) Receive considerate and respectful care.

~~12-1~~ (b) Refuse treatment to the extent permitted by law and to be informed of the consequences of that refusal.

~~13-1~~ (c) Refuse to participate in any medical experiments conducted at the facility.

~~14-1~~ (d) Retain his privacy concerning his program of medical care.

~~Discussions of a patient's care, consultation with other persons concerning the patient, examinations or treatments, and all communications and records concerning the patient, except as otherwise provided in NRS 108.640, 442.300 to~~

~~442.330, inclusive, and 449.705, and chapter 629 of NRS, are confidential. The patient must consent to the presence of any person who is not directly involved with his care during any examination, consultation or treatment.~~

~~5.1~~ (e) Have any reasonable request for services reasonably satisfied by the facility or home considering its ability to do so.

~~6.1~~ (f) Receive continuous care from the facility or home. The patient must be informed:

~~(a)~~ (1) Of his appointments for treatment and the names of the persons available at the facility or home for those treatments; and

~~(b)~~ (2) By his physician or an authorized representative of the physician, of his need for continuing care.

2. Except as otherwise provided in NRS 108.640, 442.300 to 442.330, inclusive, and 449.705 and chapter 629 of NRS and section 1 of this act, discussions of the care of a patient, consultation with other persons concerning the patient, examinations or treatments, and all communications and records concerning the patient are confidential. The patient must consent to the presence of any person who is not directly involved with his care during any examination, consultation or treatment.

Sec. 9. (Deleted by amendment.)

Sec. 10. (Deleted by amendment.)

Sec. 11. (Deleted by amendment.)

Sec. 12. NRS 458.280 is hereby amended to read as follows:

458.280 1. Except as otherwise provided in subsection 2, NRS 442.300 to 442.330, inclusive, and 449.705 and chapter 629 of NRS, *and section 1 of this act*, the registration and other records of a treatment facility are confidential and must not be disclosed to any person not connected with the treatment facility without the consent of the patient.

2. The provisions of subsection 1 do not restrict the use of a patient's records for the purpose of research into the causes and treatment of alcoholism if such information is ~~not~~:

(a) *Not* published in a way that discloses the patient's name or other identifying information ~~is~~; *or*

(b) *Disclosed pursuant to section 1 of this act.*

Sec. 13. (Deleted by amendment.)

Sec. 14. (Deleted by amendment.)

Sec. 15. (Deleted by amendment.)

Sec. 16. (Deleted by amendment.)

Sec. 17. NRS 396.525 is hereby amended to read as follows:

396.525 1. Except as otherwise provided in subsection 2 ~~is~~ *and section 1 of this act*, the records of the genetics program concerning the clients and families of clients are confidential.

2. The genetics program may share information in its possession with the University of Nevada School of Medicine and the Health Division of the Department of Health and Human Services, if the confidentiality of the information is otherwise maintained in accordance with the terms and conditions required by law.

Sec. 18. (Deleted by amendment.)

Sec. 19. (Deleted by amendment.)

Sec. 20. (Deleted by amendment.)

1 **Sec. 21.** NRS 432B.280 is hereby amended to read as follows:
2 432B.280 1. ~~Reports~~ *Except as otherwise provided in section 1 of this*
3 *act, reports* made pursuant to this chapter, as well as all records concerning these
4 reports and investigations thereof, are confidential.

5 2. Any person, law enforcement agency or public agency, institution or
6 facility who willfully releases data or information concerning such reports and
7 investigations, except:

8 (a) Pursuant to a criminal prosecution relating to the abuse or neglect of a
9 child;

10 (b) As otherwise authorized or required pursuant to NRS 432B.290; ~~for~~

11 (c) As otherwise required pursuant to NRS 432B.513 ~~to~~; or

12 (d) *As otherwise authorized or required pursuant to section 1 of this act,*
13 *is guilty of a misdemeanor.*

14 **Sec. 22.** (Deleted by amendment.)

15 **Sec. 23.** NRS 433.332 is hereby amended to read as follows:

16 433.332 1. If a patient in a division facility is transferred to another division
17 facility or to a medical facility, a facility for the dependent or a physician licensed
18 to practice medicine, the division facility shall forward a copy of the medical
19 records of the patient, on or before the date the patient is transferred, to the facility
20 or physician. Except as otherwise required by 42 U.S.C. §§ ~~290dd-3 and 290ee-3,~~
21 *290dd, 290dd-1 or 290dd-2 or section 1 of this act,* the division facility is not
22 required to obtain the oral or written consent of the patient to forward a copy of the
23 medical records.

24 2. As used in this section, "medical records" includes a medical history of the
25 patient, a summary of the current physical condition of the patient and a discharge
26 summary which contains the information necessary for the proper treatment of the
27 patient.

28 **Sec. 24.** NRS 433.482 is hereby amended to read as follows:

29 433.482 Each client admitted for evaluation, treatment or training to a facility
30 has the following personal rights, a list of which must be prominently posted in all
31 facilities providing those services and must be otherwise brought to the attention of
32 the client by such additional means as prescribed by regulation:

33 1. To wear his own clothing, to keep and use his own personal possessions,
34 including his toilet articles, unless those articles may be used to endanger his or
35 others' lives, and to keep and be allowed to spend a reasonable sum of his own
36 money for expenses and small purchases.

37 2. To have access to individual space for storage for his private use.

38 3. To see visitors each day.

39 4. To have reasonable access to telephones, both to make and receive
40 confidential calls.

41 5. To have ready access to materials for writing letters, including stamps, and
42 to mail and receive unopened correspondence, but:

43 (a) For the purposes of this subsection, packages are not considered as
44 correspondence; and

45 (b) Correspondence identified as containing a check payable to a client may be
46 subject to control and safekeeping by the administrative officer of that facility or
47 his designee, so long as the client's record of treatment documents the action.

48 6. To have reasonable access to an interpreter if the client does not speak
49 English or is hearing impaired.

50 7. To designate a person who must be kept informed by the facility of the
51 client's medical and mental condition, if the client signs a release allowing the
52 facility to provide such information to the person.

1 8. ~~[(e)]~~ *Except as otherwise provided in section 1 of this act, to* have access
2 to his medical records denied to any person other than:

3 (a) A member of the staff of the facility or related medical personnel, as
4 appropriate;

5 (b) A person who obtains a waiver by the client of his right to keep the medical
6 records confidential; or

7 (c) A person who obtains a court order authorizing the access.

8 9. Other personal rights as specified by regulation of the Commission.

9 **Sec. 25.** NRS 433A.360 is hereby amended to read as follows:

10 433A.360 1. A clinical record for each client must be diligently maintained
11 by any division facility or private institution or facility offering mental health
12 services. The record must include information pertaining to the client's admission,
13 legal status, treatment and individualized plan for habilitation. The clinical record is
14 not a public record and no part of it may be released, except:

15 (a) *If the release is authorized or required pursuant to section 1 of this act.*

16 (b) The record must be released to physicians, attorneys and social agencies as
17 specifically authorized in writing by the client, his parent, guardian or attorney.

18 ~~[(b)]~~ (c) The record must be released to persons authorized by the order of a
19 court of competent jurisdiction.

20 ~~[(c)]~~ (d) The record or any part thereof may be disclosed to a qualified member
21 of the staff of a division facility, an employee of the Division or a member of the
22 staff of an agency in Nevada which has been established pursuant to the
23 Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. §§
24 ~~15001~~ 15001 et seq., or the Protection and Advocacy for Mentally Ill Individuals
25 Act of 1986, 42 U.S.C. §§ 10801 et seq., when the Administrator deems it
26 necessary for the proper care of the client.

27 ~~[(d)]~~ (e) Information from the clinical records may be used for statistical and
28 evaluative purposes if the information is abstracted in such a way as to protect the
29 identity of individual clients.

30 ~~[(e)]~~ (f) To the extent necessary for a client to make a claim, or for a claim to
31 be made on behalf of a client for aid, insurance or medical assistance to which he
32 may be entitled, information from the records may be released with the written
33 authorization of the client or his guardian.

34 ~~[(f)]~~ (g) The record must be released without charge to any member of the staff
35 of an agency in Nevada which has been established pursuant to 42 U.S.C. §§ ~~15001~~
36 15001 et seq. or 42 U.S.C. §§ 10801 et seq. if:

37 (1) The client is a client of that office and he or his legal representative or
38 guardian authorizes the release of the record; or

39 (2) A complaint regarding a client was received by the office or there is
40 probable cause to believe that the client has been abused or neglected and the client:

41 (I) Is unable to authorize the release of the record because of his mental
42 or physical condition; and

43 (II) Does not have a guardian or other legal representative or is a ward
44 of the State.

45 ~~[(g)]~~ (h) The record must be released as provided in NRS 433.332 or 433B.200
46 and in chapter 629 of NRS.

47 2. As used in this section, "client" includes any person who seeks, on his own
48 or others' initiative, and can benefit from, care, treatment and training in a private
49 institution or facility offering mental health services, or from treatment to
50 competency in a private institution or facility offering mental health services.

51 **Sec. 26.** (Deleted by amendment.)

1 **Sec. 27.** NRS 629.161 is hereby amended to read as follows:

2 629.161 1. It is unlawful to retain genetic information that identifies a
3 person, without first obtaining the informed consent of the person or the person's
4 legal guardian pursuant to NRS 629.181, unless retention of the genetic information
5 is:

6 (a) *Authorized or required pursuant to section 1 of this act;*

7 (b) Necessary to conduct a criminal investigation, an investigation concerning
8 the death of a person or a criminal or juvenile proceeding;

9 ~~(b)~~ (c) Authorized pursuant to an order of a court of competent jurisdiction;
10 or

11 ~~(e)~~ (d) Necessary for a medical facility as defined in NRS 449.0151 to
12 maintain a medical record of the person.

13 2. A person who has authorized another person to retain his genetic
14 information may request that person to destroy the genetic information. If so
15 requested, the person who retains that genetic information shall destroy the
16 information, unless retention of that information is:

17 (a) *Authorized or required pursuant to section 1 of this act;*

18 (b) Necessary to conduct a criminal investigation, an investigation concerning
19 the death of a person or a criminal or juvenile proceeding;

20 ~~(b)~~ (c) Authorized by an order of a court of competent jurisdiction;

21 ~~(e)~~ (d) Necessary for a medical facility as defined in NRS 449.0151 to
22 maintain a medical record of the person; or

23 ~~(e)~~ (e) Authorized or required by state or federal law or regulation.

24 3. Except as otherwise provided in subsection 4 or by federal law or
25 regulation, a person who obtains the genetic information of a person for use in a
26 study shall destroy that information upon:

27 (a) The completion of the study; *or*

28 (b) The withdrawal of the person from the study,

29 ↪ whichever occurs first.

30 4. A person whose genetic information is used in a study may authorize the
31 person who conducts the study to retain that genetic information after the study is
32 completed or upon his withdrawal from the study.

33 **Sec. 28.** (Deleted by amendment.)

34 **Sec. 29.** NRS 639.238 is hereby amended to read as follows:

35 639.238 1. Prescriptions filled and on file in a pharmacy are not a public
36 record. Except as otherwise provided in NRS 639.2357, *and section 1 of this act*, a
37 pharmacist shall not divulge the contents of any prescription or provide a copy of
38 any prescription, except to:

39 (a) The patient for whom the original prescription was issued;

40 (b) The practitioner who originally issued the prescription;

41 (c) A practitioner who is then treating the patient;

42 (d) A member, inspector or investigator of the Board or an inspector of the
43 Food and Drug Administration or an agent of the Investigation Division of the
44 Department of Public Safety;

45 (e) An agency of State Government charged with the responsibility of
46 providing medical care for the patient;

47 (f) An insurance carrier, on receipt of written authorization signed by the
48 patient or his legal guardian, authorizing the release of such information;

49 (g) Any person authorized by an order of a district court;

50 (h) Any member, inspector or investigator of a professional licensing board
51 which licenses a practitioner who orders prescriptions filled at the pharmacy;

(i) Other registered pharmacists for the limited purpose of and to the extent necessary for the exchange of information relating to persons who are suspected of:

(1) Misusing prescriptions to obtain excessive amounts of drugs; or

(2) Failing to use a drug in conformity with the directions for its use or taking a drug in combination with other drugs in a manner that could result in injury to that person; ~~to~~

(j) A peace officer employed by a local government for the limited purpose of and to the extent necessary:

(1) For the investigation of an alleged crime reported by an employee of the pharmacy where the crime was committed; or

(2) To carry out a search warrant or subpoena issued pursuant to a court order ~~to~~; or

(k) A county coroner, medical examiner or investigator employed by an office of a county coroner for the purpose of:

(1) Identifying a deceased person;

(2) Determining a cause of death; or

(3) Performing other duties authorized by law.

2. Any copy of a prescription for a controlled substance or a dangerous drug as defined in chapter 454 of NRS that is issued to a county coroner, medical examiner or investigator employed by an office of a county coroner must be limited to a copy of the prescription filled or on file for:

(a) The person whose name is on the container of the controlled substance or dangerous drug that is found on or near the body of a deceased person; or

(b) The deceased person whose cause of death is being determined.

3. Except as otherwise provided in NRS 639.2357, any copy of a prescription for a controlled substance or a dangerous drug as defined in chapter 454 of NRS, issued to a person authorized by this section to receive such a copy, must contain all of the information appearing on the original prescription and be clearly marked on its face "Copy, Not Refillable—For Reference Purposes Only." The copy must bear the name or initials of the registered pharmacist who prepared the copy.

4. If a copy of a prescription for any controlled substance or a dangerous drug as defined in chapter 454 of NRS is furnished to the customer, the original prescription must be voided and notations made thereon showing the date and the name of the person to whom the copy was furnished.

5. As used in this section, "peace officer" does not include:

(a) A member of the Police Department of the Nevada System of Higher Education.

(b) A school police officer who is appointed or employed pursuant to NRS 391.100.

Sec. 30. (Deleted by amendment.)

Sec. 31. (Deleted by amendment.)

Sec. 32. (Deleted by amendment.)