

ASSEMBLY BILL NO. 316—ASSEMBLYMEN DONDERO LOOP,
SPRINKLE AND KIRKPATRICK

MARCH 18, 2013

Referred to Committee on Health and Human Services

SUMMARY—Revises provisions governing medical records.
(BDR 40-233)

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

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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; requiring a person who receives a health care record from certain persons or governmental entities to maintain the confidentiality of the record; authorizing a civil action for certain violations of such confidentiality; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 Existing law prohibits a person from using, releasing or publishing certain
2 information from an electronic health record or from the statewide health
3 information exchange for a purpose unrelated to the treatment, care, well-being or
4 billing of the person who is the subject of the information or for a marketing
5 purpose unless the use, release or publication is authorized by the Health Insurance
6 Portability and Accountability Act of 1996, Public Law 104-191. (NRS 439.590)
7 This bill: (1) prohibits a person who receives health care records from a person or
8 governmental entity who is subject to the Health Insurance Portability and
9 Accountability Act of 1996 from sharing or otherwise disclosing any information
10 contained in the records in any manner that is not authorized by the Act; and (2)
11 allows a person who is harmed by any such sharing or disclosure of his or her
12 health care records to bring an action to recover civil damages against the person or
13 governmental entity who violated this provision or who provided the health care
14 records to the person who violated this provision. This bill further specifically
15 authorizes the Attorney General to bring a civil action for damages on behalf of
16 residents for violations of the Health Insurance Portability and Accountability Act
17 of 1996.



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. A person who receives health care records as part of a transaction with a person or governmental entity who is subject to the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, shall not share or otherwise disclose any information contained in the health care records in any manner not authorized by the Health Insurance Portability and Accountability Act of 1996.

2. A person who is harmed by a violation of subsection 1 may bring an action to recover any damages sustained in a court of competent jurisdiction in this State against:

(a) Except as otherwise provided in paragraph (b), the person or governmental entity that violated subsection 1; or

(b) If the person that violated subsection 1 is located outside of the United States, the person or governmental entity that transmitted those health care records to the person located outside of the United States.

3. If the Attorney General has reason to believe that one or more residents of this State have been harmed by a violation of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, the Attorney General may bring a civil action against the person responsible for the violation to obtain damages on behalf of the resident or residents to the greatest extent permitted by federal law.

4. Nothing in this section shall be construed to:

(a) Modify the application of the Health Insurance Portability and Accountability Act of 1996 to a person or governmental entity that is already subject to that law.

(b) Waive any immunity from liability or limitation on liability otherwise applicable to a governmental entity.

5. As used in this section, "health care records" has the meaning ascribed to it in NRS 629.021.

Sec. 2. NRS 439.538 is hereby amended to read as follows:

439.538 1. If a covered entity transmits electronically individually identifiable health information in compliance with the provisions of:

(a) The Health Insurance Portability and Accountability Act of 1996, Public Law 104-191; and

(b) NRS 439.581 to 439.595, inclusive, and the regulations adopted pursuant thereto,



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↳ which govern the electronic transmission of such information, the covered entity is, for purposes of the electronic transmission, exempt from any state law , *except section 1 of this act*, 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 or her individually identifiable health information disclosed electronically to other covered entities, except:

(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 or her individually identifiable health information disclosed electronically.

3. As used in this section, "covered entity" has the meaning ascribed to it in 45 C.F.R. § 160.103.

Sec. 3. This act becomes effective on July 1, 2013.

