

Amendment No. 75

Senate Amendment to Senate Bill No. 48	(BDR 40-323)
Proposed by: Senate Committee on Health and Human Services	
Amends: Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION		Initial and Date	SENATE ACTION		Initial and Date
Adopted	<input type="checkbox"/>	Lost <input type="checkbox"/>	Adopted	<input type="checkbox"/>	Lost <input type="checkbox"/>
Concurred In	<input type="checkbox"/>	Not <input type="checkbox"/>	Concurred In	<input type="checkbox"/>	Not <input type="checkbox"/>
Receded	<input type="checkbox"/>	Not <input type="checkbox"/>	Receded	<input type="checkbox"/>	Not <input type="checkbox"/>

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added 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 proposed to be retained in this amendment.

AAK/RBL



Date: 4/14/2015

S.B. No. 48—Revises provisions relating to health information exchanges.
(BDR 40-323)



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:

Under existing law, the Director of the Department of Health and Human Services is required to: (1) establish a statewide health information exchange system and a governing entity for the system; and (2) prescribe various regulations relating to the operation of health information exchanges and the use and transmission of electronic health records, health-related information and related data. (NRS 439.587) **Sections 3-6, 8-10 and 12** of this bill eliminate the requirement that the Director establish a statewide health information exchange system, including the establishment of a governing entity for the system, and eliminate various provisions relating to a statewide health information exchange system. Although this bill eliminates a statewide system, the existing provisions governing health information exchanges remain. **Section 2** of this bill ~~excludes health care providers who directly provide health-related information to other health care providers by certain electronic means from~~ revises the definition of "health information exchange" to mean a person who makes an electronic means of connecting disparate systems available for the secure transfer of certain health-related information between certain persons. **Section 3** authorizes the Director to establish or contract with not more than one health information exchange to serve as the statewide health information exchange for certain purposes.

Section 4 requires ~~to a person or governmental entity to receive a~~ certification from the Director before ~~operating~~ a health information exchange may operate in this State and establishes provisions governing the certification of health information exchanges. **Section 4** also provides for the imposition of an administrative fine for ~~operating~~ a health information

exchange **operating** without a certification. **Section 11** of this bill, however, gives a health information exchange that is already operating in this State until July 1, 2016, to comply with this requirement.

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

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

Section 1. NRS 439.581 is hereby amended to read as follows:

439.581 As used in NRS 439.581 to 439.595, inclusive, unless the context otherwise requires, the words and terms defined in NRS 439.582 to ~~439.586,~~ **439.585**, inclusive, have the meanings ascribed to them in those sections.

Sec. 2. NRS 439.584 is hereby amended to read as follows:

439.584 "Health information exchange" means ~~an organization that provides for the electronic movement of~~ **a person who makes available an electronic means of connecting disparate electronic systems on which** health-related information ~~across and among disparate organizations~~ **is shared which:**

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

2. Allows the secure transfer of clinical information concerning the health of a patient according to nationally recognized standards. ~~The term does not include a health care provider who directly transfers health-related information to another health care provider electronically, including, without limitation, information transferred via facsimile, to any health care provider who provides services to the patient that elects to exchange health information in such a manner.~~

Sec. 3. NRS 439.587 is hereby amended to read as follows:

439.587 1. The Director is the state authority for health information technology. The Director shall:

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

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

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

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

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

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

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

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

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

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

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

~~(b) Must have a governing body which complies with all relevant requirements of federal law and which consists of 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 person shall not operate 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 ~~1~~, *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 1 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*

1 *the provisions of NRS 439.581 to 439.595, inclusive, or the regulations adopted*
2 *pursuant thereto or any applicable federal or state law.*

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

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

11 6. *The Director may impose an administrative fine against a ~~person who~~*
12 *~~operates a~~ health information exchange which operates in this State without*
13 *holding a certification in an amount established by the Director by regulation.*
14 *The Director shall afford ~~any person~~ a health information exchange so fined an*
15 *opportunity for a hearing pursuant to the provisions of NRS 233B.121.*

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

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

19 439.589 1. The Director shall by regulation prescribe standards:

20 (a) To ensure that electronic health records ~~and the statewide included in~~
21 retained or shared by any health information exchange ~~system~~ are secure;

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

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

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

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

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

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

42 (a) ~~Training requirements for persons who work with electronic health records~~
43 ~~or the statewide health information exchange system;~~

44 ~~(b)~~ Requirements for the creation, maintenance and transmittal of electronic
45 health records;

46 ~~(c)~~ (b) Requirements for protecting confidentiality, including control over,
47 access to and the collection, organization and maintenance of electronic health
48 records, health-related information and individually identifiable health information;

49 ~~(d)~~ (c) Requirements for the manner in which ~~the statewide health~~
50 ~~information exchange system will remove or exclude health records or any portion~~
51 ~~thereof upon the request of a person about whom the record pertains and the~~
52 ~~requirements for a person to make such a request;~~

1 ~~—(e) a patient may, through a health care provider who participates in the~~
2 ~~sharing of health records using a health information exchange, revoke his or her~~
3 ~~consent for ~~that~~ a health care provider to retrieve the patient's health records~~
4 ~~from ~~that~~ the health information exchange;~~

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

7 ~~(f) (e)~~ (e) Any other requirements necessary to comply with all applicable
8 federal laws relating to electronic health records, health-related information, health
9 information exchanges and the security and confidentiality of such records and
10 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 elects to~~
13 ~~participate in the statewide health information exchange system must agree to~~
14 ~~comply with all requirements prescribed by the Director and imposed by the~~
15 ~~governing entity established or contracted with pursuant to NRS 439.588.~~

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

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

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

27 (a) Individually identifiable health information from an electronic health record
28 or ~~{the statewide} a~~ health information exchange ~~{system}~~ for a purpose unrelated to
29 the treatment, care, well-being or billing of the person who is the subject of the
30 information; or

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

34 ~~{5.} 2.~~ Individually identifiable health information obtained from an
35 electronic health record or ~~{the statewide} a~~ health information exchange ~~{system}~~
36 concerning health care services received by a child without the consent of a parent
37 or guardian of the child must not be disclosed to the parent or guardian of the child
38 without the consent of the child which is obtained in the manner established
39 pursuant to NRS 439.589.

40 ~~{6.} 3.~~ A person who accesses an electronic health record ~~{, the statewide~~
41 ~~health information exchange system}~~ or a health information exchange without
42 authority to do so is guilty of a misdemeanor and liable for any damages to any
43 person that result from the unauthorized access.

44 ~~{7.} 4.~~ The Director shall adopt regulations establishing the manner in which
45 a person may file a complaint with the Director regarding a violation of the
46 provisions of this section. The Director shall also post on the Internet website of the
47 Department and publish in any other manner the Director deems necessary and
48 appropriate information concerning the manner in which to file a complaint with
49 the Director and the manner in which to file a complaint of a violation of the Health
50 Insurance Portability and Accountability Act of 1996, Public Law 104-191.

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

52 439.591 1. Except as otherwise provided in subsection 2 of NRS 439.538, a
53 patient must not be required to participate in a health information exchange. Before

1 a patient's health care records may be ~~transmitted electronically or included in~~
2 ~~retrieved from~~ a health information exchange, the patient must be fully informed
3 and consent, in the manner prescribed by the Director . ~~to the transmittal or~~
4 ~~inclusion.~~

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

8 3. A patient who consents to the ~~inclusion~~ ~~retrieval~~ of his or her electronic
9 health record ~~from~~ a health information exchange may at any time request ~~that~~
10 ~~a health care provider~~ access ~~to~~ ~~and provide the patient with~~ his or her electronic
11 health record in accordance with the provisions of 45 C.F.R. § 164.526.

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

13 439.592 1. Except as otherwise prohibited by federal law:

14 (a) If a statute or regulation requires that a health care record, prescription,
15 medical directive or other health-related document be in writing, or that such a
16 record, prescription, directive or document be signed, an electronic health record,
17 an electronic signature or the transmittal ~~or retrieval~~ of health information in
18 accordance with the provisions of NRS 439.581 to 439.595, inclusive, and the
19 regulations adopted pursuant thereto shall be deemed to comply with the
20 requirements of the statute or regulation.

21 (b) If a statute or regulation requires that a health care record or information
22 contained in a health care record be kept confidential, maintaining , ~~for~~
23 transmitting ~~or retrieving~~ that information in an electronic health record or ~~the~~
24 ~~statewide~~ ~~by a~~ health information exchange ~~system~~ in accordance with the
25 provisions of NRS 439.581 to 439.595, inclusive, and the regulations adopted
26 pursuant thereto concerning the confidentiality of records shall be deemed to
27 comply with the requirements of the statute or regulation.

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

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

31 439.593 A health care provider who with reasonable care relies upon an
32 apparently genuine electronic health record accessed ~~through the statewide~~ ~~from a~~
33 health information exchange ~~system~~ to make a decision concerning the provision
34 of health care to a patient is immune from civil or criminal liability for the decision
35 if:

- 36 1. The electronic health record is inaccurate;
37 2. The inaccuracy was not caused by the health care provider;
38 3. The inaccuracy resulted in an inappropriate health care decision; and
39 4. The health care decision was appropriate based upon the information
40 contained in the inaccurate electronic health record.

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

42 449.925 1. A person who wishes to register an advance directive must
43 submit to the Secretary of State:

- 44 (a) An application in the form prescribed by the Secretary of State;
45 (b) A copy of the advance directive; and
46 (c) The fee, if any, established by the Secretary of State pursuant to NRS
47 449.955.

48 2. If the person satisfies the requirements of subsection 1, the Secretary of
49 State shall:

- 50 (a) Make an electronic reproduction of the advance directive and post it to the
51 Registry and, if the person consents pursuant to NRS 439.591, ~~the statewide~~ ~~a~~
52 health information exchange ~~system~~ established pursuant to NRS 439.581 to

439.595, inclusive ~~§~~, *if that health information exchange is connected to the Registry;*

(b) Assign a registration number and password to the registrant; and
(c) Provide the registrant with a registration card that includes, without limitation, the name, registration number and password of the registrant.

3. The Secretary of State shall establish procedures for:

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

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

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

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

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

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

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