

ASSEMBLY BILL NO. 431—COMMITTEE ON
HEALTH AND HUMAN SERVICES

MARCH 26, 2021

Referred to Committee on Health and Human Services

SUMMARY—Revises provisions governing consent to retrieval of records from a health information exchanges. (BDR 40-1035)

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 health care; providing that a patient is presumed to consent to the retrieval of his or her health care records from a health information exchange unless the patient opts out; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires a patient to consent to the retrieval of his or her health care records from a health information exchange before those records may be retrieved. (NRS 439.591) **Section 5** of this bill instead provides that a patient is presumed to consent to the retrieval of his or her health care records unless he or she opts out. **Section 3** of this bill requires the Director of the Department of Health and Human Services to prescribe standards for providing a patient the opportunity to opt out of allowing access to the patient's health records from a health information exchange. **Sections 1, 2, 4 and 6** of this bill make various changes to account for the changes made by **sections 3 and 5** from requiring a patient to provide consent to the retrieval of his or her health records from a health information exchange to presuming such consent unless the patient opts out.

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

Section 1. 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,

↳ 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 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. *If a covered entity makes individually identifiable information available electronically using a health information exchange, as defined in NRS 439.584, the opportunity to opt out of such disclosure pursuant to subsection 2 must be provided in accordance with the regulations adopted pursuant to NRS 439.589.*

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

Sec. 2. NRS 439.588 is hereby amended to read as follows:

439.588 1. 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~~ *opt out* 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



1 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
4 certification, he or she shall give reasonable notice to all parties by
5 certified mail. The notice must contain the legal authority,
6 jurisdiction and reasons for the action to be taken. A health
7 information exchange that wishes to contest the action of the
8 Director must file an appeal with the Director.

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

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

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

20 **Sec. 3.** NRS 439.589 is hereby amended to read as follows:

21 439.589 1. The Director shall by regulation prescribe
22 standards:

23 (a) To ensure that electronic health records retained or shared by
24 any health information exchange are secure;

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

31 (c) To ensure the privacy of individually identifiable health
32 information, including, without limitation, standards to ensure the
33 privacy of information relating to a child who has received health
34 care services without the consent of a parent or guardian;

35 (d) For ~~obtaining consent from~~ *providing* a patient ~~before~~
36 ~~retrieving~~ *with the opportunity to opt out of allowing access to* the
37 patient's health records from a health information exchange,
38 including, without limitation, standards for ~~obtaining such consent~~
39 ~~from~~ *providing such an opportunity to* a child who has received
40 health care services without the consent of a parent or guardian;

41 (e) For making any necessary corrections to information or
42 records retained or shared by a health information exchange; and

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



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

(a) Requirements for the creation, maintenance and transmittal of electronic health records;

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

~~(c) [Requirements for the manner in which a patient may, through a health care provider who participates in the sharing of health records using a health information exchange, revoke his or her consent for a health care provider to retrieve the patient's health records from the health information exchange;~~

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

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

Sec. 4. NRS 439.590 is hereby amended to read as follows:

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

(a) Individually identifiable health information from an electronic health record or a health information exchange for a purpose unrelated to the treatment, care, well-being or billing of the person who is the subject of the information; or

(b) Any information contained in an electronic health record or retained by or retrieved from a health information exchange for a marketing purpose.

2. Individually identifiable health information obtained from an electronic health record or a health information exchange concerning health care services received by a child without the consent of a parent or guardian of the child must not be disclosed to the parent or guardian of the child ~~[without the consent of]~~ **if** the child ~~[which is obtained]~~ **opts out of such disclosure** in the manner established pursuant to NRS 439.589.

3. A person who accesses an electronic health record or a health information exchange without authority to do so is guilty of a misdemeanor and liable for any damages to any person that result from the unauthorized access.

4. The Director shall adopt regulations establishing the manner in which a person may file a complaint with the Director regarding a violation of the provisions of this section. The Director shall also



1 post on the Internet website of the Department and publish in any
2 other manner the Director deems necessary and appropriate
3 information concerning the manner in which to file a complaint with
4 the Director and the manner in which to file a complaint of a
5 violation of the Health Insurance Portability and Accountability Act
6 of 1996, Public Law 104-191.

7 **Sec. 5.** NRS 439.591 is hereby amended to read as follows:

8 439.591 1. Except as otherwise provided in subsection 2 of
9 NRS 439.538, a patient ~~{must not be required}~~ **is presumed to**
10 **consent to {participate in} the retrieval of his or her health care**
11 **records from** a health information exchange ~~{. Before a patient's~~
12 ~~health care records may be retrieved from a health information~~
13 ~~exchange, the patient must be fully informed and consent,}~~ **unless**
14 **the patient opts out** in the manner prescribed by the Director ~~{}~~
15 **pursuant to paragraph (d) of subsection 1 of NRS 439.589.**

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

19 3. A patient who ~~{consents to the retrieval}~~ **does not opt out** of
20 **allowing access to** his or her electronic health record from a health
21 information exchange may at any time request that a health care
22 provider access and provide the patient with his or her electronic
23 health record in accordance with the provisions of 45 C.F.R. §
24 164.526.

25 **Sec. 6.** NRS 449A.715 is hereby amended to read as follows:

26 449A.715 1. A person who wishes to register an advance
27 directive must submit to the Secretary of State:

28 (a) An application in the form prescribed by the Secretary of
29 State;

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

31 (c) The fee, if any, established by the Secretary of State pursuant
32 to NRS 449A.733.

33 2. If the person satisfies the requirements of subsection 1, the
34 Secretary of State shall:

35 (a) Make an electronic reproduction of the advance directive and
36 post it to the Registry and, if the person ~~{consents}~~ **does not opt out**
37 pursuant to NRS 439.591, a health information exchange established
38 pursuant to NRS 439.581 to 439.595, inclusive, if that health
39 information exchange is connected to the Registry;

40 (b) Assign a registration number and password to the registrant;
41 and

42 (c) Provide the registrant with a registration card that includes,
43 without limitation, the name, registration number and password of
44 the registrant.

45 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. 7. Notwithstanding the provisions of NRS 218D.430 and 218D.435, a committee, other than the Assembly Standing Committee on Ways and Means and the Senate Standing Committee on Finance, may vote on this act before the expiration of the period prescribed for the return of a fiscal note in NRS 218D.475. This section applies retroactively from and after March 22, 2021.

Sec. 8. 1. This section becomes effective upon passage and approval.

2. Sections 1 to 6, inclusive, of this act become effective:

(a) Upon passage and approval for the purpose of adopting any regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and

(b) On October 1, 2021, for all other purposes.

