

Amendment No. 554

Senate Amendment to Assembly Bill No. 366	(BDR 54-456)
Proposed by: Senate Committee on Commerce and Labor	
Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: Yes 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.



ASSEMBLY BILL NO. 366—ASSEMBLYWOMAN TOLLES

MARCH 22, 2021

JOINT SPONSOR: SENATOR SPEARMAN

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing mental health records. (BDR 54-456)

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 mental health; exempting recordings of certain training activities from requirements concerning the retention, maintenance and disclosure of health care records ~~and~~ under certain circumstances; requiring the destruction of such a recording after a certain period of time; prescribing certain additional requirements governing such a recording; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law imposes various requirements concerning the retention, maintenance and disclosure of health care records, including the patient or client records of a psychologist, marriage and family therapist, clinical professional counselor, social worker, independent social worker, clinical social worker, clinical alcohol and drug counselor, alcohol and drug counselor or problem gambling counselor. (NRS 629.051-629.069) This bill provides that a program of education for such mental health professionals approved by the applicable licensing board, a mental health professional or a person receiving training for mental health professionals is not required to retain a recording of the provision of services by such a mental health professional to a patient if: (1) the recording is used for a training activity; (2) the patient has provided informed written consent to the use of the recording in the training activity; ~~and~~ (3) ~~discarding~~ destroying the recording does not result in the maintenance of incomplete patient records ~~and~~ ; and (4) the recording is destroyed after a period of time prescribed by the licensing board responsible for regulating the mental health professional. This bill requires such a recording to meet certain federal requirements designed to prevent the reproduction, copying or theft of the recording. This bill also prohibits the inclusion of personally identifiable information concerning a patient or client unless the patient or client, as applicable, has provided specific informed written consent to the inclusion of that information in the recording.

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

Section 1. NRS 629.021 is hereby amended to read as follows:

629.021 "Health care records" means any reports, notes, orders, photographs, X-rays or other recorded data or information whether maintained in written, electronic or other form which is received or produced by a provider of health care, or any person employed by a provider of health care, and contains information relating to the medical history, examination, diagnosis or treatment of the patient. The term does not include a recording used for a training activity by a program of education for mental health professionals, a mental health professional or a person receiving training for mental health professionals that is not required to be retained pursuant to section 2, 3, 4 or 5 of this act.

Sec. 2. Chapter 641 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A program of education for mental health professionals approved by the Board, a mental health professional or a person receiving training for mental health professionals is not required to retain a recording of the provision of mental health services by a psychologist to a patient that meets the requirements of subsection 2 if:

(a) The recording is used for a training activity that is part of a program of education for mental health professionals approved by the Board;

(b) The patient has provided informed consent in writing on a form that meets the requirements prescribed by the Board pursuant to subsection 3 to the use of the recording in the training activity; ~~and~~

(c) ~~Discarding~~ Destroying the recording does not result in noncompliance with the obligations described in subsection ~~3-4~~ 4; and

(d) The recording is destroyed after the expiration of the period of time prescribed by the Board pursuant to paragraph (b) of subsection 3.

2. A recording of the provision of mental health services by a psychologist to a patient used for the purpose described in paragraph (a) of subsection 1:

(a) Must meet all requirements of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and any regulations adopted thereto, that are designed to prevent the reproduction, copying or theft of the recording; and

(b) Must not contain any personally identifiable information relating to the patient unless the patient has provided informed consent in writing specifically authorizing the inclusion of that information in the recording.

3. The Board shall adopt regulations:

(a) Prescribing requirements governing the provision of informed written consent pursuant to paragraph (b) of subsection 1, including, without limitation, requirements governing:

(1) The form on which such informed written consent must be provided; and

(2) The length of time that a psychologist who obtains such informed written consent must maintain the informed written consent;

(b) Prescribing the length of time that a program of education for mental health professionals, a mental health professional or a person receiving training for mental health professionals that uses a recording of the provision of mental health services by a psychologist to a patient for the purposes described in paragraph (a) of subsection 1 may retain the recording before destroying it; and

(c) Defining "training activity" for the purposes of this section.

1 4. The provisions of this section do not abrogate, alter or otherwise affect
2 the obligation of a psychologist to comply with the applicable requirements of
3 chapter 629 of NRS, including, without limitation, the requirement to retain
4 records concerning the mental health services that he or she provides to patients
5 in accordance with NRS 629.051 to 629.069, inclusive.

6 ~~3.1~~ 5. As used in this section, "mental health professional" means a
7 psychologist, marriage and family therapist, clinical professional counselor,
8 social worker, independent social worker, clinical social worker, clinical alcohol
9 and drug counselor, alcohol and drug counselor or problem gambling counselor.

10 **Sec. 3.** Chapter 641A of NRS is hereby amended by adding thereto a new
11 section to read as follows:

12 1. A program of education for mental health professionals approved by the
13 Board, a mental health professional or a person receiving training for mental
14 health professionals is not required to retain a recording of the provision of
15 mental health services by a marriage and family therapist or clinical professional
16 counselor to a client that meets the requirements of subsection 2 if:

17 (a) The recording is used for a training activity that is part of a program of
18 education for mental health professionals approved by the Board;

19 (b) The client has provided informed consent in writing on a form that meets
20 the requirements prescribed by the Board pursuant to subsection 3 to the use of
21 the recording in the training activity; ~~and~~

22 (c) ~~(Discarding)~~ Destroying the recording does not result in noncompliance
23 with the obligations described in subsection ~~2.1~~ 4; and

24 (d) The recording is destroyed after the expiration of the period of time
25 prescribed by the Board pursuant to paragraph (b) of subsection 3.

26 2. A recording of the provision of mental health services by a marriage and
27 family therapist or clinical professional counselor to a client used for the purpose
28 described in paragraph (a) of subsection 1:

29 (a) Must meet all requirements of the Health Insurance Portability and
30 Accountability Act of 1996, Public Law 104-191, and any regulations adopted
31 thereto, that are designed to prevent the reproduction, copying or theft of the
32 recording; and

33 (b) Must not contain any personally identifiable information relating to the
34 client unless the client has provided informed consent in writing specifically
35 authorizing the inclusion of that information in the recording.

36 3. The Board shall adopt regulations:

37 (a) Prescribing requirements governing the provision of informed written
38 consent pursuant to paragraph (b) of subsection 1, including, without limitation,
39 requirements governing:

40 (1) The form on which such informed written consent must be provided;
41 and

42 (2) The length of time that a marriage and family therapist or clinical
43 professional counselor who obtains such informed written consent must maintain
44 the informed written consent;

45 (b) Prescribing the length of time that a program of education for mental
46 health professionals, a mental health professional or a person receiving training
47 for mental health professionals that uses a recording of the provision of mental
48 health services by a marriage and family therapist or clinical professional
49 counselor to a client for the purposes described in paragraph (a) of subsection 1
50 may retain the recording before destroying it; and

51 (c) Defining "training activity" for the purposes of this section.

52 4. The provisions of this section do not abrogate, alter or otherwise affect
53 the obligation of a marriage and family therapist or clinical professional

counselor to comply with the applicable requirements of chapter 629 of NRS, including, without limitation, the requirement to retain records concerning the mental health services that he or she provides to clients in accordance with NRS 629.051 to 629.069, inclusive.

~~3.1~~ 5. As used in this section, "mental health professional" means a psychologist, marriage and family therapist, clinical professional counselor, social worker, independent social worker, clinical social worker, clinical alcohol and drug counselor, alcohol and drug counselor or problem gambling counselor.

Sec. 4. Chapter 641B of NRS is hereby amended by adding thereto a new section to read as follows:

1. A program of education for mental health professionals approved by the Board, a mental health professional or a person receiving training for mental health professionals is not required to retain a recording of the provision of mental health services by a social worker, independent social worker or clinical social worker to a client that meets the requirements of subsection 2 if:

(a) The recording is used for a training activity that is part of a program of education for mental health professionals approved by the Board;

(b) The client has provided informed consent in writing on a form that meets the requirements prescribed by the Board pursuant to subsection 3 to the use of the recording in the training activity; ~~and~~

(c) ~~Discarding~~ Destroying the recording does not result in noncompliance with the obligations described in subsection ~~3.1~~ 4; and

(d) The recording is destroyed after the expiration of the period of time prescribed by the Board pursuant to paragraph (b) of subsection 3.

2. A recording of the provision of mental health services by a social worker, independent social worker or clinical social worker to a client used for the purpose described in paragraph (a) of subsection 1:

(a) Must meet all requirements of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and any regulations adopted thereto, that are designed to prevent the reproduction, copying or theft of the recording; and

(b) Must not contain any personally identifiable information relating to the client unless the client has provided informed consent in writing specifically authorizing the inclusion of that information in the recording.

3. The Board shall adopt regulations:

(a) Prescribing requirements governing the provision of informed written consent pursuant to paragraph (b) of subsection 1, including, without limitation, requirements governing:

(1) The form on which such informed written consent must be provided; and

(2) The length of time that a social worker, independent social worker or clinical social worker who obtains such informed written consent must maintain the informed written consent;

(b) Prescribing the length of time that a program of education for mental health professionals, a mental health professional or a person receiving training for mental health professionals that uses a recording of the provision of mental health services by a social worker, independent social worker or clinical social worker to a client for the purposes described in paragraph (a) of subsection 1 may retain the recording before destroying it; and

(c) Defining "training activity" for the purposes of this section.

4. The provisions of this section do not abrogate, alter or otherwise affect the obligation of a social worker, independent social worker or clinical social worker to comply with the applicable requirements of chapter 629 of NRS,

1 including, without limitation, the requirement to retain records concerning the
2 mental health services that he or she provides to clients in accordance with NRS
3 629.051 to 629.069, inclusive.

4 ~~(3.)~~ 5. As used in this section, “mental health professional” means a
5 psychologist, marriage and family therapist, clinical professional counselor,
6 social worker, independent social worker, clinical social worker, clinical alcohol
7 and drug counselor, alcohol and drug counselor or problem gambling counselor.

8 **Sec. 5.** Chapter 641C of NRS is hereby amended by adding thereto a new
9 section to read as follows:

10 1. A program of education for mental health professionals approved by the
11 Board, a mental health professional or a person receiving training for mental
12 health professionals is not required to retain a recording of the provision of
13 mental health services by a clinical alcohol and drug counselor, alcohol and drug
14 counselor or problem gambling counselor to a client that meets the requirements
15 of subsection 2 if:

16 (a) The recording is used for a training activity that is part of a program of
17 education for mental health professionals approved by the Board;

18 (b) The client has provided informed consent in writing on a form that meets
19 the requirements prescribed by the Board pursuant to subsection 3 to the use of
20 the recording in the training activity; ~~and~~

21 (c) ~~(Discarding)~~ Destroying the recording does not result in noncompliance
22 with the obligations described in subsection ~~(2.)~~ 4; and

23 (d) The recording is destroyed after the expiration of the period of time
24 prescribed by the Board pursuant to paragraph (b) of subsection 3.

25 2. A recording of the provision of mental health services by a clinical
26 alcohol and drug counselor, alcohol and drug counselor or problem gambling
27 counselor to a client used for the purpose described in paragraph (a) of
28 subsection 1:

29 (a) Must meet all requirements of the Health Insurance Portability and
30 Accountability Act of 1996, Public Law 104-191, and any regulations adopted
31 thereto, that are designed to prevent the reproduction, copying or theft of the
32 recording; and

33 (b) Must not contain any personally identifiable information relating to the
34 client unless the client has provided informed consent in writing specifically
35 authorizing the inclusion of that information in the recording.

36 3. The Board shall adopt regulations:

37 (a) Prescribing requirements governing the provision of informed written
38 consent pursuant to paragraph (b) of subsection 1, including, without limitation,
39 requirements governing:

40 (1) The form on which such informed written consent must be provided;
41 and

42 (2) The length of time that a clinical alcohol and drug counselor, alcohol
43 and drug counselor or problem gambling counselor who obtains such informed
44 written consent must maintain the informed written consent;

45 (b) Prescribing the length of time that a program of education for mental
46 health professionals, a mental health professional or a person receiving training
47 for mental health professionals that uses a recording of the provision of mental
48 health services by a clinical alcohol and drug counselor, alcohol and drug
49 counselor or problem gambling counselor to a client for the purposes described
50 in paragraph (a) of subsection 1 may retain the recording before destroying it;
51 and

52 (c) Defining “training activity” for the purposes of this section.

1 4. The provisions of this section do not abrogate, alter or otherwise affect
2 the obligation of a clinical alcohol and drug counselor, alcohol and drug
3 counselor or problem gambling counselor to comply with the applicable
4 requirements of chapter 629 of NRS, including, without limitation, the
5 requirement to retain records concerning the mental health services that he or
6 she provides to clients in accordance with NRS 629.051 to 629.069, inclusive.

7 ~~3.~~ 5. As used in this section, "mental health professional" means a
8 psychologist, marriage and family therapist, clinical professional counselor,
9 social worker, independent social worker, clinical social worker, clinical alcohol
10 and drug counselor, alcohol and drug counselor or problem gambling counselor.

11 Sec. 6. 1. This section becomes effective upon passage and approval.

12 2. Sections 1 to 5, inclusive, of this act ~~becomes~~ become effective ~~on~~ :

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

16 (b) On July 1, 2021, ~~it~~, for all other purposes.