

Amendment No. 730

Senate Amendment to Assembly Bill No. 366 First Reprint	(BDR 54-456)
Proposed by: Senator Hardy	
Amends: Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: No	

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.

SRF/EWR



Date: 5/20/2021

A.B. No. 366—Revises provisions governing mental health records. (BDR 54-456)





## 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 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; (3) destroying the recording does not result in the maintenance of incomplete patient records; 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 *except as otherwise provided in section 2, 3, 4 or 5 of this act,* 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;*

*(c) Destroying the recording does not result in noncompliance with the obligations described in subsection 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.

4. The provisions of this section do not abrogate, alter or otherwise affect the obligation of a psychologist 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 patients in accordance with NRS 629.051 to 629.069, inclusive.

5. Except where necessary for compliance with subsection 4, a recording of the provision of mental health services by a psychologist to a patient that is 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 in accordance with the provisions of this section is not a health care record for the purposes of chapter 629 of NRS.

6. 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. 3. Chapter 641A 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 marriage and family therapist or clinical professional counselor 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;

(c) Destroying the recording does not result in noncompliance with the obligations described in subsection 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 marriage and family therapist or clinical professional counselor 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 marriage and family therapist or clinical professional counselor 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

1 for mental health professionals that uses a recording of the provision of mental  
2 health services by a marriage and family therapist or clinical professional  
3 counselor to a client for the purposes described in paragraph (a) of subsection 1  
4 may retain the recording before destroying it; and

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

6 4. The provisions of this section do not abrogate, alter or otherwise affect  
7 the obligation of a marriage and family therapist or clinical professional  
8 counselor to comply with the applicable requirements of chapter 629 of NRS,  
9 including, without limitation, the requirement to retain records concerning the  
10 mental health services that he or she provides to clients in accordance with NRS  
11 629.051 to 629.069, inclusive.

12 5. Except where necessary for compliance with subsection 4, a recording of  
13 the provision of mental health services by a marriage and family therapist or  
14 clinical professional counselor to a client that is used for a training activity by a  
15 program of education for mental health professionals, a mental health  
16 professional or a person receiving training for mental health professionals in  
17 accordance with the provisions of this section is not a health care record for the  
18 purposes of chapter 629 of NRS.

19 6. As used in this section, "mental health professional" means a  
20 psychologist, marriage and family therapist, clinical professional counselor,  
21 social worker, independent social worker, clinical social worker, clinical alcohol  
22 and drug counselor, alcohol and drug counselor or problem gambling counselor.

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

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

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

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

35 (c) Destroying the recording does not result in noncompliance with the  
36 obligations described in subsection 4; and

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

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

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

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

49 3. The Board shall adopt regulations:

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

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

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

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

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

13           4. *The provisions of this section do not abrogate, alter or otherwise affect*  
14 *the obligation of a social worker, independent social worker or clinical social*  
15 *worker to comply with the applicable requirements of chapter 629 of NRS,*  
16 *including, without limitation, the requirement to retain records concerning the*  
17 *mental health services that he or she provides to clients in accordance with NRS*  
18 *629.051 to 629.069, inclusive.*

19           5. *Except where necessary for compliance with subsection 4, a recording of*  
20 *the provision of mental health services by a social worker, independent social*  
21 *worker or clinical social worker to a client that is used for a training activity by a*  
22 *program of education for mental health professionals, a mental health*  
23 *professional or a person receiving training for mental health professionals in*  
24 *accordance with the provisions of this section is not a health care record for the*  
25 *purposes of chapter 629 of NRS.*

26           6. *As used in this section, “mental health professional” means a*  
27 *psychologist, marriage and family therapist, clinical professional counselor,*  
28 *social worker, independent social worker, clinical social worker, clinical alcohol*  
29 *and drug counselor, alcohol and drug counselor or problem gambling counselor.*

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

32           1. *A program of education for mental health professionals approved by the*  
33 *Board, a mental health professional or a person receiving training for mental*  
34 *health professionals is not required to retain a recording of the provision of*  
35 *mental health services by a clinical alcohol and drug counselor, alcohol and drug*  
36 *counselor or problem gambling counselor to a client that meets the requirements*  
37 *of subsection 2 if:*

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

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

43           (c) *Destroying the recording does not result in noncompliance with the*  
44 *obligations described in subsection 4; and*

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

47           2. *A recording of the provision of mental health services by a clinical*  
48 *alcohol and drug counselor, alcohol and drug counselor or problem gambling*  
49 *counselor to a client used for the purpose described in paragraph (a) of*  
50 *subsection 1:*

51           (a) *Must meet all requirements of the Health Insurance Portability and*  
52 *Accountability Act of 1996, Public Law 104-191, and any regulations adopted*

1 *thereto, that are designed to prevent the reproduction, copying or theft of the*  
2 *recording; and*

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

6 **3. The Board shall adopt regulations:**

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

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

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

15 *(b) Prescribing the length of time that a program of education for mental*  
16 *health professionals, a mental health professional or a person receiving training*  
17 *for mental health professionals that uses a recording of the provision of mental*  
18 *health services by a clinical alcohol and drug counselor, alcohol and drug*  
19 *counselor or problem gambling counselor to a client for the purposes described*  
20 *in paragraph (a) of subsection 1 may retain the recording before destroying it;*  
21 *and*

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

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

29 **5. Except where necessary for compliance with subsection 4, a recording of**  
30 **the provision of mental health services by a clinical alcohol and drug counselor,**  
31 **alcohol and drug counselor or problem gambling counselor to a client that is**  
32 **used for a training activity by a program of education for mental health**  
33 **professionals, a mental health professional or a person receiving training for**  
34 **mental health professionals in accordance with the provisions of this section is**  
35 **not a health care record for the purposes of chapter 629 of NRS.**

36 **6. As used in this section, “mental health professional” means a**  
37 **psychologist, marriage and family therapist, clinical professional counselor,**  
38 **social worker, independent social worker, clinical social worker, clinical alcohol**  
39 **and drug counselor, alcohol and drug counselor or problem gambling counselor.**

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

41 **2. Sections 1 to 5, inclusive, of this act become effective:**

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

45 **(b) On July 1, 2021, for all other purposes.**