

SENATE BILL NO. 43—COMMITTEE ON
HEALTH AND HUMAN SERVICES

(ON BEHALF OF THE DEPARTMENT OF
HEALTH AND HUMAN SERVICES)

PREFILED DECEMBER 14, 2010

Referred to Committee on Health and Human Services

SUMMARY—Makes various changes relating to electronic health records. (BDR 40-443)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
Effect on the State: Yes.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to health care; requiring the Director of the Department of Health and Human Services to establish a statewide health information exchange system in accordance with federal law; requiring the Director to establish or contract with a nonprofit entity to govern the statewide health information exchange system; requiring the Director to prescribe standards to ensure the security and confidentiality of electronic health records; requiring the Director to take action necessary to comply with federal law concerning electronic health records and the statewide health information exchange system; making various changes relating to electronic health records; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 The American Recovery and Reinvestment Act of 2009 includes the Health
- 2 Information Technology for Economic and Clinical Health Act of 2009, otherwise
- 3 known as the "HITECH Act." (Public Law 111-5, 42 U.S.C. §§ 300jj et seq. and
- 4 17901 et seq.) The HITECH Act establishes various requirements with respect to
- 5 electronic health records and health information exchange systems. This bill
- 6 requires the establishment of a system that allows the exchange of electronic health



7 information in accordance with the requirements of the HITECH Act and other
8 federal law, authorizes the State to make use of electronic records and health
9 information exchange systems, and requires protection of individual privacy and
10 prevention of unauthorized access to health records.

11 **Section 5** of this bill requires the Director of the Department of Health and
12 Human Services to establish a statewide health information exchange system and
13 specifies the Director's powers and duties. **Section 6** of this bill requires the
14 Director to establish or contract with not more than one nonprofit entity to govern
15 the statewide health information exchange system. **Section 6** requires the governing
16 entity to have a governing body and authorizes the governing entity to hire or
17 contract with a public or private entity to administer the statewide health
18 information exchange system. **Section 6** further requires the Director to certify
19 health information exchanges who may then participate in the statewide health
20 information exchange system. **Section 6** requires the governing body to hold public
21 meetings which are conducted in accordance with the Open Meeting Law.

22 **Section 7** of this bill requires the Director to prescribe standards for the security
23 and confidentiality of electronic health records, health-related information and the
24 statewide health information exchange system. Such standards must include the
25 manner in which a person may remove or exclude health records or any portion
26 thereof from the statewide health information exchange system. **Section 8** of this
27 bill imposes requirements upon persons who transmit electronic health records or
28 participate in the statewide health information exchange system and makes it a
29 misdemeanor to commit certain acts related to electronic health records, health
30 information exchanges and the statewide health information exchange system.
31 **Section 8** further provides that a health care provider may not be required to
32 participate in the statewide health information exchange system and may not be
33 subject to disciplinary action for electing not to participate. **Section 8** requires the
34 Director to adopt regulations establishing the manner in which a person may file a
35 complaint of violations with the Director and requires the Director to post that
36 information as well as information about how to file a complaint involving a
37 violation of federal law on the Internet website of the Department.

38 **Section 9** of this bill provides immunity from liability to a health care provider
39 for certain acts in connection with electronic health records and the statewide health
40 information exchange system. **Section 9.5** of this bill similarly provides immunity
41 from liability to the governing entity of the statewide health information exchange
42 system, the administrator of the system and health information exchanges for
43 information which they include or cause to be included in the statewide health
44 information exchange system in certain circumstances. **Section 11** of this bill
45 requires a patient's consent for electronic transmittal of health care records or
46 participation in the statewide health information exchange system, and specifies the
47 rights of a patient. **Section 12** of this bill ensures that electronic health records
48 maintained in accordance with these provisions comply with other laws concerning
49 written health care records and directives, access to health care records and
50 confidentiality of health care records.



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

1 **Section 1.** Chapter 439 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 to 12, inclusive, of this
3 act.

4 **Sec. 2.** *As used in sections 2 to 12, inclusive, of this act,*
5 *unless the context otherwise requires, the words and terms defined*
6 *in sections 3 to 4.9, inclusive, of this act have the meanings*
7 *ascribed to them in those sections.*

8 **Sec. 3.** *“Electronic health record” has the meaning ascribed*
9 *to it in 42 U.S.C. § 17921(5).*

10 **Sec. 4.** (Deleted by amendment.)

11 **Sec. 4.2.** *“Health care provider” has the meaning ascribed to*
12 *it in 45 C.F.R. § 160.103.*

13 **Sec. 4.4.** *“Health information exchange” means an*
14 *organization that provides for the electronic movement of health-*
15 *related information across and among disparate organizations*
16 *according to nationally recognized standards.*

17 **Sec. 4.6.** *“Person” means:*

18 1. *A natural person.*

19 2. *Any form of business or social organization and any other*
20 *nongovernmental legal entity, including, without limitation, a*
21 *corporation, partnership, association, trust or unincorporated*
22 *organization.*

23 3. *A government, a political subdivision of a government or*
24 *an agency or instrumentality of a government or of a political*
25 *subdivision of a government.*

26 **Sec. 4.8.** *“Statewide health information exchange system”*
27 *means the system established pursuant to sections 2 to 12,*
28 *inclusive, of this act for the electronic movement, storage, analysis*
29 *and exchange of electronic health records, health-related*
30 *information and related data.*

31 **Sec. 5. 1.** *The Director is the state authority for health*
32 *information technology. The Director shall:*

33 (a) *Establish a statewide health information exchange system,*
34 *including, without limitation, establishing or contracting with a*
35 *governing entity for the system pursuant to section 6 of this act,*
36 *and ensuring the system complies with the specifications and*
37 *protocols for exchanging electronic health records, health-related*
38 *information and related data prescribed pursuant to the provisions*
39 *of the Health Information Technology for Economic and Clinical*
40 *Health Act of 2009, 42 U.S.C. §§ 300jj et seq. and 17901 et seq.,*
41 *and other applicable federal and state law;*



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

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

8 ***(d) Prescribe by regulation rules governing the ownership,***
9 ***management and use of electronic health records, health-related***
10 ***information and related data in the statewide health information***
11 ***exchange system; and***

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

16 ***2. The Director may enter into contracts, apply for and accept***
17 ***available gifts, grants and donations, and adopt such regulations***
18 ***as are necessary to carry out the provisions of sections 2 to 12,***
19 ***inclusive, of this act.***

20 ***Sec. 6. 1. The Director shall establish or contract with not***
21 ***more than one nonprofit entity to govern the statewide health***
22 ***information exchange system. The Director shall by regulation***
23 ***prescribe the requirements for that governing entity.***

24 ***2. The governing entity established or contracted with***
25 ***pursuant to this section:***

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

28 ***(b) Must have a governing body which complies with all***
29 ***relevant requirements of federal law and which consists of***
30 ***representatives of health care providers, insurers, patients,***
31 ***employers and others who represent interests related to electronic***
32 ***health records and health information exchanges.***

33 ***(c) Shall oversee and govern the exchange of electronic health***
34 ***records and health-related information within the statewide health***
35 ***information exchange system.***

36 ***(d) May, with the approval of the Director, hire or contract***
37 ***with a public or private entity to administer the statewide health***
38 ***information exchange system.***

39 ***(e) May enter into contracts with any health information***
40 ***exchange which is certified by the Director pursuant to subsection***
41 ***4 to participate in the statewide health information exchange***
42 ***system. The governing entity shall not enter into a contract with a***
43 ***health information exchange that is not certified.***



1 (f) *Is accountable to the Director, in his or her capacity as the*
2 *state authority for health information technology, for carrying out*
3 *the provisions of a contract entered into pursuant to this section.*

4 (g) *May apply for and accept available gifts, grants and*
5 *donations for the support of the governing entity and the statewide*
6 *health information exchange system.*

7 3. *The governing body of the governing entity shall hold*
8 *public meetings at such times as required by the Director. Such*
9 *meetings must be conducted in accordance with the provisions of*
10 *chapter 241 of NRS.*

11 4. *The Director shall by regulation establish the manner in*
12 *which a health information exchange may apply for certification*
13 *and the requirements for granting such certification, which must*
14 *include, without limitation, that the health information exchange*
15 *demonstrate its financial and operational sustainability.*

16 **Sec. 7. 1. The Director shall by regulation prescribe**
17 **standards:**

18 (a) *To ensure that electronic health records and the statewide*
19 *health information exchange system are secure;*

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

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

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

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

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

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

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



1 (b) Requirements for the creation, maintenance and
2 transmittal of electronic health records;

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

7 (d) Requirements for the manner in which the statewide health
8 information exchange system will remove or exclude health
9 records or any portion thereof upon the request of a person about
10 whom the record pertains and the requirements for a person to
11 make such a request;

12 (e) A secure and traceable electronic audit system for
13 identifying access points and trails to electronic health records
14 and health information exchanges; and

15 (f) Any other requirements necessary to comply with all
16 applicable federal laws relating to electronic health records,
17 health-related information, health information exchanges and the
18 security and confidentiality of such records and exchanges.

19 **Sec. 8. 1.** A health care provider, insurer or other payer
20 that elects to participate in the statewide health information
21 exchange system must agree to comply with all requirements
22 prescribed by the Director and imposed by the governing entity
23 established or contracted with pursuant to section 6 of this act.

24 2. A health care provider may not be required to participate
25 in the statewide health information exchange system and may not
26 be subject to any disciplinary action for electing not to participate
27 in the system.

28 3. The Director may prohibit a person from participating in
29 the statewide health information exchange system if the person
30 does not comply with the provisions of sections 2 to 12, inclusive,
31 of this act, or the requirements prescribed by the Director and
32 imposed by the governing entity established or contracted with
33 pursuant to section 6 of this act.

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

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

42 (b) Any information contained in an electronic health record
43 or the statewide health information exchange system for a
44 marketing purpose.



1 5. *Individually identifiable health information obtained from*
2 *an electronic health record or the statewide health information*
3 *exchange system concerning health care services received by a*
4 *child without the consent of a parent or guardian of the child must*
5 *not be disclosed to the parent or guardian of the child without the*
6 *consent of the child which is obtained in the manner established*
7 *pursuant to section 7 of this act.*

8 6. *A person who accesses an electronic health record, the*
9 *statewide health information exchange system or a health*
10 *information exchange without authority to do so is guilty of a*
11 *misdemeanor and liable for any damages to any person that result*
12 *from the unauthorized access.*

13 7. *The Director shall adopt regulations establishing the*
14 *manner in which a person may file a complaint with the Director*
15 *regarding a violation of the provisions of this section. The*
16 *Director shall also post on the Internet website of the Department*
17 *and publish in any other manner the Director deems necessary*
18 *and appropriate information concerning the manner in which to*
19 *file a complaint with the Director and the manner in which to file*
20 *a complaint of a violation of the Health Insurance Portability and*
21 *Accountability Act of 1996, Public Law 104-191.*

22 **Sec. 9.** *A health care provider who with reasonable care*
23 *relies upon an apparently genuine electronic health record*
24 *accessed through the statewide health information exchange*
25 *system to make a decision concerning the provision of health care*
26 *to a patient is immune from civil or criminal liability for the*
27 *decision if:*

- 28 1. *The electronic health record is inaccurate;*
- 29 2. *The inaccuracy was not caused by the health care*
30 *provider;*
- 31 3. *The inaccuracy resulted in an inappropriate health care*
32 *decision; and*
- 33 4. *The health care decision was appropriate based upon the*
34 *information contained in the inaccurate electronic health record.*

35 **Sec. 9.5.** *The governing entity established or contracted with*
36 *pursuant to section 6 of this act, a public or private entity with*
37 *whom the governing entity contracts to administer the statewide*
38 *health information system pursuant to section 6 of this act, and*
39 *any health information exchange with which the governing entity*
40 *contracts pursuant to section 6 of this act that with reasonable*
41 *care includes or causes to be included in the statewide health*
42 *information exchange system apparently genuine health-related*
43 *information that was provided to the governing entity,*
44 *administrator or health information exchange, as applicable, is*
45 *immune from civil and criminal liability for including the*



1 *information in the statewide health information exchange system*
2 *if reliance on that information by a health care provider results in*
3 *an undesirable or adverse outcome if:*

4 1. *The information in the statewide health information*
5 *exchange system mirrors the information that was provided to the*
6 *governing entity, administrator or health information exchange;*

7 2. *The health care provider was informed of known risks*
8 *associated with the quality and accuracy of information included*
9 *in the statewide health information exchange system;*

10 3. *Any inaccuracy in the information included in the*
11 *statewide health information exchange system was not caused by*
12 *the governing entity, administrator or the health information*
13 *exchange; and*

14 4. *The information in the statewide health information*
15 *exchange system:*

16 (a) *Was incomplete, if applicable, because a health care*
17 *provider elected not to participate in the system; or*

18 (b) *Was not available, if applicable, because of operational*
19 *issues with the system, which may include, without limitation,*
20 *maintenance or inoperability of the system.*

21 **Sec. 10.** *Providing information to an electronic health record*
22 *or participating in a health information exchange in accordance*
23 *with sections 2 to 12, inclusive, of this act does not constitute an*
24 *unfair trade practice pursuant to chapter 598A or 686A of NRS.*

25 **Sec. 11.** 1. *Except as otherwise provided in subsection 2 of*
26 *NRS 439.538, a patient must not be required to participate in a*
27 *health information exchange. Before a patient's health care*
28 *records may be transmitted electronically or included in a health*
29 *information exchange, the patient must be fully informed and*
30 *consent, in the manner prescribed by the Director, to the*
31 *transmittal or inclusion.*

32 2. *A patient must be notified in the manner prescribed by the*
33 *Director of any breach of the confidentiality of electronic health*
34 *records of the patient or a health information exchange.*

35 3. *A patient who consents to the inclusion of his or her*
36 *electronic health record in a health information exchange may at*
37 *any time request access to his or her electronic health record in*
38 *accordance with the provisions of 45 C.F.R. § 164.526.*

39 **Sec. 12.** 1. *Except as otherwise prohibited by federal law:*

40 (a) *If a statute or regulation requires that a health care record,*
41 *prescription, medical directive or other health-related document be*
42 *in writing, or that such a record, prescription, directive or*
43 *document be signed, an electronic health record, an electronic*
44 *signature or the transmittal of health information in accordance*
45 *with the provisions of sections 2 to 12, inclusive, of this act, and*



1 *the regulations adopted pursuant thereto shall be deemed to*
2 *comply with the requirements of the statute or regulation.*

3 *(b) If a statute or regulation requires that a health care record*
4 *or information contained in a health care record be kept*
5 *confidential, maintaining or transmitting that information in an*
6 *electronic health record or the statewide health information*
7 *exchange system in accordance with the provisions of sections 2 to*
8 *12, inclusive, of this act and the regulations adopted pursuant*
9 *thereto concerning the confidentiality of records shall be deemed*
10 *to comply with the requirements of the statute or regulation.*

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

13 **Sec. 13.** NRS 439.005 is hereby amended to read as follows:

14 439.005 As used in this chapter, unless the context requires
15 otherwise:

16 1. "Administrator" means the Administrator of the Health
17 Division.

18 2. "Department" means the Department of Health and Human
19 Services.

20 3. "Director" means the Director of the Department.

21 4. "Health authority" means the officers and agents of the
22 Health Division or the officers and agents of the local boards of
23 health.

24 5. "Health Division" means the Health Division of the
25 Department.

26 6. *"Individually identifiable health information" has the*
27 *meaning ascribed to it in 45 C.F.R. § 160.103.*

28 **Sec. 14.** NRS 439.010 is hereby amended to read as follows:

29 439.010 ~~[The]~~ *Except as otherwise provided in sections 2 to*
30 *12, inclusive, of this act, the* provisions of this chapter must be
31 administered by the Administrator and the Health Division, subject
32 to administrative supervision by the Director.

33 **Sec. 15.** NRS 439.538 is hereby amended to read as follows:

34 439.538 1. If a covered entity transmits electronically
35 individually identifiable health information in compliance with the
36 provisions of ~~[the]~~ :

37 *(a) The Health Insurance Portability and Accountability Act of*
38 *1996, Public Law 104-191 [§]; and*

39 *(b) Sections 2 to 12, inclusive, of this act and the regulations*
40 *adopted pursuant thereto,*

41 ↪ which govern the electronic transmission of such information, the
42 covered entity is, for purposes of the electronic transmission,
43 exempt from any state law that contains more stringent requirements
44 or provisions concerning the privacy or confidentiality of
45 individually identifiable health information.



1 2. A covered entity that makes individually identifiable health
2 information available electronically pursuant to subsection 1 shall
3 allow any person to opt out of having his or her individually
4 identifiable health information disclosed electronically to other
5 covered entities, except:

6 (a) As required by the administrative simplification provisions
7 of the Health Insurance Portability and Accountability Act of 1996,
8 Public Law 104-191.

9 (b) As otherwise required by a state law.

10 (c) That a person who is a recipient of Medicaid or insurance
11 pursuant to the Children's Health Insurance Program may not opt
12 out of having his or her individually identifiable health information
13 disclosed electronically.

14 3. As used in this section ~~†~~:

15 ~~—(a) “Covered”, “covered” entity” has the meaning ascribed to it~~
16 ~~in 45 C.F.R. § 160.103.~~

17 ~~[(b) “Individually identifiable health information” has the~~
18 ~~meaning ascribed to it in 45 C.F.R. § 160.103.]~~

19 **Sec. 16.** NRS 439.580 is hereby amended to read as follows:

20 439.580 1. Any local health officer or a deputy of a local
21 health officer who neglects or fails to enforce the provisions of this
22 chapter in his or her jurisdiction, or neglects or refuses to perform
23 any of the duties imposed upon him or her by this chapter or by the
24 instructions and directions of the Health Division shall be punished
25 by a fine of not more than \$250.

26 2. Each person who violates any of the provisions of this
27 chapter or refuses or neglects to obey any lawful order, rule or
28 regulation of the :

29 (a) State Board of Health or violates any rule or regulation
30 approved by the State Board of Health pursuant to NRS 439.350,
31 439.366, 439.410 and 439.460 ; or

32 (b) *Director adopted pursuant to NRS 439.538 or sections 2 to*
33 *12, inclusive, of this act,*

34 *↪* is guilty of a misdemeanor.

35 **Sec. 17.** NRS 453.385 is hereby amended to read as follows:

36 453.385 1. Each prescription for a controlled substance must
37 comply with the regulations of the Board adopted pursuant to
38 subsection 2.

39 2. The Board shall, by regulation, adopt requirements for:

40 (a) The form and content of a prescription for a controlled
41 substance. The requirements may vary depending upon the schedule
42 of the controlled substance.

43 (b) Transmitting a prescription for a controlled substance to a
44 pharmacy. The requirements may vary depending upon the schedule
45 of the controlled substance.



1 (c) The form and contents of an order for a controlled substance
2 given for a patient in a medical facility and the requirements for
3 keeping records of such orders.

4 3. Except as otherwise provided in this subsection, the
5 regulations adopted pursuant to subsection 2 must **[ensure]** :

6 (a) *Ensure* compliance with, but may be more stringent than
7 required by, applicable federal law governing controlled substances
8 and the rules, regulations and orders of any federal agency
9 administering such law. The regulations adopted pursuant to
10 paragraph (b) of subsection 2 for the electronic transmission or
11 transmission by a facsimile machine of a prescription for a
12 controlled substance must not be more stringent than federal law
13 governing the electronic transmission or transmission by a facsimile
14 machine of a prescription for a controlled substance or the rules,
15 regulations or orders of any federal agency administering such law
16 **[H]**; and

17 (b) *Be consistent with the provisions of sections 2 to 12,*
18 *inclusive, of this act and the regulations adopted pursuant thereto.*

19 **Sec. 18.** NRS 454.223 is hereby amended to read as follows:

20 454.223 1. **[Each]** *Except as otherwise provided in*
21 *subsection 4, each* prescription for a dangerous drug must be
22 written on a prescription blank or as an order on the chart of a
23 patient. A chart of a patient may be used to order multiple
24 prescriptions for that patient.

25 2. A written prescription must contain:

26 (a) The name of the practitioner, the signature of the practitioner
27 if the prescription was not transmitted orally and the address of the
28 practitioner if not immediately available to the pharmacist;

29 (b) The classification of his or her license;

30 (c) The name of the patient, and the address of the patient if not
31 immediately available to the pharmacist;

32 (d) The name, strength and quantity of the drug or drugs
33 prescribed;

34 (e) The symptom or purpose for which the drug is prescribed, if
35 included by the practitioner pursuant to NRS 639.2352;

36 (f) Directions for use; and

37 (g) The date of issue.

38 3. Directions for use must be specific in that they must indicate
39 the portion of the body to which the medication is to be applied, or,
40 if to be taken into the body by means other than orally, the orifice
41 or canal of the body into which the medication is to be inserted or
42 injected.

43 4. *The Board shall adopt regulations concerning the*
44 *electronic transmission of a prescription for a dangerous drug,*
45 *which must be consistent with federal law and the provisions of*



1 *sections 2 to 12, inclusive, of this act and the regulations adopted*
2 *pursuant thereto.*

3 **Sec. 19.** NRS 433.332 is hereby amended to read as follows:

4 433.332 1. If a patient in a division facility is transferred to
5 another division facility or to a medical facility, a facility for the
6 dependent or a physician licensed to practice medicine, the division
7 facility shall forward a copy of the medical records of the patient, on
8 or before the date the patient is transferred, to the facility or
9 physician. Except as otherwise required by 42 U.S.C. §§ 290dd,
10 290dd-1 or 290dd-2 or NRS 439.538 ~~§~~ *or section 11 of this act*, the
11 division facility is not required to obtain the oral or written consent
12 of the patient to forward a copy of the medical records.

13 2. As used in this section, "medical records" includes a medical
14 history of the patient, a summary of the current physical condition
15 of the patient and a discharge summary which contains the
16 information necessary for the proper treatment of the patient.

17 **Sec. 20.** NRS 603A.100 is hereby amended to read as follows:

18 603A.100 1. *The provisions of this chapter do not apply to*
19 *the maintenance or transmittal of information in accordance with*
20 *sections 2 to 12, inclusive, of this act and the regulations adopted*
21 *pursuant thereto.*

22 2. Any waiver of the provisions of this chapter is contrary to
23 public policy, void and unenforceable.

24 **Sec. 21.** NRS 629.051 is hereby amended to read as follows:

25 629.051 1. Except as otherwise provided in this section and
26 in regulations adopted by the State Board of Health pursuant to NRS
27 652.135 with regard to the records of a medical laboratory and
28 unless a longer period is provided by federal law, each provider of
29 health care shall retain the health care records of his or her patients
30 as part of his or her regularly maintained records for 5 years after
31 their receipt or production. Health care records may be retained in
32 written form, or by microfilm or any other recognized form of size
33 reduction, including, without limitation, microfiche, computer disc,
34 magnetic tape and optical disc, which does not adversely affect their
35 use for the purposes of NRS 629.061. Health care records may be
36 created, authenticated and stored in a computer system which ~~limits~~
37 ~~access to those records.~~ *meets the requirements of sections 2 to 12,*
38 *inclusive, of this act and the regulations adopted pursuant thereto.*

39 2. A provider of health care shall post, in a conspicuous place
40 in each location at which the provider of health care performs health
41 care services, a sign which discloses to patients that their health care
42 records may be destroyed after the period set forth in subsection 1.

43 3. When a provider of health care performs health care services
44 for a patient for the first time, the provider of health care shall
45 deliver to the patient a written statement which discloses to the



1 patient that the health care records of the patient may be destroyed
2 after the period set forth in subsection 1.

3 4. If a provider of health care fails to deliver the written
4 statement to the patient pursuant to subsection 3, the provider of
5 health care shall deliver to the patient the written statement
6 described in subsection 3 when the provider of health care next
7 performs health care services for the patient.

8 5. In addition to delivering a written statement pursuant to
9 subsection 3 or 4, a provider of health care may deliver such a
10 written statement to a patient at any other time.

11 6. A written statement delivered to a patient pursuant to this
12 section may be included with other written information delivered to
13 the patient by a provider of health care.

14 7. A provider of health care shall not destroy the health care
15 records of a person who is less than 23 years of age on the date of
16 the proposed destruction of the records. The health care records of a
17 person who has attained the age of 23 years may be destroyed in
18 accordance with this section for those records which have been
19 retained for at least 5 years or for any longer period provided by
20 federal law.

21 8. The provisions of this section do not apply to a pharmacist.

22 9. The State Board of Health shall adopt:

23 (a) Regulations prescribing the form, size, contents and
24 placement of the signs and written statements required pursuant to
25 this section; and

26 (b) Any other regulations necessary to carry out the provisions
27 of this section.

28 **Sec. 22.** NRS 639.0745 is hereby amended to read as follows:

29 639.0745 1. The Board may adopt regulations concerning the
30 transfer of information between pharmacies relating to prescriptions.

31 2. The Board shall adopt regulations concerning the electronic
32 transmission and the transmission by a facsimile machine of a
33 prescription from a practitioner to a pharmacist for the dispensing of
34 a drug. The regulations must *be consistent with sections 2 to 12,*
35 *inclusive, of this act and the regulations adopted pursuant thereto*
36 *and must* establish procedures to:

37 (a) Ensure the security and confidentiality of the data that is
38 transmitted between:

39 (1) The practitioner and the pharmacy;

40 (2) The practitioner and an insurer of the person for whom
41 the prescription is issued; and

42 (3) The pharmacy and an insurer of the person for whom the
43 prescription is issued.



1 (b) Protect the identity of the practitioner to prevent misuse of
2 the identity of the practitioner or other fraudulent conduct related to
3 the electronic transmission of a prescription.

4 (c) Verify the authenticity of a signature that is produced:

5 (1) By the computer or other electronic device; or

6 (2) Manually by the practitioner.

7 3. The Board shall adopt regulations governing the exchange of
8 information between pharmacists and practitioners relating to
9 prescriptions filled by the pharmacists for persons who are
10 suspected of:

11 (a) Misusing prescriptions to obtain excessive amounts of drugs.

12 (b) Failing to use a drug in conformity with the directions for its
13 use or taking a drug in combination with other drugs in a manner
14 that could result in injury to that person.

15 ➔ The pharmacists and practitioners shall maintain the
16 confidentiality of the information exchanged pursuant to this
17 subsection.

18 **Sec. 23.** NRS 639.2353 is hereby amended to read as follows:

19 639.2353 Except as otherwise provided in a regulation adopted
20 pursuant to NRS 453.385 or 639.2357:

21 1. A prescription must be given:

22 (a) Directly from the practitioner to a pharmacist;

23 (b) Indirectly by means of an order signed by the practitioner;

24 (c) By an oral order transmitted by an agent of the practitioner;
25 or

26 (d) Except as otherwise provided in subsection 5, by electronic
27 transmission or transmission by a facsimile machine, including,
28 without limitation, transmissions made from a facsimile machine to
29 another facsimile machine, a computer equipped with a facsimile
30 modem to a facsimile machine or a computer to another computer,
31 pursuant to the regulations of the Board.

32 2. A written prescription must contain:

33 (a) Except as otherwise provided in this section, the name and
34 signature of the practitioner, and the address of the practitioner if
35 not immediately available to the pharmacist;

36 (b) The classification of his or her license;

37 (c) The name of the patient, and the address of the patient if not
38 immediately available to the pharmacist;

39 (d) The name, strength and quantity of the drug prescribed;

40 (e) The symptom or purpose for which the drug is prescribed, if
41 included by the practitioner pursuant to NRS 639.2352;

42 (f) Directions for use; and

43 (g) The date of issue.

44 3. The directions for use must be specific in that they indicate
45 the portion of the body to which the medication is to be applied or,



1 if to be taken into the body by means other than orally, the orifice
2 or canal of the body into which the medication is to be inserted or
3 injected.

4 4. Each written prescription must be written in such a manner
5 that any registered pharmacist would be able to dispense it. A
6 prescription must be written in Latin or English and may include
7 any character, figure, cipher or abbreviation which is generally used
8 by pharmacists and practitioners in the writing of prescriptions.

9 5. A prescription for a controlled substance must not be given
10 by electronic transmission or transmission by a facsimile machine
11 unless authorized by federal law ~~§~~ *and sections 2 to 12, inclusive,*
12 *of this act and the regulations adopted pursuant thereto.*

13 6. A prescription that is given by electronic transmission is not
14 required to contain the signature of the practitioner if:

15 (a) It contains a facsimile signature, security code or other mark
16 that uniquely identifies the practitioner; ~~§~~

17 (b) A voice recognition system, biometric identification
18 technique or other security system approved by the Board is used to
19 identify the practitioner ~~§~~; *or*

20 *(c) It complies with the provisions of sections 2 to 12,*
21 *inclusive, of this act and the regulations adopted pursuant thereto.*

22 **Sec. 24.** NRS 639.2583 is hereby amended to read as follows:

23 639.2583 1. Except as otherwise provided in this section, if a
24 practitioner has prescribed a drug by brand name and the
25 practitioner has not indicated, by a method set forth in subsection 5,
26 that a substitution is prohibited, the pharmacist who fills or refills
27 the prescription shall dispense, in substitution, another drug which is
28 available to him or her if the other drug:

29 (a) Is less expensive than the drug prescribed by brand name;

30 (b) Is biologically equivalent to the drug prescribed by brand
31 name;

32 (c) Has the same active ingredient or ingredients of the same
33 strength, quantity and form of dosage as the drug prescribed by
34 brand name; and

35 (d) Is of the same generic type as the drug prescribed by brand
36 name.

37 2. If the pharmacist has available to him or her more than one
38 drug that may be substituted for the drug prescribed by brand name,
39 the pharmacist shall dispense, in substitution, the least expensive of
40 the drugs that are available to him or her for substitution.

41 3. Before a pharmacist dispenses a drug in substitution for a
42 drug prescribed by brand name, the pharmacist shall:

43 (a) Advise the person who presents the prescription that the
44 pharmacist intends to dispense a drug in substitution; and



1 (b) Advise the person that he or she may refuse to accept the
2 drug that the pharmacist intends to dispense in substitution, unless
3 the pharmacist is being paid for the drug by a governmental agency.

4 4. If a person refuses to accept the drug that the pharmacist
5 intends to dispense in substitution, the pharmacist shall dispense the
6 drug prescribed by brand name, unless the pharmacist is being paid
7 for the drug by a governmental agency, in which case the
8 pharmacist shall dispense the drug in substitution.

9 5. A pharmacist shall not dispense a drug in substitution for a
10 drug prescribed by brand name if the practitioner has indicated that
11 a substitution is prohibited using one or more of the following
12 methods:

13 (a) By oral communication to the pharmacist at any time before
14 the drug is dispensed.

15 (b) By handwriting the words "Dispense as Written" on the form
16 used for the prescription, including, without limitation, any form
17 used for transmitting the prescription from a facsimile machine to
18 another facsimile machine. The pharmacist shall disregard the words
19 "Dispense as Written" if they have been placed on the form used for
20 the prescription by preprinting or other mechanical process or by
21 any method other than handwriting.

22 (c) By including the words "Dispense as Written" in any
23 prescription that is given to the pharmacist by electronic
24 transmission pursuant to the regulations of the Board ~~§~~ *or in*
25 *accordance with sections 2 to 12, inclusive, of this act and the*
26 *regulations adopted pursuant thereto*, including, without limitation,
27 an electronic transmission from a computer equipped with a
28 facsimile modem to a facsimile machine or from a computer to
29 another computer pursuant to the regulations of the Board.

30 6. The provisions of this section also apply to a prescription
31 issued to a person by a practitioner from outside this State if the
32 practitioner has not indicated, by a method set forth in subsection 5,
33 that a substitution is prohibited.

34 7. The provisions of this section do not apply to:

35 (a) A prescription drug that is dispensed to any inpatient of a
36 hospital by an inpatient pharmacy which is associated with that
37 hospital;

38 (b) A prescription drug that is dispensed to any person by mail
39 order or other common carrier by an Internet pharmacy which is
40 certified by the Board pursuant to NRS 639.23288 and authorized to
41 provide service by mail order or other common carrier pursuant to
42 the provisions of this chapter; or

43 (c) A prescription drug that is dispensed to any person by a
44 pharmacist if the substitution:



1 (1) Would violate the terms of a health care plan that
2 maintains a mandatory, exclusive or closed formulary for its
3 coverage for prescription drugs; or

4 (2) Would otherwise make the transaction ineligible for
5 reimbursement by a third party.

6 **Sec. 25.** NRS 719.200 is hereby amended to read as follows:

7 719.200 1. Except as otherwise provided in subsection 2, the
8 provisions of this chapter apply to electronic records and electronic
9 signatures relating to a transaction.

10 2. The provisions of this chapter do not apply to a transaction
11 to the extent it is governed by:

12 (a) A law governing the creation and execution of wills, codicils
13 or testamentary trusts; ~~or~~

14 (b) The Uniform Commercial Code other than NRS 104.1306,
15 104.2101 to 104.2725, inclusive, and 104A.2101 to 104A.2532,
16 inclusive ~~or~~; or

17 (c) *The provisions of sections 2 to 12, inclusive, of this act and
18 the regulations adopted pursuant thereto.*

19 3. The provisions of this chapter apply to an electronic record
20 or electronic signature otherwise excluded from the application of
21 this chapter under subsection 2 to the extent it is governed by a law
22 other than those specified in subsection 2.

23 4. A transaction subject to the provisions of this chapter is also
24 subject to other applicable substantive law.

25 **Sec. 26.** NRS 720.140 is hereby amended to read as follows:

26 720.140 1. ~~The~~ *Except as otherwise provided in this
27 subsection, the* provisions of this chapter apply to any transaction
28 for which a digital signature is used to sign an electronic record. *The
29 provisions of this chapter do not apply to a digital signature that is
30 used to sign an electronic health record in accordance with
31 sections 2 to 12, inclusive, of this act and the regulations adopted
32 pursuant thereto.*

33 2. As used in this section, "electronic record" has the meaning
34 ascribed to it in NRS 719.090.

35 **Sec. 26.5.** The Director of the Department of Health and
36 Human Services, the State Board of Pharmacy and any other state
37 agency designated by either of them shall conduct a collaborative
38 study to determine the manner in which to provide for
39 standardization of the electronic transmission of prior authorizations
40 for prescription medications using the statewide health information
41 exchange system. The results of the study must be used by the
42 Director in adopting appropriate regulations pursuant to section 5 of
43 this act.



1 **Sec. 27.** This act becomes effective upon passage and
2 approval.

⑩



* S B 4 3 R 1 *

