

MOCK-UP

PROPOSED AMENDMENT 3511 TO
ASSEMBLY BILL NO. 7

PREPARED FOR ASSEMBLY COMMITTEE ON HEALTH AND HUMAN SERVICES
FEBRUARY 6, 2023

PREPARED BY THE LEGAL DIVISION

NOTE: THIS DOCUMENT SHOWS PROPOSED AMENDMENTS IN CONCEPTUAL FORM. THE LANGUAGE AND ITS PLACEMENT IN THE OFFICIAL AMENDMENT MAY DIFFER.

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.

Legislative Counsel's Digest:

Existing law authorizes the Director of the Department of Health and Human Services to contract with not more than one health information exchange to be responsible for compiling statewide master indexes of patients, health care providers and payers. (NRS 439.587) Section 1 of this bill authorizes the Director to contract with multiple health information exchanges to perform those functions. Section 1 also removes a requirement that the Director encourage the use of health information exchanges and prohibits the Director from requiring any person to sue a health information exchange.

Existing law provides that a health care provider who with reasonable care relies upon an apparently genuine electronic health record accessed from a health information exchange to make a decision concerning the provision of health care to a patient is immune from civil or criminal liability for the decision if: (1) the electronic health record is inaccurate; (2) the inaccuracy was not caused by the health care provider; (3) the inaccuracy resulted in an inappropriate health care decision; and (4) the health care decision was appropriate based upon the information contained in the inaccurate electronic health record. (NRS 439.593) ~~Section 1.1~~ Section 1.1 of this bill expands this immunity from liability to also apply to any health care provider who ~~(1) submits an apparently genuine electronic health record to a health information exchange; (2) accesses an apparently genuine electronic health record from a health information exchange; or (3) utilizes or discloses an apparently genuine electronic health record accessed from a health information exchange.~~

~~Existing law authorizes the creation, authentication and storage of health care records on a computer system that is part of a health information exchange. (NRS 629.051) Beginning on January 1, 2028, sections 2 and 4 of this bill require, with certain exceptions, the creation, authentication and storage of health care records on a computer system that is part of a health information exchange and allows patients to access~~

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1 ~~and forward their health care records electronically.] transmits, accesses, utilizes,~~
2 ~~discloses, relies upon or provides to the patient any apparently genuine electronic~~
3 ~~health record in accordance with the applicable law and regulations. Section 1.2 of~~
4 ~~this bill provides that transmitting, accessing, utilizing or disclosing an electronic~~
5 ~~health record is not an unfair trade practice.~~
6 Existing law: (1) provides for the regulation of medical facilities; and (2)
7 establishes requirements governing the maintenance of the health records of providers
8 of health care. (chapter 449 of NRS, NRS 629.051-629.069) Beginning on January 1,
9 2028, sections 1.3 and 2 of this bill require such facilities and providers of health care
10 to maintain, transmit and exchange health records electronically in a manner that: (1)
11 allows patients to electronically access their health records directly from the facility or
12 custodian of the records and forward such records electronically to other persons and
13 entities; and (2) allows for the interoperability of health records with the electronic
14 health records and systems of other facilities and providers of health care. Section 2.5
15 of this bill appropriates money to the Department to award grants to certain small
16 facilities and providers of health care who work in small business settings to assist in
17 compliance with the requirements of sections 1.3 and 2. Section 1 of this bill requires
18 the Director to prescribe standards for the electronic maintenance and exchange of
19 such records. Sections 1.4-1.9 of this bill make conforming changes to indicate the
20 proper placement of and provide for the enforcement of section 1.3.

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

21 **Section 1. NRS 439.587 is hereby amended to read as follows:**
22 439.587 1. The Director is the state authority for health information
23 technology. The Director shall:
24 (a) Ensure that a health information exchange complies with the
25 specifications and protocols for exchanging electronic health records,
26 health-related information and related data prescribed pursuant to the
27 provisions of the Health Information Technology for Economic and
28 Clinical Health Act of 2009, 42 U.S.C. §§ 300jj et seq. and 17901 et seq.,
29 and other applicable federal and state law;
30 (b) ~~Encourage the use of a health information exchange by health care~~
31 ~~providers, payers and patients;~~
32 ~~(c)~~ Prescribe by regulation standards for the electronic maintenance,
33 transmittal and exchange of electronic health records, prescriptions,
34 health-related information, electronic signatures and requirements for
35 electronic equivalents of written entries or written approvals in accordance
36 with federal law;
37 ~~(d)~~ (c) Prescribe by regulation rules governing the ownership,
38 management and use of electronic health records, health-related
39 information and related data retained or shared by a health information
40 exchange; and
41 ~~(e)~~ (d) Prescribe by regulation, in consultation with the State Board
42 of Pharmacy, standards for the electronic transmission of prior
43 authorizations for prescription medication using a health information
44 exchange.

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

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

14 4. The regulations adopted pursuant to this section and NRS
15 389.589 must not require any person or entity, other than the
16 Department, to use a health information exchange.

17 Sec. 1.1. NRS 439.593 is hereby amended to read as follows:

18 439.593 A health care provider who with reasonable care ~~[submits an~~
19 ~~apparently genuine electronic health record to a health information~~
20 ~~exchange, accesses an apparently genuine electronic health record from~~
21 ~~a health information exchange or]~~ transmits, accesses, utilizes, discloses
22 , [or] relies upon or provides to a patient an apparently genuine electronic
23 health record ~~[accessed from a health information exchange [to make a~~
24 ~~decision concerning the provision of health care to a patient]~~ in
25 accordance with NRS 439.581 to 439.595, inclusive, and the regulations
26 adopted pursuant thereto is immune from civil or criminal liability for
27 ~~[the]~~ any decision concerning the provision of health care to a patient
28 and any civil or criminal liability resulting from the provision of an
29 apparently genuine electronic health record to a patient if:

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

36 Sec. 1.2. NRS 439.595 is hereby amended to read as follows:

37 439.595 Providing information to , transmitting, accessing, utilizing
38 or disclosing an electronic health record or participating in a health
39 information exchange in accordance with NRS 439.581 to 439.595,
40 inclusive, does not constitute an unfair trade practice pursuant to chapter
41 598A or 686A of NRS.

42 Sec. 1.3. Chapter 449 of NRS is hereby amended by adding
43 thereto a new section to read as follows:

44 Except as otherwise provided in NRS 439.538 and 439.591, a medical
45 facility shall maintain, transmit and exchange health records

1 electronically in accordance with paragraph (a) of subsection 1 of NRS
2 629.051.

3 **Sec. 1.4. NRS 449.029 is hereby amended to read as follows:**
4 449.029 As used in NRS 449.029 to 449.240, inclusive, and section
5 1.3 of this act, unless the context otherwise requires, “medical facility” has
6 the meaning ascribed to it in NRS 449.0151 and includes a program of
7 hospice care described in NRS 449.196.

8 **Sec. 1.5. NRS 449.0301 is hereby amended to read as follows:**
9 449.0301 The provisions of NRS 449.029 to 449.2428, inclusive, and
10 section 1.3 of this act do not apply to:

11 1. Any facility conducted by and for the adherents of any church or
12 religious denomination for the purpose of providing facilities for the care
13 and treatment of the sick who depend solely upon spiritual means through
14 prayer for healing in the practice of the religion of the church or
15 denomination, except that such a facility shall comply with all regulations
16 relative to sanitation and safety applicable to other facilities of a similar
17 category.

18 2. Foster homes as defined in NRS 424.014.

19 3. Any medical facility, facility for the dependent or facility which is
20 otherwise required by the regulations adopted by the Board pursuant to
21 NRS 449.0303 to be licensed that is operated and maintained by the United
22 States Government or an agency thereof.

23 **Sec. 1.6. NRS 449.089 is hereby amended to read as follows:**
24 449.089 1. Each license issued pursuant to NRS 449.029 to
25 449.2428, inclusive, and section 1.3 of this act expires on December 31
26 following its issuance and is renewable for 1 year upon reapplication and
27 payment of all fees required pursuant to subsection 4 and NRS 449.050, as
28 applicable, unless the Division finds, after an investigation, that the facility
29 has not:

30 (a) Satisfactorily complied with the provisions of NRS 449.029 to
31 449.2428, inclusive, and section 1.3 of this act or the standards and
32 regulations adopted by the Board;

33 (b) Obtained the approval of the Director of the Department of Health
34 and Human Services before undertaking a project, if such approval is
35 required by NRS 439A.100; or

36 (c) Conformed to all applicable local zoning regulations.

37 2. Each reapplication for an agency to provide personal care services
38 in the home, an agency to provide nursing in the home, a community
39 health worker pool, a facility for intermediate care, a facility for skilled
40 nursing, a provider of community-based living arrangement services, a
41 hospital described in 42 U.S.C. § 1395ww(d)(1)(B)(iv), a psychiatric
42 hospital that provides inpatient services to children, a psychiatric
43 residential treatment facility, a residential facility for groups, a program of
44 hospice care, a home for individual residential care, a facility for the care
45 of adults during the day, a facility for hospice care, a nursing pool, the

1 distinct part of a hospital which meets the requirements of a skilled nursing
2 facility or nursing facility pursuant to 42 C.F.R. § 483.5, a hospital that
3 provides swing-bed services as described in 42 C.F.R. § 482.58 or, if
4 residential services are provided to children, a medical facility or facility
5 for the treatment of alcohol or other substance use disorders must include,
6 without limitation, a statement that the facility, hospital, agency, program,
7 pool or home is in compliance with the provisions of NRS 449.115 to
8 449.125, inclusive, and 449.174.

9 3. Each reapplication for an agency to provide personal care services
10 in the home, a community health worker pool, a facility for intermediate
11 care, a facility for skilled nursing, a facility for the care of adults during the
12 day, a residential facility for groups or a home for individual residential
13 care must include, without limitation, a statement that the holder of the
14 license to operate, and the administrator or other person in charge and
15 employees of, the facility, agency, pool or home are in compliance with
16 the provisions of NRS 449.093.

17 4. Each reapplication for a surgical center for ambulatory patients,
18 facility for the treatment of irreversible renal disease, facility for hospice
19 care, program of hospice care, hospital, facility for intermediate care,
20 facility for skilled nursing, agency to provide personal care services in the
21 home or rural clinic must be accompanied by the fee prescribed by the
22 State Board of Health pursuant to NRS 457.240, in addition to the fees
23 imposed pursuant to NRS 449.050.

24 **Sec. 1.7. NRS 449.160 is hereby amended to read as follows:**

25 449.160 1. The Division may deny an application for a license or
26 may suspend or revoke any license issued under the provisions of NRS
27 449.029 to 449.2428, inclusive, **and section 1.3 of this act** upon any of the
28 following grounds:

29 (a) Violation by the applicant or the licensee of any of the provisions
30 of NRS 439B.410 or 449.029 to 449.245, inclusive, **and section 1.3 of this**
31 **act** or of any other law of this State or of the standards, rules and
32 regulations adopted thereunder.

33 (b) Aiding, abetting or permitting the commission of any illegal act.

34 (c) Conduct inimical to the public health, morals, welfare and safety of
35 the people of the State of Nevada in the maintenance and operation of the
36 premises for which a license is issued.

37 (d) Conduct or practice detrimental to the health or safety of the
38 occupants or employees of the facility.

39 (e) Failure of the applicant to obtain written approval from the Director
40 of the Department of Health and Human Services as required by NRS
41 439A.100 or as provided in any regulation adopted pursuant to NRS
42 449.001 to 449.430, inclusive, **and section 1.3 of this act** and 449.435 to
43 449.531, inclusive, and chapter 449A of NRS if such approval is required.

44 (f) Failure to comply with the provisions of NRS 441A.315 and any
45 regulations adopted pursuant thereto or NRS 449.2486.

1 (g) Violation of the provisions of NRS 458.112.

2 2. In addition to the provisions of subsection 1, the Division may
3 revoke a license to operate a facility for the dependent if, with respect to
4 that facility, the licensee that operates the facility, or an agent or employee
5 of the licensee:

6 (a) Is convicted of violating any of the provisions of NRS 202.470;

7 (b) Is ordered to but fails to abate a nuisance pursuant to NRS 244.360,
8 244.3603 or 268.4124; or

9 (c) Is ordered by the appropriate governmental agency to correct a
10 violation of a building, safety or health code or regulation but fails to
11 correct the violation.

12 3. The Division shall maintain a log of any complaints that it receives
13 relating to activities for which the Division may revoke the license to
14 operate a facility for the dependent pursuant to subsection 2. The Division
15 shall provide to a facility for the care of adults during the day:

16 (a) A summary of a complaint against the facility if the investigation of
17 the complaint by the Division either substantiates the complaint or is
18 inconclusive;

19 (b) A report of any investigation conducted with respect to the
20 complaint; and

21 (c) A report of any disciplinary action taken against the facility.

22 ↪ The facility shall make the information available to the public pursuant
23 to NRS 449.2486.

24 4. On or before February 1 of each odd-numbered year, the Division
25 shall submit to the Director of the Legislative Counsel Bureau a written
26 report setting forth, for the previous biennium:

27 (a) Any complaints included in the log maintained by the Division
28 pursuant to subsection 3; and

29 (b) Any disciplinary actions taken by the Division pursuant to
30 subsection 2.

31 **Sec. 1.75. NRS 449.163 is hereby amended to read as follows:**

32 449.163 1. In addition to the payment of the amount required by
33 NRS 449.0308, if a medical facility, facility for the dependent or facility
34 which is required by the regulations adopted by the Board pursuant to NRS
35 449.0303 to be licensed violates any provision related to its licensure,
36 including any provision of NRS 439B.410 or 449.029 to 449.2428,
37 inclusive, **and section 1.3 of this act** or any condition, standard or
38 regulation adopted by the Board, the Division, in accordance with the
39 regulations adopted pursuant to NRS 449.165, may:

40 (a) Prohibit the facility from admitting any patient until it determines
41 that the facility has corrected the violation;

42 (b) Limit the occupancy of the facility to the number of beds occupied
43 when the violation occurred, until it determines that the facility has
44 corrected the violation;

1 (c) If the license of the facility limits the occupancy of the facility and
2 the facility has exceeded the approved occupancy, require the facility, at its
3 own expense, to move patients to another facility that is licensed;

4 (d) Impose an administrative penalty of not more than \$5,000 per day
5 for each violation, together with interest thereon at a rate not to exceed 10
6 percent per annum; and

7 (e) Appoint temporary management to oversee the operation of the
8 facility and to ensure the health and safety of the patients of the facility,
9 until:

10 (1) It determines that the facility has corrected the violation and has
11 management which is capable of ensuring continued compliance with the
12 applicable statutes, conditions, standards and regulations; or

13 (2) Improvements are made to correct the violation.

14 2. If the facility fails to pay any administrative penalty imposed
15 pursuant to paragraph (d) of subsection 1, the Division may:

16 (a) Suspend the license of the facility until the administrative penalty is
17 paid; and

18 (b) Collect court costs, reasonable attorney's fees and other costs
19 incurred to collect the administrative penalty.

20 3. The Division may require any facility that violates any provision of
21 NRS 439B.410 or 449.029 to 449.2428, inclusive, and section 1.3 of this
22 act or any condition, standard or regulation adopted by the Board to make
23 any improvements necessary to correct the violation.

24 4. Any money collected as administrative penalties pursuant to
25 paragraph (d) of subsection 1 must be accounted for separately and used to
26 administer and carry out the provisions of NRS 449.001 to 449.430,
27 inclusive, and section 1.3 of this act, 449.435 to 449.531, inclusive, and
28 chapter 449A of NRS to protect the health, safety, well-being and property
29 of the patients and residents of facilities in accordance with applicable
30 state and federal standards or for any other purpose authorized by the
31 Legislature.

32 **Sec. 1.8. NRS 449.220 is hereby amended to read as follows:**

33 449.220 1. The Division may bring an action in the name of the
34 State to enjoin any person, state or local government unit or agency thereof
35 from operating or maintaining any facility within the meaning of NRS
36 449.029 to 449.2428, inclusive ~~§~~, and section 1.3 of this act:

37 (a) Without first obtaining a license therefor; or

38 (b) After his or her license has been revoked or suspended by the
39 Division.

40 2. It is sufficient in such action to allege that the defendant did, on a
41 certain date and in a certain place, operate and maintain such a facility
42 without a license.

43 **Sec. 1.9. NRS 449.240 is hereby amended to read as follows:**

44 449.240 The district attorney of the county in which the facility is
45 located shall, upon application by the Division, institute and conduct the

1 prosecution of any action for violation of any provisions of NRS 449.029
2 to 449.245, inclusive ~~[,]~~, *and section 1.3 of this act.*

3 **Sec. 2.** NRS 629.051 is hereby amended to read as follows:

4 629.051 1. Except as otherwise provided in this section and in
5 regulations adopted by the State Board of Health pursuant to NRS 652.135
6 with regard to the records of a medical laboratory and unless a longer
7 period is provided by federal law, each custodian of health care records
8 shall retain the health care records of patients as part of the regularly
9 maintained records of the custodian for 5 years after their receipt or
10 production. Health care records may be retained in written form, or by
11 microfilm or any other recognized form of size reduction, including,
12 without limitation, microfiche, computer disc, magnetic tape and optical
13 disc, which does not adversely affect their use for the purposes of NRS
14 629.061. ~~[Health]~~ *Except as otherwise provided in NRS 439.538 and*
15 *439.591, health care records ~~may must~~ :*

16 *(a) Must be maintained, transmitted and exchanged electronically in*
17 *a manner that:*

18 *(1) Allows patients to electronically access their health records*
19 *directly from the custodian of health care records and forward such*
20 *records electronically to other persons and entities;*

21 *(2) Allows for the interoperability of health records with the*
22 *electronic health records and systems of health care facilities and other*
23 *providers of health care; and*

24 *(3) Complies with the applicable provisions of NRS 439.581 to*
25 *439.595, inclusive, and any regulations adopted pursuant thereto.*

26 *(b) May be created, authenticated and stored in a ~~[computer system]~~*
27 *health information exchange which ~~meets~~;*

28 ~~*(a) Meets the requirements of NRS 439.581 to 439.595, inclusive,*~~
29 ~~*and the regulations adopted pursuant thereto and*~~

30 ~~*(b) Allows patients to access their health care records electronically*~~
31 ~~*and forward their health care records electronically to other persons.*~~

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

36 3. When a provider of health care performs health care services for a
37 patient for the first time, the provider of health care shall deliver to the
38 patient a written statement which discloses to the patient that the health
39 care records of the patient may be destroyed after the period set forth in
40 subsection 1.

41 4. If a provider of health care fails to deliver the written statement to
42 the patient pursuant to subsection 3, the provider of health care shall
43 deliver to the patient the written statement described in subsection 3 when
44 the provider of health care next performs health care services for the
45 patient.

1 5. In addition to delivering a written statement pursuant to subsection
2 3 or 4, a provider of health care may deliver such a written statement to a
3 patient at any other time.

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

7 7. A custodian of health care records shall not destroy the health care
8 records of a person who is less than 23 years of age on the date of the
9 proposed destruction of the records. The health care records of a person
10 who has attained the age of 23 years may be destroyed in accordance with
11 this section for those records which have been retained for at least 5 years
12 or for any longer period provided by federal law.

13 8. The provisions of this section, except for the provisions of
14 paragraph (a) of subsection 1, do not apply to a pharmacist.

15 9. The State Board of Health shall adopt:

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

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

20 Sec. 2.5. 1. There is hereby appropriated from the State
21 General Fund to the Department of Health and Human Services the
22 sum of \$3,000,000 for the purpose of awarding grants to providers of
23 health care and medical facilities for the purposes of complying with
24 the requirements of section 1.3 of this act and paragraph (a) of
25 subsection 1 of NRS 629.051, as amended by section 2 of this act. To
26 receive such a grant, a provider of health care or medical facility must
27 have a staff of less than 50 persons or work for an entity that has a
28 staff of less than 50 persons, as applicable.

29 2. Any remaining balance of the appropriation made by
30 subsection 1 must not be committed for expenditure after June 30,
31 2025, by the entity to which the appropriation is made or any entity to
32 which money from the appropriation is granted or otherwise
33 transferred in any manner, and any portion of the appropriated
34 money remaining must not be spent for any purpose after September
35 19, 2025, by either the entity to which the money was appropriated or
36 the entity to which the money was subsequently granted or
37 transferred, and must be reverted to the State General Fund on or
38 before September 19, 2025.

39 3. As used in this section,:

40 (a) “Medical facility” has the meaning ascribed to it in NRS
41 449.0151.

42 (b) “Provider of health care” has the meaning ascribe to it in NRS
43 629.031.

1 [**Sec. 3.** The provisions of NRS 354.599 do not apply to any
2 additional expenses of a local government that are related to the provisions
3 of this act.

4 **Sec. 4.** 1. This section ~~[and sections 1 and 3 of this act become~~
5 ~~effective upon passage and approval~~
6 ~~2. Section 2]~~ and sections 1, 1.1, 1.2 and 2.5 of this act becomes
7 effective on July 1, 2023.

8 3. Sections 1.3 to 2, inclusive, and 3 of this act ~~[becomes]~~ become
9 effective on January 1, 2028.

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