

STATEWIDE HEALTH INFORMATION EXCHANGE SYSTEM

NRS 439.581 Definitions. As used in NRS 439.581 to 439.595, inclusive, unless the context otherwise requires, the words and terms defined in NRS 439.582 to 439.586, inclusive, have the meanings ascribed to them in those sections.

(Added to NRS by 2011, 1754)

NRS 439.582 “Electronic health record” defined. “Electronic health record” has the meaning ascribed to it in 42 U.S.C. § 17921(5).

(Added to NRS by 2011, 1754)

NRS 439.583 “Health care provider” defined. “Health care provider” has the meaning ascribed to it in 45 C.F.R. § 160.103.

(Added to NRS by 2011, 1754)

NRS 439.584 “Health information exchange” defined. “Health information exchange” means an organization that provides for the electronic movement of health-related information across and among disparate organizations according to nationally recognized standards.

(Added to NRS by 2011, 1754)

NRS 439.585 “Person” defined. “Person” means:

1. A natural person.
2. Any form of business or social organization and any other nongovernmental legal entity, including, without limitation, a corporation, partnership, association, trust or unincorporated organization.
3. A government, a political subdivision of a government or an agency or instrumentality of a government or of a political subdivision of a government.

(Added to NRS by 2011, 1754)

NRS 439.586 “Statewide health information exchange system” defined. “Statewide health information exchange system” means the system established pursuant to NRS 439.581 to 439.595, inclusive, for the electronic movement, storage, analysis and exchange of electronic health records, health-related information and related data.

(Added to NRS by 2011, 1755)

NRS 439.587 Designation and duties of Director as state authority for health information technology; adoption of regulations and other necessary actions authorized.

1. The Director is the state authority for health information technology. The Director shall:

(a) Establish a statewide health information exchange system, including, without limitation, establishing or contracting with a governing entity for the system pursuant to NRS 439.588, and ensuring the system complies with the specifications and protocols for exchanging electronic health records, health-related information and related data prescribed pursuant to the provisions of the Health Information Technology for Economic and Clinical Health Act of 2009, 42 U.S.C. §§ 300jj et seq. and 17901 et seq., and other applicable federal and state law;

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

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

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

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

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

(Added to NRS by 2011, 1755)

REVISER'S NOTE.

Ch. 313, Stats. 2011, the source of this section, contains the following provision not included in NRS:

“The Director of the Department of Health and Human Services, the State Board of Pharmacy and any other state agency designated by either of them shall conduct a collaborative study to determine the manner in which to provide for standardization of the electronic transmission of prior authorizations for prescription medications using the statewide health information exchange system. The results of the study must be used by the Director in adopting appropriate regulations pursuant to section 5 of this act [NRS 439.587].”

NRS 439.588 Establishment or designation of governing entity; duties and authorized act of governing entity; meetings of governing body of governing entity; regulations for certification as health information exchange.

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

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

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

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

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

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

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

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

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

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

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

(Added to NRS by 2011, 1755)

NRS 439.589 Adoption of regulations to prescribe standards relating to electronic health records, health-related information and system.

1. The Director shall by regulation prescribe standards:

- (a) To ensure that electronic health records and the statewide health information exchange system are secure;
 - (b) To maintain the confidentiality of electronic health records and health-related information, including, without limitation, standards to maintain the confidentiality of electronic health records relating to a child who has received health care services without the consent of a parent or guardian and which ensure that a child's right to access such health care services is not impaired;
 - (c) To ensure the privacy of individually identifiable health information, including, without limitation, standards to ensure the privacy of information relating to a child who has received health care services without the consent of a parent or guardian;
 - (d) For obtaining consent from a patient before transmitting the patient's health records to the health information exchange system, including, without limitation, standards for obtaining such consent from a child who has received health care services without the consent of a parent or guardian;
 - (e) For making any necessary corrections to information or records included in the statewide health information exchange system; and
 - (f) For notifying a patient if the confidentiality of information contained in an electronic health record of the patient is breached.
2. The standards prescribed pursuant to this section must include, without limitation:
- (a) Training requirements for persons who work with electronic health records or the statewide health information exchange system;
 - (b) Requirements for the creation, maintenance and transmittal of electronic health records;
 - (c) Requirements for protecting confidentiality, including control over, access to and the collection, organization and maintenance of electronic health records, health-related information and individually identifiable health information;
 - (d) Requirements for the manner in which the statewide health information exchange system will remove or exclude health records or any portion thereof upon the request of a person about whom the record pertains and the requirements for a person to make such a request;
 - (e) A secure and traceable electronic audit system for identifying access points and trails to electronic health records and health information exchanges; and
 - (f) Any other requirements necessary to comply with all applicable federal laws relating to electronic health records, health-related information, health information exchanges and the security and confidentiality of such records and exchanges.
- (Added to NRS by 2011, 1756)

NRS 439.590 Requirements for participation in system; limitations on use, release or publication of certain information; penalty for unauthorized access to electronic health record, system or health information exchange; establishment of complaint system.

- 1. A health care provider, insurer or other payer that elects to participate in the statewide health information exchange system must agree to comply with all requirements prescribed by the Director and imposed by the governing entity established or contracted with pursuant to NRS 439.588.
- 2. A health care provider may not be required to participate in the statewide health information exchange system and may not be subject to any disciplinary action for electing not to participate in the system.
- 3. The Director may prohibit a person from participating in the statewide health information exchange system if the person does not comply with the provisions of NRS 439.581 to 439.595, inclusive, or the requirements prescribed by the Director and imposed by the governing entity established or contracted with pursuant to NRS 439.588.
- 4. Except as otherwise authorized by the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, a person shall not use, release or publish:
 - (a) Individually identifiable health information from an electronic health record or the statewide health information exchange system for a purpose unrelated to the treatment, care, well-being or billing of the person who is the subject of the information; or

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

5. Individually identifiable health information obtained from an electronic health record or the statewide health information exchange system concerning health care services received by a child without the consent of a parent or guardian of the child must not be disclosed to the parent or guardian of the child without the consent of the child which is obtained in the manner established pursuant to NRS 439.589.

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

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

(Added to NRS by 2011, 1757)

NRS 439.591 Patient not required to participate in health information exchange; notification to patient of breach of confidentiality of electronic health records or health information exchange; patient access to electronic health records.

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

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

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

(Added to NRS by 2011, 1759)

NRS 439.592 Electronic health records, electronic signatures and electronically transmitted health information deemed to comply with certain writing and signature requirements; information maintained or transmitted in electronic health record or system deemed to comply with certain confidentiality requirements; exception.

1. Except as otherwise prohibited by federal law:

(a) If a statute or regulation requires that a health care record, prescription, medical directive or other health-related document be in writing, or that such a record, prescription, directive or document be signed, an electronic health record, an electronic signature or the transmittal of health information in accordance with the provisions of NRS 439.581 to 439.595, inclusive, and the regulations adopted pursuant thereto shall be deemed to comply with the requirements of the statute or regulation.

(b) If a statute or regulation requires that a health care record or information contained in a health care record be kept confidential, maintaining or transmitting that information in an electronic health record or the statewide health information exchange system in accordance with the provisions of NRS 439.581 to 439.595, inclusive, and the regulations adopted pursuant thereto concerning the confidentiality of records shall be deemed to comply with the requirements of the statute or regulation.

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

(Added to NRS by 2011, 1759)

NRS 439.593 Immunity from liability for health care provider who uses system. A health care provider who with reasonable care relies upon an apparently genuine electronic health record accessed through the statewide health information exchange system 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.

(Added to NRS by 2011, 1758)

NRS 439.594 Immunity from liability for governing entity, administrator of system and health information exchange. The governing entity established or contracted with pursuant to NRS 439.588, a public or private entity with whom the governing entity contracts to administer the statewide health information system pursuant to NRS 439.588, and any health information exchange with which the governing entity contracts pursuant to NRS 439.588 that with reasonable care includes or causes to be included in the statewide health information exchange system apparently genuine health-related information that was provided to the governing entity, administrator or health information exchange, as applicable, is immune from civil and criminal liability for including the information in the statewide health information exchange system if reliance on that information by a health care provider results in an undesirable or adverse outcome if:

1. The information in the statewide health information exchange system mirrors the information that was provided to the governing entity, administrator or health information exchange;
2. The health care provider was informed of known risks associated with the quality and accuracy of information included in the statewide health information exchange system;
3. Any inaccuracy in the information included in the statewide health information exchange system was not caused by the governing entity, administrator or the health information exchange; and
4. The information in the statewide health information exchange system:
 - (a) Was incomplete, if applicable, because a health care provider elected not to participate in the system; or
 - (b) Was not available, if applicable, because of operational issues with the system, which may include, without limitation, maintenance or inoperability of the system.

(Added to NRS by 2011, 1758)

NRS 439.595 Provision of information to electronic health record or participation in health information exchange not unfair trade practice. Providing information to an electronic health record or participating in a health information exchange in accordance with NRS 439.581 to 439.595, inclusive, does not constitute an unfair trade practice pursuant to chapter 598A or 686A of NRS.

(Added to NRS by 2011, 1758)