

Section 1. Chapter 439 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 27, inclusive, of this regulation.

Sec. 2. *As used in sections 2 to 27, inclusive, unless the context otherwise requires, the words and terms defined in sections 3 to 9, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Child” means a person who is less than 18 years of age.*

Sec. 4. *“Director” means the Director of the Department of Health and Human Services.*

Sec. 5. *“Electronic health record” has the meaning ascribed to it in NRS 439.582.*

Sec. 6. *“Health care provider” has the meaning ascribed to it in NRS 439.583.*

Sec. 7. *“Health information exchange” has the meaning ascribed to it in NRS 439.584.*

Sec. 8. *“Person” has the meaning ascribed to it in NRS 439.585.*

Sec. 9. *“Statewide health information exchange system” has the meaning ascribed to it in NRS 439.586.*

Sec. 10. *1. The nonprofit entity established by the Director or with which the Director contracts pursuant to NRS 439.588 to govern the statewide health information exchange system shall:*

(a) Govern the statewide health information exchange system;

(b) Comply 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 (HITECH) Act, part of the American Recovery and Reinvestment Act of 2009 (ARRA) that was enacted on February 17, 2009, Public Law 111-5, and implementing regulations, and other applicable federal and state law;

(c) Operate in a manner to improve the health of people in the State of Nevada and the efficiency and effectiveness of the delivery of health care services in Nevada through the collaborative use of health-related information;

(d) Be accountable to and answer to the Director as the state authority in Nevada for health information technology;

(e) Facilitate the provision and sharing of better information concerning health care for improved health care outcomes in this State;

(f) Support population and public health initiatives and interactions;

(g) Facilitate a cooperative health-related information sharing environment across the public and private sectors;

(h) Be aligned with meaningful use criteria as defined by the federal government pursuant to 42 C.F.R. Parts 412, 413, 495; and

(i) Ensure the privacy and security of health-related information in compliance with all relevant federal and state statutes and regulations.

2. The Department of Health and Human Services has ownership of the statewide health information exchange system and will be responsible for operating the system if the nonprofit entity established by the Director or the nonprofit entity with which the Director has contracted pursuant to NRS 439.588 to govern the system violates the contract or is unable to perform the duties necessary to operate the system, until the Director establishes or enters into a contract with a new nonprofit entity to govern the system.

Sec. 11. *1. Except as otherwise provided in section 12 of this regulation, each health information exchange must be certified by the Director before providing services in this state.*

2. The Director may certify a health information exchange if:

(a) The exchange adequately demonstrates to the Director its financial and operational sustainability in the manner specified by the Director and by providing the Director with all information requested by the Director;

(b) The Director determines that the exchange provides interoperable data, infrastructure and technology for the exchange of clinical data between and among health care providers and other persons involved in the provision of health care with quality and efficiency;

(c) The Director determines that the exchange will be operational 24 hours a day, seven days a week;

(d) The Director determines that the exchange will be interoperable on both an intrastate and interstate level so that the exchange is capable of transmitting information to other exchanges, health care providers and other persons involved in the provision of health care located in Nevada and in all other states and territories of the United States;

(e) The Director determines that the exchange has adequate privacy and security policies which comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) security rule set forth in 45 C.F.R. Part 160 and Subparts A and C of Part 164, as well as all other applicable federal and state laws;

(f) The Director approves the standards of the exchange for routine electronic auditing of individual access to health-related information of patients submitted to the Director by the exchange; and

(g) The exchange is certified by a third-party entity which accredits health information exchanges and which is approved by the Director. If there is no third-party

accreditation entity approved by the Director, the Department of Health and Human Services will act as the third-party accreditation entity with the exchange responsible for paying the costs incurred by the Department.

3. Each health information exchange certified by the Director pursuant to this section must apply for recertification every 3 years.

Sec. 12. 1. The Director may issue a provisional certification to a health information exchange if the health information exchange is in compliance with paragraphs (a) to (f), inclusive, of subsection 2 of section 11 of this regulation. A provisional certification issued pursuant to this subsection expires 3 years after the date on which it was issued.

2. A health information exchange that is operational on the effective date of this regulation is automatically provisionally certified until it is certified by the Director pursuant to section 11 of this regulation or is issued a provisional certification pursuant to subsection 1. An automatic provisional certification obtained pursuant to this subsection expires 6 months after the effective date of this regulation.

3. A health information exchange which is provisionally certified pursuant to this section:

(a) May engage in the same activities as a health information exchange that is certified pursuant to section 11 of this regulation;

(b) Must comply with all relevant federal and state statutes and regulations governing health information exchanges;

(c) Must be monitored by the Board of Directors of the nonprofit entity established by the Director or the nonprofit entity with which the Director contracts pursuant to NRS 439.588 to govern the statewide health information exchange system; and

(d) Must submit an annual report to the Director and the Board of Directors of the nonprofit entity established by the Director or the nonprofit entity with which the Director contracts pursuant to NRS 439.588 to govern the statewide health information exchange system, by April 1 of each year for the previous calendar year, in the manner specified by the Director.

Sec. 13. 1. Electronic health records must be created, maintained and transmitted in accordance with the requirements of federal law, including, without limitation, in the manner authorized by the Health Information Technology for Economic and Clinical Health (HITECH) Act, part of the American Recovery and Reinvestment Act of 2009 (ARRA) that was enacted on February 17, 2009, Public Law 111-5, and implementing regulations, and the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA) and implementing regulations.

2. Prescriptions that are created, maintained or transmitted electronically must be created, maintained or transmitted in the manner set forth in NRS 639.2353 and in the manner set forth in the regulations adopted by the State Board of Pharmacy related to the electronic transmission of prescriptions.

Sec. 14. *1. To ensure the security of electronic health records, health-related information, and the statewide health information exchange system, each health care provider, each health care payer, the statewide health information exchange system, each certified health information exchange, and each other person that is involved in the provision of health care, must adopt procedures to ensure compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) security rule set forth in 45 C.F.R. Part 160 and Subparts A and C of Part 164.*

2. Each certified health information exchange shall:

(a) Ensure that only workforce members, agents and contractors who have a legitimate and appropriate need to use the exchange or release or obtain information through the exchange are able to access the exchange.

(b) Establish authorization policies and procedures for verifying the identity of all persons accessing health-related information of patients through the exchange. The ability of authorized users to access health-related information of patients through an exchange must be based on a minimum set of role-based access standards that apply to all participants in the exchange. The authorization policy must include, without limitation:

(1) A process and registry for verifying the identity and credentials of each person seeking authorization to access or exchange health-related information;

(2) A set of systems and a process to enable specific access permissions approved for the person seeking access; and

(3) A process for providing a person seeking authorization to access or exchange health-related information with the information and a mechanism to obtain authorization to access or exchange health-related information upon approval.

(c) Adopt and comply with national policies that require a minimum level of authentication for verifying the identity of all persons accessing health-related information of patients through the exchange.

(d) Establish procedures to verify that access to patient health-related information is only granted for purposes that are consistent with the consent of the patient and with any role-based access standards for which individual users have been authorized.

3. The infrastructure for each certified health information exchange must be located in a secure physical environment with access controlled to those persons who have been identified as needing access. Access to the server must be controlled by locked access. Data must be covered by a contingency plan that allows for emergency access in the event of a disaster. Data storage must be in a secure location off site and backup of the information in the data storage must occur on a regularly scheduled basis. Employee workstations must be located away from public access and must be automatically logged out of when a workstation is unattended for a specified period of time. The maintenance of equipment must be recorded and monitored. When no longer in use, each data storage device must be properly destroyed or the data must be permanently removed from the device.

4. Each certified health information exchange must conduct a risk assessment of its administrative safeguards and identify risks and develop mitigation strategies. Users of the exchange must be identified within the statewide health information exchange system and audits must track the access to the data in the system by the users. Data must

be encrypted and data moving within the system must be controlled by user authentication procedures and system protections. Each exchange must use integrity controls to protect the data and to assure that it has not been altered or tampered with during storage or transmission.

Sec. 15. *1. Each person using the statewide health information exchange system shall provide or request health-related information through the exchange only:*

(a) To the extent necessary;

(b) For those purposes that are permitted by applicable federal and state laws;

and

(c) As authorized by the patient through his or her informed consent provided pursuant to section 18 of this regulation.

2. Information may not be requested or provided for a discriminatory purpose.

3. Except for disclosures to a health care provider for treatment purposes and disclosures required by law, a person:

(a) Shall disclose through the statewide health information exchange system only the minimum amount of health-related information as is necessary for the disclosure;

(b) Shall request only the minimum amount of health-related information as is necessary for the intended purpose of the request; and

(c) Shall not use, disclose or request the entire medical record of a patient except where specifically justified as the amount that is reasonably necessary to accomplish the purpose of the use, disclosure or request.

Sec. 16. *1. The nonprofit entity established by the Director or the nonprofit entity with which the Director contracts pursuant to NRS 439.588 to govern the statewide health information exchange system must establish an enterprise master patient index and a master health care provider and payer index which includes the extent to which each patient has, pursuant to section 18 of this regulation, consented to have his or her health records included in the statewide health information exchange system.*

2. To maintain and protect the confidentiality of electronic health records and health-related information and to ensure the integrity of such information, each certified health information exchange shall use the enterprise master patient index and the master health care provider and payer index established pursuant to subsection 1 before transmitting any electronic health records or health-related information.

3. The Department of Health and Human Services owns the enterprise master patient index and the master health care provider and payer index established pursuant to this section. If the contract between the nonprofit entity with which the Director has contracted pursuant to NRS 439.588 to govern the statewide health information exchange system and the state is terminated or if the nonprofit entity established by the Director to govern the system becomes no longer responsible for governing the system, the information in those indexes remains with the state and may not be retained by the nonprofit entity.

Sec. 17. 1. *To ensure the confidentiality of electronic health records and health-related information, each health care provider, each health care payer, the statewide health information exchange system, each certified health information exchange, and each other person that is involved in the provision of health care, must adopt procedures to ensure compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) privacy rule set forth in 45 C.F.R. Part 160 and Subparts A and E of Part 164.*

2. *Each certified health information exchange must:*

(a) *Only collect, use and disclose individually identifiable health-related information to the extent necessary;*

(b) *Reasonably protect the quality and integrity of the data in the system;*

(c) *Protect individually identifiable health-related information with reasonable administrative, technical and physical safeguards to ensure its confidentiality, integrity and availability, and to prevent unauthorized or inappropriate access, use or disclosure; and*

(d) *Operate in accordance with the National Information Exchange Model of the United States Department of Justice, Department of Homeland Security and the Department of Health and Human Services, which can be found on the Internet at the website www.niem.gov.*

3. *Each certified health information exchange must ensure that data access through the system is identified at the data element level, including, without limitation, as belonging to substance abuse or behavioral health treatment or particularly sensitive data such as HIV status or the presence of a sexually transmitted disease, to allow for the redaction of certain data while sharing other data.*

Sec. 18. 1. *Except as otherwise provided in subsection 2 of NRS 439.538, each health care provider and each other person that is involved in the provision of health care shall obtain the written informed consent of a patient before transmitting the patient's health care records electronically and before transmitting the patient's health care records through the statewide health information exchange system, including, without limitation, the written consent of a child who has received health care services without the consent of a parent or guardian. Each health care provider and other person that is involved in the provision of health care is only required to obtain written informed consent from each patient once. Written informed consent obtained pursuant to this section is valid until it is revoked.*

2. *Informed consent obtained pursuant to this section must include:*

(a) *The patient being competent to understand what he or she is consenting to and to make a competent decision;*

(b) *The patient making a voluntary decision;*

(c) *The health care provider or other person involved in the provision of health care disclosing all material information to the patient;*

(d) *The patient comprehending the material disclosed pursuant to paragraph (c);*

(e) *The agreement of the patient; and*

(f) *The authorization of the patient as evidenced by the patient signing a copy of a statement authorizing the transmittal of his or her health care records electronically.*

3. A health care provider or other person involved in the provision of health care who obtains written informed consent pursuant to this section must:

(a) Explain the benefits of certified health information exchanges to the patient;

(b) Answer questions about certified health information exchanges; and

(c) Provide the patient with a notice which includes, without limitation:

(1) A description of the statewide health information exchange system, including, without limitation, the role of certified health information exchanges.

(2) The manner in which the information included in the statewide health information exchange system is collected.

(3) The manner in which the information included in the statewide health information exchange system is used.

(4) The manner in which the information included in the statewide health information exchange system can be disclosed, including, without limitation:

(I) Who can access the information in the exchange and the purposes for which that information can be accessed; and

(II) The manner in which the information may be obtained in an emergency as set forth in subsection 8.

(5) The reasonable and informed choices that the patient can exercise with respect to the information transmitted through the statewide health information exchange system or contained in a certified health information exchange, including, without limitation, the manner in which a patient may:

(I) Specify pursuant to subsection 4 the information which may be transmitted, the persons to whom the information may be transmitted and the purposes for which the information may be transmitted;

(II) Request information or records to be corrected pursuant to section 19 of this regulation; and

(III) Request a health care record or a specific portion thereof to be removed or excluded from the statewide health information exchange system pursuant to section 20 of this regulation.

4. A patient providing written informed consent pursuant to this section may specify the information which may be transmitted, the persons to whom the information may be transmitted, and the purposes for which the information may be transmitted.

5. Each health care provider or other person involved in the provision of health care obtaining written informed consent pursuant to this section must:

(a) Make the notice provided pursuant to paragraph (c) of subsection 3 available to the public upon request and available at the office of the provider or person;

(b) Post the notice provided pursuant to paragraph (c) of subsection 3 on all websites of the provider or person and in a clear and prominent location where it is reasonable to expect persons seeking services to see the notice; and

(c) Document and maintain documentation of each patient's decision whether to allow his or her health care records to be transmitted electronically and whether to participate in the statewide health information exchange system.

6. A health care provider or other person involved in the provision of health care must not withhold coverage or care from a person on the basis of that person's choice not to allow his or her health care records to be transmitted electronically or not to participate in the statewide health information exchange system.

7. *A patient may revoke his or her written informed consent at any time and for any reason by providing notice in writing of his or her revocation to the health care provider or other person to whom he or she provided the original written informed consent.*

8. *Nothing in this section prohibits a health care provider or other person that is involved in the provision of health care from following the procedures established pursuant to 45 C.F.R. § 164.312(a)(2)(ii) for obtaining necessary electronic protected health information during an emergency.*

Sec. 19. *Any necessary corrections to information or records included in the statewide health information exchange system must be made in accordance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) privacy rule set forth in 45 C.F.R. Part 160 and Subparts A and E of Part 164, including, without limitation, the correction principle set forth in 45 C.F.R. § 164.526.*

Sec. 20. *Except as otherwise provided in subsection 2 of NRS 439.538, a patient may request his or her health care provider in writing to have any health care record of the patient or any specific portion thereof removed or excluded from the information contained in the statewide health information exchange system or contained in a certified health information exchange.*

Sec. 21. 1. *A certified health information exchange, a health care provider, a health care payer, and any other person involved in the provision of health care shall notify a patient, in the manner set forth in sections 13402 and 13407 of the Health Information Technology for Economic and Clinical Health (HITECH) Act, part of the American Recovery and Reinvestment Act of 2009 (ARRA) that was enacted on February 17, 2009, Public Law 111-5, and implementing regulations, if the exchange, provider, payer or person becomes aware that the confidentiality of information contained in an electronic health record of the patient is breached.*

2. *Each certified health information exchange, health care provider and any other person involved in the provision of health care that becomes aware that the confidentiality of information contained in an electronic health record of a patient is breached shall mitigate and take appropriate remedial action to remedy, to the extent practicable, any harmful effect that is known to the exchange or person to have resulted from the breach.*

Sec. 22. 1. *Each health care provider and health care payer must ensure that each person who works with electronic health records of his or her patients is familiar with and receives training concerning:*

(a) *The relevant state and federal laws regarding protecting the confidentiality and security of those records; and*

(b) The policies and procedures for accessing and exchanging health-related information of patients through the statewide health information exchange system.

2. Each certified health information exchange must ensure that each employee of the exchange is familiar with and receives training concerning:

(a) The relevant state and federal laws regarding protecting the confidentiality and security of information included in the statewide health information exchange system; and

(b) The policies and procedures for accessing and exchanging health-related information of patients through the statewide health information exchange system.

3. Any other person that is involved in the provision of health care must ensure that each employee who works with electronic health records is familiar with and receives training concerning:

(a) The relevant state and federal laws regarding protecting the confidentiality and security of those records; and

(b) The policies and procedures for accessing and exchanging health-related information of patients through the statewide health information exchange system.

4. Each person who provides, makes available or requests health-related information through the statewide health information exchange system shall have a mechanism for, and shall encourage, all workforce members, agents and contractors to report any noncompliance with any relevant state or federal law or with any policies or procedures for accessing and exchanging health-related information of patients through the exchange.

Sec. 23. *1. Each certified health information exchange shall maintain an audit log documenting which persons posted and accessed information related to a patient through the exchange and when such information was posted or accessed.*

2. Upon request of a patient, a certified health information exchange shall provide the information maintained pursuant to subsection 1 and related to the patient to that patient in a timely manner.

Sec. 24. *1. The Director will establish minimum standards for routine electronic auditing of individual access to health-related information of patients in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA) and implementing regulations.*

2. Each person participating in the statewide health information exchange system shall comply with the standards established pursuant to this section.

Sec. 25. *1. Any person who becomes aware of a violation of NRS 439.590 may file a complaint specifying the relevant facts with the Director, in the manner specified by the Director.*

2. A complaint must be made in writing on a form prescribed by the Director and be signed and verified, in the manner specified by the Director, by the person making it.

3. *The Director will determine which complaints to refer to the Office of the Attorney General for investigation, enforcement or referral to the appropriate district attorney.*

4. *The Department of Health and Human Services will retain all complaints filed pursuant to this section for at least 10 years, including, without limitation, any complaints not acted upon.*

5. *The Department of Health and Human Services will establish and publicize an educational campaign to inform persons of the provisions of NRS 439.590 and their right to file a complaint regarding a violation of NRS 439.590.*

Sec. 26. *Except for information concerning a person who is a recipient of Medicaid or insurance pursuant to the Children's Health Insurance Program:*

1. *Electronic health records, health-related information and related data in a certified health information exchange belongs to the person who is the subject of the information, including, without limitation, a child who has received health care services without the consent of a parent or guardian; and*

2. *The person who is the subject of an electronic health record, health-related information or related data in a certified health information exchange has the right to control the dissemination of such information.*

Sec. 27. *Any person using an electronic signature in the electronic movement, storage, analysis or exchange of electronic health records, health-related information and related data must do so in accordance with the provisions of chapter 719 of NRS and the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§ 7001 et seq.*