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 health information exchange system in accordance with federal law; requiring the Director to establish or contract with one or more nonprofit entities to govern the administration of the 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 health information exchange systems; making various changes relating to electronic health records; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

The American Recovery and Reinvestment Act of 2009 includes the Health Information Technology for Economic and Clinical Health Act of 2009, otherwise known as the "HITECH Act." (Public Law 111-5, Division A, Title XIII) The HITECH Act establishes various requirements with respect to electronic health records and health information exchange systems. This bill requires the establishment of a system that allows the exchange of electronic health information

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

Section 5 of this bill requires the Director of the Department of Health and Human Services to establish a statewide health information exchange system and specifies the Director's powers and duties. **Section 6** of this bill requires the Director to establish or contract with one or more nonprofit entities to govern the administration of the system. **Section 7** of this bill requires the Director to prescribe standards for security and confidentiality of electronic health records and the health information exchange system. **Section 8** of this bill imposes requirements upon persons who transmit electronic health records or participate in the health information exchange system and makes it a misdemeanor to commit certain acts related to electronic health records and the health information exchange system. **Section 9** of this bill provides immunity from liability for certain acts in connection with electronic health records and the health information exchange system. **Section 11** of this bill requires a patient's consent for electronic transmittal of health records or participation in the health information exchange system, and specifies the rights of a patient. **Section 12** of this bill ensures that electronic health records maintained in accordance with these provisions comply with other laws concerning written health care records and directives, access to health care records and confidentiality of health care records.

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

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

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

Sec. 3. ***"Electronic health record" means a health care record, as that term is defined in NRS 629.021, that is maintained in an electronic format which allows the exchange of health-related information and the integration of such information with information from other sources.***

Sec. 4. ***"Health information exchange system" means the system established pursuant to sections 2 to 12, inclusive, of this act for the electronic movement and exchange of health-related information and electronic health records.***

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

(a) Establish a statewide health information exchange system which must comply with specifications and protocols for exchanging electronic health records and related data prescribed pursuant to the provisions of the Health Information Technology

for Economic and Clinical Health Act of 2009, Public Law 111-5, Division A, Title XIII, and other applicable federal and state law;

(b) Coordinate the development of the statewide infrastructure to support the health information exchange system and to allow the connection of electronic health records to the infrastructure;

(c) Develop a statewide plan for technology to guide the development of the health information exchange system and the exchange of electronic health records within this State and nationally;

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

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

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 sections 2 to 12, inclusive, of this act.

Sec. 6. *1. The Director shall establish or contract with one or more nonprofit entities to govern the administration of the health information exchange system. The Director shall by regulation prescribe the requirements for such an entity, including, without limitation, the governing body of such an entity.*

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

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

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

(c) Shall oversee and govern the exchange of electronic health records.

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

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

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

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

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

(b) To maintain the confidentiality of electronic health records;

(c) To ensure the privacy of individually identifiable health information;

(d) For obtaining consent from a patient before transmitting the patient's health records to the health information exchange system;

(e) For making any necessary corrections to information included in the health information exchange system; and

(f) 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:

(a) Training requirements for persons who work with electronic health records or the 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 and individually identifiable health information;

(d) A secure and traceable electronic audit system for identifying access points and trails; and

(e) Any other requirements necessary to comply with all applicable federal laws relating to electronic health records, health information exchange systems and the security and confidentiality of such records and systems.

Sec. 8. ***1. A provider of health care, insurer or other payer that elects to participate in the health information exchange system established pursuant to sections 2 to 12, inclusive, of this act must agree to comply with all requirements prescribed by the Director and imposed by an entity established or contracted with pursuant to section 6 of this act.***

2. The Director may prohibit a person from participating in a health information exchange system if the person does not comply with the provisions of sections 2 to 12, inclusive, of this act, or the

requirements prescribed by the Director and imposed by any entity established or contracted with pursuant to section 6 of this act.

3. A person shall not use, release or publish:

(a) Individually identifiable health information from an electronic health record or the health information exchange system for a purpose unrelated to the treatment or billing of the patient who is the subject of the information; or

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

➥ A person who violates the provisions of this subsection is guilty of a misdemeanor and liable to the patient for any damages caused by the violation.

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

Sec. 9. *A provider of health care who in good faith relies upon an apparently genuine health record accessed through a health information exchange system established pursuant to sections 2 to 12, inclusive, of this act 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 record is inaccurate;

2. The inaccuracy was not caused by the 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 health record.

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

Sec. 11. *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 system. Before a patient's health records may be transmitted electronically or included in a health information exchange system, 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 the health information exchange system.

3. A patient who consents to the inclusion of his or her electronic health record in a health insurance exchange system may at any time access that electronic health record. A provider of health care who participates in the system shall provide access to an electronic health record of a patient to the patient upon request. If the patient determines that there is an error in the record, the provider shall make any necessary corrections.

Sec. 12. ***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 sections 2 to 12, inclusive, of this act, 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 health information exchange system in accordance with the provisions of sections 2 to 12, inclusive, of this act 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.

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

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

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

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

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

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

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

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

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

439.010 ~~[The]~~ ***Except as otherwise provided in sections 2 to 12, inclusive, of this act, the*** provisions of this chapter must be

administered by the Administrator and the Health Division, subject to administrative supervision by the Director.

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

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

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

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

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

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

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

(b) As otherwise required by a state law.

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

3. As used in this section ~~[:~~

~~(a) "Covered]~~ ***, "covered*** entity" has the meaning ascribed to it in 45 C.F.R. § 160.103.

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

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

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

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

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

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

➥ is guilty of a misdemeanor.

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

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

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

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

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

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

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

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

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

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

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

2. A written prescription must contain:

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

(b) The classification of his or her license;

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

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

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

(f) Directions for use; and

(g) The date of issue.

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

4. The Board shall adopt regulations concerning the electronic transmission of a prescription for a dangerous drug, which must be consistent with federal law and the provisions of sections 2 to 12, inclusive, of this act and the regulations adopted pursuant thereto.

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

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

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

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

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

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

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

629.051 1. Except as otherwise provided in this section and in regulations adopted by the State Board of Health pursuant to NRS 652.135 with regard to the records of a medical laboratory and unless a longer period is provided by federal law, each provider of

health care shall retain the health care records of his or her patients as part of his or her regularly maintained records for 5 years after their receipt or production. Health care records may be retained in written form, or by microfilm or any other recognized form of size reduction, including, without limitation, microfiche, computer disc, magnetic tape and optical disc, which does not adversely affect their use for the purposes of NRS 629.061. Health care records may be created, authenticated and stored in a computer system which ~~[limits access to those records.]~~ ***meets the requirements of sections 2 to 12, inclusive, of this act and the regulations adopted pursuant thereto.***

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

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

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

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

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

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

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

9. The State Board of Health shall adopt:

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

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

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

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

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

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

(1) The practitioner and the pharmacy;

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

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

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

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

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

(2) Manually by the practitioner.

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

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

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

➥ The pharmacists and practitioners shall maintain the confidentiality of the information exchanged pursuant to this subsection.

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

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

1. A prescription must be given:

(a) Directly from the practitioner to a pharmacist;

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

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

(d) Except as otherwise provided in subsection 5, by electronic transmission or transmission by a facsimile machine, including, without limitation, transmissions made from a facsimile machine to another facsimile machine, a computer equipped with a facsimile

modem to a facsimile machine or a computer to another computer, pursuant to the regulations of the Board.

2. A written prescription must contain:

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

(b) The classification of his or her license;

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

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

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

(f) Directions for use; and

(g) The date of issue.

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

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

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

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

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

(b) A voice recognition system, biometric identification technique or other security system approved by the Board is used to identify the practitioner ~~[.]~~ ***; or***

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

720.140 1. ~~[The]~~ ***Except as otherwise provided in this subsection, the*** provisions of this chapter apply to any transaction for which a digital signature is used to sign an electronic record. ***The provisions of this chapter do not apply to a digital signature that is used to sign an electronic health record in accordance with***

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

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

Sec. 27. This act becomes effective upon passage and approval for purposes of adopting regulations and on October 1, 2011, for all other purposes.

㉚