

**PROPOSED REGULATION OF THE
DIRECTOR OF THE DEPARTMENT OF HEALTH AND HUMAN
SERVICES**

LCB FILE NO. R173-24I

**The following document is the initial draft regulation proposed
by the agency submitted on 06/27/2024**

Key:

- **Blue** italics = new language addition
- **Red** strikethrough = language removal

HEALTH INFORMATION *MAINTENANCE, TRANSMITTAL, AND EXCHANGES*

NAC 439.572 “Covered entity” defined. (*NRS 439.587, 439.588, 439.589*) As used in *NAC 439.572 to 439.596*, inclusive, unless the context otherwise requires, “covered entity” has the meaning ascribed to it in 45 C.F.R. § 160.103.

(Added to NAC by Dep’t of Health & Human Services by R056-16, eff. 9-21-2017)

NAC 439.574 “Commercially available” interpreted. (*NRS 439.587, 439.588, 439.589*) As used in *NRS 439.584*, the Director will interpret the term “commercially available” to mean that information is available for a fee to any health care provider or other covered entity who is authorized to use a health information exchange pursuant to *NAC 439.584*, regardless of the relationship of the health care provider or other covered entity to other users of a health information exchange.

(Added to NAC by Dep’t of Health & Human Services by R056-16, eff. 9-21-2017)

NAC 439.XXX “Interoperability” defined. *As used in NAC 439.572 to NAC 439.596, inclusive, “interoperability” means the ability to securely exchange, integrate or cooperatively use electronic health information with electronic health information in other networks and technologies used to maintain, transmit and exchange health information, in compliance with applicable HIPAA regulations and in accordance with the applicable national standards for the interoperability of health data, including those for Qualified Health Information Networks prescribed and designated by the Office of the National Coordinator for Health Information Technology of the United States Department of Health and Human Services.*

NAC 439.XXX “Provider of Health Care” defined. *As used in NAC 439.572 to NAC 439.596, inclusive, “provider of health care” has the meaning ascribed to it in NRS 629.031.*

NAC 439.XXX “Electronic Health Record System” defined. *As used in NAC 439.572 to NAC 439.596, inclusive, “electronic health record system” means technology with the ability to securely maintain, transmit and exchange electronic health information that make protected health information available instantly and securely to authorized users.*

NAC 439.XXX “Health Information Exchange” defined. *As used in NAC 439.572 to NAC 439.596, inclusive, “health information exchange” has the meaning ascribed to it in NRS 439.584.*

NAC 439.XXX “Person” defined. *As used in NAC 439.572 to NAC 439.596, inclusive, “person” has the meaning ascribed to it in NRS 439.585.*

NAC 439.576 Requirements concerning *the electronic maintenance, transmittal and exchange of electronic health records, prescriptions, health-related information and electronic signatures operation of-exchange.* (*NRS 439.587, 439.588, 439.589*)

1. A health information exchange that operates in this State must:
 - a. Comply with all applicable requirements of the Health Information Technology for Economic and Clinical Health Act of 2009, 42 U.S.C. §§ 300jj et seq. and 17901 et seq., the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, *be a member of the Trusted Exchange Framework and Common Agreement developed under section 3001(c)(9)(B) of the Public Health Service Act (42 U.S.C. 300jj–11(c)(9)(B)), in the Federal Register, prescribed by the Office of the National Coordinator for Health Information Technology of the United States Department of Health and Human Services*, and any other applicable federal or state law and the

- regulations adopted pursuant thereto, including, without limitation, requirements relating to the specifications and protocols for exchanging and maintaining electronic health records, health-related information and related data and the protection of the privacy and security of health information;
- b. Facilitate the sharing of health information across the public and private sectors to increase efficiency and improve outcomes of health care in this State;
 - c. Support public health and population health initiatives and collaboration between organizations and governmental entities working in the fields of public health and population health;
 - d. Provide services to users of the health information exchange to assist the users in meeting the meaningful use requirements pursuant to the criteria prescribed in the Health Information Technology for Economic and Clinical Health Act of 2009, 42 U.S.C. §§ 300jj et seq. and 17901 et seq. and any other applicable federal statute or regulation;
 - e. Use an enterprise master patient index and a master provider index for the secure and efficient exchange of health information;
 - f. Provide interoperable infrastructure and technology for the efficient and secure exchange of information, including, without limitation, clinical data, between health information exchanges, health care providers and other persons involved in the provision of health care;
 - g. Be operational for at least 99 percent of each month; ~~and~~
 - h. *Hold a nationally recognized accreditation for health information exchanges or meet comparable privacy and security accreditation standards approved by the Director;*
 - i. *Operate a secure exchange network in which healthcare providers and other authorized users can share information from different electronic health records systems;*
 - j. *Manage informed (opt-in) consent per NAC 439.592;*
 - k. *Manage query and response as well as “push” transactions such as event notifications and results delivery;*
 - l. *Make commercially available to providers of health care and other covered entities an electronic means of connecting disparate electronic systems on which health-related information is shared; and*
 - m. *Comply with the reporting and audit requirements of NAC 439.586.*

(Added to NAC by Dep't of Health & Human Services by R056-16, eff. 9-21-2017)

- 2. *An electronic health record system as prescribed in this section must:*
 - a. *Be certified by the Office of the National Coordinator for Health Information Technology of the United States Department of Health and Human Services, thereby maintaining interoperability and allowing patients to access electronic health records directly from the health care provider of the patient and forward such electronic health records electronically to other persons and entities;*
 - b. *Allow for the electronic transmission of prior authorizations for prescription medication;*
 - c. *Ensure compliance with the requirements, specifications and protocols for exchanging, securing and disclosing 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, 42 U.S.C. §§ 300jj et seq. and 17901 et seq., the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and other applicable federal and state law; and*
 - d. *Adhere to nationally recognized best practices for securely maintaining, transmitting and exchanging health information electronically.*

- 3. *Except as otherwise provided in subsections X, X, and X of NRS 439.589:*
 - a. *Hospitals and physician group practices with more than 20 employees must comply with the provisions of subsection X of NRS 439.589 on or before July 1, 2024.*

- b. *The Department and the divisions thereof, other state and local governmental entities, providers of health care, third parties, pharmacy benefit managers and other entities licensed or certified pursuant to title 57 of NRS operating in this state must comply with the provisions of subsection X of NRS 439.589 on or before July 1, 2025.*
 - c. *Physician group practices or other business entities organized for the purpose of practicing a health care profession with 20 or fewer employees, including, without limitation, sole proprietorships, must comply with the provisions of subsection X of NRS 439.589 on or before January 1, 2030.*
4. *Compliance with the provisions of subsection X of NRS 439.589 is satisfied by either of the following:*
- a. *Maintain an electronic health record system pursuant to NAC 439.576 subsection 2 and install and implement components or services for exchanging data; or*
 - b. *Maintain connection with a health information exchange pursuant to NAC 439.576 subsection 1.*
5. *No person or entity is required to use a health information exchange.*

NAC 439.578 Application for and renewal of certification. ([NRS 439.587](#), [439.588](#), [439.589](#))

1. A health information exchange that operates or wishes to operate in this State shall apply to the Director for certification pursuant to [NRS 439.588](#), or for the renewal of such certification, as applicable, in the form prescribed by the Director. The application must include, without limitation:

(a) Proof that the applicant meets the requirements of [NAC 439.576](#) and is operationally and financially sustainable;

(b) The standards for routine auditing of access to health information of patients as required by [NAC 439.586](#) that the applicant intends to use; and

(c) Any other information requested by the Director.

2. The certification of a health information exchange must be renewed every 3 years.

(Added to NAC by Dep't of Health & Human Services by R056-16, eff. 9-21-2017)

NAC 439.582 Request for administrative hearing; scheduling of hearing; appointment of hearing officer; submission of evidence; decision. ([NRS 439.587](#), [439.588](#))

1. If the Director denies a written appeal submitted pursuant to subsection 4 of [NRS 439.588](#), the health information exchange may request an administrative hearing in the manner described in [NRS 233B.121](#). The request must be made in writing and submitted to the Director within 30 days after the date of the notice of the decision of the Director to reject the written appeal. The failure of the health information exchange to request a hearing within this period operates as a waiver of the right of the health information exchange to request such a hearing.

2. Except as otherwise provided in this subsection, the Director will schedule a hearing not later than 45 days after receiving a timely request for a hearing pursuant to subsection 1. The Director may deny a request for a hearing if he or she determines that, because the health information exchange is not in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, or the regulations adopted pursuant thereto, information concerning patients may not be secure.

3. If the Director schedules a hearing pursuant to subsection 2, he or she will appoint a hearing officer to conduct the hearing. If the health information exchange is a natural person, he or she may represent himself or

herself at the hearing. A health information exchange may authorize any person, including, without limitation, an attorney, to represent the health information exchange at the hearing.

4. The hearing officer may request each party to submit, in advance of the hearing, copies of any evidence or exhibits that the party plans to present at the hearing. All testimony received at a hearing must be given under oath. The decision of the hearing officer must be based exclusively on the evidence and testimony presented at the hearing.

5. Within 30 days after the date of a hearing, the Director will provide the written decision of the hearing officer to the health information exchange by certified mail.

(Added to NAC by Dep't of Health & Human Services by R056-16, eff. 9-21-2017)

NAC 439.584 Duty of exchange to limit access to exchange; compliance with policies and procedures of exchange; creation, maintenance or transmission of prescription using exchange. ([NRS 439.587](#), [439.589](#))

1. A health information exchange shall:

(a) *Except when use or disclosure of protected health information is permitted or required by state or federal law for treatment, health care operations, payments, public health, and population health or otherwise, and except as otherwise directed by the patient,* Ensure that only covered entities with which the health information exchange has entered into a business associate agreement as described in [NAC 439.588](#) and members of the workforces, contractors and agents of such covered entities who have a legitimate need to use the health information exchange are allowed to use the health information exchange.

(b) Establish policies and procedures to verify the identity of all persons who wish to retrieve or disclose the health information of patients using the health information exchange. The policies and procedures must include, without limitation:

(1) A process for verifying the identity and credentials of each person seeking authorization to retrieve or disclose health information and a registry of authorized users.

(2) Standards and procedures for determining whether a person is authorized to retrieve or disclose health information using the health information exchange. These standards and procedures must be based on the role of the user and must apply to each user of the health information exchange.

(3) Systems and procedures for determining whether an authorized user is allowed to retrieve the health information of a patient and providing a person with health information that the person is authorized to retrieve.

(c) Adopt and comply with a policy that has been established by a nationally recognized organization or approved by the Director for authenticating the identity of all persons retrieving or disclosing health information using the health information exchange.

(d) Establish procedures to verify that access to health information on the health information exchange is consistent with the requirements of [NAC 439.576](#).

(e) Create a record each time health information is retrieved using the health information exchange and maintain such records for at least 6 years after the date on which the record is created.

(f) Ensure that all data is encrypted and use integrity controls to ensure that data is not altered or tampered with during storage or transmission.

2. Any person who retrieves or discloses health information using a health information exchange shall comply with the policies and procedures adopted by the health information exchange pursuant to subsection 1.

3. A prescription may be created, maintained or transmitted using a health information exchange in accordance with [NRS 639.2353](#) and any applicable regulations adopted by the State Board of Pharmacy.

4. As used in this section, "workforce" has the meaning ascribed to it in 45 C.F.R. § 160.103.

(Added to NAC by Dep't of Health & Human Services by R056-16, eff. 9-21-2017)

NAC 439.586 Duties of exchange to audit access to health information, conduct annual risk assessment, adopt procedure to incorporate certain information and provide notification of errors in information disclosed. (NRS [439.587](#), [439.589](#)) A health information exchange shall:

1. Routinely audit access to health information by users of the health information exchange to ensure that such access complies with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and make the records of such audits available to the Director upon request;

2. Annually conduct a risk assessment of measures taken by the health information exchange to safeguard the health information of patients and develop strategies for mitigating the risk of unauthorized access to such information;

3. Adopt a standard procedure for incorporating revocations of consent made pursuant to [NAC 439.592](#) and amendments to records made by authorized users of the health information exchange in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191; and

4. If the health information exchange becomes aware of an error in information disclosed using the health information exchange, notify the authorized user who disclosed the information of the error.

(Added to NAC by Dep't of Health & Human Services by R056-16, eff. 9-21-2017)

NAC 439.588 Prohibited use, retrieval or disclosure of health information using exchange; compliance with certain federal and state laws concerning electronic information. (NRS [439.587](#), [439.589](#))

1. *Except when use or disclosure of protected health information is permitted or required by state or federal law for treatment, health care operations, payments, public health, and population health or otherwise, and except as otherwise directed by the patient, ~~Ensure for a disclosure for the purpose of treating a patient or as otherwise required by law,~~* a person shall not use, retrieve or disclose more health information using a health information exchange than is necessary to accomplish the purpose of the use, retrieval or disclosure.

2. A person shall not use, retrieve or disclose health information using a health information exchange for a purpose prohibited by law, including, without limitation, discrimination prohibited by federal or state law.

3. A person, *other than a patient, and except when use or disclosure of protected health information is permitted or required by federal law for treatment, health care operations, payments, public health, and population health or otherwise, and except as otherwise directed by the patient,* shall not retrieve health information from a health information exchange unless the person has entered into a business associate agreement that is consistent with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

4. Electronic transmittal of electronic health records, prescriptions and health-related information, electronic signatures, electronic equivalents of written entries and written approvals must comply with the provisions of [chapters 719](#) and [720](#) of NRS and the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§ 7001 et seq.

(Added to NAC by Dep't of Health & Human Services by R056-16, eff. 9-21-2017)

NAC 439.592 Control by patient of access to health information; conditions for retrieval of information from exchange; requirements concerning informed written consent of patient; electronic notice, information, revocation or signature authorized. ([NRS 439.587](#), [439.589](#))

1. Except for health information concerning a patient who is prohibited by [NRS 439.538](#) from opting out of electronic disclosure of individually identifiable health information, health information concerning a patient, including, without limitation, a child under 18 years of age who has received health care services without the consent of a parent or guardian, that is retrieved, disclosed or maintained using a health information exchange belongs to the patient. A patient may control access to such information by providing or refusing to provide informed written consent in the manner prescribed by this section.

2. Except as otherwise provided in subsection 7, a person shall, before retrieving the health information of a patient that belongs to the patient pursuant to subsection 1 from a health information exchange:

(a) Provide the patient with a statement of information about health information exchanges, including, without limitation, the manner in which health information is collected, retrieved and disclosed using the health information exchange; and

(b) Obtain informed written consent from the patient or the legal representative of the patient.

3. Informed written consent obtained pursuant to subsection 2 must be voluntary and must be given on a form signed by the patient or the legal representative of the patient that is written in plain language and contains sufficient information for the patient to make a fully informed decision, including, without limitation:

(a) Information concerning the manner in which health information is collected, retrieved and disclosed using the health information exchange;

(b) A statement of the provisions of subsections 5, 6 and 7; and

(c) A statement that the health information of the patient may be retrieved from the health information exchange if the patient provides consent by signing the form.

4. A person who requests informed written consent pursuant to this section shall maintain a record of the patient's consent or refusal to consent for at least 6 years after the date on which the consent or refusal is executed.

5. A person shall not use informed written consent for any purpose prohibited by law, including, without limitation, discrimination prohibited by federal or state law, or require informed written consent as a condition of receiving medical treatment.

6. Informed written consent provided pursuant to this section is valid until revoked. A patient may revoke his or her informed written consent at any time and for any reason by providing written notice of the revocation to a person who is authorized to retrieve or disclose health information using a health information exchange pursuant to [NAC 439.584](#). A person who receives such a revocation shall communicate the revocation to the health information exchange. A health information exchange shall accept and carry out any such revocation communicated to the health information exchange.

7. A health care provider may retrieve the health information of any patient from a health information exchange without obtaining informed written consent from the patient:

(a) During an emergency using the procedures adopted pursuant to 45 C.F.R. § 164.312(a)(2)(ii); or

(b) If the patient is prohibited by [NRS 439.538](#) from opting out of having his or her individually identifiable health information disclosed electronically.

8. Any informed written consent provided by a patient for a person to retrieve the health information of the patient from a health information exchange that is executed before September 21, 2017, and complies with all

applicable state and federal laws, including, without limitation, the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, is valid until such informed written consent is revoked in the manner prescribed by subsection 6.

9. Any notice, information, revocation or signature described in this section may be delivered or obtained electronically in conformance with the requirements of [chapters 719](#) and [720](#) of NRS.

(Added to NAC by Dep't of Health & Human Services by R056-16, eff. 9-21-2017)

NAC 439.594 Submission and retention of complaints. ([NRS 439.587](#), [439.588](#), [439.590](#))

1. Any person who becomes aware of a violation of the provisions of [NRS 439.588](#) or [439.590](#) may submit to the Director a written, signed complaint in the form prescribed by the Director. The Director will determine whether to take action concerning the complaint, which may include, without limitation, referring the complaint to the Office of the Attorney General or the appropriate district attorney for investigation.

2. The Department will retain all complaints submitted pursuant to this section for at least 6 years, regardless of whether action is taken concerning the complaint.

(Added to NAC by Dep't of Health & Human Services by R056-16, eff. 9-21-2017)

NAC 439.596 Duties of exchange if confidentiality of information breached. ([NRS 439.587](#), [439.589](#)) If the confidentiality of information contained in an electronic record of a patient that is retrieved, disclosed or maintained using a health information exchange is breached, the health information exchange shall:

1. Notify the patient of the breach in a manner that meets the requirements of the Health Information Technology for Economic and Clinical Health Act of 2009, 42 U.S.C. §§ 300jj et seq. and 17901 et seq., the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and any other applicable federal or state law; and

2. Take any appropriate action to mitigate or remediate any damage caused by the breach.

(Added to NAC by Dep't of Health & Human Services by R056-16, eff. 9-21-2017)

NAC 439.597 Request for waiver of requirements (NRS 439.589). *A provider may request a waiver of the requirements of NRS 439.581 to 439.595, inclusive, and NAC 439.572 to 439.596, inclusive, pursuant to subsection X of NRS 439.589, which request must include a written statement signed by the provider of health care certifying that the provider of health care satisfies the criteria set forth in subsection X of NRS 439.589 or other appropriate documentation that satisfies the Department that such criteria is satisfied. The Department will consider each request for such a waiver on a case-by-case basis and render a determination in writing. The provider of health care requesting the waiver may appeal the determination pursuant to the requirements of NAC 439.346.*

NAC 439.598 Inapplicability of certain provisions *The provisions of NRS 439.581 to 439.595, inclusive, and NAC 439.572 to 439.596, inclusive, do not apply to the Federal Government and employees thereof, a provider of health coverage for federal employees, a provider of health coverage that is subject to the Employee Retirement Income Security Act of 1974, 29 U.S.C. §§ 1001 et seq., a Taft-Hartley trust formed pursuant to 29 U.S.C. § 186(c)(5), or the Nevada Department of Corrections.*