Senate Bill No. 394–Senators Spearman, Segerblom, Denis, Manendo, Parks; Cancela, Cannizzaro, Ford and Woodhouse

Joint Sponsors: Assemblymen Neal; Araujo, Diaz and Thompson

CHAPTER.....

AN ACT relating to health insurance; requiring health maintenance organizations to provide certain data relating to health insurance claims to the person responsible for overseeing the health care plan of certain group purchasers of health insurance upon request; prohibiting the further disclosure of such data except in certain circumstances; requiring the Commissioner of Insurance to impose an administrative penalty against a person who engages in the unauthorized disclosure of such data; requiring the Legislative Committee on Health Care to study certain issues relating to health care during the 2017-2018 interim; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Section 1.3 of this bill requires a health maintenance organization which provides a health care plan to certain large employers or multiple employer trusts to provide to the person responsible for overseeing the health care plan for the employer or trust upon request, not more than once every year, either: (1) all claims data relating to the enrollees of the health care plan; or (2) sufficient data for the employer or trust to calculate the cost of providing certain medical services through the health maintenance organization. **Section 1.3** requires such data to: (1) be free of any personally identifiable information; (2) comply with all other federal and state laws concerning privacy; and (3) be easily accessible. **Section 1.3** also requires a health maintenance organization to prepare and provide, under certain circumstances, an annual report relating to the cost and percentage trends in such data. **Section 1.6** of this bill prohibits the further disclosure of data provided pursuant to **section 1.3** to any person other than a person responsible for making decisions about the health care plan, except as otherwise authorized by the health maintenance organization that provided the data or ordered by a court. **Section 1.6** also establishes a schedule of administrative and criminal penalties to be imposed against a person who engages in unauthorized disclosure of such data. The penalty imposed depends on the culpability of the person who disclosed the data, the nature and extent of the disclosure and the harm caused by the disclosure.

Section 2 of this bill requires the Legislative Committee on Health Care to study certain issues relating to: (1) making a program similar to the Medicaid managed care program which is currently available to certain low-income persons in this State available to persons who are not eligible for Medicaid; and (2) ensuring the same level of health insurance coverage which is currently available in this State pursuant to the Patient Protection and Affordable Care Act (Public Law 111-148, as amended) is maintained if the Affordable Care Act is repealed by Congress. **Section 2** requires the Legislative Committee on Health Care to submit a

report relating to these issues to the Director of the Legislative Counsel Bureau by not later than September 1, 2018.

EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~[omitted material]~~ is material to be omitted.

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

Section 1. Chapter 695C of NRS is hereby amended by adding thereto the provisions set forth as sections 1.3 and 1.6 of this act.

Sec. 1.3. ***1. Notwithstanding any other provision of law that provides for the confidentiality of the information described in this section, a health maintenance organization shall, except as otherwise provided in subsection 4, provide to the person responsible for overseeing the health care plan for a group purchaser upon written request from that person not more than once each year:***

(a) All claims data relating to the enrollees in a health care plan provided by the health maintenance organization pursuant to a contract with the group purchaser; or

(b) Sufficient data relating to the claims of enrollees in the health care plan to allow the group purchaser to calculate the cost-effectiveness of the benefits provided by the health maintenance organization. Such data must include, without limitation:

(1) Data necessary to calculate the actual cost of obtaining medical services through the health maintenance organization, organized by medical service and category of disease;

(2) Data relating to enrollees in the health care plan who receive care, including, without limitation, demographics of such enrollees, prescriptions, office visits with a provider of health care, inpatient services and outpatient services, as used by the health maintenance organization to make calculations which are required to comply with the risk adjustment, reinsurance and risk corridor requirements of 42 U.S.C. §§ 18061, 18062 and 18063; and

(3) Such data as used to establish an experience rating for the enrollees in the health care plan, including, without limitation, coding relating to diagnostics and procedures, the total cost charged to any person for each drug, device or service made available by the health care plan and all reimbursements made to a provider of health care for such drugs, devices or services.

2. If a written request is made pursuant to subsection 1, the health maintenance organization must also provide an annual report relating to the data required to be made available pursuant to subsection 1, which must include, without limitation, sufficient detail to demonstrate the annual changes in the cost and the percentage of increase or decrease, as applicable, for each category of information made available pursuant to subsection 1.

3. A health maintenance organization shall provide the data required by this section in an aggregated form which complies with federal and state law, including, without limitation, the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and any applicable regulations.

4. Before providing any data pursuant to subsection 1, a health maintenance organization shall ensure that a professional statistician examines the data to confirm that such data cannot be used to identify and does not provide a reasonable basis upon which to identify a person whose information is included in the report. If the professional statistician is not able to make such a confirmation, the data must not be provided by the health maintenance organization until such confirmation is obtained.

5. A health maintenance organization must provide the data required by this section in a format which is easily searchable electronically or on a secure Internet website. A health maintenance organization may only provide the data described in this section relating to the health care plan of a group purchaser to the person responsible for overseeing the health care plan for the group purchaser and not relating to the health care plan of any other group purchaser.

6. A group purchaser must have policies and procedures in place which are compliant with federal law, including, without limitation, the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and the regulations adopted pursuant thereto, and the laws of this State to ensure the privacy and security of the data made available to the person responsible for overseeing the health care plan for a group purchaser pursuant to this section.

7. As used in this section, "group purchaser" means:

(a) An employer that employs at least 1,000 employees, at least 300 of whom are enrolled in a health care plan which is offered by a health maintenance organization; or

(b) A group of employers that cumulatively employ at least 500 employees and which has formed a trust for the purpose of funding health care benefits for at least 300 employees who are

enrolled in a health care plan which is offered by a health maintenance organization.

Sec. 1.6. *1. Except as otherwise provided in subsection 2:*

(a) A person responsible for overseeing a health care plan for a group purchaser shall not disclose data made available to the person pursuant to section 1.3 of this act to any other person except for a person responsible for making decisions about the health care plan.

(b) A person responsible for making decisions about a health care plan for a group purchaser shall not further disclose data disclosed to the person pursuant to paragraph (a) to any other person except for another person responsible for making decisions about the health care plan.

2. A person described in subsection 1 may disclose data made available to the person pursuant to that subsection or section 1.3 of this act to another person not described in that subsection if:

(a) The health maintenance organization that provided the data agrees to the disclosure; or

(b) The disclosure is ordered by a court of competent jurisdiction.

3. Except as otherwise provided in subsections 4 to 7, inclusive, the Commissioner shall impose against any person who violates the requirements of this section:

(a) If the person did not know of the violation and would not have known about the violation if he or she had exercised reasonable diligence, an administrative penalty of not less than $100 and not more than $50,000 per violation.

(b) If the person knew of the violation or should have known about the violation if he or she had exercised reasonable diligence but the violation is not due to willful neglect, an administrative penalty of not less than $1,000 and not more than $50,000 per violation.

(c) If the violation is due to willful neglect, an administrative penalty of $50,000 per violation.

4. If a person who violates the requirements of this section corrects the violation not later than 30 days after the person knew of the violation or should have known of the violation if he or she had exercised reasonable diligence, or another date determined by the Commissioner, the Commissioner:

(a) Shall not impose an administrative penalty if the violation is not due to willful neglect.

(b) Except as otherwise provided in subsection 5, shall impose an administrative penalty of not less than $10,000 and not more than $50,000 per violation if the violation is due to willful neglect.

5. Administrative penalties imposed pursuant to this section against a person must not exceed $1,500,000 in a calendar year.

6. The Commissioner:

(a) Shall make a determination of the amount of an administrative penalty imposed pursuant to this section based upon the nature and extent of the violation and the harm resulting from the violation; and

(b) May reduce any administrative penalty imposed for a violation of the requirements of this section, other than a violation due to willful neglect, if the Commissioner determines that the amount prescribed by subsection 3 is excessive.

7. The Commissioner shall not impose an administrative penalty for a violation for which a penalty has been imposed pursuant to subsection 8.

8. Any person who knowingly violates the requirements of this section:

(a) Except as otherwise provided in paragraphs (b) and (c), is guilty of a gross misdemeanor and may be fined not more than $50,000.

(b) If the violation is committed under false pretenses, is guilty of a category C felony and shall be punished as provided in NRS 193.130, and may be further punished by a fine of not more than $100,000.

(c) If the violation is committed with intent to sell, transfer or use the data for commercial advantage, personal gain or malicious harm, is guilty of a category B felony and shall be punished by imprisonment in the state prison for a minimum term of not less than 1 year and a maximum term of not more than 10 years, and may be further punished by a fine of not more than $250,000.

Sec. 2. 1. The Legislative Committee on Health Care shall, during the 2017-2018 interim, study opportunities for:

(a) The establishment of a program similar to the Medicaid managed care program authorized by NRS 422.273 to be made available through the Silver State Health Insurance Exchange established by NRS 695I.200 to a person who is otherwise ineligible for Medicaid;

(b) A person who is determined eligible for advance payments of the premium tax credit and cost-sharing reductions pursuant to 45 C.F.R. § 155.305 to use such credits and reductions to pay for

coverage obtained through the program described in paragraph (a); and

(c) The Nevada Legislature to ensure the current level of health insurance coverage provided in this State pursuant to the Patient Protection and Affordable Care Act, Public Law 111-148, as it existed on the effective date of this act, is maintained if the Affordable Care Act is repealed by Congress.

2. The Legislative Committee on Health Care shall conduct the study required pursuant to subsection 1 in consultation with:

(a) The Department of Health and Human Services;

(b) The Division of Insurance of the Department of Business and Industry;

(c) The Silver State Health Insurance Exchange; and

(d) Any other entity identified by the Committee which has expertise in the topics listed in subsection 1.

3. The Legislative Committee on Health Care shall submit a report of the results of the study required pursuant to subsection 1 and any recommendations for legislation to the Director of the Legislative Counsel Bureau for transmittal to the Legislature not later than September 1, 2018.

Sec. 3. This act becomes effective upon passage and approval.