

SENATE BILL NO. 283—SENATORS PAZINA, DONATE; DALY, DONDERO LOOP, FLORES, D. HARRIS, LANGE, NEAL, NGUYEN, OHRENSCHALL AND SCHEIBLE

MARCH 15, 2023

Referred to Committee on Commerce and Labor

SUMMARY—Revises certain provisions relating to health care records. (BDR 54-555)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact.
Effect on the State: Yes.

CONTAINS UNFUNDED MANDATE (§§ 1, 3)
(NOT REQUESTED BY AFFECTED LOCAL GOVERNMENT)

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

AN ACT relating to health care; requiring certain persons and entities to furnish health care records electronically under certain circumstances; prohibiting such persons and entities from charging a fee to furnish health care records electronically if the health care records are maintained electronically; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law requires each custodian of health care records and each person
2 who owns or operates an ambulance in this State to make health care records
3 available for inspection by a patient, certain representatives of a patient and certain
4 government officials. (NRS 629.061) Upon request of such a person, **section 1** of
5 this bill requires a custodian of health care records or person who owns or operates
6 an ambulance in this State to electronically transmit the health care records to the
7 person or, if the patient has provided written authorization for records to be
8 furnished to another person or entity, to that person or entity.

9 Existing law authorizes a custodian of health care records and a person who
10 owns or operates an ambulance in this State to charge certain fees for furnishing a
11 copy of health care records. (NRS 629.061) **Section 1** prohibits a custodian of
12 health care records and a person who owns or operates an ambulance in this State
13 from charging a fee for furnishing a copy of health care records electronically if the
14 custodian of health care records or person who owns or operates an ambulance in
15 this State maintains such health care records electronically. **Section 2** of this bill



16 makes a conforming change to indicate the proper placement of **section 1** in the
17 Nevada Revised Statutes.

18 Existing law provides for the payment of compensation to employees
19 who are injured or disabled as a result of an occupational injury or disease.
20 (Chapters 616A-616D and 617 of NRS) Existing law entitles any injured employee
21 or a person who has been authorized by the injured employee to information from
22 the records of an insurer or employer to the extent necessary for the proper
23 presentation of such a claim. (NRS 616B.012) Existing regulations: (1) prescribe a
24 process for an injured employee or person who has been authorized by the injured
25 employee to request such information from the records of an insurer or employer;
26 and (2) prohibit an insurer or employer from charging a fee that is more than 30
27 cents per page when providing the requested information. (NAC 616B.008)

28 Upon receiving such a request for health care records that asks for the records
29 to be furnished electronically, **section 3** of this bill requires an insurer or employer
30 to electronically transmit any health care records using a method of secure
31 electronic transmission. **Section 3** prohibits an insurer or employer from charging a
32 fee for furnishing a copy of the health care records electronically if the insurer or
33 employer maintains such health care records electronically. **Section 4** of this bill
34 makes a conforming change to clarify that **section 3** provides an exception to the
35 general requirement that information obtained from an insurer or employer remain
36 confidential.

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

1 **Section 1.** Chapter 629 of NRS is hereby amended by adding
2 thereto a new section to read as follows:

3 *1. If a person who is authorized to request a copy of health*
4 *care records of a patient pursuant to NRS 629.061 requests that a*
5 *copy of such records be furnished electronically, the custodian of*
6 *health care records or a person who owns or operates an*
7 *ambulance in this State must electronically transmit a copy of the*
8 *requested records to the person or, if the patient has provided*
9 *written authorization for records to be furnished to another person*
10 *or entity, to that person or entity. Such records must be furnished*
11 *in an electronic format using a method of secure electronic*
12 *transmission that complies with applicable federal and state law.*

13 *2. If a custodian of health care records or a person who owns*
14 *or operates an ambulance in this State maintains health care*
15 *records electronically, the custodian or person shall not charge a*
16 *fee to furnish those records electronically pursuant to*
17 *subsection 1.*

18 *3. As used in this section, "secure electronic transmission"*
19 *means the sending of information from one computer system to*
20 *another computer system in such a manner as to ensure that:*

21 *(a) No person other than the intended recipient receives the*
22 *information;*



1 *(b) The identity and signature of the sender of the information*
2 *can be authenticated; and*

3 *(c) The information which is received by the intended recipient*
4 *is identical to the information that was sent.*

5 **Sec. 2.** NRS 641.2291 is hereby amended to read as follows:

6 641.2291 1. A program of education for mental health
7 professionals approved by the Board, a mental health professional or
8 a person receiving training for mental health professionals is not
9 required to retain a recording of the provision of mental health
10 services by a psychologist to a patient that meets the requirements of
11 subsection 2 if:

12 (a) The recording is used for a training activity that is part of a
13 program of education for mental health professionals approved by
14 the Board;

15 (b) The patient has provided informed consent in writing on a
16 form that meets the requirements prescribed by the Board pursuant
17 to subsection 3 to the use of the recording in the training activity;

18 (c) Destroying the recording does not result in noncompliance
19 with the obligations described in subsection 4; and

20 (d) The recording is destroyed after the expiration of the period
21 of time prescribed by the Board pursuant to paragraph (b) of
22 subsection 3.

23 2. A recording of the provision of mental health services by a
24 psychologist to a patient used for the purpose described in paragraph
25 (a) of subsection 1:

26 (a) Must meet all requirements of the Health Insurance
27 Portability and Accountability Act of 1996, Public Law 104-191,
28 and any regulations adopted pursuant thereto, that are designed to
29 prevent the reproduction, copying or theft of the recording; and

30 (b) Must not contain any personally identifiable information
31 relating to the patient unless the patient has provided informed
32 consent in writing specifically authorizing the inclusion of that
33 information in the recording.

34 3. The Board shall adopt regulations:

35 (a) Prescribing requirements governing the provision of
36 informed written consent pursuant to paragraph (b) of subsection 1,
37 including, without limitation, requirements governing:

38 (1) The form on which such informed written consent must
39 be provided; and

40 (2) The length of time that a psychologist who obtains such
41 informed written consent must maintain the informed written
42 consent;

43 (b) Prescribing the length of time that a program of education
44 for mental health professionals, a mental health professional or
45 a person receiving training for mental health professionals that uses



1 a recording of the provision of mental health services by a
2 psychologist to a patient for the purposes described in paragraph (a)
3 of subsection 1 may retain the recording before destroying it; and

4 (c) Defining “training activity” for the purposes of this section.

5 4. The provisions of this section do not abrogate, alter or
6 otherwise affect the obligation of a psychologist to comply with the
7 applicable requirements of chapter 629 of NRS, including, without
8 limitation, the requirement to retain records concerning the mental
9 health services that he or she provides to patients in accordance with
10 NRS 629.051 to 629.069, inclusive **[H]**, *and section 1 of this act.*

11 5. Except where necessary for compliance with subsection 4,
12 a recording of the provision of mental health services by a
13 psychologist to a patient that is used for a training activity by a
14 program of education for mental health professionals, a mental
15 health professional or a person receiving training for mental health
16 professionals in accordance with the provisions of this section is not
17 a health care record for the purposes of chapter 629 of NRS.

18 6. As used in this section, “mental health professional” means a
19 psychologist, a marriage and family therapist, a clinical professional
20 counselor, a social worker, a master social worker, an independent
21 social worker, a clinical social worker, a clinical alcohol and drug
22 counselor, an alcohol and drug counselor or problem gambling
23 counselor.

24 **Sec. 3.** Chapter 616B of NRS is hereby amended by adding
25 thereto a new section to read as follows:

26 *1. If an injured employee or his or her legal representative*
27 *requests health care records electronically from an insurer or*
28 *employer pursuant to subsection 1 of NRS 616B.012, any other*
29 *provision of chapters 616A to 616D, inclusive, or chapter 617 of*
30 *NRS or any regulation adopted pursuant thereto, the insurer or*
31 *employer shall electronically transmit a copy of the requested*
32 *records to the injured employee or legal representative. Such*
33 *records must be furnished in an electronic format using a method*
34 *of secure electronic transmission that complies with applicable*
35 *federal and state law.*

36 *2. If an insurer or employer maintains health care records*
37 *electronically, the insurer or employer shall not charge a fee to*
38 *furnish those records electronically pursuant to subsection 1.*

39 *3. As used in this section:*

40 *(a) “Health care records” has the meaning ascribed to it in*
41 *NRS 629.021.*

42 *(b) “Secure electronic transmission” has the meaning ascribed*
43 *to it in section 1 of this act.*



1 **Sec. 4.** NRS 616B.012 is hereby amended to read as follows:
2 616B.012 1. Except as otherwise provided in this section and
3 NRS 239.0115, 607.217, 616B.015, 616B.021 and 616C.205, *and*
4 *section 3 of this act*, information obtained from any insurer,
5 employer or employee is confidential and may not be disclosed or
6 be open to public inspection in any manner which would reveal the
7 person's identity.

8 2. Any claimant or legal representative of the claimant is
9 entitled to information from the records of the insurer, to the extent
10 necessary for the proper presentation of a claim in any proceeding
11 under chapters 616A to 616D, inclusive, or chapter 617 of NRS.

12 3. The Division and Administrator are entitled to information
13 from the records of the insurer which is necessary for the
14 performance of their duties. The Administrator may, by regulation,
15 prescribe the manner in which otherwise confidential information
16 may be made available to:

17 (a) Any agency of this or any other state charged with the
18 administration or enforcement of laws relating to industrial
19 insurance, unemployment compensation, public assistance or labor
20 law and industrial relations;

21 (b) Any state or local agency for the enforcement of child
22 support;

23 (c) The Internal Revenue Service of the Department of the
24 Treasury;

25 (d) The Department of Taxation; and

26 (e) The State Contractors' Board in the performance of its duties
27 to enforce the provisions of chapter 624 of NRS.

28 ➔ Information obtained in connection with the administration of a
29 program of industrial insurance may be made available to persons or
30 agencies for purposes appropriate to the operation of a program of
31 industrial insurance.

32 4. Upon written request made by a public officer of a local
33 government, an insurer shall furnish from its records the name,
34 address and place of employment of any person listed in its records.
35 The request must set forth the social security number of the person
36 about whom the request is made and contain a statement signed by
37 proper authority of the local government certifying that the request
38 is made to allow the proper authority to enforce a law to recover a
39 debt or obligation owed to the local government. Except as
40 otherwise provided in NRS 239.0115, the information obtained by
41 the local government is confidential and may not be used or
42 disclosed for any purpose other than the collection of a debt or
43 obligation owed to the local government. The insurer may charge a
44 reasonable fee for the cost of providing the requested information.



1 5. To further a current criminal investigation, the chief
2 executive officer of any law enforcement agency of this State may
3 submit to the Administrator a written request for the name, address
4 and place of employment of any person listed in the records of an
5 insurer. The request must set forth the social security number of the
6 person about whom the request is made and contain a statement
7 signed by the chief executive officer certifying that the request is
8 made to further a criminal investigation currently being conducted
9 by the agency. Upon receipt of a request, the Administrator shall
10 instruct the insurer to furnish the information requested. Upon
11 receipt of such an instruction, the insurer shall furnish the
12 information requested. The insurer may charge a reasonable fee to
13 cover any related administrative expenses.

14 6. Upon request by the Department of Taxation, the
15 Administrator shall provide:

16 (a) Lists containing the names and addresses of employers; and

17 (b) Other information concerning employers collected and
18 maintained by the Administrator or the Division to carry out the
19 purposes of chapters 616A to 616D, inclusive, or chapter 617 of
20 NRS,

21 ↪ to the Department for its use in verifying returns for the taxes
22 imposed pursuant to chapters 363A, 363B, 363C and 363D of NRS.
23 The Administrator may charge a reasonable fee to cover any related
24 administrative expenses.

25 7. Any person who, in violation of this section, discloses
26 information obtained from files of claimants or policyholders or
27 obtains a list of claimants or policyholders under chapters 616A to
28 616D, inclusive, or chapter 617 of NRS and uses or permits the use
29 of the list for any political purposes, is guilty of a gross
30 misdemeanor.

31 8. All letters, reports or communications of any kind, oral or
32 written, from the insurer, or any of its agents, representatives or
33 employees are privileged and must not be the subject matter or basis
34 for any lawsuit if the letter, report or communication is written, sent,
35 delivered or prepared pursuant to the requirements of chapters 616A
36 to 616D, inclusive, or chapter 617 of NRS.

37 9. The provisions of this section do not prohibit the
38 Administrator or the Division from:

39 (a) Disclosing any nonproprietary information relating to an
40 uninsured employer or proof of industrial insurance; or

41 (b) Notifying an injured employee or the surviving spouse or
42 dependent of an injured employee of benefits to which such persons
43 may be entitled in addition to those provided pursuant to the
44 provisions of chapters 616A to 616D, inclusive, or chapter 617 of
45 NRS but only if:



1 (1) The notification is solely for the purpose of informing the
2 recipient of benefits that are available to the recipient; and

3 (2) The content of the notification is limited to information
4 concerning services which are offered by nonprofit entities.

5 **Sec. 5.** The provisions of NRS 354.599 do not apply to any
6 additional expenses of a local government that are related to the
7 provisions of this act.

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