

**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.

**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.

**NAC 439.5741 “Contracted Health Information Exchange”** (NRS 439.587) means a Health Information Exchange which has entered into a contract with the Director to compile statewide master indexes of patients, health care providers and payers, is commercially available to health care providers, covered entities and business associates throughout Nevada, and provides specified additional Health Information Exchange services in Nevada in compliance with the requirements set forth in NAC 439.5761.

**NAC 439.5742 “Health Data Utility”** means a Contracted Health Information Exchange which has advanced technical capabilities to combine, enhance, and exchange electronic health data across care and service settings for treatment, care coordination, quality improvement, population health, provide data needed for community and public health purposes and provide statewide health data assets for stakeholders, as required by the Director.

**NAC 439.5743 “Interoperability”** means the ability to securely exchange electronic health information in a health information exchange, with electronic health information in other health information exchanges, without requiring special efforts or manual processes, in compliance with applicable HIPAA standards.

**NAC 439.5744 “Provider”** means a “provider of health care” as defined in NRS 629.031.

**NAC 439.576 Requirements concerning operation of exchange.** ([NRS 439.587](#), [439.588](#), [439.589](#)) A health information exchange that operates in this State must:

1. 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, 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;
2. Facilitate the sharing of health information across the public and private sectors to increase efficiency and improve outcomes of health care in this State;
3. Support public health and population health initiatives and collaboration between organizations and governmental entities working in the fields of public health and population health;
4. 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;

5. Use an enterprise master patient index and a master provider index for the secure and efficient exchange of health information;

6. 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;

7. Be operational for at least 99 percent of each month; ~~and~~

8. Hold a nationally recognized accreditation for health information exchanges or meet comparable accreditation standards approved by the Director.;

9. Receive a certificate authorizing its operation as a Health Information Exchange in this State, prior to commencement of service, and retain its certificate throughout the time during which it operates as a Health Information Exchange in the State;

10. Make commercially available to health care providers and other covered entities an electronic means of connecting disparate electronic systems on which health-related information is shared;

11. Operate a secure exchange network in which healthcare providers and other authorized users can share information from different electronic health records systems; and

12. Comply with the reporting and audit requirements of NAC 439.586.

**NAC 439.5761 Requirements concerning operation of a Contracted Health Information Exchange.** (NRS 439.587, 439.588, 439.589) In order for a Health Information Exchange to be eligible to contract with the Director as a Contracted Health Information Exchange in this State, the Health Information Exchange must:

1. Apply to and enter a contract with the Director to become a Contracted Health Information Exchange;

2. Comply with the requirements set forth in NAC 439.576; and

3. Meet the following requirements:

(a) Be incorporated as a Nevada non-profit corporation.

(b) Demonstrate the capability of serving a significant proportion of Providers and payers.

(c) Compile and operate a statewide master index of patients across all health care providers and payers.

(d) Establish a procedure by which its statewide master patient index will be transferred to the Department upon termination of its contract.

(e) Demonstrate the ability to aggregate and manage clinical information.

(f) Demonstrate the ability to adequately advise the Director on appropriate standards for certifying other exchanges.

(g) Demonstrate the ability to perform communication and information transactional services, including, but not limited to, event notification, delivery of lab results, sending discharge summaries, and other real time transactions.

(h) Demonstrate the ability to resolve patient identity matching by using a statewide master patient index that subsumes patient identities from all participating Providers and payers.

(i) Demonstrate the ability to provide public health services, including, but not limited to, electronic lab reporting, syndromic surveillance, immunizations coordination, population health analyses, public health analyses, and medical research coordination among Providers or members of academia.

**NAC 439.5762 Director may establish or contract with one Contracted Health Information Exchange; qualifications; extension of contract; (effective through January 1, 2026). (NRS 439.587, 439.588, 439.589)**

1. Prior to January 1, 2026, the Director shall contract with a Health Information Exchange to be the State's only Contracted Health Information Exchange. A Health Information Exchange contracted by the Director to be the State's only Contracted Health Information Exchange under this Section must meet the following qualifications:

(a) Holds and has held a certificate authorizing its operation as a Health Information Exchange in this State for at least the five years preceding any contract approved by this Section;

(b) Meets the requirements of NAC 439.576, and demonstrates the highest standards in information protection and security by holding a current certification from the Health Information Trust Alliance or another certifying body delineated by the Director;

(c) Makes commercially available to Providers and other stakeholders an electronic means of connecting disparate electronic systems on which health-related information is shared;

(d) Operates a secure health information exchange network by which (i) Providers and other authorized users can share information from different electronic health information systems, and (ii) patients are provided a secure direct access patient portal, whereby patients may access their own medical records across all connected providers, forward their records to other participating providers and entities, and manage their consent to participate (in the exchange);

(e) Demonstrates that it supports public health and population health initiatives and collaboration between organizations and governmental entities working in the fields of public health and population health;

(f) Demonstrates the ability to expeditiously onboard Providers onto its platform or exchange;

(g) Demonstrates that it already serves a diverse and substantial number of Providers and payers;

(h) Demonstrates that it is registered to do business in this State as a nonprofit organization and certifies that it shall continue to operate as a nonprofit through the term of its contract with the Director;

(i) Demonstrates the ability to create modern, integrated, and real-time public health information exchange infrastructure by building out a highly collaborative public utility infrastructure to facilitate State-wide electronic health data sharing across the healthcare ecosystem;

(j) Demonstrates the ability to comply with the consent laws codified in this Chapter and Chapter 439 of the NRS, including demonstrating the ability to collect patient consent form submissions and consistently comply with patient consent decisions;

(k) Demonstrates the ability to coordinate and connect with national exchange networks (e.g. a Qualified Health Information Network (QHIN));

(l) Demonstrates the transactional capabilities to create and maintain a patient information communication network to facilitate the push, pull, and expeditious transfer of patient information and notices regarding patient health; and

(m) Demonstrates the ability to serve as the State's Health Data Utility.

2. A Health Information Exchange selected by the Director to be the State's only Contracted Health Information Exchange pursuant to subsection 1 must also meet the requirements of NAC 439.5761.

3. After January 1, 2026, if the Director determines that it is in the public interest, the Director may extend the contract of the Health Information Exchange contracted by the Director pursuant to subsection 1 for any number of additional three-year terms. If the Director does not extend the contract of the Health Information Exchange contracted by the Director pursuant to subsection 1, then the Director must follow the process delineated in NAC 439.5763.

**NAC 439.5763 Required findings and considerations if Director contracts with only one Health Information Exchange. (NRS 439.587, 439.588, 439.589)**

1. Before establishing or contracting with one Health Information Exchange to serve as the State's only Contracted Health Information Exchange, the Director must:

(a) Determine that the Health Information Exchange seeking a contract under this Section meets the requirements of NAC 439.5761;

(b) Determine that the Health Information Exchange seeking a contract under this Section meets the qualifications delineated under NAC 439.5762; and

(c) Determine that the contract with the Health Information Exchange is in the best interest of the State.

**NAC 439.5764 Required findings and considerations if Director contracts with multiple Health Information Exchange; required hearing; . (NRS 439.587, 439.588, 439.589)**

1. Before establishing or contracting with more than one Health Information Exchange to serve as the State's Contracted Health Information Exchange, the Director must:

(a) Determine that each Health Information Exchange seeking a contract under this Section meets the requirements of NAC 439.5761;

(b) Determine that each Health Information Exchange seeking a contract under this Section meets the qualifications delineated under NAC 439.5762;

(c) Determine that contracting with multiple exchanges will improve the services provided to this State with respect to the creation of a modern, integrated, and real-time public health infrastructure that facilitates State-wide electronic health data sharing across the healthcare ecosystem;

(d) Determine that contracting with multiple Health Information Exchanges will reduce the costs to the State, Providers, and payers relative to contracting with only one Health Information Exchange;

(e) Convene an advisory group of Provider and payers to help address whether contracting with multiple Health Information Exchanges is in the best interest of the State; and

(f) Delineate the determinations and findings pursuant to this Section in a report to: (a) if the Legislature is not in session, the Joint Interim Standing Committee on Health and Human Services; (b) if the Legislature is in session, to the Health and Human Services committees of the Nevada State Senate and Assembly.

**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.

**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.

**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) ~~Ensure~~ Except when use or disclosure of protected health information is permitted or required by federal law for treatment, health care operations 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.

**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, and report annually to the Director.** ([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 (“HIPAA”), and ~~make the records of such audits available~~ report to the Director ~~upon request~~; within thirty (30) days of discovery, any failures to meet these HIPAA requirements.

~~—2. Annually conduct a~~

2. Report annually to the Director, no later than June 30 of each year:

(a) All instances of non-compliance with HIPAA requirements;

(b) The results of its annual 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, and a summary of the methodology used to perform this assessment;

(c) The number of:

i) Patients served

ii) Providers served

iii) Payers served

iv) Queries processed

v) Consent status of patients, e.g., Opted-In, Opted Out, or No Consent On File

vi) A description of the methodology followed to ensure interoperability with patient and provider records and the records maintained by any other connected health information exchange, and to protect the integrity of such records.

3. Submit to the Director a biennial audit by an independent auditor of its Health Information Exchange activities in the State, no later than July 31 of each even-numbered year.

~~34.~~ 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

~~45.~~ 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.

**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 ~~for a~~ when use or disclosure ~~for the purpose of treating a patient~~ of protected health information is permitted or ~~as otherwise~~ required by federal law for treatment, health care operations or otherwise, and except as otherwise directed by the patient, 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 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.

**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.

**NAC 439.594 Submission and retention of complaints; penalties for violation; use of money collected** ([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](#) ~~NRS 439.581- 439.595~~ or [NAC 439.572-439.596](#) by any person may submit to the Director a written, signed complaint in the form prescribed by the Director. ~~The Director will determine whether to take~~ and posted on the website of the Department. Such complaint must identify the specific acts which are the subject of the complaint, the legal requirements which are alleged to have been violated, and the remedy proposed by the complainant. In addition, the complaint must include contact information regarding the complainant, including the complainant's telephone number and mailing and email addresses, as well as the complainant's signature and the date signed.

2. The Director, or the Director's designee, shall investigate the matters set forth in the complaint, and make a written determination regarding the action to be taken concerning the complaint, ~~which~~. Such actions may include, without limitation, ~~referring~~ the remedies provided in Section 4 below, further investigation and hearing by the Department, and referral of the complaint to the Office of the Attorney General or the appropriate district attorney for investigation.

~~2.~~

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

4. If the Director determines that a person has violated the provisions of [NRS 439.587-439.595](#) or [NAC 439.572-439.596](#), the Director may, in accord with [NAC 439.345](#):

(a) Issue and serve on the person an order to cease and desist such violation. The order must be in writing, describe with particularity the nature of the conduct and the provisions violated, and must be served upon the person by personal delivery or by certified or registered mail, return receipt requested. The order is effective upon service.

(b) Issue a citation to the person. The citation must be served upon the person by personal delivery or by certified or registered mail, return receipt requested. The citation is effective upon service. A citation issued pursuant to this subsection must be in writing, describe with particularity the nature of the violation cited. Each activity in which the person is engaged constitutes a separate offense for which a separate citation may be issued. To appeal a citation, the person must submit a written request for a hearing to the Director not later than 30 days after service of the citation.

(c) Assess against the person an administrative fine of not more than \$5,000 for each violation.

(d) Impose any combination of the penalties set forth in subsections (a), (b) and (c).

5. A person subject to sanctions imposed pursuant to Section 3 may appeal pursuant to requirements of NAC 439.346. Upon service of an order to cease and desist, citation, or fine, if a person does not comply with such, and if no appeal pursuant to NAC 439.346 is timely filed, then the Division may bring an action in a court of competent jurisdiction to enforce these provisions.

6. Unless otherwise required by law, the Director shall deposit all civil penalties collected pursuant to subsection 5 into a separate account in the State General Fund to be used to administer and carry out the provisions of NRS 439.587-595, inclusive.

**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.

**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 6 of NRS 439.589, which request must include a written statement signed by the Provider certifying that the Provider satisfies the criteria set forth in subsection 6 of NRS 439.589 or other appropriate documentation that satisfies the Department that an such criteria is satisfied. The Department will consider each request for such a waiver on a case-by-case basis, and render a determination. The Provider requesting the wavier 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 Department of Corrections