**Confidentiality Rules: Uses and Disclosures of PHI Related to**

**Coronavirus (COVID-19) Exposures and Infections**

**For Nevada Heath Care Entities and Providers**

Medical information about an individually identifiable individual is confidential, and HIPAA “covered entities” (health care providers, plans or clearinghouses) must observe all applicable confidentiality laws when handling such information, including information about exposure to, or infection related to, coronavirus (COVID-19).

There are three main “exception pathways” that would permit Nevada healthcare providers and entities to disclose information concerning such a patient: 1) treatment purposes, 2) public health-related reporting, investigations, and interventions, and 3) the “medical directory” exception. Each will be discussed below.

**1. "Treatment Purposes" exception to confidentiality:**

Healthcare providers are permitted to share individually identifiable physical health information about a patient with other healthcare providers or entities for “treatment purposes” under **HIPAA (45 CFR §164.506)**:

**§ 164.506 Uses and disclosures to carry out treatment, payment, or health care operations.**

(a) Standard: Permitted uses and disclosures. Except with respect to uses or disclosures that require an authorization under §164.508(a)(2) and (3), a covered entity may use or disclose protected health information for treatment, payment, or health care operations as set forth in paragraph (c) of this section, provided that such use or disclosure is consistent with other applicable requirements of this subpart....

(c) Implementation specifications: Treatment, payment, or health care operations.

(1) A covered entity may use or disclose protected health information for its own treatment, payment, or health care operations.

(2) A covered entity may disclose protected health information for treatment activities of a health care provider.

"Treatment" is defined under HIPAA at **45 CFR 164.501** as follows:

***Treatment***means the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party; consultation between health care providers relating to a patient; or the referral of a patient for health care from one health care provider to another.

A similar exception exists under Nevada law for disclosures for the purpose of “diagnosis or treatment” of the patient at **NRS 449A.112 (prior: NRS 449.720):**

**NRS 449A.112** Specific rights: Care; refusal of treatment and experimentation; privacy; notice of appointments and need for care; confidentiality of information concerning patient.

     …

 2.  Except as otherwise provided …discussions of the care of a patient, consultation with other persons concerning the patient, examinations or treatments, and all communications and records concerning the patient are confidential. The patient must consent to the presence of any person who is not directly involved with the patient’s care during any examination, consultation or treatment.

The “common sense interpretation” of this law is that consent is not needed if provider IS directly involved in the patient’s care. In other words, sharing for “treatment purposes” with another healthcare professional who is caring for the same patient is ok, but sharing with a healthcare provider who is not caring for the patient is not, unless you have consent from the patient. See also, **NRS 449.705**, that requires hospitals to send records (mental or mental health) to receiving hospital when a patient is transferred from one facility to another.

Here is what the 2019 Nevada Hospital Association says about “treatment purposes” exception under Nevada law (Chapter 5, page 35; manual page 159):

**H. *Nevada Law/Medical Information in General*.** Two statutes, NRS 449A.112(2) and NRS 629.061, govern the confidentiality of most patient information held by hospitals, physicians and other providers. The statutes provide that all medical records and records concerning a patient “are confidential” and they set out a limited list of exceptions to that confidentiality where disclosure is authorized. The listed exceptions do not include the release of patient information for TPO purposes, research purposes, marketing or fund-raising purposes; or to law enforcement, or in response to a private attorney’s subpoena.

1. TPO Purposes Generally**.** While the statutes do not authorize disclosures for TPO purposes, common sense requires such exceptions be implied.

2. Treatment**.** Nevada law recognizes a “quasi-treatment exception” in two circumstances. Whenever a patient is transferred between medical facilities, NRS 449A.103 requires that a copy of a patient’s medical record be forwarded to the recipient facility. This statute reflects a clear legislative recognition of the need for disclosure of medical information between treating providers. Further, support for an “treatment exception” to disclose information among providers as necessary to treat the patient can be found in certain language in NRS 449A.112 (2) which provides:

“[D]iscussions of a patient’s care, consultations with other persons concerning the patient, examinations or treatments, and all communications and records concerning the patient...are confidential. The patient must consent to the presence of any person who is not directly involved with his care during any examination, consultation or treatment.”

The law clearly recognizes the occurrence of and need for consultations with other persons regarding the patient, which should be interpreted to mean that disclosing medical information to others directly involved in treating the patient is viewed as permissible under the statute. The fact that the statute recognizes that other persons can be directly involved in a patient’s care and must be allowed to be present during exams, seems to signal legislative recognition of the fact that health care is delivered by teams of persons and entities who are often only indirectly related.

If an implicit treatment exception does not exist, many disclosures that are commonly made in the medical community and that are essential to the efficient provision of care and the operation of the state’s health care providers could not be made. As a result, the provision of health care in Nevada would come to a halt. Since this seems a nonsensical result, it is likely we that a Nevada court should find an unstated authority to disclose information among providers as necessary to treat the patient.

So, considering COVID-12, a doctor caring for a patient in a small rural hospital can share treatment records with a subsequent treater in a large medical center if the patient is transferred for more intensive care.  And the doctors at the large medical center can talk with health care professionals at the Center for Disease Control (CDC) about a specific patient if necessary to get the best advice from infectious control experts on how to proceed with the patient’s care.

**"Public Health" exception to confidentiality:**

HIPAA permits, and Nevada law requires, the reporting of certain “reportable diseases,” “unusual diseases” and “outbreaks” to support the conduct of public health surveillance, public health investigations and public health interventions.  So, confidentiality laws would not prevent the reporting of Coronavirus cases to appropriate government agencies or the disclosure of information to the DPBH epidemiologist.  In short, healthcare providers such as Nevada rural hospital or rural clinic providers are permitted to use and disclose physical health information about a patient with appropriate public agencies, entities or individuals who oversee public health investigations.

HIPAA's exception is a "permissive" disclosure found at **45 CFR 164.512:**

**§164.512   Uses and disclosures for which an authorization or opportunity to agree or object is not required.**

A covered entity may use or disclose protected health information without the written authorization of the individual, as described in §164.508, or the opportunity for the individual to agree or object as described in §164.510, in the situations covered by this section, subject to the applicable requirements of this section. When the covered entity is required by this section to inform the individual of, or when the individual may agree to, a use or disclosure permitted by this section, the covered entity's information and the individual's agreement may be given orally.

**(a) Standard: Uses and disclosures required by law.**

(1) A covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the use or disclosure complies with and is limited to the relevant requirements of such law.

....

**(b) Standard: Uses and disclosures for public health activities**

1) Permitted uses and disclosures. A covered entity may use or disclose protected health information for the public health activities and purposes described in this paragraph to:

**(i) A public health authority that is authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions; or, at the direction of a public health authority, to an official of a foreign government agency that is acting in collaboration with a public health authority;**

....

**(iv) A person who may have been exposed to a communicable disease or may otherwise be at risk of contracting or spreading a disease or condition**, if the covered entity or public health authority is authorized by law to notify such person as necessary in the conduct of a public health intervention or investigation; ...

**45 CFR 164.501 (Definitions):**

***Health oversight agency*** means an agency or authority of the United States, a State, a territory, a political subdivision of a State or territory, or an Indian tribe, or a person or entity acting under a grant of authority from or contract with such public agency, including the employees or agents of such public agency or its contractors or persons or entities to whom it has granted authority, that is authorized by law to oversee the health care system (whether public or private) or government programs in which health information is necessary to determine eligibility or compliance, or to enforce civil rights laws for which health information is relevant.

Nevada law requires certain disclosures and NV confidentiality laws permit those disclosures:

**NRS 441A.040** **Communicable disease” defined.**“Communicable disease” means a disease which is caused by a specific infectious agent or its toxic products, and which can be transmitted, either directly or indirectly, from a reservoir of infectious agents to a susceptible host organism.

**NRS 441A.120  Regulations of State Board of Health governing control of infectious diseases and reporting cases or suspected cases of drug overdose; performance of duties set forth in regulations.**

      1.  The Board shall adopt regulations governing the control of communicable diseases in this State, including regulations specifically relating to the control of such diseases in educational, medical and correctional institutions. The regulations must specify:

      (a) The diseases which are known to be communicable.

      (b) The communicable diseases which are known to be sexually transmitted.

      (c) The procedures for investigating and reporting cases or suspected cases of communicable diseases, including the time within which these actions must be taken.

      (d) For each communicable disease, the procedures for testing, treating, isolating and quarantining a person or group of persons who have been exposed to or have or are suspected of having the disease.

      (e) A method for ensuring that any testing, treatment, isolation or quarantine of a person or a group of persons pursuant to this chapter is carried out in the least restrictive manner or environment that is appropriate and acceptable under current medical and public health practices.

      2.  The Board shall adopt regulations governing the procedures for reporting cases or suspected cases of drug overdose to the Chief Medical Officer or his or her designee, including the time within which such reports must be made and the information that such reports must include.

      3.  The duties set forth in the regulations adopted by the Board pursuant to subsection 1 must be performed by:

      (a) In a district in which there is a district health officer, the district health officer or the district health officer’s designee; or

      (b) In any other area of the State, the Chief Medical Officer or the Chief Medical Officer’s designee.

**NRS 441A.125  Use of syndromic reporting and active surveillance to monitor public health; regulations.**

      1.  The Board shall develop a system which provides for syndromic reporting and active surveillance to monitor public health in this state during major events or when determined appropriate and necessary by a health authority.

      2.  The Board shall adopt regulations concerning the system it develops pursuant to this section, including, without limitation:

      (a) The manner in which and situations during which the system actively gathers information;

      (b) The persons who are required to report information to the system; and

      (c) The procedures for reporting required information to the system.

**NRS 441A.130  Chief Medical Officer to inform local health officers of regulations and procedures.**The Chief Medical Officer shall inform each local health officer of the regulations adopted by the Board and the procedures established for investigating and reporting cases or suspected cases of infectious diseases and cases or suspected cases of exposure to biological, radiological or chemical agents pursuant to this chapter.

**NRS 441A.140  Authority of Division of Public and Behavioral Health to receive and use financial aid.**The Division of Public and Behavioral Health of the Department of Health and Human Services may receive any financial aid made available by any grant or other source and shall use the aid, in cooperation with the health authority, to carry out the provisions of this chapter.

**NRS 441A.150  Reporting occurrences of communicable diseases to health authority; reporting drug overdoses to Chief Medical Officer. [Effective January 1, 2020.]**

      1.  A provider of health care who knows of, or provides services to, a person who has or is suspected of having a communicable disease shall report that fact to the health authority in the manner prescribed by the regulations of the Board. If no provider of health care is providing services, each person having knowledge that another person has a communicable disease shall report that fact to the health authority in the manner prescribed by the regulations of the Board.

      2.  A provider of health care who knows of, or provides services to, a person who has suffered or is suspected of having suffered a drug overdose shall report that fact and the information required by the Board pursuant to [NRS 441A.120](https://www.leg.state.nv.us/NRS/NRS-441A.html#NRS441ASec120) to the Chief Medical Officer or his or her designee in the manner prescribed by the regulations of the Board. The Chief Medical Officer or his or her designee shall upload that information to the database of the program established pursuant to [NRS 453.162](https://www.leg.state.nv.us/NRS/NRS-453.html#NRS453Sec162) if the program allows for the upload of such information.

      3.  A medical facility in which more than one provider of health care may know of, or provide services to, a person who has or is suspected of having a communicable disease or who has suffered or is suspected of having suffered a drug overdose shall establish administrative procedures to ensure that the health authority or Chief Medical Officer or his or her designee, as applicable, is notified.

      4.  A laboratory director shall, in the manner prescribed by the Board, notify the health authority of the identification by his or her medical laboratory of the presence of any communicable disease in the jurisdiction of that health authority. The health authority shall not presume a diagnosis of a communicable disease on the basis of the notification received from the laboratory director.

      5.  If more than one medical laboratory is involved in testing a specimen, the laboratory that is responsible for reporting the results of the testing directly to the provider of health care for the patient shall also be responsible for reporting to the health authority.

**NRS 441A.160  Investigation: Powers of health authority to conduct investigation of communicable disease; order to require person to submit to examination; order of isolation, quarantine or treatment.**

      1.  A health authority who knows, suspects or is informed of the existence within the jurisdiction of the health authority of any communicable disease shall immediately investigate the matter and all circumstances connected with it, and shall take such measures for the prevention, suppression and control of the disease as are required by the regulations of the Board or a local board of health.

      2.  A health authority may:

      (a) Enter private property at reasonable hours to investigate any case or suspected case of a communicable disease.

      (b) Order any person whom the health authority reasonably suspects has a communicable disease in an infectious state to submit to any medical examination or test which the health authority believes is necessary to verify the presence of the disease. The order must be in writing and specify the name of the person to be examined and the time and place of the examination and testing, and may include such terms and conditions as the health authority believes are necessary to protect the public health.

      (c) Except as otherwise provided in subsection 5 and [NRS 441A.210](https://www.leg.state.nv.us/NRS/NRS-441A.html#NRS441ASec210), issue an order requiring the isolation, quarantine or treatment of any person or group of persons if the health authority believes that such action is necessary to protect the public health. The order must be in writing and specify the person or group of persons to be isolated or quarantined, the time during which the order is effective, the place of isolation or quarantine and other terms and conditions which the health authority believes are necessary to protect the public health, except that no isolation or quarantine may take place if the health authority determines that such action may endanger the life of a person who is isolated or quarantined.

      3.  Each order issued pursuant to this section must be served upon each person named in the order by delivering a copy to him or her.

      4.  If a health authority issues an order to isolate or quarantine a person with a communicable or infectious disease in a medical facility, the health authority must isolate or quarantine the person in the manner set forth in [NRS 441A.510](https://www.leg.state.nv.us/NRS/NRS-441A.html#NRS441ASec510) to [441A.720](https://www.leg.state.nv.us/NRS/NRS-441A.html#NRS441ASec720), inclusive.

      5.  Except as otherwise provided in [NRS 441A.310](https://www.leg.state.nv.us/NRS/NRS-441A.html#NRS441ASec310) and [441A.380](https://www.leg.state.nv.us/NRS/NRS-441A.html#NRS441ASec380), a health authority may not issue an order requiring the involuntary treatment of a person without a court order requiring the person to submit to treatment.

**NRS 441A.163  Investigation: Powers of health authority to conduct investigation of infectious disease or exposure to biological, radiological or chemical agent; reports; regulations.**

      1.  Except as otherwise required pursuant to [NRS 441A.160](https://www.leg.state.nv.us/NRS/NRS-441A.html#NRS441ASec160), a health authority may conduct an investigation of a case or suspected case of:

      (a) An infectious disease within its jurisdiction; or

      (b) Exposure to a biological, radiological or chemical agent within its jurisdiction,

Ê which significantly impairs the health, safety or welfare of the public within its jurisdiction.

      2.  Each health authority shall:

      (a) Except as otherwise required pursuant to [NRS 441A.170](https://www.leg.state.nv.us/NRS/NRS-441A.html#NRS441ASec170), report each week to the Chief Medical Officer the number and types of cases or suspected cases of infectious diseases or cases or suspected cases of exposure to biological, radiological or chemical agents which significantly impair the health, safety or welfare of the public reported to the health authority, and any other information required by the regulations of the Board.

      (b) Report the results of an investigation conducted pursuant to subsection 1 to the Chief Medical Officer within 30 days after concluding the investigation.

      3.  The Board may adopt regulations to carry out the provisions of [NRS 441A.163](https://www.leg.state.nv.us/NRS/NRS-441A.html#NRS441ASec163) to [441A.169](https://www.leg.state.nv.us/NRS/NRS-441A.html#NRS441ASec169), inclusive.

**NRS 441A.165  Investigation: Powers of health authority to access medical records, laboratory records and other information in possession of health care provider or medical facility; payment of certain costs related to investigation.**

      1.  A health authority which conducts an investigation pursuant to [NRS 441A.160](https://www.leg.state.nv.us/NRS/NRS-441A.html#NRS441ASec160) or [441A.163](https://www.leg.state.nv.us/NRS/NRS-441A.html#NRS441ASec163) shall, for the protection of the health, safety and welfare of the public, have access to all medical records, laboratory records and reports, books and papers relevant to the investigation which are in the possession of a provider of health care or medical facility being investigated or which are otherwise necessary to carry out the investigation. The determination of what information is necessary to carry out the investigation is at the discretion of the health authority.

      2.  If a health authority conducts an investigation pursuant to [NRS 441A.160](https://www.leg.state.nv.us/NRS/NRS-441A.html#NRS441ASec160) or [441A.163](https://www.leg.state.nv.us/NRS/NRS-441A.html#NRS441ASec163), the health authority may require a provider of health care or medical facility being investigated to pay a proportionate share of the actual cost of carrying out the investigation, including, without limitation, the cost of notifying and testing patients who may have contracted an infectious disease, been exposed to a biological, radiological or chemical agent or otherwise been harmed.

**NRS 441A.166  Investigation: Subpoena to compel production of medical records, laboratory records and other information; court order directing witness to appear for failure to produce.**

      1.  Upon petition by a health authority to the district court for the county in which an investigation is being conducted by the health authority pursuant to [NRS 441A.160](https://www.leg.state.nv.us/NRS/NRS-441A.html#NRS441ASec160) or [441A.163](https://www.leg.state.nv.us/NRS/NRS-441A.html#NRS441ASec163), the court may issue a subpoena to compel the production of medical records, laboratory records and reports, books and papers as set forth in [NRS 441A.165](https://www.leg.state.nv.us/NRS/NRS-441A.html#NRS441ASec165).

      2.  If a witness refuses to produce any medical records, laboratory records and reports, books or papers required by a subpoena issued by a court pursuant to subsection 1, the court shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in its order, the time to be not more than 10 days after the date of the order, and then and there show cause why the witness has not produced the medical records, laboratory records and reports, books or papers before the health authority. A certified copy of the order must be served upon the witness. The court may enter an order that the witness appear before the health authority at the time and place fixed in the order and produce the required medical records, laboratory records and reports, books or papers, and upon failure to obey the order, the witness must be dealt with as for contempt of court.

**NRS 441A.167  Investigation: Law enforcement agencies and political subdivisions authorized to share certain information and medical records with state and local health authorities; regulations.**

      1.  A public agency, law enforcement agency or political subdivision of this State which has information that is relevant to an investigation relating to an infectious disease or exposure to a biological, radiological or chemical agent which significantly impairs the health, safety and welfare of the public shall share the information and any medical records and reports with the appropriate state and local health authorities if it is in the best interest of the public and as necessary to further the investigation of the requesting health authority.

      2.  The Board shall adopt regulations to carry out this section, including, without limitation:

      (a) Identifying the public agencies and political subdivisions with which the information set forth in subsection 1 may be shared;

      (b) Prescribing the circumstances and procedures by which the information may be shared with those identified public agencies and political subdivisions; and

      (c) Ensuring the confidentiality of the information if it is protected health information.

**NRS 441A.169  Investigation: Powers of health authority to issue cease and desist order to health care provider or medical facility; injunction.**

      1.  During the course of or as a result of an investigation concerning the case or suspected case of an infectious disease or the case or suspected case of exposure to a biological, radiological or chemical agent pursuant to [NRS 441A.160](https://www.leg.state.nv.us/NRS/NRS-441A.html#NRS441ASec160) or [441A.163](https://www.leg.state.nv.us/NRS/NRS-441A.html#NRS441ASec163), a health authority may, upon finding that a provider of health care or medical facility significantly contributed to a case of an infectious disease or to a case of exposure to a biological, radiological or chemical agent and that the public health imperatively requires:

      (a) Issue a written order directing the provider of health care or medical facility to cease and desist any act or conduct which is harmful to the health, safety or welfare of the public; and

      (b) Take any other action to reduce or eliminate the harm to the health, safety or welfare of the public.

      2.  A written order directing a provider of health care or medical facility to cease and desist issued pursuant to subsection 1 must contain a statement of the:

      (a) Provision of law or regulation which the provider of health care or medical facility is violating; or

      (b) Standard of care that the provider of health care or medical facility is violating which led to the case of the infectious disease or to the case of exposure to a biological, radiological or chemical agent.

      3.  An order to cease and desist must be served upon the person or an authorized representative of the facility directly or by certified or registered mail, return receipt requested. The order becomes effective upon service.

      4.  An order to cease and desist expires 30 days after the date of service unless the health authority institutes an action in a court of competent jurisdiction seeking an injunction.

      5.  Upon a showing by the health authority that a provider of health care or medical facility is committing or is about to commit an act which is harmful to the health, safety or welfare of the public, a court of competent jurisdiction may enjoin the provider of health care or medical facility from committing the act.

**NRS 441A.170  Weekly reports to Chief Medical Officer.**Each health authority shall report each week to the Chief Medical Officer the number and types of cases or suspected cases of communicable disease reported to the health authority, and any other information required by the regulations of the Board.

**NRS 441A.180  Contagious person to prevent exposure to others; warning by health authority; penalty.**

      1.  A person who has a communicable disease in an infectious state shall not conduct himself or herself in any manner likely to expose others to the disease or engage in any occupation in which it is likely that the disease will be transmitted to others.

      2.  A health authority who has reason to believe that a person is in violation of subsection 1 shall issue a warning to that person, in writing, informing the person of the behavior which constitutes the violation and of the precautions that the person must take to avoid exposing others to the disease. The warning must be served upon the person by delivering a copy to him or her.

      3.  A person who violates the provisions of subsection 1 after service upon him or her of a warning from a health authority is guilty of a misdemeanor.

**NRS 441A.190  Control of disease within schools, child care facilities, medical facilities and correctional facilities.**

      1.  Except as otherwise provided in this subsection, a health authority who knows of the presence of a communicable disease within a school, child care facility, medical facility or correctional facility shall notify the principal, director or other person in charge of the school, child care facility, medical facility or correctional facility of that fact and direct what action, if any, must be taken to prevent the spread of the disease. A health authority who knows of the presence of the human immunodeficiency virus within a school shall notify the superintendent of the school district of that fact and direct what action, if any, must be taken to prevent the spread of the virus.

      2.  Except as otherwise provided in this subsection, the principal, director or other person in charge of a school, child care facility, medical facility or correctional facility who knows of or suspects the presence of a communicable disease within the school, child care facility, medical facility or correctional facility, shall notify the health authority pursuant to the regulations of the Board. If a principal of a school knows of the presence of the human immunodeficiency virus within the school, the principal shall notify the superintendent of the school district of that fact. A superintendent of a school district who is notified of or knows of the presence of the human immunodeficiency virus within a school in the school district shall notify the health authority of that fact. The health authority shall investigate a report received pursuant to this subsection to determine whether a communicable disease or the human immunodeficiency virus is present and direct what action, if any, must be taken to prevent the spread of the disease or virus.

      3.  A parent, guardian or person having custody of a child who has a communicable disease shall not knowingly permit the child to attend school or a child care facility if the Board, by regulation, has determined that the disease requires exclusion from school or a child care facility.

**NRS 441A.195  Testing of person or decedent who may have exposed law enforcement officer, correctional officer, emergency medical attendant, firefighter, county coroner or medical examiner, person employed by or volunteering for agency of criminal justice or certain other public employees or volunteers to communicable disease.**

      1.  Except as otherwise provided in [NRS 259.047](https://www.leg.state.nv.us/NRS/NRS-259.html#NRS259Sec047), a law enforcement officer, correctional officer, emergency medical attendant, firefighter, county coroner or medical examiner or any of their employees or volunteers, any other person who is employed by or is a volunteer for an agency of criminal justice or any other public employee or volunteer for a public agency who, in the course of his or her official duties, comes into contact with human blood or bodily fluids, or the employer of such a person or the public agency for which the person volunteers, may petition a court for an order requiring the testing of a person or decedent for exposure to a communicable disease if the person or decedent may have exposed the officer, emergency medical attendant, firefighter, county coroner or medical examiner or their employee or volunteer, other person employed by or volunteering for an agency of criminal justice or other public employee or volunteer for a public agency to a communicable disease.

      2.  When possible, before filing a petition pursuant to subsection 1, the person, employer or public agency for which the person volunteers, and who is petitioning shall submit information concerning the possible exposure to a communicable disease to the designated health care officer for the employer or public agency or, if there is no designated health care officer, the person designated by the employer or public agency to document and verify possible exposure to communicable diseases, for verification that there was substantial exposure. Each designated health care officer or person designated by an employer or public agency to document and verify possible exposure to communicable diseases shall establish guidelines based on current scientific information to determine substantial exposure.

      3.  A court shall promptly hear a petition filed pursuant to subsection 1 and determine whether there is probable cause to believe that a possible transfer of blood or other bodily fluids occurred between the person who filed the petition or on whose behalf the petition was filed and the person or decedent who possibly exposed him or her to a communicable disease. If the court determines that probable cause exists to believe that a possible transfer of blood or other bodily fluids occurred and, that a positive result from the test for the presence of a communicable disease would require the petitioner to seek medical intervention, the court shall:

      (a) Order the person who possibly exposed the petitioner, or the person on whose behalf the petition was filed, to a communicable disease to submit two appropriate specimens to a local hospital or medical laboratory for testing for exposure to a communicable disease; or

      (b) Order that two appropriate specimens be taken from the decedent who possibly exposed the petitioner, or the person on whose behalf the petition was filed, to a communicable disease and be submitted to a local hospital or medical laboratory for testing for exposure to the communicable disease.

Ê The local hospital or medical laboratory shall perform the test in accordance with generally accepted medical practices and shall disclose the results of the test in the manner set forth in [NRS 629.069](https://www.leg.state.nv.us/NRS/NRS-629.html#NRS629Sec069).

      4.  If a judge or a justice of the peace enters an order pursuant to this section, the judge or justice of the peace may authorize the designated health care officer or the person designated by the employer or public agency to document and verify possible exposure to a communicable disease to sign the name of the judge or justice of the peace on a duplicate order. Such a duplicate order shall be deemed to be an order of the court. As soon as practicable after the duplicate order is signed, the duplicate order must be returned to the judge or justice of the peace who authorized the signing of it and must indicate on its face the judge or justice of the peace to whom it is to be returned. The judge or justice of the peace, upon receiving the returned order, shall endorse the order with his or her name and enter the date on which the order was returned. Any failure of the judge or justice of the peace to make such an endorsement and entry does not in and of itself invalidate the order.

      5.  Except as otherwise provided in [NRS 629.069](https://www.leg.state.nv.us/NRS/NRS-629.html#NRS629Sec069), all records submitted to the court in connection with a petition filed pursuant to this section and any proceedings concerning the petition are confidential and the judge or justice of the peace shall order the records and any record of the proceedings to be sealed and to be opened for inspection only upon an order of the court for good cause shown.

      6.  A court may establish rules to allow a judge or justice of the peace to conduct a hearing or issue an order pursuant to this section by electronic or telephonic means.

      7.  The employer of a person or the public agency for which the person volunteers, who files a petition or on whose behalf a petition is filed pursuant to this section or the insurer of the employer or public agency, shall pay the cost of performing the test pursuant to subsection 3.

      8.  As used in this section:

      (a) “Agency of criminal justice” has the meaning ascribed to it in [NRS 179A.030](https://www.leg.state.nv.us/NRS/NRS-179A.html#NRS179ASec030).

      (b) “Emergency medical attendant” means a person licensed as an attendant or certified as an emergency medical technician, advanced emergency medical technician or paramedic pursuant to [chapter 450B](https://www.leg.state.nv.us/NRS/NRS-450B.html#NRS450B) of NRS.

**NRS 441A.200  Right to receive treatment from physician or clinic of choice; Board may prescribe method of treatment.**This chapter does not empower or authorize the health authority or any other person to interfere in any manner with the right of a person to receive approved treatment for a communicable disease from any physician, clinic or other person of his or her choice, but the Board has the power to prescribe the approved method of treatment to be used by the physician, clinic or other person.

**NRS 441A.210  Rights and duties of person who depends exclusively on prayer for healing.**A person who has a communicable disease and depends exclusively on prayer for healing in accordance with the tenets and precepts of any recognized religious sect, denomination or organization is not required to submit to any medical treatment required by the provisions of this chapter, but may be isolated or quarantined in the person’s home or other place of the person’s choice acceptable to the health authority, and shall comply with all applicable rules, regulations and orders issued by the health authority.

**NRS 441A.220  Confidentiality of information; permissible disclosure.**All information of a personal nature about any person provided by any other person reporting a case or suspected case of a communicable disease or drug overdose, or by any person who has a communicable disease or has suffered a drug overdose, or as determined by investigation of the health authority, is confidential medical information and must not be disclosed to any person under any circumstances, including pursuant to any subpoena, search warrant or discovery proceeding, except:

      1.  As otherwise provided in [NRS 439.538](https://www.leg.state.nv.us/NRS/NRS-439.html#NRS439Sec538)*. (If required by state law)*

      2.  For statistical purposes, provided that the identity of the person is not discernible from the information disclosed.

      3.  In a prosecution for a violation of this chapter.

      4.  In a proceeding for an injunction brought pursuant to this chapter.

      5.  In reporting the actual or suspected abuse or neglect of a child or elderly person.

      6.  To any person who has a medical need to know the information for his or her own protection or for the well-being of a patient or dependent person, as determined by the health authority in accordance with regulations of the Board.

      7.  If the person who is the subject of the information consents in writing to the disclosure.

      8.  Pursuant to subsection 4 of [NRS 441A.320](https://www.leg.state.nv.us/NRS/NRS-441A.html#NRS441ASec320) or [NRS 629.069](https://www.leg.state.nv.us/NRS/NRS-629.html#NRS629Sec069).

      9.  If the disclosure is made to the Department of Health and Human Services and the person about whom the disclosure is made has been diagnosed as having acquired immunodeficiency syndrome or an illness related to the human immunodeficiency virus and is a recipient of or an applicant for Medicaid.

      10.  To a firefighter, police officer or person providing emergency medical services if the Board has determined that the information relates to a communicable disease significantly related to that occupation. The information must be disclosed in the manner prescribed by the Board.

      11.  If the disclosure is authorized or required by [NRS 239.0115](https://www.leg.state.nv.us/NRS/NRS-239.html#NRS239Sec0115) or another specific statute.

**NRS 441A.230  Disclosure of personal information prohibited without consent.**Except as otherwise provided in this chapter and [NRS 439.538](https://www.leg.state.nv.us/NRS/NRS-439.html#NRS439Sec538), a person shall not make public the name of, or other personal identifying information about, a person infected with a communicable disease who has been investigated by the health authority pursuant to this chapter without the consent of the person.

Note that the HIPAA minimum necessary rule (see 45 CFR 164.502) may apply to some public health reporting and surveillance, so some caution is important when making these disclosures under that exception.  Also, in order to protect the patient from the stigma and fear associated with exposure to infected individuals (and the ensuing discrimination, harassment and other problems that are being reported), it is important to de-identify any information that is disseminated through the media or through public statements of any kind.

3. Disclosures Under the “Patient Directory” Exception – HIPAA permits hospitals and other health care facilities to disclose limited information about their patients to individual callers or to the media, so long as the patient has not “opted out” of being listed in the directory (**45 CFR §164.510**). It should be noted HIPAA allows the disclosure only when the inquiry includes the specific patient’s name.

The information that may be disclosed about a named patient is limited to the patient’s condition described in general terms that do not communicate specific medical information about the patient (e.g., terms such as “undetermined,” “good,” “fair,” “serious,” and “critical,” would be acceptable). Information about the patient’s location within the hospital may also be disclosed in order to facilitate visits or delivery of gifts or flowers. The patient’s stated religious preference, if any, may also be released, but only to members of the clergy. The patient’s diagnosis may NOT be discussed or disclosed.

**45 CFR § 164.510** - Uses and disclosures requiring an opportunity for the individual to agree or to object.

A covered entity may use or disclose protected health information, provided that the individual is informed in advance of the use or disclosure and has the opportunity to agree to or prohibit or restrict the use or disclosure, in accordance with the applicable requirements of this section. The covered entity may orally inform the individual of and obtain the individual’s oral agreement or objection to a use or disclosure permitted by this section.

**(a) Standard: Use and disclosure for facility directories—**

(1) Permitted uses and disclosure. Except when an objection is expressed in accordance with paragraphs (a)(2) or (3) of this section, a covered health care provider may:

(i) Use the following protected health information to maintain a directory of individuals in its facility:

(A) The individual’s name;

(B) The individual’s location in the covered health care provider’s facility;

(C) The individual’s condition described in general terms that does not communicate specific medical information about the individual; and

(D) The individual’s religious affiliation; and

(ii) Use or disclose for directory purposes such information:

(A) To members of the clergy; or

(B) Except for religious affiliation, to other persons who ask for the individual by name.

(2) Opportunity to object. A covered health care provider must inform an individual of the protected health information that it may include in a directory and the persons to whom it may disclose such information (including disclosures to clergy of information regarding religious affiliation) and provide the individual with the opportunity to restrict or prohibit some or all of the uses or disclosures permitted by paragraph (a)(1) of this section.

(3) Emergency circumstances.

(i) If the opportunity to object to uses or disclosures required by paragraph (a)(2) of this section cannot practicably be provided because of the individual’s incapacity or an emergency treatment circumstance, a covered health care provider may use or disclose some or all of the protected health information permitted by paragraph (a)(1) of this section for the facility’s directory, if such disclosure is:

(A) Consistent with a prior expressed preference of the individual, if any, that is known to the covered health care provider; and

(B) In the individual’s best interest as determined by the covered health care provider, in the exercise of professional judgment.

(ii) The covered health care provider must inform the individual and provide an opportunity to object to uses or disclosures for directory purposes as required by paragraph (a)(2) of this section when it becomes practicable to do so.

Nevada law does not specifically permit disclosures with verbal permission but common sense can dictate to some extent whether to share limited information with verbal permission, for example, in order to direct visitors to patient rooms.

Also, note, that relative to providing limited information, as allowed under HIPAA via a hospital directory, the 2019 Nevada Hospital Association Consent/HIPAA manual includes this sample language describing the “directory exception” in its model Notice of Privacy Practices (intended for distribution to patients):

**Hospital Directory**. We may include certain limited information about you in the hospital directory while you are a patient at the hospital. This information may include your name, location in the hospital, your general condition (e.g., fair, stable, etc.) and your religious affiliation. The directory information, except for your religious affiliation, may also be released to people who ask for you by name. Your religious affiliation may be given to a member of the clergy, such as a priest or rabbi, even if they don’t ask for you by name. This is so your family, friends and clergy can visit you in the hospital and generally know how you are doing. If you object to our doing this, please let us know, and we will honor your objection.

--------------------------------------------------

Finally, as long as individually identifiable patient information is not released, a hospital could tell the media the number of patients it is treating as a result of an outbreak, and further describe characteristics of those patients being treated, for example by stating their gender and age group. These rules are not waived during states of emergency or public health disasters.