Pat Lundvall (NSBN 3761)
McDONALD CARANO LLP
2300 West Sahara Avenue, Suite 1200
Las Vegas, NV 89102
Telephone: (702) 873-4100
lundvall@mcdonaldcarano.com

Robert N. Weiner
Admitted *Pro Hac Vice*
Jeffrey L. Handwerker
Admitted *Pro Hac Vice*
R. Stanton Jones
Admitted *Pro Hac Vice*
ARNOLD & PORTER KAYE SCHOLER LLP
601 Massachusetts Avenue, NW
Washington, DC 20001
Telephone: (202) 942-5000
robert.weiner@apks.com
jeffrey.handwerker@apks.com
stanton.jones@apks.com

Attorneys for Plaintiffs Pharmaceutical Research and Manufacturers of America and Biotechnology Innovation Organization

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

PHARMACEUTICAL RESEARCH AND MANUFACTURERS OF AMERICA and BIOTECHNOLOGY INNOVATION ORGANIZATION,

Plaintiffs,

vs.

BRIAN SANDOVAL, in his official capacity as Governor of the State of Nevada; RICHARD WHITLEY, in his official capacity as Director of the Nevada Department for Health and Human Services; and the NEVADA LEGISLATURE,

Defendants.

Case No.: 2:17-cv-02315-JCM-CWH

JOINT STATUS REPORT

Plaintiffs Pharmaceutical Research and Manufacturers of America ("PhRMA") and Biotechnology Innovation Organization ("BIO") (together, "Plaintiffs"), and Defendants Brian

Sandoval, in his official capacity as Governor of the State of Nevada (the "State"), Richard Whitley, in his official capacity as Director of the Nevada Department of Health and Human Services (the "Department"), and the Nevada Legislature (the "Legislature") (together, "Defendants"), by and through their respective undersigned counsel, hereby submit this joint status report to apprise the Court of their collective views regarding the implications of the now-effective regulation adopted by the Department, LCB File No. R042-18 (Joint Status Report Ex. 1), and the State's subsequent actions on this litigation.

First, as the Court is aware, the Department previously issued a proposed regulation (ECF No. 86-1) designed to mitigate the constitutional concerns that Plaintiffs raised with respect to Nevada Senate Bill No. 539 ("SB 539"). Plaintiffs argued that the challenged provisions of SB 539, including the provision that excludes from the definition of "trade secret" "any information that a manufacturer is required to report pursuant to section 3.8 or 4 of [SB 539]," *see* SB 539 § 9, are preempted by the federal patent laws and the federal Defend Trade Secrets Act ("DTSA"), and also violate the Fifth Amendment Takings Clause and the dormant Commerce Clause. The Department argued that Plaintiffs' claims were not ripe for review because "the Department is not exempt from exposure for liability under [the] DTSA if the Department were to disclose a federally defined trade secret without consent from the manufacturer who asserted that secrecy. Plaintiffs have a separate, stand-alone remedy under [the] DTSA that affords protection for their trade secrets if they need to challenge any action of the Department." Opp'n to Pls.' Mot. Summ. J. 4, ECF No. 74. Further, the Department also argued that "[t]o the extent that the state law fails to set forth a process for protecting trade secrets that could be subject to dissemination under SB 539, the void will be filled by regulations of the Department." *Id.* at 4–5.

On May 31, 2018, the Department accelerated its anticipated timeline and adopted the proposed regulation, which became effective that same date (Joint Status Report Ex. 1 at 1). Defendants believe that, as predicted, the now-effective regulation has filled any void and obviated Plaintiffs' alleged facial constitutional claims. Under the now-effective regulation, pharmaceutical manufacturers may request that information they submit to the Department pursuant to Sections 3.8 and 4 of SB 539 be kept confidential as trade secrets under the DTSA. *See* Regulation § 3 (Joint

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

Status Report Ex. 1 at 6-10). To request such confidentiality, the manufacturer must (1) "describe, with particularity, the information sought to be protected from public disclosure," *id.* § 3(2)(a); and (2) "include an explanation of the reasons why public disclosure of the information would constitute misappropriation of a trade secret for which a court may award relief pursuant to the federal [DTSA], as amended," *id.* § 3(2)(b).

Under the DTSA, a court may award relief where a trade secret is "misappropriated," which the DTSA defines to include "disclosure or use of a trade secret of another without express or implied consent by a person who . . . at the time of disclosure or use, knew or had reason to know that the knowledge of the trade secret was . . . acquired under circumstances giving rise to a duty to maintain the secrecy of the trade secret or limit the use of the trade secret." 18 U.S.C. § 1839(5)(B)(ii)(II). The parties agree and acknowledge that, under SB 539, the Department may acquire manufacturer trade secrets, such as a manufacturer's costs of production and other internal costs, "under circumstances giving rise to a duty to maintain the secrecy of the trade secret or limit the use of the trade secret." *Id.* Thus, the parties agree and acknowledge that, so long as such trade secrets continue to satisfy the definition of "trade secret" in 18 U.S.C. § 1839, if the Department were to disclose such trade secrets to any third party or use such trade secrets, such disclosure or use would constitute "misappropriation" for which a court may award relief pursuant to the DTSA. These protections are intended to afford an opportunity to manufacturers that submit trade secrets to the Department to seek to safeguard their interests in the confidentiality of those trade secrets. In Defendants' view, the now-effective regulation, as described, resolves the alleged facial constitutional issues with respect to the challenged provisions of SB 539.

Second, on June 7, 2018, the Department represented on its website that it would not proceed with enforcement actions for manufacturer reports submitted on or before January 15, 2019. The Department has further assured Plaintiffs through email correspondence that it will not bring any enforcement action against any manufacturer based on the submission of an incomplete report or no report during this time period, so long as the manufacturer submits a compliant report on or before January 15, 2019. On the basis of these representations, on June 8, 2018, Plaintiffs withdrew their renewed motion for a preliminary injunction without prejudice.

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

Third, by filing this joint status report or agreeing to voluntary dismissal of this action without prejudice under Federal Rule of Civil Procedure 41(a)(2), the parties do not waive any of their rights but fully reserve all of their rights to assert any claims, issues, arguments, objections or defenses, in law or fact, that they raised or that they could properly have raised during the course of this action, including, without limitation, any claims, issues, arguments, objections or defenses, in law or fact, relating to the constitutionality of the challenged provisions of SB 539.

On the basis of the foregoing acknowledgements, assurances, changed circumstances, and reservation of rights, Plaintiffs have agreed to separately file an unopposed motion for voluntary dismissal of this action without prejudice under Federal Rule of Civil Procedure 41(a)(2).

Dated: June 28, 2018.

/s/ *Pat Lundvall*
Pat Lundvall (NSBN 3761)
McDONALD CARANO LLP
2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102
Telephone: (702) 873-4100
lundvall@mcdonaldcarano.com

Robert N. Weiner
Jeffrey L. Handwerker
R. Stanton Jones
ARNOLD & PORTER KAYE SCHOLER LLP
601 Massachusetts Avenue, NW
Washington, DC 20001
Telephone: (202) 942-5000

Attorneys for Plaintiffs Pharmaceutical Research and Manufacturers of America and Biotechnology Innovation Organization

/s/ Linda C. Anderson
Linda C. Anderson
Nevada Bar No. 4090
Nevada Attorney General's Office
555 E. Washington Ave.
Suite 3900
Las Vegas, NV 89101
Telephone: (702) 486-3077
landerson@ag.nv.gov

Attorney for Defendants Brian Sandoval and Richard Whitley

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

/s/ Kevin C. Powers
Kevin C. Powers
Chief Litigation Counsel
Nevada Bar No. 6781
Nevada Legislative Counsel Bureau, Legal Division
401 S. Carson Street
Carson City, Nevada 89701
Telephone: (775) 684-6830
kpowers@lcb.state.nv.us

Attorney for Defendant Nevada Legislature

CERTIFICATE OF SERVICE

I certify that I am an employee of McDonald Carano, and that on the 28th day of June, 2018, a true and correct copy of the foregoing JOINT STATUS REPORT was electronically filed with the Clerk of the Court by using CM/ECF service which will provide copies to all counsel of record registered to receive CM/ECF notification.

/s/ Beau Nelson
An employee of McDonald Carano LLP

McDONALD CARANO
2300 WEST SAHARA AVENUE, SUITE 1200 • LAS VEGAS, NEVADA 89102
PHONE 702.873.4100 • FAX 702.873.9966

EXHIBIT 1

SECRETARY OF STATE
FILING DATA

FILED.NV.SOS
2018 MAY 31 PM4:42

Form For Filing
Administrative Regulations

Agency:
Department of Health and Human Services

FOR EMERGENCY
REGULATIONS ONLY

Effective date _____

Expiration date _____

_____
Governor's signature

Classification: **PROPOSED X ADOPTED BY AGENCY** **EMERGENCY**

Brief description of action:

The adopted regulation outlines how the Department of Health and Human Services will support submission of certain reports by manufacturers of prescription drugs, pharmacy benefit managers and pharmaceutical sales representatives by providing forms online. It describes the process by which a manufacturer or pharmacy benefit manager can submit a request for confidentiality covering certain information. Lastly, it describes procedures the Department will follow when public information requests for information are filed and for which a confidentiality request has been submitted.

Authority citation other than 233B:

Notice date: January 30, 2018; April 30, 2018 **Date of Adoption by Agency:** May 31, 2018

Hearing date: February 15, 2018; May 31, 2018

APPROVED REGULATION OF THE

DEPARTMENT OF HEALTH AND HUMAN SERVICES

LCB File No. R042-18

Effective May 31, 2018

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

AUTHORITY: §§1-4, NRS 439.930.

A REGULATION relating to prescription drugs; providing that the Department of Health and Human Services will make available on an Internet website maintained by the Department certain forms that must be used by manufacturers of prescription drugs, pharmacy benefit managers and pharmaceutical sales representatives to submit certain reports to the Department; authorizing a manufacturer or pharmacy benefit manager that submits such a report to request that the Department keep certain information confidential as a trade secret under federal law; establishing procedures for the Department to follow when it receives a request for public records seeking disclosure of information for which a manufacturer or pharmacy benefit manager has submitted a request for confidentiality; prescribing certain requirements for reports compiled by the Department concerning the prices of certain prescription drugs; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires the Department of Health and Human Services to compile each year: (1) a list of prescription drugs essential for treating diabetes in this State; and (2) a list of such prescription drugs which have been subject to an increase in wholesale acquisition cost that exceeds a prescribed amount. (Section 3.6 of Senate Bill No. 539, chapter 592, Statutes of Nevada 2017, at page 4297 (NRS 439B.630)) Existing law also requires the manufacturers of drugs that appear on those lists and pharmacy benefit managers to submit to the Department annual reports containing certain information about the prices of those drugs. (Sections 3.8, 4 and 4.2 of Senate Bill No. 539, chapter 592, Statutes of Nevada 2017, at pages 4297-98 (NRS 439B.635, 439B.640 and 439B.645)) Existing law further requires a pharmaceutical sales representative who markets prescription drugs on behalf of a manufacturer in this State to submit to the Department an annual report concerning the provision of compensation and free samples to certain persons. (Section 4.6 of Senate Bill No. 539, chapter 592, Statutes of Nevada 2017, at page 4299 (NRS 439B.660)) **Section 2** of this regulation provides that the Department will make

available on an Internet website maintained by the Department the forms that must be used by the manufacturers, pharmacy benefit managers and pharmaceutical sales representatives to submit such annual reports.

Under existing law, commonly known as the Nevada Public Records Act, when a state or local governmental entity receives a request to disclose information contained in public records within its legal custody or control, the governmental entity must disclose the information, unless the information is confidential under state or federal law. (NRS 239.010; *City of Reno v. Reno Gazette-Journal*, 119 Nev. 55, 58-61 (2003)) Upon receiving such a request for public records, the governmental entity must respond to the requester within five business days by doing one of the following: (1) if the requested information is confidential under state or federal law, the governmental entity must provide the requester with written notice of the denial of the request and a citation to the specific statute or other legal authority that makes the information confidential; (2) if the requested information is not confidential under state or federal law and the governmental entity is able to make the information available within those five business days, the governmental entity must provide the requester with the information; or (3) if the governmental entity is unable to make the information available within those five business days, the governmental entity must provide the requester with written notice of that fact and a date and time after which the information will be made available. (NRS 239.0107)

Under existing federal law, when a state or local governmental entity is exercising its powers and duties under state or local law, the governmental entity must also comply with federal law, which supersedes any conflicting state or local law, because federal law is the supreme law of the land under the Supremacy Clause of the United States Constitution. (U.S. Const. Art. VI, cl. 2; *Alden v. Maine*, 527 U.S. 706, 755 (1999)) For example, if information is provided to state governmental entities and maintained in their databases as part of state regulatory programs and the information has potential commercial value in interstate commerce, Congress may exercise its power under the Commerce Clause of the United States Constitution to prohibit the state governmental entities from disclosing the information, even if such disclosure is authorized by state law. (U.S. Const. Art. I, § 8, cl. 3; *Reno v. Condon*, 528 U.S. 141, 143-51 (2000))

In the context of trade secrets related to products or services used in interstate commerce, Congress has exercised its power under the Commerce Clause to enact the federal Defend Trade Secrets Act of 2016 (DTSA), which authorizes the owner of a trade secret to bring a civil action to prevent the improper disclosure of information that would constitute misappropriation of a trade secret under federal law and, if such information is improperly disclosed, to provide remedies for violations of the federal law. (18 U.S.C. § 1836) In such a civil action brought under the federal DTSA, a court of competent jurisdiction may award legal and equitable relief, including protective orders, injunctive relief, compensatory damages, punitive damages and attorney's fees, to the owner of a trade secret to prevent or remedy violations of the federal law. (18 U.S.C. §§ 1833-1839) In addition to the remedies established by the federal DTSA, federal

law also prohibits certain conduct that constitutes theft of a trade secret and prescribes criminal penalties for such violations. (18 U.S.C. § 1832)

Because information that constitutes a trade secret may be submitted to federal agencies, the federal Trade Secrets Act prohibits federal officers and employees from disclosing such information, unless the disclosure is specifically authorized by federal law. (18 U.S.C. § 1905; *Chrysler Corp. v. Brown*, 441 U.S. 281, 294-319 (1979)) As a result of this federal prohibition, when federal agencies receive requests for public records under the federal Freedom of Information Act (FOIA), the federal agencies cannot disclose information that constitutes a trade secret under the federal Trade Secrets Act, and such information is also exempt from disclosure under the "trade secrets" exemption in FOIA, which is commonly referred to as "Exemption 4." (5 U.S.C. § 552(b)(4); 18 U.S.C. § 1905; *Canadian Commercial Corp. v. Dep't of Air Force*, 514 F.3d 37, 39 (D.C. Cir. 2008); *Pac. Architects & Eng'rs v. Dep't of State*, 906 F.2d 1345, 1346-47 (9th Cir. 1990); *Pub. Citizen Health Research Grp. v. FDA*, 704 F.2d 1280, 1286-90 (D.C. Cir. 1983))

To ensure that trade secrets are not improperly disclosed under the federal Trade Secrets Act and FOIA, federal agencies have a duty to adopt regulations establishing specific procedures that the federal agencies must follow when they receive requests for public records under FOIA seeking disclosure of information that may constitute a trade secret or other confidential commercial information. The purpose of such procedures is to ensure that persons who have submitted trade secrets or other confidential commercial information to federal agencies are provided with notice of the potential disclosure of the information under FOIA and an opportunity to respond and protect their interests in the confidentiality of the information before the federal agencies may disclose the information to the public. (*Predisclosure Notification Procedures for Confidential Commercial Information*, Exec. Order No. 12,600, 52 Fed. Reg. 23,781 (June 23, 1987); *OSHA Data/CIH v. Dep't of Labor*, 220 F.3d 153, 163-64 (3d Cir. 2000); *Venetian Casino Resort v. EEOC*, 530 F.3d 925, 934-35 (D.C. Cir. 2008))

Section 3 of this regulation establishes specific procedures that the Department will follow when it receives a request for public records under the Nevada Public Records Act seeking disclosure of information which: (1) may constitute a trade secret under the federal DTSA; and (2) is included by a manufacturer or pharmacy benefit manager in an annual report concerning the prices of prescription drugs submitted to the Department under sections 3.8, 4 or 4.2 of Senate Bill No. 539, chapter 592, Statutes of Nevada 2017, at pages 4297-98 (NRS 439B.635, 439B.640 or 439B.645). **Section 3** provides that a manufacturer or pharmacy benefit manager which is required to submit such a report may submit to the Department a request to keep information included in the report confidential if the manufacturer or pharmacy benefit manager reasonably believes that public disclosure of the information would constitute misappropriation of a trade secret under the federal DTSA. If a manufacturer or pharmacy benefit manager submits a request for confidentiality, **section 3** requires the request to: (1) describe, with particularity, the information sought to be protected from public disclosure;

and (2) include an explanation of the reasons why public disclosure of the information would constitute misappropriation of a trade secret under the federal DTSA.

If the Department receives a request for public records under the Nevada Public Records Act seeking disclosure of information for which the manufacturer or pharmacy benefit manager has submitted a request for confidentiality, **section 3** requires the Department, as soon as reasonably practicable after receiving the request, to provide the manufacturer or pharmacy benefit manager with: (1) written notice of the request for public records and the procedures set forth in **section 3**; and (2) a copy of the request for public records and the date on which the Department received the request. **Section 3** also requires the Department to undertake an initial review to determine whether the Department reasonably believes that public disclosure of the information would constitute misappropriation of a trade secret under the federal DTSA. When the Department undertakes its initial review, **section 3** states that the Department will consider, as persuasive authority, the interpretation and application given to the term "trade secrets" under Exemption 4 of FOIA.

If, after undertaking its initial review, the Department reasonably believes that public disclosure of the information would constitute misappropriation of a trade secret under the federal DTSA, **section 3** provides that the Department will: (1) within the time required by the Nevada Public Records Act, provide the requester of public records with written notice that the Department must deny the request on the basis that the information is confidential under the federal DTSA; and (2) as soon as reasonably practicable after notifying the requester, provide the manufacturer or pharmacy benefit manager with written notice that the Department denied the request and a copy of the written notice provided to the requester and the date on which it was sent to the requester. Under the Nevada Public Records Act, the requester would have the right to bring an action against the Department to challenge the denial of the request for public records. (NRS 239.011; *City of Sparks v. Reno Newspapers*, 133 Nev. Adv. Op. 56, 399 P.3d 352, 354 (2017); *DR Partners v. Bd. of County Comm'rs*, 116 Nev. 616, 620-21 (2000)) If the requester were to bring such an action against the Department, the manufacturer or pharmacy benefit manager could assert a right to intervene in the action to protect its interests in the confidentiality of the information. (*Appleton v. FDA*, 310 F. Supp. 2d 194, 196-97 (D.D.C. 2004); *Yorkshire v. IRS*, 26 F.3d 942, 944-45 (9th Cir. 1994))

If, after undertaking its initial review, the Department reasonably believes that public disclosure of the information would not constitute misappropriation of a trade secret under the federal DTSA, **section 3** requires the Department, within the time required by the Nevada Public Records Act, to provide the requester of public records with written notice that the Department intends to disclose the information. However, **section 3** also requires the Department to inform the requester that: (1) the Department will not be able to disclose the information until 30 days have elapsed following the date on which such written notice was sent to the requester; and (2) if the manufacturer or pharmacy benefit manager timely commences an action within that 30-day period to enjoin disclosure of the information under the federal DTSA, the Department will not be able to disclose the information, unless the disclosure is permitted after final resolution of the

action, including any appeals. **Section 3** additionally requires the Department, as soon as reasonably practicable after notifying the requester, to provide the manufacturer or pharmacy benefit manager with: (1) written notice that the Department intends to disclose the information; and (2) a copy of the written notice sent to the requester and the date on which it was sent to the requester.

If, within the 30-day period following the date on which the Department sent the written notice to the requester, the manufacturer or pharmacy benefit manager does not commence an action to enjoin the Department from disclosing the information under the federal DTSA, **section 3** requires the Department to disclose the information. However, if such an action is timely commenced within the 30-day period, **section 3** provides that the Department will not disclose the information until final resolution of the action, including any appeals. Following commencement of the action, the requester of the public records could assert a right to intervene in the action to protect its interests in the disclosure of the information. (*Entergy Gulf States La. v. EPA*, 817 F.3d 198, 203-06 (5th Cir. 2016); *LaRouche v. FBI*, 677 F.2d 256, 257-58 (2d Cir. 1982))

After final resolution of the action, including any appeals, if the court enjoins the Department from disclosing the information as a trade secret, **section 3** provides that the Department will not disclose the information so long as the information retains its status as a trade secret. However, if the court does not enjoin the Department from disclosing the information as a trade secret, **section 3** provides that the Department will disclose the information as soon as reasonably practicable after final resolution of the action.

Finally, existing law requires the Department to: (1) analyze the information submitted by manufacturers and pharmacy benefit managers in their annual reports; and (2) compile a report on the prices of the prescription drugs that appear on the most current lists of essential diabetes drugs compiled by the Department. (Section 4.3 of Senate Bill No. 539, chapter 592, Statutes of Nevada 2017, at page 4299 (NRS 439B.650)) **Section 4** of this regulation provides that the report compiled by the Department will include only aggregated data that does not disclose the identity of any drug, manufacturer or pharmacy benefit manager. **Section 4** also provides that the Department will include in the report: (1) a description of trends concerning the prices of the prescription drugs that appear on the most current lists of essential diabetes drugs compiled by the Department; and (2) an explanation of how those prices and trends may affect the prevalence and severity of diabetes in this State and the system of health care in this State.

Section 1. Chapter 439 of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this regulation.

Sec. 2. ***The Department will make available on an Internet website maintained by the Department the forms on which:***

1. A manufacturer is required to submit the reports required by sections 3.8 and 4 of Senate Bill No. 539, chapter 592, Statutes of Nevada 2017, at pages 4297-98 (NRS 439B.635 and 439B.640).

2. A pharmacy benefit manager is required to submit the report required by section 4.2 of Senate Bill No. 539, chapter 592, Statutes of Nevada 2017, at page 4298 (NRS 439B.645).

3. A person included on a list of pharmaceutical sales representatives provided by a manufacturer to the Department pursuant to subsection 1 of section 4.6 of Senate Bill No. 539, chapter 592, Statutes of Nevada 2017, at page 4299 (NRS 439B.660), is required to submit the report required by subsection 4 of that section.

Sec. 3. ***1. In complying with section 3.8, 4 or 4.2 of Senate Bill No. 539, chapter 592, Statutes of Nevada 2017, at pages 4297-98 (NRS 439B.635, 439B.640 or 439B.645), if a manufacturer or pharmacy benefit manager reasonably believes that public disclosure of information that it submits to the Department would constitute misappropriation of a trade secret for which a court may award relief pursuant to the federal Defend Trade Secrets Act of 2016, 18 U.S.C. § 1836, as amended, the manufacturer or pharmacy benefit manager may submit to the Department a request to keep the information confidential.***

2. A request for confidentiality submitted pursuant to subsection 1 must be divided into the following parts, which must be severable from each other:

(a) The first part of the request for confidentiality must describe, with particularity, the information sought to be protected from public disclosure. Upon a request for public records

pursuant to NRS 239.010, the Department will not disclose the description set forth in the request for confidentiality or the information sought to be protected from public disclosure, unless the description and information are disclosed pursuant to subsections 5 and 6.

(b) The second part of the request for confidentiality must include an explanation of the reasons why public disclosure of the information would constitute misappropriation of a trade secret for which a court may award relief pursuant to the federal Defend Trade Secrets Act of 2016, 18 U.S.C. § 1836, as amended. Upon a request for public records pursuant to NRS 239.010, the Department will disclose the explanation set forth in the request for confidentiality.

3. If the Department receives a request for public records pursuant to NRS 239.010 seeking disclosure of any information for which a manufacturer or pharmacy benefit manager has submitted a request for confidentiality pursuant to subsection 1, the Department will:

(a) As soon as reasonably practicable after receiving the request for public records, provide the manufacturer or pharmacy benefit manager with:

(1) Written notice of the request for public records and the procedures set forth in this section; and

(2) A copy of the request for public records and the date on which the Department received the request.

(b) Undertake an initial review to determine whether the Department reasonably believes that public disclosure of the information would constitute misappropriation of a trade secret for which a court may award relief pursuant to the federal Defend Trade Secrets Act of 2016,

18 U.S.C. § 1836, as amended. In undertaking its initial review, the Department will consider, as persuasive authority, the interpretation and application given to the term "trade secrets" in Exemption 4 of the federal Freedom of Information Act, 5 U.S.C. § 552(b)(4), as amended.

4. If, after undertaking its initial review pursuant to subsection 3, the Department reasonably believes that public disclosure of the information would constitute misappropriation of a trade secret for which a court may award relief pursuant to the federal Defend Trade Secrets Act of 2016, 18 U.S.C. § 1836, as amended, the Department will:

(a) Within the time prescribed by NRS 239.0107, provide the requester of the public records with written notice pursuant to paragraph (d) of subsection 1 of NRS 239.0107 that the Department must deny the request for public records on the basis that the information is confidential pursuant to the federal Defend Trade Secrets Act of 2016, 18 U.S.C. § 1836, as amended.

(b) As soon as reasonably practicable after providing the written notice to the requester pursuant to paragraph (a), provide the manufacturer or pharmacy benefit manager with:

(1) Written notice that the Department denied the request for public records; and

(2) A copy of the written notice that the Department provided to the requester pursuant to paragraph (a) and the date on which the Department sent the written notice to the requester.

5. If, after undertaking its initial review pursuant to subsection 3, the Department reasonably believes that public disclosure of the information would not constitute misappropriation of a trade secret for which a court may award relief pursuant to the federal Defend Trade Secrets Act of 2016, 18 U.S.C. § 1836, as amended, the Department will:

(a) Within the time prescribed by NRS 239.0107, provide the requester of the public records with written notice pursuant to paragraph (c) of subsection 1 of NRS 239.0107 that the Department intends to disclose the information, except that:

(1) The Department will not be able to disclose the information until 30 days have elapsed following the date on which such written notice was sent to the requester; and

(2) If the manufacturer or pharmacy benefit manager timely commences an action within the 30-day period as provided in subsection 6, the Department will not be able to disclose the information, unless the disclosure is permitted by that subsection.

(b) As soon as reasonably practicable after providing the written notice to the requester pursuant to paragraph (a), provide the manufacturer or pharmacy benefit manager with:

(1) Written notice that the Department intends to disclose the information; and

(2) A copy of the written notice that the Department provided to the requester pursuant to paragraph (a) and the date on which the Department sent the written notice to the requester.

6. If, within the 30-day period following the date on which the Department sent the written notice to the requester of public records pursuant to subsection 5, the manufacturer or pharmacy benefit manager:

(a) Does not commence an action in a court of competent jurisdiction to enjoin the Department from disclosing the information pursuant to the federal Defend Trade Secrets Act of 2016, 18 U.S.C. § 1836, as amended, the Department will disclose the information.

(b) Commences an action in a court of competent jurisdiction to enjoin the Department from disclosing the information pursuant to the federal Defend Trade Secrets Act of 2016, 18

U.S.C. § 1836, as amended, the Department will not disclose the information until final resolution of the action, including any appeals. After final resolution of the action, if the court:

(1) Enjoins the Department from disclosing the information as a trade secret, the Department will not disclose the information so long as the information retains its status as a trade secret.

(2) Does not enjoin the Department from disclosing the information as a trade secret, the Department will disclose the information as soon as reasonably practicable after final resolution of the action.

Sec. 4. *In the report compiled by the Department pursuant to section 4.3 of Senate Bill No. 539, chapter 592, Statutes of Nevada 2017, at page 4299 (NRS 439B.650), the Department will include:*

1. Only aggregated data that does not disclose the identity of any drug, manufacturer or pharmacy benefit manager; and

2. In addition to the information required by section 4.3 of Senate Bill No. 539, chapter 592, Statutes of Nevada 2017, at page 4299 (NRS 439B.650), a description of trends concerning the prices of prescription drugs that appear on the most current lists compiled by the Department pursuant to section 3.6 of Senate Bill No. 539, chapter 592, Statutes of Nevada 2017, at page 4297(NRS 439B.630), and an explanation of how those prices and trends may affect:

(a) The prevalence and severity of diabetes in this State; and

(b) The system of health care in this State.