

REFERENCE TITLE: HIV-related testing; consent; confidentiality; exceptions

State of Arizona
Senate
Fifty-first Legislature
Second Regular Session
2014

SB 1276

Introduced by
Senator Yee

AN ACT

AMENDING SECTIONS 36-661, 36-663 AND 36-664, ARIZONA REVISED STATUTES;
RELATING TO COMMUNICABLE DISEASE INFORMATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 36-661, Arizona Revised Statutes, is amended to
3 read:

4 36-661. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Acquired immune deficiency syndrome" has the same meaning as
7 defined by the centers for disease control of the United States public health
8 service.

9 2. "Capacity to consent" means a person's ability, determined without
10 regard to the person's age, to understand and appreciate the nature and
11 consequences of a proposed health care service, treatment or procedure and to
12 make an informed decision concerning that service, treatment or procedure.

13 3. "Child" means an unemancipated person under eighteen years of age.

14 4. "Communicable disease" means a contagious, epidemic or infectious
15 disease required to be reported to the local board of health or the
16 department pursuant to chapter 1 of this title and this chapter.

17 5. "Communicable disease related information" means information
18 regarding a communicable disease in the possession of a person who provides
19 health services or who obtains the information pursuant to the release of
20 communicable disease related information.

21 6. "Contact" means a spouse or sex partner of a protected person, a
22 person who has shared hypodermic needles or syringes with a protected person
23 or a person otherwise exposed to a protected person with a communicable
24 disease in a manner that poses an epidemiologically significant risk of
25 transmission of that disease.

26 7. "Department" means the department of health services.

27 8. "Director" means the director of the department of health services.

28 9. "FIRST RESPONDER" MEANS A PUBLIC SAFETY EMPLOYEE OR VOLUNTEER AS
29 DEFINED IN SECTION 13-1210.

30 ~~9.~~ 10. "Good samaritan" means a person who renders emergency care or
31 assistance in good faith and without compensation at the scene of any
32 accident, fire or other life-threatening emergency and who believes that a
33 significant exposure risk occurred while the person rendered care or
34 assistance.

35 ~~10.~~ 11. "Health care decision maker" has the same meaning prescribed
36 in section 12-2801.

37 ~~11.~~ 12. "Health care provider" means a physician, nurse or other
38 person involved in providing health services.

39 ~~12.~~ 13. "Health facility" means a health care institution as defined
40 in section 36-401, a blood bank, blood center, milk bank, sperm bank, organ
41 or tissue bank or clinical laboratory or a health care services organization
42 holding a certificate of authority pursuant to section 20-1054.

43 ~~13.~~ 14. "Health service" means public or private care, treatment,
44 clinical laboratory tests, counseling or educational service for adults or
45 children and acute, chronic, custodial, residential, outpatient, home or

1 other health care or activities related to the detection, reporting,
2 prevention and control of communicable or preventable diseases.

3 ~~14.~~ 15. "HIV" means the human immunodeficiency virus.

4 ~~15.~~ 16. "HIV infection" means infection with the human
5 immunodeficiency virus or a related virus identified as a probable causative
6 agent of acquired immune deficiency syndrome.

7 ~~16.~~ 17. "HIV-related illness" means an illness that may result from or
8 be associated with HIV infection.

9 ~~17.~~ 18. "HIV-related information" means information concerning whether
10 a person has had an HIV-related test or has HIV infection, HIV-related
11 illness or acquired immune deficiency syndrome and includes information that
12 identifies or reasonably permits identification of that person or the
13 person's contacts.

14 ~~18.~~ 19. "HIV-related test" means a laboratory test or series of tests
15 for the virus, components of the virus or antibodies to the virus thought to
16 indicate the presence of HIV infection.

17 ~~19.~~ 20. "Protected person" means a person who takes an HIV-related
18 test or who has been diagnosed as having HIV infection, acquired immune
19 deficiency syndrome, HIV-related illness or another communicable disease.

20 ~~20.~~ 21. "Significant exposure risk" means contact with another person
21 in a manner that, if the other person has a communicable disease, poses an
22 epidemiologically significant risk of transmission of that disease as
23 determined by the department.

24 Sec. 2. Section 36-663, Arizona Revised Statutes, is amended to read:

25 36-663. HIV-related testing; restrictions; exceptions

26 A. Except as otherwise specifically authorized or required by this
27 state or by federal law, before an HIV-related test is ordered by a health
28 care provider, the health care provider shall ensure that oral or written
29 informed consent information is provided to the subject of the test who has
30 capacity to consent or, if the subject lacks capacity to consent, ~~of~~ TO a
31 person authorized pursuant to law to consent to health care for that person.
32 For the purposes of this subsection, "informed consent information" means
33 information that explains HIV infection and the meaning of a positive test
34 result and that indicates that the patient may ask questions and decline
35 testing.

36 B. This section does not apply to the performance of an HIV-related
37 test:

38 1. By a health care provider or health facility in relation to the
39 procuring, processing, distributing or use of a human body or a human body
40 part, including organs, tissues, eyes, bones, arteries, blood, semen, milk or
41 other body fluids, for use in medical research or therapy or for
42 transplantation to other persons.

43 2. IF TESTING IS REQUESTED BY A HEALTH CARE PROVIDER OR FIRST
44 RESPONDER WHO HAS HAD A SIGNIFICANT EXPOSURE RISK. HIV-RELATED TESTING MAY
45 BE PERFORMED UNDER THIS PARAGRAPH ONLY ON RECEIPT OF A WRITTEN REQUEST FROM A

1 HEALTH CARE PROVIDER OR FIRST RESPONDER WHO CERTIFIES THAT THE HEALTH CARE
2 PROVIDER OR FIRST RESPONDER HAS HAD A SIGNIFICANT EXPOSURE RISK TO THE
3 SUBJECT'S BLOOD OR BODILY FLUID.

4 ~~2-~~ 3. For the purpose of research if the testing is performed in a
5 manner by which the identity of the test subject is not known and may not be
6 retrieved by the researcher.

7 ~~3-~~ 4. On a deceased person, if the test is conducted in order to
8 determine the cause of death or for epidemiologic or public health purposes.

9 ~~4-~~ 5. In the course of providing necessary emergency medical
10 treatment to a patient who lacks capacity to consent to HIV-related testing
11 and for whom no person authorized pursuant to law to consent to health care
12 for that person can be identified on a timely basis if the testing is
13 necessary for the diagnosis and treatment of the emergency condition. The
14 attending physician shall document the existence of an emergency medical
15 condition, the necessity of the HIV-related testing to diagnose and treat the
16 emergency condition and the patient's lack of capacity.

17 ~~5-~~ 6. On a patient who lacks capacity to consent and for whom no
18 person authorized pursuant to law to consent to health care for that person
19 can be identified on a timely basis if the HIV-related testing is directly
20 related to and necessary for the diagnosis and treatment of the person's
21 medical condition. HIV-related testing shall be performed under these
22 circumstances only on written certification by the attending physician and a
23 consulting physician that the HIV-related testing is directly related to and
24 necessary for the diagnosis and treatment of the patient's medical condition.

25 ~~6-~~ 7. That is performed on an anonymous basis at a public health
26 agency.

27 Sec. 3. Section 36-664, Arizona Revised Statutes, is amended to read:

28 ~~36-664.~~ Confidentiality: exceptions

29 A. A person who obtains communicable disease related information in
30 the course of providing a health service or obtains that information from a
31 health care provider pursuant to an authorization shall not disclose or be
32 compelled to disclose that information except to the following:

33 1. The protected person or, if the protected person lacks capacity to
34 consent, the protected person's health care decision maker.

35 2. A HEALTH CARE PROVIDER OR FIRST RESPONDER WHO HAS HAD A SIGNIFICANT
36 EXPOSURE RISK TO THE PROTECTED PERSON'S BLOOD OR BODILY FLUID.

37 ~~2-~~ 3. The department or a local health department for purposes of
38 notifying a good Samaritan pursuant to subsection E of this section.

39 ~~3-~~ 4. An agent or employee of a health facility or health care
40 provider to provide health services to the protected person or the protected
41 person's child or for billing or reimbursement for health services.

42 ~~4-~~ 5. A health facility or health care provider, in relation to the
43 procurement, processing, distributing or use of a human body or a human body
44 part, including organs, tissues, eyes, bones, arteries, blood, semen, milk or

1 other body fluids, for use in medical education, research or therapy or for
2 transplantation to another person.

3 ~~5-~~ 6. A health facility or health care provider, or an organization,
4 committee or individual designated by the health facility or health care
5 provider, that is engaged in the review of professional practices, including
6 the review of the quality, utilization or necessity of medical care, or an
7 accreditation or oversight review organization responsible for the review of
8 professional practices at a health facility or by a health care provider.

9 ~~6-~~ 7. A private entity that accredits the health facility or health
10 care provider and with whom the health facility or health care provider has
11 an agreement requiring the agency to protect the confidentiality of patient
12 information.

13 ~~7-~~ 8. A federal, state, county or local health officer if disclosure
14 is mandated by federal or state law.

15 ~~8-~~ 9. A federal, state or local government agency authorized by law
16 to receive the information. The agency is authorized to redisclose the
17 information only pursuant to this article or as otherwise permitted by law.

18 ~~9-~~ 10. An authorized employee or agent of a federal, state or local
19 government agency that supervises or monitors the health care provider or
20 health facility or administers the program under which the health service is
21 provided. An authorized employee or agent includes only an employee or agent
22 who, in the ordinary course of business of the government agency, has access
23 to records relating to the care or treatment of the protected person.

24 ~~10-~~ 11. A person, health care provider or health facility to which
25 disclosure is ordered by a court or administrative body pursuant to section
26 36-665.

27 ~~11-~~ 12. The industrial commission or parties to an industrial
28 commission of Arizona claim pursuant to section 23-908, subsection D and
29 section 23-1043.02.

30 ~~12-~~ 13. Insurance entities pursuant to section 20-448.01 and
31 third-party payors or the payors' contractors.

32 ~~13-~~ 14. Any person or entity as authorized by the patient or the
33 patient's health care decision maker.

34 ~~14-~~ 15. A person or entity as required by federal law.

35 ~~15-~~ 16. The legal representative of the entity holding the information
36 in order to secure legal advice.

37 ~~16-~~ 17. A person or entity for research only if the research is
38 conducted pursuant to applicable federal or state laws and regulations
39 governing research.

40 ~~17-~~ 18. A person or entity that provides services to the patient's
41 health care provider, as defined in section 12-2291, and with whom the health
42 care provider has a business associate agreement that requires the person or
43 entity to protect the confidentiality of patient information as required by
44 the health insurance portability and accountability act privacy standards,
45 Code of Federal Regulations part 164, subpart E.

1 B. At the request of the department of economic security and in
2 conjunction with the placement of children in foster care or for adoption or
3 court-ordered placement, a health care provider shall disclose communicable
4 disease information, including HIV-related information, to the department of
5 economic security.

6 C. A state, county or local health department or officer may disclose
7 communicable disease related information if the disclosure is any of the
8 following:

- 9 1. Specifically authorized or required by federal or state law.
- 10 2. Made pursuant to an authorization signed by the protected person or
11 the protected person's health care decision maker.
- 12 3. Made to a contact of the protected person. The disclosure shall be
13 made without identifying the protected person.
- 14 4. For the purposes of research as authorized by state and federal
15 law.

16 D. The director may authorize the release of information that
17 identifies the protected person to the national center for health statistics
18 of the United States public health service for the purposes of conducting a
19 search of the national death index.

20 E. The department or a local health department shall disclose
21 communicable disease related information to a good Samaritan who submits a
22 request to the department or the local health department. The request shall
23 document the occurrence of the accident, fire or other life-threatening
24 emergency and shall include information regarding the nature of the
25 significant exposure risk. The department shall adopt rules that prescribe
26 standards of significant exposure risk based on the best available medical
27 evidence. The department shall adopt rules that establish procedures for
28 processing requests from good Samaritans pursuant to this subsection. The
29 rules shall provide that the disclosure to the good Samaritan shall not
30 reveal the protected person's name and shall be accompanied by a written
31 statement that warns the good Samaritan that the confidentiality of the
32 information is protected by state law.

33 F. An authorization to release communicable disease related
34 information shall be signed by the protected person or, if the protected
35 person lacks capacity to consent, the protected person's health care decision
36 maker. An authorization shall be dated and shall specify to whom disclosure
37 is authorized, the purpose for disclosure and the time period during which
38 the release is effective. A general authorization for the release of medical
39 or other information, including communicable disease related information, is
40 not an authorization for the release of HIV-related information unless the
41 authorization specifically indicates its purpose as an authorization for the
42 release of confidential HIV-related information and complies with the
43 requirements of this section.

44 G. A person to whom communicable disease related information is
45 disclosed pursuant to this section shall not disclose the information to

1 another person except as authorized by this section. This subsection does
2 not apply to the protected person or a protected person's health care
3 decision maker.

4 H. This section does not prohibit the listing of communicable disease
5 related information, including acquired immune deficiency syndrome,
6 HIV-related illness or HIV infection, in a certificate of death, autopsy
7 report or other related document that is prepared pursuant to law to document
8 the cause of death or that is prepared to release a body to a funeral
9 director. This section does not modify a law or rule relating to access to
10 death certificates, autopsy reports or other related documents.

11 I. If a person in possession of HIV-related information reasonably
12 believes that an identifiable third party is at risk of HIV infection, that
13 person may report that risk to the department. The report shall be in
14 writing and include the name and address of the identifiable third party and
15 the name and address of the person making the report. The department shall
16 contact the person at risk pursuant to rules adopted by the department. The
17 department employee making the initial contact shall have expertise in
18 counseling persons who have been exposed to or tested positive for HIV or
19 acquired immune deficiency syndrome.

20 J. Except as otherwise provided pursuant to this article or subject to
21 an order or search warrant issued pursuant to section 36-665, a person who
22 receives HIV-related information in the course of providing a health service
23 or pursuant to a release of HIV-related information shall not disclose that
24 information to another person or legal entity or be compelled by subpoena,
25 order, search warrant or other judicial process to disclose that information
26 to another person or legal entity.

27 K. This section and sections 36-663, 36-666, 36-667 and 36-668 do not
28 apply to persons or entities subject to regulation under title 20.