

State of Arizona  
House of Representatives  
Fiftieth Legislature  
First Regular Session  
2011

# HOUSE BILL 2620

AN ACT

AMENDING SECTIONS 12-2291, 12-2294, 12-2296, 13-2316, 36-135, 36-470, 36-509 AND 36-664, ARIZONA REVISED STATUTES; AMENDING TITLE 36, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 38; RELATING TO MEDICAL RECORDS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 12-2291, Arizona Revised Statutes, is amended to  
3 read:

4 12-2291. Definitions

5 In this article, unless the context otherwise requires:

6 1. "CLINICAL LABORATORY" HAS THE SAME MEANING PRESCRIBED IN SECTION  
7 36-451.

8 ~~1.~~ 2. "Contractor" means an agency or service that duplicates medical  
9 records on behalf of health care providers.

10 ~~2.~~ 3. "Department" means the department of health services.

11 ~~3.~~ 4. "Health care decision maker" means an individual who is  
12 authorized to make health care treatment decisions for the patient, including  
13 a parent of a minor or an individual who is authorized pursuant to section  
14 8-514.05, title 14, chapter 5, article 2 or 3 or section 36-3221, 36-3231 or  
15 36-3281.

16 ~~4.~~ 5. "Health care provider" means:

17 (a) A person who is licensed pursuant to title 32 and who maintains  
18 medical records.

19 (b) A health care institution as defined in section 36-401.

20 (c) An ambulance service as defined in section 36-2201.

21 (d) A health care services organization licensed pursuant to title 20,  
22 chapter 4, article 9.

23 ~~5.~~ 6. "Medical records" means all communications related to a  
24 patient's physical or mental health or condition that are recorded in any  
25 form or medium and that are maintained for purposes of patient diagnosis or  
26 treatment, including medical records that are prepared by a health care  
27 provider or by other providers. Medical records do not include materials  
28 that are prepared in connection with utilization review, peer review or  
29 quality assurance activities, including records that a health care provider  
30 prepares pursuant to section 36-441, 36-445, 36-2402 or 36-2917. Medical  
31 records do not include recorded telephone and radio calls to and from a  
32 publicly operated emergency dispatch office relating to requests for  
33 emergency services or reports of suspected criminal activity, but ~~shall~~  
34 include communications that are recorded in any form or medium between  
35 emergency medical personnel and medical personnel concerning the diagnosis or  
36 treatment of a person.

37 ~~6.~~ 7. "Payment records" means all communications related to payment  
38 for a patient's health care that contain individually identifiable  
39 information.

40 ~~7.~~ 8. "Source data" means information that is summarized, interpreted  
41 or reported in the medical record, including x-rays and other diagnostic  
42 images.

1           Sec. 2. Section 12-2294, Arizona Revised Statutes, is amended to read:  
2           12-2294. Release of medical records and payment records to  
3   third parties

4           A. A health care provider shall disclose medical records or payment  
5 records, or the information contained in medical records or payment records,  
6 without the patient's written authorization as otherwise required by law or  
7 when ordered by a court or tribunal of competent jurisdiction.

8           B. A health care provider may disclose medical records or payment  
9 records, or the information contained in medical records or payment records,  
10 pursuant to written authorization signed by the patient or the patient's  
11 health care decision maker.

12           C. A health care provider may disclose medical records or payment  
13 records or the information contained in medical records or payment records  
14 **AND A CLINICAL LABORATORY MAY DISCLOSE CLINICAL LABORATORY RESULTS** without  
15 the written authorization of the patient or the patient's health care  
16 decision maker as otherwise authorized by state or federal law, including the  
17 health insurance portability and accountability act privacy standards  
18 (45 Code of Federal Regulations part 160 and part 164, subpart E), or as  
19 follows:

20           1. To health care providers who are currently providing health care to  
21 the patient for the purpose of diagnosis or treatment of the patient.

22           2. To health care providers who have previously provided treatment to  
23 the patient, to the extent that the records pertain to the provided  
24 treatment.

25           3. To ambulance attendants as defined in section 36-2201 for the  
26 purpose of providing care to or transferring the patient whose records are  
27 requested.

28           4. To a private agency that accredits health care providers and with  
29 whom the health care provider has an agreement requiring the agency to  
30 protect the confidentiality of patient information.

31           5. To a health profession regulatory board as defined in section  
32 32-3201.

33           6. To health care providers for the purpose of conducting utilization  
34 review, peer review and quality assurance pursuant to section 36-441, 36-445,  
35 36-2402 or 36-2917.

36           7. To a person or entity that provides ~~billing, claims management,~~  
37 ~~medical data processing, utilization review or other administrative~~ services  
38 to the patient's health care providers **OR CLINICAL LABORATORIES** and with whom  
39 the health care provider has an agreement requiring the person or entity to  
40 protect the confidentiality of patient information **AND AS REQUIRED BY THE**  
41 **HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT PRIVACY STANDARDS, 45**  
42 **CODE OF FEDERAL REGULATIONS PART 164, SUBPART E.**

43           8. To the legal representative of a health care provider in possession  
44 of the medical records or payment records for the purpose of securing legal  
45 advice.

1           9. To the patient's third party payor or the payor's contractor.

2           10. To the industrial commission of Arizona or parties to an industrial  
3 commission claim pursuant to title 23, chapter 6.

4           D. A health care provider may disclose a deceased patient's medical  
5 records or payment records or the information contained in medical records or  
6 payment records to the patient's health care decision maker at the time of  
7 the patient's death. A health care provider also may disclose a deceased  
8 patient's medical records or payment records or the information contained in  
9 medical records or payment records to the personal representative or  
10 administrator of the estate of a deceased patient, or if a personal  
11 representative or administrator has not been appointed, to the following  
12 persons in the following order of priority, unless the deceased patient  
13 during the deceased patient's lifetime or a person in a higher order of  
14 priority has notified the health care provider in writing that the deceased  
15 patient opposed the release of the medical records or payment records:

16           1. The deceased patient's spouse, unless the patient and the patient's  
17 spouse were legally separated at the time of the patient's death.

18           2. The acting trustee of a trust created by the deceased patient  
19 either alone or with the deceased patient's spouse if the trust was a  
20 revocable inter vivos trust during the deceased patient's lifetime and the  
21 deceased patient was a beneficiary of the trust during the deceased patient's  
22 lifetime.

23           3. An adult child of the deceased patient.

24           4. A parent of the deceased patient.

25           5. An adult brother or sister of the deceased patient.

26           6. A guardian or conservator of the deceased patient at the time of  
27 the patient's death.

28           E. A person who receives medical records or payment records pursuant  
29 to this section shall not disclose those records without the written  
30 authorization of the patient or the patient's health care decision maker,  
31 unless otherwise authorized by law.

32           F. If a health care provider releases a patient's medical records or  
33 payment records to a contractor for the purpose of duplicating or disclosing  
34 the records on behalf of the health care provider, the contractor shall not  
35 disclose any part or all of a patient's medical records or payment records in  
36 its custody except as provided in this article. After duplicating or  
37 disclosing a patient's medical records or payment records on behalf of a  
38 health care provider, a contractor must return the records to the health care  
39 provider who released the medical records or payment records to the  
40 contractor.

41           Sec. 3. Section 12-2296, Arizona Revised Statutes, is amended to read:

42           12-2296. Immunity

43           A health care provider, ~~or~~ contractor OR CLINICAL LABORATORY that acts  
44 in good faith under this article is not liable for damages in any civil  
45 action for the disclosure of medical records, ~~or~~ payment records OR CLINICAL

1 LABORATORY RESULTS or information contained in medical records, ~~or~~ payment  
2 records OR CLINICAL LABORATORY RESULTS that is made pursuant to this article  
3 or as otherwise provided by law. The health care provider, ~~or~~ contractor OR  
4 CLINICAL LABORATORY is presumed to have acted in good faith. The presumption  
5 may be rebutted by clear and convincing evidence.

6 Sec. 4. Section 13-2316, Arizona Revised Statutes, is amended to read:  
7 13-2316. Computer tampering; venue; forfeiture; classification

8 A. A person who acts without authority or who exceeds authorization of  
9 use commits computer tampering by:

10 1. Accessing, altering, damaging or destroying any computer, computer  
11 system or network, or any part of a computer, computer system or network,  
12 with the intent to devise or execute any scheme or artifice to defraud or  
13 deceive, or to control property or services by means of false or fraudulent  
14 pretenses, representations or promises.

15 2. Knowingly altering, damaging, deleting or destroying computer  
16 programs or data.

17 3. Knowingly introducing a computer contaminant into any computer,  
18 computer system or network.

19 4. Recklessly disrupting or causing the disruption of computer,  
20 computer system or network services or denying or causing the denial of  
21 computer or network services to any authorized user of a computer, computer  
22 system or network.

23 5. Recklessly using a computer, computer system or network to engage  
24 in a scheme or course of conduct that is directed at another person and that  
25 seriously alarms, torments, threatens or terrorizes the person. For the  
26 purposes of this paragraph, the conduct must both:

27 (a) Cause a reasonable person to suffer substantial emotional  
28 distress.

29 (b) Serve no legitimate purpose.

30 6. Preventing a computer user from exiting a site, computer system or  
31 network-connected location in order to compel the user's computer to continue  
32 communicating with, connecting to or displaying the content of the service,  
33 site or system.

34 7. Knowingly obtaining any information that is required by law to be  
35 kept confidential or any records that are not public records by accessing any  
36 computer, computer system or network that is operated by this state, a  
37 political subdivision of this state, ~~or a medical institution~~ A HEALTH CARE  
38 PROVIDER AS DEFINED IN SECTION 12-2291, A CLINICAL LABORATORY AS DEFINED IN  
39 SECTION 36-451 OR A PERSON OR ENTITY THAT PROVIDES SERVICES ON BEHALF OF A  
40 HEALTH CARE PROVIDER OR A CLINICAL LABORATORY.

41 8. Knowingly accessing any computer, computer system or network or any  
42 computer software, program or data that is contained in a computer, computer  
43 system or network.

1 B. In addition to section 13-109, a prosecution for a violation of  
2 this section may be tried in any of the following counties:

3 1. The county in which the victimized computer, computer system or  
4 network is located.

5 2. The county in which the computer, computer system or network that  
6 was used in the commission of the offense is located or in which any books,  
7 records, documents, property, financial instruments, computer software, data,  
8 access devices or instruments of the offense were used.

9 3. The county in which any authorized user was denied service or in  
10 which an authorized user's service was interrupted.

11 4. The county in which critical infrastructure resources were tampered  
12 with or affected.

13 C. On conviction of a violation of this section, the court shall order  
14 that any computer system or instrument of communication that was owned or  
15 used exclusively by the defendant and that was used in the commission of the  
16 offense be forfeited and sold, destroyed or otherwise properly disposed.

17 D. A violation of subsection A, paragraph 6 of this section  
18 constitutes an unlawful practice under section 44-1522 and is in addition to  
19 all other causes of action, remedies and penalties that are available to this  
20 state. The attorney general may investigate and take appropriate action  
21 pursuant to title 44, chapter 10, article 7.

22 E. Computer tampering pursuant to subsection A, paragraph 1 of this  
23 section is a class 3 felony. Computer tampering pursuant to subsection A,  
24 paragraph 2, 3 or 4 of this section is a class 4 felony, unless the computer,  
25 computer system or network tampered with is a critical infrastructure  
26 resource, in which case it is a class 2 felony. Computer tampering pursuant  
27 to subsection A, paragraph 5 of this section is a class 5 felony. Computer  
28 tampering pursuant to subsection A, paragraph 7 or 8 of this section is a  
29 class 6 felony.

30 Sec. 5. Section 36-135, Arizona Revised Statutes, is amended to read:

31 36-135. Child immunization reporting system; requirements;  
32 access; confidentiality; immunity; violation;  
33 classification; definitions

34 A. The child immunization reporting system is established in the  
35 department to collect, store, analyze, release and report immunization data.

36 B. ~~Beginning on January 1, 1998,~~ A health care professional who is  
37 licensed under title 32 to provide immunizations, except as provided in  
38 subsection I **OF THIS SECTION**, shall report the following information:

39 1. The health care professional's name, business address and business  
40 telephone number.

41 2. The child's name, address, social security number if known and not  
42 confidential, gender, date of birth and mother's maiden name.

43 3. The type of vaccine administered and the date it is administered.

1 C. The health care professional may submit this information to the  
2 department on a weekly or monthly basis by telephone, facsimile, mail,  
3 computer or any other method prescribed by the department.

4 D. Except as provided in subsection I OF THIS SECTION, the department  
5 shall release identifying information only to the ~~person's health care~~  
6 ~~professional~~ PERSON, THE PERSON'S HEALTH CARE DECISION MAKER, parent or  
7 guardian, ~~health care services organization~~, A HEALTH CARE PROVIDER, AN  
8 ENTITY REGULATED UNDER TITLE 20, the Arizona health care cost containment  
9 system and its providers as defined in chapter 29 of this title, ~~or~~ a school  
10 official who is authorized by law to receive and record immunization records  
11 OR A PERSON OR ENTITY THAT PROVIDES SERVICES TO A HEALTH CARE PROVIDER AND  
12 WITH WHOM THE HEALTH CARE PROVIDER HAS A BUSINESS ASSOCIATE AGREEMENT THAT  
13 REQUIRES THE PERSON OR ENTITY TO PROTECT THE CONFIDENTIALITY OF THE  
14 INFORMATION, AS REQUIRED BY THE HEALTH INSURANCE PORTABILITY AND  
15 ACCOUNTABILITY ACT PRIVACY STANDARDS, 45 CODE OF FEDERAL REGULATIONS  
16 PART 164, SUBPART E. THE DEPARTMENT MAY ALSO RELEASE IDENTIFYING INFORMATION  
17 TO AN ENTITY DESIGNATED BY THE PERSON OR THE PERSON'S HEALTH CARE DECISION  
18 MAKER, PARENT OR GUARDIAN. The department, by rule, may release immunization  
19 information to persons for a specified purpose. The department may release  
20 nonidentifying summary statistics.

21 E. Identifying information in the system is confidential. A person  
22 who is authorized to receive confidential information under subsection D OF  
23 THIS SECTION OR PURSUANT TO RULES ADOPTED BY THE DEPARTMENT shall ~~not~~  
24 disclose this information ~~to any other person~~ ONLY AS PERMITTED BY THIS  
25 SECTION OR RULES ADOPTED BY THE DEPARTMENT.

26 F. A health care ~~professional who~~ PROVIDER THAT provides information  
27 in good faith pursuant to this section is not subject to civil or criminal  
28 liability.

29 G. A health care ~~professional who~~ PROVIDER THAT does not comply with  
30 the requirements of this section violates a law applicable to the practice of  
31 medicine and commits an act of unprofessional conduct OR A VIOLATION OF  
32 CHAPTER 4 OF THIS TITLE.

33 H. Any agency or person receiving confidential information from the  
34 system who subsequently discloses that information to any other person OTHER  
35 THAN AS PERMITTED BY THIS SECTION is guilty of a class 3 misdemeanor.

36 I. At the request of the person, or if the person is a child the  
37 child's parent or guardian, the department of health services shall provide a  
38 form to be signed that allows confidential immunization information to be  
39 withheld from all persons including persons authorized to receive  
40 confidential information pursuant to subsection D OF THIS SECTION. If the  
41 request is delivered to the health care professional ~~prior to~~ BEFORE the  
42 immunization, the health care professional shall not forward the information  
43 required under subsection B OF THIS SECTION to the department.

44 J. FOR THE PURPOSES OF THIS SECTION, "HEALTH CARE DECISION MAKER" AND  
45 "HEALTH CARE PROVIDER" HAVE THE SAME MEANINGS PRESCRIBED IN SECTION 12-2291.





1           ~~G~~ H. The laboratory shall report test results ordered pursuant to  
2 subsection ~~F~~ G OF THIS SECTION to the person who authorized the test and to  
3 the person who requested it.

4           Sec. 7. Section 36-509, Arizona Revised Statutes, is amended to read:  
5           36-509. Confidential records; immunity

6           A. A health care entity must keep records and information contained in  
7 records confidential and not as public records, except as provided in this  
8 section. Records and information contained in records may only be disclosed  
9 to:

10           1. Physicians and providers of health, mental health or social and  
11 welfare services involved in caring for, treating or rehabilitating the  
12 patient.

13           2. Individuals to whom the patient or the patient's health care  
14 decision maker has given authorization to have information disclosed.

15           3. Persons authorized by a court order.

16           4. Persons doing research only if the activity is conducted pursuant  
17 to applicable federal or state laws and regulations governing research.

18           5. The state department of corrections in cases in which prisoners  
19 confined to the state prison are patients in the state hospital on authorized  
20 transfers either by voluntary admission or by order of the court.

21           6. Governmental or law enforcement agencies if necessary to:

22           (a) Secure the return of a patient who is on unauthorized absence from  
23 any agency where the patient was undergoing evaluation and treatment.

24           (b) Report a crime on the premises.

25           (c) Avert a serious and imminent threat to an individual or the  
26 public.

27           7. Persons, including family members, actively participating in the  
28 patient's care, treatment or supervision. A health care provider may only  
29 release information relating to the patient's diagnosis, prognosis, need for  
30 hospitalization, anticipated length of stay, discharge plan, medication,  
31 medication side effects and short-term and long-term treatment goals. A  
32 health care provider may make this release only after the treating  
33 professional or that person's designee interviews the patient or the  
34 patient's health care decision maker and the patient or the patient's health  
35 care decision maker does not object, unless federal or state law permits the  
36 disclosure. If the patient does not have the opportunity to object to the  
37 disclosure because of incapacity or an emergency circumstance and the  
38 patient's health care decision maker is not available to object to the  
39 release, the health care provider in the exercise of professional judgment  
40 may determine if the disclosure is in the best interests of the patient and,  
41 if so, may release the information authorized pursuant to this paragraph. A  
42 decision to release or withhold information is subject to review pursuant to  
43 section 36-517.01. The health care provider must record the name of any  
44 person to whom any information is given under this paragraph.

- 1           8. A state agency that licenses health professionals pursuant to title  
2 32, chapter 13, 15, 17, 19.1 or 33 and that requires these records in the  
3 course of investigating complaints of professional negligence, incompetence  
4 or lack of clinical judgment.
- 5           9. A state or federal agency that licenses health care providers.
- 6           10. A governmental agency or a competent professional, as defined in  
7 section 36-3701, in order to comply with chapter 37 of this title.
- 8           11. Human rights committees established pursuant to title 41, chapter  
9 35. Any information released pursuant to this paragraph shall comply with  
10 the requirements of section 41-3804 and applicable federal law and shall be  
11 released without personally identifiable information unless the personally  
12 identifiable information is required for the official purposes of the human  
13 rights committee. Case information received by a human rights committee  
14 shall be maintained as confidential. For the purposes of this paragraph,  
15 "personally identifiable information" includes a person's name, address, date  
16 of birth, social security number, tribal enrollment number, telephone or  
17 telefacsimile number, driver license number, places of employment, school  
18 identification number and military identification number or any other  
19 distinguishing characteristic that tends to identify a particular person.
- 20           12. A patient or the patient's health care decision maker pursuant to  
21 section 36-507.
- 22           13. The department of public safety by the court to comply with the  
23 requirements of section 36-540, subsection N.
- 24           14. A third party payor or the payor's contractor ~~to obtain~~  
25 ~~reimbursement for health care, mental health care or behavioral health care~~  
26 ~~provided to the patient~~ AS PERMITTED BY THE HEALTH INSURANCE PORTABILITY AND  
27 ACCOUNTABILITY ACT PRIVACY STANDARDS, 45 CODE OF FEDERAL REGULATIONS PART 160  
28 AND PART 164, SUBPART E.
- 29           15. A private entity that accredits the health care provider and with  
30 whom the health care provider has an agreement requiring the agency to  
31 protect the confidentiality of patient information.
- 32           16. The legal representative of a health care entity in possession of  
33 the record for the purpose of securing legal advice.
- 34           17. A person or entity as otherwise required by state or federal law.
- 35           18. A person or entity as permitted by the federal regulations on  
36 alcohol and drug abuse treatment (42 Code of Federal Regulations part 2).
- 37           19. A person or entity to conduct utilization review, peer review and  
38 quality assurance pursuant to section 36-441, 36-445, 36-2402 or 36-2917.
- 39           20. A person maintaining health statistics for public health purposes  
40 as authorized by law.
- 41           21. A grand jury as directed by subpoena.
- 42           22. A PERSON OR ENTITY THAT PROVIDES SERVICES TO THE PATIENT'S HEALTH  
43 CARE PROVIDER, AS DEFINED IN SECTION 12-2291, AND WITH WHOM THE HEALTH CARE  
44 PROVIDER HAS A BUSINESS ASSOCIATE AGREEMENT THAT REQUIRES THE PERSON OR  
45 ENTITY TO PROTECT THE CONFIDENTIALITY OF PATIENT INFORMATION AS REQUIRED BY

1 THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT PRIVACY STANDARDS, 45  
2 CODE OF FEDERAL REGULATIONS PART 164, SUBPART E.

3 B. Information and records obtained in the course of evaluation,  
4 examination or treatment and submitted in any court proceeding pursuant to  
5 this chapter or title 14, chapter 5 are confidential and are not public  
6 records unless the hearing requirements of this chapter or title 14, chapter  
7 5 require a different procedure. Information and records that are obtained  
8 pursuant to this section and submitted in a court proceeding pursuant to  
9 title 14, chapter 5 and that are not clearly identified by the parties as  
10 confidential and segregated from nonconfidential information and records are  
11 considered public records.

12 C. Notwithstanding subsections A and B of this section, the legal  
13 representative of a patient who is the subject of a proceeding conducted  
14 pursuant to this chapter and title 14, chapter 5 has access to the patient's  
15 information and records in the possession of a health care entity or filed  
16 with the court.

17 D. A HEALTH CARE ENTITY THAT ACTS IN GOOD FAITH UNDER THIS ARTICLE IS  
18 NOT LIABLE FOR DAMAGES IN ANY CIVIL ACTION FOR THE DISCLOSURE OF RECORDS OR  
19 PAYMENT RECORDS THAT IS MADE PURSUANT TO THIS ARTICLE OR AS OTHERWISE  
20 PROVIDED BY LAW. THE HEALTH CARE ENTITY IS PRESUMED TO HAVE ACTED IN GOOD  
21 FAITH. THIS PRESUMPTION MAY BE REBUTTED BY CLEAR AND CONVINCING EVIDENCE.

22 Sec. 8. Section 36-664, Arizona Revised Statutes, is amended to read:  
23 36-664. Confidentiality; exceptions

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

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

30 2. The department or a local health department for purposes of  
31 notifying a good Samaritan pursuant to subsection E of this section.

32 3. An agent or employee of a health facility or health care provider  
33 to provide health services to the protected person or the protected person's  
34 child or for billing or reimbursement for health services.

35 4. A health facility or health care provider, in relation to the  
36 procurement, processing, distributing or use of a human body or a human body  
37 part, including organs, tissues, eyes, bones, arteries, blood, semen, milk or  
38 other body fluids, for use in medical education, research or therapy or for  
39 transplantation to another person.

40 5. A health facility or health care provider, or an organization,  
41 committee or individual designated by the health facility or health care  
42 provider, that is engaged in the review of professional practices, including  
43 the review of the quality, utilization or necessity of medical care, or an  
44 accreditation or oversight review organization responsible for the review of  
45 professional practices at a health facility or by a health care provider.

1           6. A private entity that accredits the health facility or health care  
2 provider and with whom the health facility or health care provider has an  
3 agreement requiring the agency to protect the confidentiality of patient  
4 information.

5           7. A federal, state, county or local health officer if disclosure is  
6 mandated by federal or state law.

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

10          9. An authorized employee or agent of a federal, state or local  
11 government agency that supervises or monitors the health care provider or  
12 health facility or administers the program under which the health service is  
13 provided. An authorized employee or agent includes only an employee or agent  
14 who, in the ordinary course of business of the government agency, has access  
15 to records relating to the care or treatment of the protected person.

16          10. A person, health care provider or health facility to which  
17 disclosure is ordered by a court or administrative body pursuant to section  
18 36-665.

19          11. The industrial commission or parties to an industrial commission **OF**  
20 **ARIZONA** claim pursuant to section 23-908, subsection D and section  
21 23-1043.02.

22          12. Insurance entities pursuant to section 20-448.01 and third party  
23 payors or the payors' contractors.

24          13. Any person or entity as authorized by the patient or the patient's  
25 health care decision maker.

26          14. A person or entity as required by federal law.

27          15. The legal representative of the entity holding the information in  
28 order to secure legal advice.

29          16. A person or entity for research only if the research is conducted  
30 pursuant to applicable federal or state laws and regulations governing  
31 research.

32          17. **A PERSON OR ENTITY THAT PROVIDES SERVICES TO THE PATIENT'S HEALTH**  
33 **CARE PROVIDER, AS DEFINED IN SECTION 12-2291, AND WITH WHOM THE HEALTH CARE**  
34 **PROVIDER HAS A BUSINESS ASSOCIATE AGREEMENT THAT REQUIRES THE PERSON OR**  
35 **ENTITY TO PROTECT THE CONFIDENTIALITY OF PATIENT INFORMATION AS REQUIRED BY**  
36 **THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT PRIVACY STANDARDS,**  
37 **45 CODE OF FEDERAL REGULATIONS PART 164, SUBPART E.**

38          B. At the request of the department of economic security **AND** in  
39 conjunction with the placement of children in foster care or for adoption or  
40 court-ordered placement, a health care provider shall disclose communicable  
41 disease information, including HIV-related information, to the department of  
42 economic security.

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

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

8           D. The director may authorize the release of information that  
9 identifies the protected person to the national center for health statistics  
10 of the United States public health service for the purposes of conducting a  
11 search of the national death index.

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

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

36           G. A person to whom communicable disease related information is  
37 disclosed pursuant to this section shall not disclose the information to  
38 another person except as authorized by this section. This subsection does  
39 not apply to the protected person or a protected person's health care  
40 decision maker.

41           ~~H. If a disclosure of communicable disease related information is made~~  
42 ~~pursuant to an authorization under subsection F of this section, the~~  
43 ~~disclosure shall be accompanied by a statement in writing that warns that the~~  
44 ~~information is from confidential records protected by state law and that~~  
45 ~~prohibits further disclosure of the information without the specific written~~

1 ~~authorization of the person to whom it pertains or as otherwise permitted by~~  
2 ~~law.~~

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

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

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

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

28 Sec. 9. Title 36, Arizona Revised Statutes, is amended by adding  
29 chapter 38, to read:

30 CHAPTER 38  
31 HEALTH INFORMATION ORGANIZATIONS  
32 ARTICLE 1. GENERAL PROVISIONS

33 36-3801. Definitions

34 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

35 1. "BREACH" HAS THE SAME MEANING PRESCRIBED IN 45 CODE OF FEDERAL  
36 REGULATIONS, PART 164, SUBPART D.

37 2. "CLINICAL LABORATORY" HAS THE SAME MEANING PRESCRIBED IN SECTION  
38 36-451.

39 3. "HEALTH CARE DECISION MAKER" HAS THE SAME MEANING PRESCRIBED IN  
40 SECTION 12-2291.

41 4. "HEALTH CARE PROVIDER" HAS THE SAME MEANING PRESCRIBED IN SECTION  
42 12-2291.

43 5. "HEALTH INFORMATION ORGANIZATION" MEANS AN ORGANIZATION THAT  
44 OVERSEES AND GOVERNS THE EXCHANGE OF INDIVIDUALLY IDENTIFIABLE HEALTH  
45 INFORMATION AMONG ORGANIZATIONS ACCORDING TO NATIONALLY RECOGNIZED STANDARDS.

1 HEALTH INFORMATION ORGANIZATION DOES NOT INCLUDE A HEALTH CARE PROVIDER OR AN  
2 ELECTRONIC HEALTH RECORD MAINTAINED BY OR ON BEHALF OF A HEALTH CARE PROVIDER  
3 AND DOES NOT INCLUDE ENTITIES SUBJECT TO TITLE 20 OR THAT ARE HEALTH PLANS AS  
4 DEFINED IN 45 CODE OF FEDERAL REGULATIONS SECTION 160.103.

5 6. "INDIVIDUAL" MEANS THE PERSON WHO IS THE SUBJECT OF THE  
6 INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION.

7 7. "INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION" HAS THE SAME MEANING  
8 PRESCRIBED IN THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT PRIVACY  
9 STANDARDS, 45 CODE OF FEDERAL REGULATIONS PART 160 AND PART 164, SUBPART E.

10 8. "MEDICAL RECORDS" HAS THE SAME MEANING PRESCRIBED IN SECTION  
11 12-2291.

12 9. "OPT OUT" MEANS AN INDIVIDUAL'S WRITTEN DECISION THAT THE  
13 INDIVIDUAL'S INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION CANNOT BE SHARED  
14 THROUGH A HEALTH INFORMATION ORGANIZATION.

15 10. "PERSON" HAS THE SAME MEANING PRESCRIBED IN SECTION 1-215.

16 11. "TREATMENT" HAS THE SAME MEANING PRESCRIBED IN THE HEALTH INSURANCE  
17 PORTABILITY AND ACCOUNTABILITY ACT PRIVACY STANDARDS, 45 CODE OF FEDERAL  
18 REGULATIONS PART 160 AND PART 164, SUBPART E.

19 12. "WRITTEN" MEANS IN HANDWRITING OR THROUGH AN ELECTRONIC TRANSACTION  
20 THAT MEETS THE REQUIREMENTS OF TITLE 44, CHAPTER 26.

21 36-3802. Individual rights

22 A. A HEALTH INFORMATION ORGANIZATION MUST PROVIDE THE FOLLOWING RIGHTS  
23 TO INDIVIDUALS:

24 1. TO OPT OUT OF PARTICIPATING IN THE HEALTH INFORMATION ORGANIZATION  
25 PURSUANT TO SECTION 36-3803.

26 2. TO REQUEST A COPY OF THE INDIVIDUAL'S INDIVIDUALLY IDENTIFIABLE  
27 HEALTH INFORMATION THAT IS AVAILABLE THROUGH THE HEALTH INFORMATION  
28 ORGANIZATION. THE HEALTH INFORMATION ORGANIZATION MAY PROVIDE THIS RIGHT  
29 DIRECTLY OR MAY REQUIRE HEALTH CARE PROVIDERS PARTICIPATING IN THE HEALTH  
30 INFORMATION ORGANIZATION TO PROVIDE ACCESS TO INDIVIDUALS. THE COPY MAY BE  
31 PROVIDED ELECTRONICALLY, IF THE INDIVIDUAL REQUESTING THE COPY CONSENTS TO  
32 ELECTRONIC DELIVERY OF THE INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION, AND  
33 MUST BE PROVIDED TO THE INDIVIDUAL WITHIN THIRTY DAYS AFTER THE INDIVIDUAL'S  
34 REQUEST. CHARGES FOR COPIES ARE GOVERNED BY SECTION 12-2295.

35 3. TO REQUEST AMENDMENT OF INCORRECT INDIVIDUALLY IDENTIFIABLE HEALTH  
36 INFORMATION AVAILABLE THROUGH THE HEALTH INFORMATION ORGANIZATION.

37 4. TO REQUEST A LIST OF THE PERSONS WHO HAVE ACCESSED THE INDIVIDUAL'S  
38 INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION THROUGH THE HEALTH INFORMATION  
39 ORGANIZATION FOR A PERIOD OF AT LEAST THREE YEARS BEFORE THE INDIVIDUAL'S  
40 REQUEST. THIS LIST MUST BE PROVIDED TO THE INDIVIDUAL WITHIN THIRTY DAYS  
41 AFTER THE INDIVIDUAL'S REQUEST.

42 5. TO BE NOTIFIED, PURSUANT TO SECTION 44-7501 AND 45 CODE OF FEDERAL  
43 REGULATIONS PART 164, SUBPART D, OF A BREACH AT THE HEALTH INFORMATION  
44 ORGANIZATION THAT AFFECTS THE INDIVIDUAL'S INDIVIDUALLY IDENTIFIABLE HEALTH  
45 INFORMATION.





1 E. A HEALTH CARE PROVIDER PARTICIPATING IN A HEALTH INFORMATION  
2 ORGANIZATION MUST PROVIDE THE HEALTH INFORMATION ORGANIZATION'S NOTICE OF  
3 HEALTH INFORMATION PRACTICES IN AT LEAST TWELVE-POINT TYPE TO THE PROVIDER'S  
4 PATIENTS BEFORE OR AT THE PROVIDER'S FIRST ENCOUNTER WITH A PATIENT,  
5 BEGINNING ON THE FIRST DAY OF THE PROVIDER'S PARTICIPATION IN THE HEALTH  
6 INFORMATION ORGANIZATION. A HEALTH CARE PROVIDER MUST DOCUMENT THAT IT HAS  
7 PROVIDED THE HEALTH INFORMATION ORGANIZATION'S NOTICE OF HEALTH INFORMATION  
8 PRACTICES TO A PATIENT AND THAT THE PATIENT HAS RECEIVED AND READ AND  
9 UNDERSTANDS THE NOTICE. DOCUMENTATION MUST BE IN THE FORM OF A SIGNATURE BY  
10 THE PATIENT INDICATING THE PATIENT HAS RECEIVED AND READ AND UNDERSTANDS THE  
11 NOTICE OF HEALTH INFORMATION PRACTICES AND WHETHER THE PATIENT CHOOSES TO OPT  
12 OUT. AS TECHNOLOGY DEVELOPS AND ELECTRONIC METHODS OF RECEIVING  
13 DOCUMENTATION FROM THE PATIENT EXIST, THE HEALTH INFORMATION ORGANIZATION IS  
14 PERMITTED TO UTILIZE SUCH ELECTRONIC DOCUMENTATION.

15 F. IF THE PATIENT CHOOSES TO OPT OUT OF THE HEALTH INFORMATION  
16 ORGANIZATION, THE PATIENT'S PERSONAL HEALTH INFORMATION SHALL NOT BE  
17 ACCESSIBLE THROUGH THE HEALTH INFORMATION ORGANIZATION NO LATER THAN THIRTY  
18 DAYS AFTER THE PATIENT OPTS OUT.

19 G. IF THERE IS A MATERIAL CHANGE TO A HEALTH INFORMATION  
20 ORGANIZATION'S NOTICE OF HEALTH INFORMATION PRACTICES, A HEALTH CARE PROVIDER  
21 MUST REDISTRIBUTE THE NOTICE OF HEALTH INFORMATION PRACTICES AT THE NEXT  
22 POINT OF CONTACT WITH THE PATIENT OR IN THE SAME MANNER AND WITHIN THE SAME  
23 TIME PERIOD AS IS REQUIRED BY 45 CODE OF FEDERAL REGULATIONS SECTION 164.528  
24 IN RELATION TO THE HEALTH CARE PROVIDER'S NOTICE OF PRIVACY PRACTICES,  
25 WHICHEVER COMES FIRST.

26 36-3805. Disclosure of individually identifiable health  
27 information

28 A. A HEALTH INFORMATION ORGANIZATION MAY DISCLOSE AN INDIVIDUAL'S  
29 INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION ONLY IF:

30 1. THE INDIVIDUAL HAS NOT OPTED OUT OF PARTICIPATING IN THE HEALTH  
31 INFORMATION ORGANIZATION.

32 2. THE TYPE OF DISCLOSURE IS EXPLAINED IN THE HEALTH INFORMATION  
33 ORGANIZATION'S CURRENT NOTICE OF HEALTH INFORMATION PRACTICES.

34 3. THE DISCLOSURE COMPLIES WITH THE HEALTH INSURANCE PORTABILITY AND  
35 ACCOUNTABILITY ACT PRIVACY RULE, 45 CODE OF FEDERAL REGULATIONS PART 164,  
36 SUBPART E.

37 B. A HEALTH INFORMATION ORGANIZATION MAY NOT SELL OR OTHERWISE MAKE  
38 COMMERCIAL USE OF AN INDIVIDUAL'S INDIVIDUALLY IDENTIFIABLE HEALTH  
39 INFORMATION WITHOUT THE WRITTEN CONSENT OF THE INDIVIDUAL.

40 C. A HEALTH INFORMATION ORGANIZATION MAY NOT TRANSFER INDIVIDUALLY  
41 IDENTIFIABLE HEALTH INFORMATION OR DEIDENTIFIED HEALTH INFORMATION TO ANY  
42 PERSON OR ENTITY FOR THE PURPOSE OF RESEARCH OR USING THE INFORMATION AS PART  
43 OF A SET OF DATA FOR AN APPLICATION FOR GRANT OR OTHER RESEARCH FUNDING,  
44 UNLESS THE HEALTH CARE PROVIDER OBTAINS CONSENT FROM THE INDIVIDUAL FOR THE  
45 TRANSFER. A HEALTH CARE PROVIDER MUST DOCUMENT THAT IT HAS PROVIDED A NOTICE

1 OF TRANSFER TO THE INDIVIDUAL AND THAT THE INDIVIDUAL HAS RECEIVED AND READ  
2 AND UNDERSTANDS THE NOTICE. DOCUMENTATION MUST BE IN THE FORM OF A SIGNATURE  
3 BY THE INDIVIDUAL INDICATING THE INDIVIDUAL HAS RECEIVED AND READ AND  
4 UNDERSTANDS THE NOTICE AND THAT THE PATIENT GIVES CONSENT TO THE TRANSFER OF  
5 INFORMATION. FOR THE PURPOSES OF THIS SUBSECTION, "CONSENT" MEANS THAT A  
6 HEALTH CARE PROVIDER PARTICIPATING IN A HEALTH INFORMATION ORGANIZATION HAS  
7 PROVIDED A NOTICE TO THE INDIVIDUAL THAT IS IN AT LEAST TWELVE-POINT TYPE AND  
8 THAT DESCRIBES THE PURPOSES OF THE TRANSFER.

9 D. THIS CHAPTER DOES NOT INTERFERE WITH ANY OTHER FEDERAL OR STATE  
10 LAWS OR REGULATIONS THAT PROVIDE MORE EXTENSIVE PROTECTION OF INDIVIDUALLY  
11 IDENTIFIABLE HEALTH INFORMATION THAN PROVIDED IN THIS CHAPTER.

12 36-3806. Required policies

13 A HEALTH INFORMATION ORGANIZATION MUST IMPLEMENT AND ENFORCE POLICIES  
14 GOVERNING THE PRIVACY AND SECURITY OF INDIVIDUALLY IDENTIFIABLE HEALTH  
15 INFORMATION AND COMPLIANCE WITH THIS CHAPTER. THESE POLICIES MUST:

16 1. IMPLEMENT THE INDIVIDUAL RIGHTS PRESCRIBED IN SECTION 36-3802.  
17 2. ADDRESS THE INDIVIDUAL'S RIGHT TO OPT-OUT OF PARTICIPATING IN THE  
18 HEALTH INFORMATION ORGANIZATION PURSUANT TO SECTION 36-3803.

19 3. ADDRESS THE CONTENT AND DISTRIBUTION OF THE NOTICE OF HEALTH  
20 INFORMATION PRACTICES PRESCRIBED IN SECTION 36-3804.

21 4. IMPLEMENT THE RESTRICTIONS ON DISCLOSURE OF INDIVIDUALLY  
22 IDENTIFIABLE HEALTH INFORMATION PRESCRIBED IN SECTION 36-3805.

23 5. ADDRESS SECURITY SAFEGUARDS TO PROTECT INDIVIDUALLY IDENTIFIABLE  
24 HEALTH INFORMATION, AS REQUIRED BY THE HEALTH INSURANCE PORTABILITY AND  
25 ACCOUNTABILITY ACT SECURITY RULE, 45 CODE OF FEDERAL REGULATIONS PART 164,  
26 SUBPART C.

27 6. PRESCRIBE THE APPOINTMENT AND RESPONSIBILITIES OF A PERSON OR  
28 PERSONS WHO HAVE RESPONSIBILITY FOR MAINTAINING PRIVACY AND SECURITY  
29 PROCEDURES FOR THE HEALTH INFORMATION ORGANIZATION.

30 7. REQUIRE TRAINING OF EACH EMPLOYEE AND AGENT OF THE HEALTH  
31 INFORMATION ORGANIZATION ABOUT THE HEALTH INFORMATION ORGANIZATION'S  
32 POLICIES, INCLUDING THE NEED TO MAINTAIN THE PRIVACY AND SECURITY OF  
33 INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION AND THE PENALTIES PROVIDED FOR  
34 THE UNAUTHORIZED ACCESS, RELEASE, TRANSFER, USE OR DISCLOSURE OF INDIVIDUALLY  
35 IDENTIFIABLE HEALTH INFORMATION. THE HEALTH INFORMATION ORGANIZATION MUST  
36 PROVIDE THIS TRAINING BEFORE AN EMPLOYEE OR AGENT MAY HAVE ACCESS TO  
37 INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION AVAILABLE TO THE HEALTH  
38 INFORMATION ORGANIZATION, AND TWICE A YEAR FOR ALL EMPLOYEES AND AGENTS.

39 36-3807. Implementing individual preference for sharing  
40 individually identifiable health information; review

41 A HEALTH INFORMATION ORGANIZATION MUST HAVE TECHNOLOGY CAPABILITY TO  
42 IMPLEMENT INDIVIDUAL PREFERENCES FOR SHARING OR SEGREGATING INDIVIDUALLY  
43 IDENTIFIABLE HEALTH INFORMATION WITHIN THREE YEARS AFTER THE EFFECTIVE DATE  
44 OF THIS SECTION. AFTER THE HEALTH INFORMATION ORGANIZATION OBTAINS THE  
45 TECHNOLOGY CAPABILITY TO IMPLEMENT INDIVIDUAL PREFERENCES FOR SHARING OR

1 SEGREGATING INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION, THE HEALTH CARE  
2 PROVIDER MUST PROVIDE NOTICE TO THE PATIENT OF THE CHANGE PURSUANT TO SECTION  
3 36-3804, SUBSECTION G.

4 36-3808. Subpoenas; certification requirements

5 A. INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION THAT IS MAINTAINED BY  
6 A HEALTH INFORMATION ORGANIZATION IS NOT SUBJECT TO A SUBPOENA DIRECTED TO  
7 THE HEALTH INFORMATION ORGANIZATION UNLESS SECTION 12-2294.01 IS FOLLOWED AND  
8 A COURT HAS DETERMINED ON MOTION AND NOTICE TO THE HEALTH INFORMATION  
9 ORGANIZATION AND THE PARTIES TO THE LITIGATION IN WHICH THE SUBPOENA IS  
10 SERVED THAT THE INFORMATION SOUGHT FROM THE HEALTH INFORMATION ORGANIZATION  
11 IS NOT AVAILABLE FROM THE ORIGINAL SOURCE AND EITHER IS RELEVANT TO THE  
12 SUBJECT MATTER INVOLVED IN THE PENDING ACTION OR IS REASONABLY CALCULATED TO  
13 LEAD TO THE DISCOVERY OF ADMISSIBLE EVIDENCE IN THE PENDING ACTION.

14 B. A PERSON WHO ISSUES A SUBPOENA TO THE HEALTH INFORMATION  
15 ORGANIZATION PURSUANT TO THIS SECTION MUST CERTIFY BEFORE THE ISSUANCE OF THE  
16 SUBPOENA THAT THE REQUIREMENTS OF SUBSECTION A OF THIS SECTION HAVE BEEN MET.

17 36-3809. Health care providers; duty to maintain medical  
18 records

19 A. A HEALTH CARE PROVIDER WHO PARTICIPATES IN A HEALTH INFORMATION  
20 ORGANIZATION IS RESPONSIBLE FOR MAINTAINING THE PROVIDER'S OWN MEDICAL  
21 RECORDS PURSUANT TO TITLE 12, CHAPTER 13, ARTICLE 7.1.

22 B. PARTICIPATION IN A HEALTH INFORMATION ORGANIZATION DOES NOT IMPACT  
23 THE CONTENT, USE OR DISCLOSURE OF MEDICAL RECORDS OR INFORMATION CONTAINED IN  
24 MEDICAL RECORDS THAT ARE HELD IN LOCATIONS OTHER THAN THE HEALTH INFORMATION  
25 ORGANIZATION.

26 C. THIS CHAPTER DOES NOT LIMIT, CHANGE OR OTHERWISE AFFECT A HEALTH  
27 CARE PROVIDER'S RIGHT OR DUTY TO EXCHANGE MEDICAL RECORDS OR INFORMATION  
28 CONTAINED IN MEDICAL RECORDS IN ACCORDANCE WITH APPLICABLE LAW.