

State of Arizona
House of Representatives
Fiftieth Legislature
Second Regular Session
2012

HOUSE BILL 2369

AN ACT

AMENDING SECTIONS 12-2293, 12-2294, 36-470, 36-2525, 36-3801 AND 36-3804,
ARIZONA REVISED STATUTES; RELATING TO HEALTH INFORMATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 12-2293, Arizona Revised Statutes, is amended to
3 read:

4 12-2293. Release of medical records and payment records to
5 patients and health care decision makers; definition

6 A. Except as provided in subsections B and C of this section, on the
7 written request of a patient or the patient's health care decision maker for
8 access to or copies of the patient's medical records and payment records, the
9 health care provider in possession of the record shall provide access to or
10 copies of the records to the patient or the patient's health care decision
11 maker.

12 B. A health care provider may deny a request for access to or copies
13 of medical records or payment records if a health professional determines
14 that either:

15 1. Access by the patient ~~or the patient's health care decision maker~~
16 is reasonably likely to endanger the life or physical safety of the patient
17 or another person.

18 2. The records make reference to a person other than a health
19 professional and access by the patient or the patient's health care decision
20 maker is reasonably likely to cause substantial harm to that other person.

21 3. Access by the patient's health care decision maker is reasonably
22 likely to cause substantial harm to the patient or another person.

23 4. Access by the patient or the patient's health care decision maker
24 would reveal information obtained under a promise of confidentiality with
25 someone other than a health professional and access would be reasonably
26 likely to reveal the source of the information.

27 C. A health care provider may deny a request for access to or copies
28 of medical records or payment records if the health care provider determines
29 that either:

30 1. The information was created or obtained in the course of clinical
31 research and the patient or the patient's health care decision maker agreed
32 to the denial of access when consenting to participate in the research and
33 was informed that the right of access will be reinstated on completion of the
34 research.

35 2. A health care provider is a correctional institution or is acting
36 under the direction of a correctional institution and access by a patient who
37 is an inmate in the correctional institution would jeopardize the health,
38 safety, security, custody or rehabilitation of the patient or other inmates
39 or the safety of any officer, employee or other person at the correctional
40 institution or of a person who is responsible for transporting the inmate.

41 D. If the health care provider denies a request for access to or
42 copies of the medical records or payment records, the health care provider
43 must note this determination in the patient's records and provide to the
44 patient or the patient's health care decision maker a written explanation of
45 the reason for the denial of access. The health care provider must release

1 the medical records or payment records information for which there is not a
2 basis to deny access under subsection B of this section.

3 E. For the purposes of this section, "health professional" has the
4 same meaning prescribed in section 32-3201.

5 Sec. 2. Section 12-2294, Arizona Revised Statutes, is amended to read:
6 12-2294. Release of medical records and payment records to
7 third parties

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

12 B. A health care provider may disclose medical records or payment
13 records, or the information contained in medical records or payment records,
14 pursuant to written authorization signed by the patient or the patient's
15 health care decision maker.

16 C. A health care provider may disclose medical records or payment
17 records or the information contained in medical records or payment records
18 and a clinical laboratory may disclose clinical laboratory results without
19 the written authorization of the patient or the patient's health care
20 decision maker as otherwise authorized by state or federal law, including the
21 health insurance portability and accountability act privacy standards
22 (45 Code of Federal Regulations part 160 and part 164, subpart E), or as
23 follows:

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

26 2. To health care providers who have previously provided treatment to
27 the patient, to the extent that the records pertain to the provided
28 treatment.

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

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

35 5. To a health profession regulatory board as defined in section
36 32-3201.

37 6. To health care providers for the purpose of conducting utilization
38 review, peer review and quality assurance pursuant to section 36-441, 36-445,
39 36-2402 or 36-2917.

40 7. To a person or entity that provides services to the patient's
41 health care providers or clinical laboratories and with whom the health care
42 provider **OR CLINICAL LABORATORY** has an agreement requiring the person or
43 entity to protect the confidentiality of patient information and as required
44 by the health insurance portability and accountability act privacy standards,
45 Code of Federal Regulations part 164, subpart E.

1 8. To the legal representative of a health care provider in possession
2 of the medical records or payment records for the purpose of securing legal
3 advice.

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

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

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

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

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

26 3. An adult child of the deceased patient.

27 4. A parent of the deceased patient.

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

29 6. A guardian or conservator of the deceased patient at the time of
30 the patient's death.

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

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

1 Sec. 3. Section 36-470, Arizona Revised Statutes, is amended to read:
2 36-470. Examination of specimens; written requests; reports of
3 results; retention of test records

4 A. Except as otherwise provided, a clinical laboratory shall examine
5 specimens at the authorization of any person licensed pursuant to title 32,
6 chapter 7, 8, 13, 14, 17 or 29 or title 32, chapter 11, article 2, a person
7 licensed to practice medicine or surgery in another state or a person
8 authorized by law or department rules.

9 B. The result of a test shall be reported to the person who authorized
10 it. A report of results issued from a clinical laboratory shall provide
11 information required by the department by rule. A clinical interpretation,
12 diagnosis or prognosis or suggested treatment other than normal values shall
13 not appear on the laboratory report form, except that a report made by a
14 physician licensed to practice medicine and surgery in this state or another
15 state may include this information.

16 C. The result of a test may be reported to a health care provider, as
17 defined in section 12-2291, that has a treatment relationship with a patient,
18 ~~or~~ to a person or entity that provides services to the health care provider
19 and with whom the health care provider **OR THE CLINICAL LABORATORY** has a
20 business associate agreement that requires the person or entity to protect
21 the confidentiality of patient information as required by the health
22 insurance portability and accountability act privacy standards, 45 Code of
23 Federal Regulations part 164, subpart E **OR TO THE PATIENT OR THE PATIENT'S**
24 **HEALTH CARE DECISION MAKER.**

25 D. All specimens accepted by a laboratory for specified tests shall be
26 tested on its premises, except that specimens, other than those for
27 proficiency testing purposes, may be forwarded for examination to another
28 laboratory licensed under this article or exempted by section 36-461,
29 paragraph 1.

30 E. When the laboratory performing the examination is other than the
31 laboratory accepting the specimen, the report submitted shall include
32 information required by the department by rule.

33 F. Records involving laboratory services and copies of reports of
34 laboratory tests shall be kept in a manner as prescribed by the department by
35 rule.

36 G. A person authorized to request clinical laboratory examinations
37 pursuant to this section may direct that a clinical laboratory examine a
38 person's specimens at that person's request if the authorization is given
39 pursuant to department rules and specifies:

- 40 1. The name of the person authorized to request an examination and to
41 receive the results of that examination.
- 42 2. The type of examinations to be performed by the laboratory.
- 43 3. The total number of examinations the authorized person may request.
- 44 4. The beginning and expiration dates of the authorization.
- 45 5. The identification of the person giving the authorization.

1 H. The laboratory shall report test results ordered pursuant to
2 subsection G of this section to the person who authorized the test and to the
3 person who requested it.

4 Sec. 4. Section 36-2525, Arizona Revised Statutes, is amended to read:
5 36-2525. Prescription orders; labels

6 A. In addition to requirements in section 32-1968, pertaining to
7 prescription orders for prescription-only drugs, the prescription order for a
8 controlled substance shall bear the name, address and federal registration
9 number of the prescriber. A prescription order for a schedule II controlled
10 substance drug other than a hospital drug order for a hospital inpatient
11 shall contain only one drug order per prescription blank. If authorized
12 verbally by the prescriber, the pharmacist may make changes to correct errors
13 or omissions made by the prescriber on the following parts of a written
14 schedule II controlled substance prescription order:

- 15 1. The date issued.
- 16 2. The strength, dosage form or quantity of drug.
- 17 3. The directions for its use.

18 B. The pharmacist must document on the original prescription order the
19 changes that were made pursuant to the verbal authorization and record the
20 time and date the authorization was granted.

21 C. A person registered to dispense controlled substances under this
22 chapter must keep and maintain prescription orders for controlled substances
23 as follows:

24 1. Prescription orders for controlled substances listed in schedules I
25 and II must be maintained in a separate prescription file for controlled
26 substances listed in schedules I and II only.

27 2. Prescription orders for controlled substances listed in schedules
28 III, IV and V must be maintained either in a separate prescription file for
29 controlled substances listed in schedules III, IV and V only or in a form
30 that allows them to be readily retrievable from the other prescription
31 records of the registrant. For the purposes of this paragraph, "readily
32 retrievable" means that when the prescription is initially filed, the face of
33 the prescription is stamped in red ink in the lower right corner with the
34 letter "C" in a font that is not less than one inch high and that the
35 prescription is filed in the usual consecutively numbered prescription file
36 for noncontrolled substance prescriptions. The requirement to stamp the hard
37 copy prescription with a red "C" is waived if a registrant employs an
38 electronic data processing system or other electronic record keeping system
39 for prescriptions that permits identification by prescription number and
40 retrieval of original documents by prescriber's name, patient's name, drug
41 dispensed and date filled.

42 D. Except in emergency situations in conformity with subsection E of
43 this section, under the conditions specified in subsections F and G of this
44 section or when dispensed directly by a medical practitioner to an ultimate
45 user, a controlled substance in schedule II shall not be dispensed without

1 EITHER the written prescription order in ink or indelible pencil or
2 typewritten and manually signed by the medical practitioner OR AN ELECTRONIC
3 PRESCRIPTION ORDER AS PRESCRIBED BY FEDERAL LAW OR REGULATION. A
4 prescription order for a schedule II substance shall not be dispensed more
5 than ninety days after the date on which the prescription order was issued.
6 A prescription order for a schedule II substance shall not be refilled.

7 E. In emergency situations, emergency quantities of schedule II
8 substances may be dispensed on an oral prescription order of a medical
9 practitioner. Such an emergency prescription order shall be immediately
10 reduced to writing by the pharmacist and shall contain all the information
11 required for schedule II drugs except for the manual signing of the order by
12 the medical practitioner. Within seven days after authorizing an emergency
13 oral prescription order, the prescribing medical practitioner shall cause a
14 written prescription order manually signed for the emergency quantity
15 prescribed to be delivered to the dispensing pharmacist OR AN ELECTRONIC
16 PRESCRIPTION ORDER TO BE TRANSMITTED TO THE PHARMACIST. In addition to
17 conforming to other requirements for prescription orders for schedule II
18 substances, it shall INDICATE ELECTRONICALLY OR have written on its face
19 "authorization for emergency dispensing" and the date of the oral order. If
20 the prescribing medical practitioner fails to deliver such an emergency
21 prescription order within seven days in conformance with board rules, the
22 pharmacist shall notify the board. Failure of the pharmacist to notify the
23 board shall void the authority conferred by this subsection to dispense
24 without a written, manually-signed prescription order of a medical
25 practitioner.

26 F. The following may be transmitted to a pharmacy by facsimile by a
27 patient's medical practitioner or the medical practitioner's agent:

28 1. A prescription order written for a schedule II controlled substance
29 to be compounded for the direct administration to a patient by parenteral,
30 intravenous, intramuscular, subcutaneous or intraspinal infusion.

31 2. A prescription order written for any schedule II controlled
32 substance for a resident of a long-term care facility.

33 3. A prescription order written for a schedule II controlled substance
34 for a patient enrolled in a hospice care program certified or paid for by
35 medicare under title XVIII or a hospice program that is licensed by this
36 state. The medical practitioner or the medical practitioner's agent must
37 note on the prescription that the patient is a hospice patient.

38 G. A facsimile transmitted pursuant to subsection F of this section is
39 the original written prescription order for purposes of this section and must
40 be maintained as required by subsection C of this section.

41 H. Except when dispensed directly by a medical practitioner to an
42 ultimate user, a controlled substance included in schedule III or IV that
43 requires a prescription order as determined under state or federal laws shall
44 not be dispensed without a written or oral prescription order of a medical
45 practitioner OR AN ELECTRONIC PRESCRIPTION ORDER AS PRESCRIBED BY FEDERAL LAW

1 **OR REGULATION.** The prescription order shall not be filled or refilled more
2 than six months after the date on which the prescription order was issued. A
3 prescription order authorized to be refilled shall not be refilled more than
4 five times. Additional quantities may only be authorized by the prescribing
5 medical practitioner through issuance of a new prescription order that shall
6 be treated by the pharmacist as a new and separate prescription order.

7 I. Except when dispensed directly by a medical practitioner to an
8 ultimate user, a controlled substance that is included in schedule V and that
9 requires a prescription order as determined under state or federal laws shall
10 not be dispensed without a written or oral prescription order of a medical
11 practitioner. The prescription order may be refilled as authorized by the
12 prescribing medical practitioner but shall not be filled or refilled more
13 than one year after the date of issuance.

14 J. A controlled substance that is listed in schedule III, IV or V and
15 that does not require a prescription order as determined under state or
16 federal laws may be dispensed at retail by a pharmacist, a pharmacy intern or
17 a graduate intern under the pharmacist's supervision without a prescription
18 order to a purchaser who is at least eighteen years of age if all of the
19 following are true:

20 1. It is for a legitimate medical purpose.

21 2. Not more than two hundred forty cubic centimeters (eight ounces) of
22 any such controlled substance containing opium, nor more than one hundred
23 twenty cubic centimeters (four ounces) of any other such controlled
24 substance, nor more than forty-eight dosage units of any such controlled
25 substance containing opium, nor more than twenty-four dosage units of any
26 other controlled substance may be dispensed at retail to the same purchaser
27 in any given forty-eight hour period.

28 3. No more than one hundred dosage units of any single active
29 ingredient ephedrine preparation may be sold, offered for sale, bartered, or
30 given away to any one person in any one thirty-day period.

31 4. The pharmacist, pharmacy intern or graduate intern requires every
32 purchaser of a controlled substance under this subsection not known to that
33 person to furnish suitable identification, including proof of age where
34 appropriate.

35 5. A bound record book for dispensing controlled substances under this
36 subsection is maintained by the pharmacist and contains the name and address
37 of the purchaser, the name and quantity of the controlled substance
38 purchased, the date of each purchase and the name or initials of the
39 pharmacist, pharmacy intern or graduate intern who dispensed the substance to
40 the purchaser. Such book shall be maintained in conformity with the record
41 keeping requirements of section 36-2523.

42 K. In the absence of a law requiring a prescription for a schedule V
43 controlled substance, the board, by rules, may require, or remove the
44 requirement of, a prescription order for a schedule V controlled substance.

1 L. The label on a container of a controlled substance directly
2 dispensed by a medical practitioner or pharmacist, not for the immediate
3 administration to the ultimate user, such as a bed patient in a hospital,
4 shall bear the name and address of the dispensing medical practitioner or
5 pharmacist, the serial number, date of dispensing, name of prescriber, name
6 of patient or, if an animal, the name of the owner of the animal and the
7 species of the animal, directions for use and cautionary statements, if any,
8 contained in the prescription order or required by law. If the controlled
9 substance is included in schedule II, III or IV the label shall bear a
10 transfer warning to the effect: "Caution: federal law prohibits the
11 transfer of this drug to any person other than the patient for whom it was
12 prescribed".

13 M. CONTROLLED SUBSTANCES IN SCHEDULES II, III, IV AND V MAY BE
14 DISPENSED AS ELECTRONICALLY TRANSMITTED PRESCRIPTIONS IF THE PRESCRIBING
15 MEDICAL PRACTITIONER IS ALL OF THE FOLLOWING:

16 1. PROPERLY REGISTERED BY THE UNITED STATES DRUG ENFORCEMENT
17 ADMINISTRATION.

18 2. LICENSED IN GOOD STANDING IN THE UNITED STATES JURISDICTION IN
19 WHICH THE MEDICAL PRACTITIONER PRACTICES.

20 3. AUTHORIZED TO ISSUE SUCH PRESCRIPTIONS IN THE JURISDICTION IN WHICH
21 THE MEDICAL PRACTITIONER IS LICENSED.

22 ~~M.~~ N. The board, by rule, may provide additional requirements for
23 prescribing and dispensing controlled substances.

24 Sec. 5. Section 36-3801, Arizona Revised Statutes, is amended to read:
25 36-3801. Definitions

26 In this chapter, unless the context otherwise requires:

27 1. "Breach" has the same meaning prescribed in 45 Code of Federal
28 Regulations, part 164, subpart D.

29 2. "Clinical laboratory" has the same meaning prescribed in section
30 36-451.

31 3. "DE-IDENTIFIED HEALTH INFORMATION" HAS THE SAME MEANING AS
32 DESCRIBED IN 45 CODE OF FEDERAL REGULATIONS SECTION 164.514.

33 ~~3.~~ 4. "Health care decision maker" has the same meaning prescribed in
34 section 12-2291.

35 ~~4.~~ 5. "Health care provider" has the same meaning prescribed in
36 section 12-2291.

37 ~~5.~~ 6. "Health information organization" means an organization that
38 oversees and governs the exchange of individually identifiable health
39 information among organizations according to nationally recognized standards.
40 Health information organization does not include:

41 (a) A health care provider or an electronic health record maintained
42 by or on behalf of a health care provider ~~and does not include.~~

43 (b) Entities THAT ARE subject to title 20 or that are health plans as
44 defined in 45 Code of Federal Regulations section 160.103.

1 (c) THE EXCHANGE OF INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION
2 DIRECTLY BETWEEN HEALTH CARE PROVIDERS WITHOUT A SEPARATE ORGANIZATION
3 GOVERNING THAT EXCHANGE.

4 ~~6-~~ 7. "Individual":

5 (a) Means the person who is the subject of the individually
6 identifiable health information.

7 (b) DOES NOT INCLUDE AN INMATE AS DEFINED UNDER THE HEALTH INSURANCE
8 PORTABILITY AND ACCOUNTABILITY ACT PRIVACY STANDARDS PRESCRIBED IN 45 CODE OF
9 FEDERAL REGULATIONS SECTION 164.501.

10 ~~7-~~ 8. "Individually identifiable health information" has the same
11 meaning prescribed in the health insurance portability and accountability act
12 privacy standards, 45 Code of Federal Regulations part 160 and part 164,
13 subpart E.

14 ~~8-~~ 9. "Medical records" has the same meaning prescribed in section
15 12-2291.

16 ~~9-~~ 10. "Opt out" means an individual's written decision that the
17 individual's individually identifiable health information cannot be shared
18 through a health information organization.

19 ~~10-~~ 11. "Person" has the same meaning prescribed in section 1-215.

20 ~~11-~~ 12. "Treatment" has the same meaning prescribed in the health
21 insurance portability and accountability act privacy standards, 45 Code of
22 Federal Regulations part 160 and part 164, subpart E.

23 ~~12-~~ 13. "Written" means in handwriting or through an electronic
24 transaction that meets the requirements of title 44, chapter 26.

25 Sec. 6. Section 36-3804, Arizona Revised Statutes, is amended to read:

26 ~~36-3804.~~ Notice of health information practices

27 A. A health information organization must maintain a written notice of
28 health information practices describing the following:

29 1. Individually identifiable health information that the health
30 information organization collects about individuals.

31 2. The categories of persons who have access to information, including
32 individually identifiable health information, through the health information
33 organization.

34 3. The purposes for which access to the information, including
35 individually identifiable health information, is provided through the health
36 information organization.

37 4. The individual's right to opt out of participating in the health
38 information organization.

39 5. An explanation as to how an individual opts out of participating in
40 the health information organization.

41 B. The notice shall include a statement informing the patient of the
42 right NOT to ~~choose to keep~~ SHARE the patient's ~~personal~~ INDIVIDUALLY
43 IDENTIFIABLE health information ~~out of~~ THROUGH the health information
44 organization and that this right is protected by article XXVII, section 2,
45 Constitution of Arizona.

1 C. A health information organization must post its current notice of
2 health information practices on its website in a conspicuous manner.

3 D. Notwithstanding any other requirement in this section, a health
4 information organization must provide an individual with a copy of the notice
5 of health information practices within thirty days after receiving a written
6 request for that information.

7 E. A health care provider participating in a health information
8 organization must provide the health information organization's notice of
9 health information practices in at least twelve-point type to the provider's
10 patients before or at the provider's first encounter with a patient,
11 beginning on the first day of the provider's participation in the health
12 information organization. A health care provider must document that it has
13 provided the health information organization's notice of health information
14 practices to a patient and that the patient has received and read and
15 understands the notice. Documentation must be in the form of a signature by
16 the patient indicating the patient has received and read and understands the
17 notice of health information practices and whether the patient chooses to opt
18 out. As technology develops and electronic methods of receiving
19 documentation from the patient exist, the health information organization is
20 permitted to utilize such electronic documentation.

21 F. If the patient chooses to opt out of the health information
22 organization, the patient's ~~personal~~ INDIVIDUALLY IDENTIFIABLE health
23 information shall not be accessible through the health information
24 organization no later than thirty days after the patient opts out. A PERSON
25 WHO RECEIVES DE-IDENTIFIED INFORMATION FROM THE HEALTH INFORMATION
26 ORGANIZATION MAY NOT USE SUCH DE-IDENTIFIED INFORMATION, EITHER ALONE OR IN
27 COMBINATION WITH OTHER INFORMATION, TO IDENTIFY AN INDIVIDUAL.

28 G. If there is a material change to a health information
29 organization's notice of health information practices, a health care provider
30 must redistribute the notice of health information practices at the next
31 point of contact with the patient or in the same manner and within the same
32 time period as is required by 45 Code of Federal Regulations section 164.528
33 in relation to the health care provider's notice of privacy practices,
34 whichever comes first.