

State of Arizona  
Senate  
Fifty-fourth Legislature  
First Regular Session  
2019

**CHAPTER 239**  
**SENATE BILL 1240**

AN ACT

AMENDING SECTIONS 36-509 AND 36-664, ARIZONA REVISED STATUTES; RELATING TO  
CONFIDENTIAL 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 36-509, Arizona Revised Statutes, is amended to  
3 read:

4 36-509. Confidential records; immunity; definition

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

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

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

14 3. Persons authorized by a court order.

15 4. Persons doing research only if the activity is conducted  
16 pursuant to applicable federal or state laws and regulations governing  
17 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  
20 authorized transfers either by voluntary admission or by order of the  
21 court.

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

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

25 (b) Report a crime on the premises.

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

28 7. Persons, including family members, other relatives, close  
29 personal friends or any other person identified by the patient, as  
30 otherwise authorized or required by state or federal law, including the  
31 health insurance portability and accountability act of 1996 privacy  
32 standards (45 Code of Federal Regulations part 160 and part 164,  
33 subpart E), or pursuant to one of the following:

34 (a) If the patient is present or otherwise available and has the  
35 capacity to make health care decisions, the health care entity may  
36 disclose the information if one of the following applies:

37 (i) The patient agrees verbally or agrees in writing by signing a  
38 consent form that permits disclosure.

39 (ii) The patient is given an opportunity to object and does not  
40 express an objection.

41 (iii) The health care entity reasonably infers from the  
42 circumstances, based on the exercise of professional judgment, that the  
43 patient does not object to the disclosure.

44 (b) If the patient is not present or the opportunity to agree or  
45 object to the disclosure of information cannot practicably be provided

1 because of the patient's incapacity or an emergency circumstance, the  
2 health care entity may disclose the information if the entity determines  
3 that the disclosure of the information is in the best interests of the  
4 patient. In determining whether the disclosure of information is in the  
5 best interests of the patient, in addition to all other relevant factors,  
6 the health care entity shall consider all of the following:

7 (i) The patient's medical and treatment history, including the  
8 patient's history of compliance or noncompliance with an established  
9 treatment plan based on information in the patient's medical record and on  
10 reliable and relevant information received from the patient's family  
11 members, friends or others involved in the patient's care, treatment or  
12 supervision.

13 (ii) Whether the information is necessary or, based on professional  
14 judgment, would be useful in assisting the patient in complying with the  
15 care, treatment or supervision prescribed in the patient's treatment plan.

16 (iii) Whether the health care entity has reasonable grounds to  
17 believe that the release of the information may subject the patient to  
18 domestic violence, abuse or endangerment by family members, friends or  
19 other persons involved in the patient's care, treatment or supervision.

20 (c) The health care entity believes the patient presents a serious  
21 and imminent threat to the health or safety of the patient or others, and  
22 the health care entity believes that family members, friends or others  
23 involved in the patient's care, treatment or supervision can help to  
24 prevent the threat.

25 (d) In order for the health care entity to notify a family member,  
26 friend or other person involved in the patient's care, treatment or  
27 supervision of the patient's location, general condition or death.

28 8. A state agency that licenses health professionals pursuant to  
29 title 32, chapter 13, 15, 17, 19.1 or 33 and that requires these records  
30 in the course of investigating complaints of professional negligence,  
31 incompetence or lack of clinical judgment.

32 9. A state or federal agency that licenses health care providers.

33 10. A governmental agency or a competent professional, as defined  
34 in section 36-3701, in order to comply with chapter 37 of this title.

35 11. Independent oversight committees established pursuant to title  
36 41, chapter 35. Any information released pursuant to this paragraph shall  
37 comply with the requirements of section 41-3804 and applicable federal law  
38 and shall be released without personally identifiable information unless  
39 the personally identifiable information is required for the official  
40 purposes of the independent oversight committee. Case information  
41 received by an independent oversight committee shall be maintained as  
42 confidential. For the purposes of this paragraph, "personally  
43 identifiable information" includes a person's name, address, date of  
44 birth, social security number, tribal enrollment number, telephone or  
45 telefacsimile number, driver license number, places of employment, school

1 identification number and military identification number or any other  
2 distinguishing characteristic that tends to identify a particular person.

3 12. A patient or the patient's health care decision maker.

4 13. The department of public safety or another law enforcement  
5 agency by the court to comply with the requirements of section 36-540,  
6 subsections O and P.

7 14. A third-party payor or the payor's contractor as permitted by  
8 the health insurance portability and accountability act privacy standards,  
9 45 Code of Federal Regulations part 160 and part 164, subpart E.

10 15. A private entity that accredits the health care provider and  
11 with whom the health care provider has an agreement requiring the agency  
12 to protect the confidentiality of patient information.

13 16. The legal representative of a health care entity in possession  
14 of the record for the purpose of securing legal advice.

15 17. A person or entity as otherwise required by state or federal  
16 law.

17 18. A person or entity as permitted by the federal regulations on  
18 alcohol and drug abuse treatment (42 Code of Federal Regulations part 2).

19 19. A person or entity to conduct utilization review, peer review  
20 and quality assurance pursuant to section 36-441, 36-445, 36-2402 or  
21 36-2917.

22 20. A person maintaining health statistics for public health  
23 purposes as authorized by law.

24 21. A grand jury as directed by subpoena.

25 22. A person or entity that provides services to the patient's  
26 health care provider, as defined in section 12-2291, and with whom the  
27 health care provider has a business associate agreement that requires the  
28 person or entity to protect the confidentiality of patient information as  
29 required by the health insurance portability and accountability act  
30 privacy standards, (45 Code of Federal Regulations part 164, subpart E).

31 23. A COUNTY MEDICAL EXAMINER OR AN ALTERNATE MEDICAL EXAMINER  
32 DIRECTING AN INVESTIGATION INTO THE CIRCUMSTANCES SURROUNDING A DEATH  
33 PURSUANT TO SECTION 11-593.

34 B. Information disclosed pursuant to subsection A, paragraph 7 of  
35 this section may include only information that is directly relevant to the  
36 person's involvement with the patient's health care or payment related to  
37 the patient's health care. Subsection A, paragraph 7 of this section does  
38 not prevent a health care entity from obtaining or receiving information  
39 about the patient from a family member, friend or other person involved in  
40 the patient's care, treatment or supervision. A health care entity shall  
41 keep a record of the name and contact information of any person to whom  
42 any patient information is released pursuant to subsection A, paragraph 7  
43 of this section. A decision to release or withhold information pursuant  
44 subsection A, paragraph 7 of this section is subject to review pursuant to  
45 section 36-517.01.

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

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

15 E. A health care entity that acts in good faith under this article  
16 is not liable for damages in any civil action for the disclosure of  
17 records or payment records that is made pursuant to this article or as  
18 otherwise provided by law. The health care entity is presumed to have  
19 acted in good faith. This presumption may be rebutted by clear and  
20 convincing evidence.

21 F. For the purposes of this section, "information" means records  
22 and the information contained in records.

23 Sec. 2. Section 36-664, Arizona Revised Statutes, is amended to  
24 read:

25 36-664. Confidentiality; exceptions

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

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

32 2. A health care provider or first responder who has had an  
33 occupational significant exposure risk to the protected person's blood or  
34 bodily fluid if the health care provider or first responder provides a  
35 written request that documents the occurrence and information regarding  
36 the nature of the occupational significant exposure risk and the report is  
37 reviewed and confirmed by a health care provider who is both licensed  
38 pursuant to title 32, chapter 13, 15 or 17 and competent to determine a  
39 significant exposure risk. A health care provider who releases  
40 communicable disease information pursuant to this paragraph shall provide  
41 education and counseling to the person who has had the occupational  
42 significant exposure risk.

43 3. The department or a local health department for purposes of  
44 notifying a Good Samaritan pursuant to subsection E of this section.

- 1           4. An agent or employee of a health facility or health care  
2 provider to provide health services to the protected person or the  
3 protected person's child or for billing or reimbursement for health  
4 services.
- 5           5. A health facility or health care provider, in relation to the  
6 procurement, processing, distributing or use of a human body or a human  
7 body part, including organs, tissues, eyes, bones, arteries, blood, semen,  
8 milk or other body fluids, for use in medical education, research or  
9 therapy or for transplantation to another person.
- 10          6. A health facility or health care provider, or an organization,  
11 committee or individual designated by the health facility or health care  
12 provider, that is engaged in the review of professional practices,  
13 including the review of the quality, utilization or necessity of medical  
14 care, or an accreditation or oversight review organization responsible for  
15 the review of professional practices at a health facility or by a health  
16 care provider.
- 17          7. A private entity that accredits the health facility or health  
18 care provider and with whom the health facility or health care provider  
19 has an agreement requiring the agency to protect the confidentiality of  
20 patient information.
- 21          8. A federal, state, county or local health officer if disclosure  
22 is mandated by federal or state law.
- 23          9. A federal, state or local government agency authorized by law to  
24 receive the information. The agency is authorized to redisclose the  
25 information only pursuant to this article or as otherwise permitted by  
26 law.
- 27          10. An authorized employee or agent of a federal, state or local  
28 government agency that supervises or monitors the health care provider or  
29 health facility or administers the program under which the health service  
30 is provided. An authorized employee or agent includes only an employee or  
31 agent who, in the ordinary course of business of the government agency,  
32 has access to records relating to the care or treatment of the protected  
33 person.
- 34          11. A person, health care provider or health facility to which  
35 disclosure is ordered by a court or administrative body pursuant to  
36 section 36-665.
- 37          12. The industrial commission or parties to an industrial  
38 commission of Arizona claim pursuant to section 23-908, subsection D and  
39 section 23-1043.02.
- 40          13. Insurance entities pursuant to section 20-448.01 and  
41 third-party payors or the payors' contractors.
- 42          14. Any person or entity as authorized by the patient or the  
43 patient's health care decision maker.
- 44          15. A person or entity as required by federal law.

1           16. The legal representative of the entity holding the information  
2 in order to secure legal advice.

3           17. A person or entity for research only if the research is  
4 conducted pursuant to applicable federal or state laws and regulations  
5 governing research.

6           18. A person or entity that provides services to the patient's  
7 health care provider, as defined in section 12-2291, and with whom the  
8 health care provider has a business associate agreement that requires the  
9 person or entity to protect the confidentiality of patient information as  
10 required by the health insurance portability and accountability act  
11 privacy standards, ~~—~~ (45 Code of Federal Regulations part 164, subpart E).

12           19. A COUNTY MEDICAL EXAMINER OR AN ALTERNATE MEDICAL EXAMINER  
13 DIRECTING AN INVESTIGATION INTO THE CIRCUMSTANCES SURROUNDING A DEATH  
14 PURSUANT TO SECTION 11-593.

15           B. At the request of the department of child safety or the  
16 department of economic security and in conjunction with the placement of  
17 children in foster care or for adoption or court-ordered placement, a  
18 health care provider shall disclose communicable disease information,  
19 including HIV-related information, to the department of child safety or  
20 the department of economic security.

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

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

31           D. The director may authorize the release of information that  
32 identifies the protected person to the national center for health  
33 statistics of the United States public health service for the purposes of  
34 conducting a search of the national death index.

35           E. The department or a local health department shall disclose  
36 communicable disease related information to a Good Samaritan who submits a  
37 request to the department or the local health department. The request  
38 shall document the occurrence of the accident, fire or other  
39 life-threatening emergency and shall include information regarding the  
40 nature of the significant exposure risk. The department shall adopt rules  
41 that prescribe standards of significant exposure risk based on the best  
42 available medical evidence. The department shall adopt rules that  
43 establish procedures for processing requests from Good Samaritans pursuant  
44 to this subsection. The rules shall provide that the disclosure to the  
45 Good Samaritan shall not reveal the protected person's name and shall be

1 accompanied by a written statement that warns the Good Samaritan that the  
2 confidentiality of the information is protected by state law.

3 F. An authorization to release communicable disease related  
4 information shall be signed by the protected person or, if the protected  
5 person lacks capacity to consent, the protected person's health care  
6 decision maker. An authorization shall be dated and shall specify to whom  
7 disclosure is authorized, the purpose for disclosure and the time period  
8 during which the release is effective. A general authorization for the  
9 release of medical or other information, including communicable disease  
10 related information, is not an authorization for the release of  
11 HIV-related information unless the authorization specifically indicates  
12 its purpose as an authorization for the release of confidential  
13 HIV-related information and complies with the requirements of this  
14 section.

15 G. A person to whom communicable disease related information is  
16 disclosed pursuant to this section shall not disclose the information to  
17 another person except as authorized by this section. This subsection does  
18 not apply to the protected person or a protected person's health care  
19 decision maker.

20 H. This section does not prohibit the listing of communicable  
21 disease related information, including acquired immune deficiency  
22 syndrome, HIV-related illness or HIV infection, in a certificate of death,  
23 autopsy report or other related document that is prepared pursuant to law  
24 to document the cause of death or that is prepared to release a body to a  
25 funeral director. This section does not modify a law or rule relating to  
26 access to death certificates, autopsy reports or other related documents.

27 I. If a person in possession of HIV-related information reasonably  
28 believes that an identifiable third party is at risk of HIV infection,  
29 that person may report that risk to the department. The report shall be  
30 in writing and include the name and address of the identifiable third  
31 party and the name and address of the person making the report. The  
32 department shall contact the person at risk pursuant to rules adopted by  
33 the department. The department employee making the initial contact shall  
34 have expertise in counseling persons who have been exposed to or tested  
35 positive for HIV or acquired immune deficiency syndrome.

36 J. Except as otherwise provided pursuant to this article or subject  
37 to an order or search warrant issued pursuant to section 36-665, a person  
38 who receives HIV-related information in the course of providing a health  
39 service or pursuant to a release of HIV-related information shall not  
40 disclose that information to another person or legal entity or be  
41 compelled by subpoena, order, search warrant or other judicial process to  
42 disclose that information to another person or legal entity.

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

S.B. 1240

APPROVED BY THE GOVERNOR MAY 20, 2019.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 20, 2019.