

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

CHAPTER 311
SENATE BILL 1321

AN ACT

AMENDING SECTIONS 36-509, 36-664, 36-3801, 36-3802, 36-3803, 36-3804, 36-3805 AND 36-3806, ARIZONA REVISED STATUTES; REPEALING SECTION 36-3807, ARIZONA REVISED STATUTES; AMENDING SECTIONS 36-3808 AND 36-3809, ARIZONA REVISED STATUTES; RELATING TO HEALTH INFORMATION ORGANIZATIONS.

(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~~ be
8 disclosed **ONLY AS AUTHORIZED BY STATE OR FEDERAL LAW, INCLUDING THE HEALTH
9 INSURANCE PORTABILITY AND ACCOUNTABILITY ACT PRIVACY STANDARDS (45 CODE OF
10 FEDERAL REGULATIONS PART 160 AND PART 164, SUBPART E), OR AS FOLLOWS** to:

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

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

16 3. Persons authorized by a court order.

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

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

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

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

27 (b) Report a crime on the premises.

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

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

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

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

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

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

1 (b) If the patient is not present or the opportunity to agree or
2 object to the disclosure of information cannot practicably be provided
3 because of the patient's incapacity or an emergency circumstance, the
4 health care entity may disclose the information if the entity determines
5 that the disclosure of the information is in the best interests of the
6 patient. In determining whether the disclosure of information is in the
7 best interests of the patient, in addition to all other relevant factors,
8 the health care entity shall consider all of the following:

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

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

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

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

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

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

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

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

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

1 birth, social security number, tribal enrollment number, telephone or
2 telefacsimile number, driver license number, places of employment, school
3 identification number and military identification number or any other
4 distinguishing characteristic that tends to identify a particular person.

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

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

9 14. A third-party payor or the payor's contractor as permitted by
10 the health insurance portability and accountability act privacy standards,
11 45 Code of Federal Regulations part 160 and part 164, subpart E.

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

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

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

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

21 19. A person or entity to conduct utilization review, peer review
22 and quality assurance pursuant to section 36-441, 36-445, 36-2402 or
23 36-2917.

24 20. A person maintaining health statistics for public health
25 purposes as authorized by law.

26 21. A grand jury as directed by subpoena.

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

33 B. Information disclosed pursuant to subsection A, paragraph 7 of
34 this section may include only information that is directly relevant to the
35 person's involvement with the patient's health care or payment related to
36 the patient's health care. Subsection A, paragraph 7 of this section does
37 not prevent a health care entity from obtaining or receiving information
38 about the patient from a family member, friend or other person involved in
39 the patient's care, treatment or supervision. A health care entity shall
40 keep a record of the name and contact information of any person to whom
41 any patient information is released pursuant to subsection A, paragraph 7
42 of this section. A decision to release or withhold information pursuant
43 subsection A, paragraph 7 of this section is subject to review pursuant to
44 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 **AS AUTHORIZED BY STATE OR
30 FEDERAL LAW, INCLUDING THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY
31 ACT PRIVACY STANDARDS (45 CODE OF FEDERAL REGULATIONS PART 160 AND PART
32 164, SUBPART E), OR PURSUANT** to the following:

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

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

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

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

7 5. A health facility or health care provider, in relation to the
8 procurement, processing, distributing or use of a human body or a human
9 body part, including organs, tissues, eyes, bones, arteries, blood, semen,
10 milk or other body fluids, for use in medical education, research or
11 therapy or for transplantation to another person.

12 6. A health facility or health care provider, or an organization,
13 committee or individual designated by the health facility or health care
14 provider, that is engaged in the review of professional practices,
15 including the review of the quality, utilization or necessity of medical
16 care, or an accreditation or oversight review organization responsible for
17 the review of professional practices at a health facility or by a health
18 care provider.

19 7. A private entity that accredits the health facility or health
20 care provider and with whom the health facility or health care provider
21 has an agreement requiring the agency to protect the confidentiality of
22 patient information.

23 8. A federal, state, county or local health officer if disclosure
24 is mandated by federal or state law.

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

29 10. An authorized employee or agent of a federal, state or local
30 government agency that supervises or monitors the health care provider or
31 health facility or administers the program under which the health service
32 is provided. An authorized employee or agent includes only an employee or
33 agent who, in the ordinary course of business of the government agency,
34 has access to records relating to the care or treatment of the protected
35 person.

36 11. A person, health care provider or health facility to which
37 disclosure is ordered by a court or administrative body pursuant to
38 section 36-665.

39 12. The industrial commission or parties to an industrial
40 commission of Arizona claim pursuant to section 23-908, subsection D and
41 section 23-1043.02.

42 13. Insurance entities pursuant to section 20-448.01 and
43 third-party payors or the payors' contractors.

44 14. Any person or entity as authorized by the patient or the
45 patient's health care decision maker.

1 15. A person or entity as required by federal law.

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

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

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

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

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

22 1. Specifically authorized or required by federal or state law.

23 2. Made pursuant to an authorization signed by the protected person
24 or the protected person's health care decision maker.

25 3. Made to a contact of the protected person. The disclosure shall
26 be made without identifying the protected person.

27 4. For the purposes of research as authorized by state and federal
28 law.

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

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

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

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

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

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

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

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

1 Sec. 3. Section 36-3801, Arizona Revised Statutes, is amended to
2 read:

3 36-3801. Definitions

4 In this chapter, unless the context otherwise requires:

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

7 ~~2. "Clinical laboratory" has the same meaning prescribed in section~~
8 ~~36-451.~~

9 ~~3.~~ 2. "De-identified health information" has the same meaning as
10 described in 45 Code of Federal Regulations section 164.514.

11 ~~4.~~ 3. "Health care decision maker" has the same meaning prescribed
12 in section 12-2291.

13 ~~5.~~ 4. "Health care provider" has the same meaning prescribed in
14 section 12-2291.

15 ~~6.~~ 5. "Health information organization" means an organization that
16 oversees and governs the exchange of individually identifiable health
17 information among organizations according to nationally recognized
18 standards. Health information organization does not include:

19 (a) A health care provider or an electronic health record
20 maintained by or on behalf of a health care provider.

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

23 (c) The exchange of individually identifiable health information
24 directly between health care providers without a separate organization
25 governing that exchange.

26 ~~7.~~ 6. "Individual":

27 (a) Means the person who is the subject of the individually
28 identifiable health information.

29 (b) Does not include an inmate as defined under the health
30 insurance portability and accountability act privacy standards prescribed
31 in 45 Code of Federal Regulations section 164.501.

32 ~~8.~~ 7. "Individually identifiable health information" has the same
33 meaning prescribed in the health insurance portability and accountability
34 act privacy standards, ~~(45 Code of Federal Regulations part 160 and part~~
35 ~~164, subpart E).~~

36 ~~9.~~ 8. "Medical records" has the same meaning prescribed in section
37 12-2291.

38 ~~10.~~ 9. "Opt out" means an individual's written decision that the
39 individual's individually identifiable health information cannot be shared
40 through a health information organization.

41 10. "PARTICIPATION" OR "PARTICIPATING", WITH RESPECT TO A HEALTH
42 INFORMATION ORGANIZATION, MEANS PROVIDING OR ACCESSING INDIVIDUALLY
43 IDENTIFIABLE HEALTH INFORMATION IN THE MANNER PROVIDED IN THE HEALTH
44 INFORMATION ORGANIZATION'S POLICIES.

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

2 ~~12. "Treatment" has the same meaning prescribed in the health~~
3 ~~insurance portability and accountability act privacy standards, 45 Code of~~
4 ~~Federal Regulations part 160 and part 164, subpart E.~~

5 ~~13.~~ 12. "Written" means in handwriting or through an electronic
6 transaction that meets the requirements of title 44, chapter 26.

7 Sec. 4. Section 36-3802, Arizona Revised Statutes, is amended to
8 read:

9 36-3802. Individual rights

10 A. ~~A health information organization must provide~~ AN INDIVIDUAL HAS
11 the following rights ~~to individuals~~:

12 1. EXCEPT AS OTHERWISE PROVIDED IN STATE OR FEDERAL LAW, to opt out
13 of ~~participating in the~~ HAVING THE INDIVIDUAL'S INDIVIDUALLY IDENTIFIABLE
14 HEALTH INFORMATION ACCESSIBLE THROUGH A health information organization
15 pursuant to section 36-3803.

16 2. To request a copy of the individual's individually identifiable
17 health information that is ~~available~~ ACCESSIBLE through the health
18 information organization IN ACCORDANCE WITH THE HEALTH INSURANCE
19 PORTABILITY AND ACCOUNTABILITY ACT (45 CODE OF FEDERAL REGULATIONS SECTION
20 164.524). The health information organization may provide this right
21 directly or may require health care providers OR OTHER PERSONS
22 participating in the health information organization to provide THIS
23 access to individuals. ~~The copy may be provided electronically, if the~~
24 ~~individual requesting the copy consents to electronic delivery of the~~
25 ~~individually identifiable health information, and must be provided to the~~
26 ~~individual within thirty days after the individual's request.~~ Charges for
27 copies are governed by section 12-2295.

28 3. To request the amendment of incorrect individually identifiable
29 health information ~~available~~ ACCESSIBLE through the health information
30 organization.

31 4. To request a list of the persons who have accessed the
32 individual's individually identifiable health information through the
33 health information organization for a period of at least three years
34 before the individual's request. This list must be provided to the
35 individual within thirty days after the individual's request.

36 5. To be notified, pursuant to section 18-552 and 45 Code of
37 Federal Regulations part 164, subpart D, of a breach at the health
38 information organization that affects the individual's individually
39 identifiable health information.

40 B. If an individual does not have the capacity to make health care
41 decisions, the individual's health care decision maker may exercise all
42 individual rights in this chapter on behalf of the individual.

1 Sec. 5. Section 36-3803, Arizona Revised Statutes, is amended to
2 read:

3 36-3803. Individual right to opt out of health information
4 organizations

5 EXCEPT AS OTHERWISE PROVIDED IN STATE OR FEDERAL LAW, an individual
6 has the right to opt out of ~~participating in~~ HAVING THE INDIVIDUAL'S
7 INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION ACCESSIBLE THROUGH a health
8 information organization by providing notice as explained in the health
9 information organization's notice of health information practices. ~~An~~
10 ~~individual also has the right to opt out of a particular health care~~
11 ~~provider sharing the individual's individually identifiable health~~
12 ~~information through the health information organization, provided that, if~~
13 ~~the health care provider is an employee of an organization, the~~
14 ~~organization may apply such opt out to all health care providers employed~~
15 ~~by the organization.~~ If an individual provides a notice of opt out to a
16 health care provider, the health care provider must PROMPTLY provide that
17 notice to the health information organization IN THE MANNER PROVIDED IN
18 THE HEALTH INFORMATION ORGANIZATION'S POLICIES. A decision to opt out of
19 ~~participating in a health care~~ HAVING INDIVIDUALLY IDENTIFIABLE HEALTH
20 INFORMATION ACCESSIBLE THROUGH THE HEALTH information organization may be
21 changed by an individual at any time by providing notice as explained in
22 the health information organization's notice of health information
23 practices. INDIVIDUALS WHO PREVIOUSLY ELECTED TO OPT OUT OF HAVING A
24 PARTICULAR HEALTH CARE PROVIDER'S DATA ACCESSIBLE THROUGH THE HEALTH
25 INFORMATION ORGANIZATION WILL BE TREATED BY THE HEALTH INFORMATION
26 ORGANIZATION AS HAVING ELECTED TO OPT OUT UNDER THIS SECTION WITHIN NINETY
27 DAYS AFTER THE EFFECTIVE DATE OF THIS AMENDMENT TO THIS SECTION.

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

30 36-3804. Notice of health information practices; posting;
31 distribution; decision to opt out

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

- 34 1. Individually identifiable health information that IS ACCESSIBLE
35 THROUGH the health information organization ~~collects about individuals~~.
- 36 2. The categories of persons who have access to information,
37 including individually identifiable health information, through the health
38 information organization.
- 39 3. The purposes for which access to the information, including
40 individually identifiable health information, is provided through the
41 health information organization. THE NOTICE OF HEALTH INFORMATION
42 PRACTICES MAY REFERENCE A PUBLICLY ACCESSIBLE WEBSITE THAT DISPLAYS THE
43 CURRENT LIST OF ALLOWED PURPOSES FOR WHICH ACCESS TO THIS INFORMATION IS
44 ALLOWED THROUGH THE HEALTH INFORMATION ORGANIZATION.

1 4. EXCEPT AS OTHERWISE PROVIDED IN STATE OR FEDERAL LAW, the
2 individual's right to opt out of ~~participating in~~ HAVING THE INDIVIDUAL'S
3 INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION ACCESSIBLE THROUGH the health
4 information organization.

5 5. An explanation as to how an individual ~~opts~~ MAY OPT out of
6 ~~participating in~~ HAVING THE INDIVIDUAL'S INDIVIDUALLY IDENTIFIABLE HEALTH
7 INFORMATION ACCESSIBLE THROUGH the health information organization.

8 B. The notice shall include a statement informing the ~~patient~~
9 INDIVIDUAL of the right not to ~~share~~ HAVE the ~~patient's~~ INDIVIDUAL'S
10 individually identifiable health information ACCESSIBLE through the health
11 information organization, EXCEPT AS OTHERWISE PROVIDED BY STATE OR FEDERAL
12 LAW, and that this right is protected by article XXVII, section 2,
13 Constitution of Arizona.

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

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

20 E. A health care provider participating in a health information
21 organization must ~~provide~~ DISTRIBUTE AND DOCUMENT THE DISTRIBUTION OF the
22 health information organization's notice of health information practices
23 in ~~at least twelve-point type to the provider's patients before or at the~~
24 ~~provider's first encounter with a patient, beginning on the first day of~~
25 ~~the provider's participation in the health information organization. A~~
26 ~~health care provider must document that it has provided the health~~
27 ~~information organization's notice of health information practices to a~~
28 ~~patient and that the patient has received and read and understands the~~
29 ~~notice. Documentation must be in the form of a signature by the patient~~
30 ~~indicating the patient has received and read and understands the notice of~~
31 ~~health information practices and whether the patient chooses to opt~~
32 ~~out. As technology develops and electronic methods of receiving~~
33 ~~documentation from the patient exist, the health information organization~~
34 ~~is permitted to utilize such electronic documentation~~ THE SAME
35 CIRCUMSTANCES AND IN THE SAME MANNER AS THE HEALTH CARE PROVIDER IS
36 REQUIRED TO DISTRIBUTE AND DOCUMENT A NOTICE OF PRIVACY PRACTICES BY THE
37 HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (45 CODE OF FEDERAL
38 REGULATION SECTION 164.520(c)(2) AND (3)). THE HEALTH INFORMATION
39 ORGANIZATION'S NOTICE OF HEALTH INFORMATION PRIVACY PRACTICES MUST USE A
40 LEGIBLE FONT IN AT LEAST TEN-POINT TYPE. HEALTH CARE PROVIDERS THAT SHARE
41 A LOCATION MAY PROVIDE THE HEALTH INFORMATION ORGANIZATION'S NOTICE OF
42 HEALTH INFORMATION PRACTICES FOR, OR ON BEHALF OF, ANY OF THE HEALTH CARE
43 PROVIDERS THAT SHARE A LOCATION.

1 F. ~~if the patient~~ EXCEPT AS OTHERWISE PROVIDED IN STATE OR FEDERAL
2 LAW, IF AN INDIVIDUAL chooses to opt out of HAVING THE INDIVIDUAL'S
3 INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION ACCESSIBLE THROUGH the health
4 information organization, the ~~patient's~~ INDIVIDUAL'S individually
5 identifiable health information shall not be accessible through the health
6 information organization ~~no~~ later than thirty days after the ~~patient opts~~
7 HEALTH INFORMATION ORGANIZATION RECEIVES NOTICE, IN THE MANNER EXPLAINED
8 IN THE HEALTH INFORMATION ORGANIZATION'S NOTICE OF HEALTH INFORMATION
9 PRACTICES, OF THE INDIVIDUAL'S DECISION TO OPT out. A person who receives
10 de-identified information from the health information organization may not
11 use such de-identified information, either alone or in combination with
12 other information, to identify an individual.

13 G. If there is a material change to a health information
14 organization's notice of health information practices, INCLUDING THE
15 HEALTH INFORMATION ORGANIZATION'S CAPABILITY TO IMPLEMENT INDIVIDUAL
16 PREFERENCES FOR SHARING OR SEGREGATING INDIVIDUALLY IDENTIFIABLE HEALTH
17 INFORMATION, a health care provider must redistribute the notice of health
18 information practices at the next point of contact with the ~~patient~~
19 INDIVIDUAL or in the same manner and within the same time period as is
20 required by 45 Code of Federal Regulations section 164.528 in relation to
21 the health care provider's notice of privacy practices, whichever comes
22 first.

23 Sec. 7. Section 36-3805, Arizona Revised Statutes, is amended to
24 read:

25 36-3805. Disclosure of individually identifiable health
26 information; transfer; consent

27 A. EXCEPT AS OTHERWISE PROVIDED IN STATE OR FEDERAL LAW, DISCLOSURE
28 OF AN INDIVIDUAL'S INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION THROUGH a
29 health information organization ~~may disclose an individual's individually~~
30 ~~identifiable health information~~ IS ALLOWED only if:

31 1. The individual has not opted out of ~~participating in~~ HAVING THE
32 INDIVIDUAL'S INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION ACCESSIBLE
33 THROUGH the health information organization.

34 2. The ~~type~~ PURPOSE of THE disclosure is explained in the health
35 information organization's current notice of health information practices.

36 3. The disclosure complies with the health insurance portability
37 and accountability act privacy ~~rule~~, STANDARD (45 Code of Federal
38 Regulations part 164, subpart E).

39 B. A health information organization may not sell or otherwise make
40 commercial use of an individual's individually identifiable health
41 information without the written consent of the individual.

42 C. A health information organization may not transfer individually
43 identifiable health information or ~~deidentified~~ DE-IDENTIFIED health
44 information THAT IS ACCESSIBLE THROUGH THE HEALTH INFORMATION EXCHANGE to
45 any person or entity for the purpose of research or using the information

1 as part of a set of data for an application for grant or other research
2 funding, unless the health care provider obtains consent from the
3 individual for the transfer. A health care provider must document that it
4 has provided a notice of transfer to the individual and that the
5 individual has received and read and understands the notice.
6 Documentation must be in the form of a signature by the individual
7 indicating the individual has received and read and understands the notice
8 and that the ~~patient~~ INDIVIDUAL gives consent to the transfer of
9 information. For the purposes of this subsection, "consent" means that a
10 health care provider participating in a health information organization
11 has provided a notice to the individual that is in at least twelve-point
12 type and that describes the purposes of the transfer.

13 D. This chapter does not:

14 1. Interfere with any other federal or state laws or regulations
15 that provide more extensive protection of individually identifiable health
16 information than provided in this chapter.

17 2. LIMIT, CHANGE OR OTHERWISE AFFECT A HEALTH INFORMATION
18 ORGANIZATION'S RIGHT OR DUTY TO EXCHANGE INFORMATION, INCLUDING
19 INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION AND DE-IDENTIFIED HEALTH
20 INFORMATION, IN ACCORDANCE WITH APPLICABLE LAW AND BY MEANS OTHER THAN
21 THROUGH THE HEALTH INFORMATION ORGANIZATION.

22 Sec. 8. Section 36-3806, Arizona Revised Statutes, is amended to
23 read:

24 36-3806. Required policies

25 A health information organization must implement and enforce
26 policies governing the privacy and security of individually identifiable
27 health information and compliance with this chapter. These policies must:

28 1. Implement the individual rights prescribed in section 36-3802.

29 2. Address the individual's right to opt out of ~~participating in~~
30 HAVING THE INDIVIDUAL'S INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION
31 ACCESSIBLE THROUGH the health information organization pursuant to section
32 36-3803.

33 3. Address the content and distribution of the notice of health
34 information practices prescribed in section 36-3804.

35 4. Implement the restrictions on disclosure of individually
36 identifiable health information THROUGH THE HEALTH INFORMATION
37 ORGANIZATION AS prescribed in section 36-3805.

38 5. Address security safeguards to protect individually identifiable
39 health information, as required by the health insurance portability and
40 accountability act security rule, (45 Code of Federal Regulations part
41 164, subpart C).

42 6. Prescribe the appointment and responsibilities of a person or
43 persons who have responsibility for maintaining privacy and security
44 procedures for the health information organization.

1 7. Require training of each employee and agent of the health
2 information organization about the health information organization's
3 policies, including the need to maintain the privacy and security of
4 individually identifiable health information and the penalties ~~provided~~
5 for the unauthorized access, release, transfer, use or disclosure of
6 individually identifiable health information. The health information
7 organization must **INITIALLY** provide this training before an employee or
8 agent may have access to individually identifiable health information
9 available ~~to~~ **THROUGH** the health information organization, and ~~twice a year~~
10 ~~for all employees and agents~~ **AT A LATER TIME AS REASONABLE AND APPROPRIATE**
11 **IN ACCORDANCE WITH THE TRAINING IMPLEMENTATION SPECIFICATIONS REQUIRED BY**
12 **THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT PRIVACY RULE (45**
13 **CODE OF FEDERAL REGULATIONS SECTION 164.530(b)).**

14 Sec. 9. Repeal

15 Section 36-3807, Arizona Revised Statutes, is repealed.

16 Sec. 10. Section 36-3808, Arizona Revised Statutes, is amended to
17 read:

18 36-3808. Civil litigation subpoenas; certification
19 requirements

20 A. **EXCEPT AS OTHERWISE PROVIDED IN STATE OR FEDERAL LAW,**
21 individually identifiable health information that is ~~maintained by~~
22 **ACCESSIBLE THROUGH** a health information organization is not subject to a
23 **CIVIL LITIGATION** subpoena directed to the health information organization
24 unless section 12-2294.01 is followed and a court has determined on motion
25 and notice to the health information organization and the parties to the
26 **CIVIL** litigation in which the subpoena is served that the information
27 sought from the health information organization is not available from the
28 original source and either is relevant to the subject matter involved in
29 the pending **CIVIL** action or is reasonably calculated to lead to the
30 discovery of admissible evidence in the pending action.

31 B. A person who issues a **CIVIL LITIGATION** subpoena to the health
32 information organization pursuant to this section must certify before the
33 issuance of the **CIVIL LITIGATION** subpoena that the requirements of
34 subsection A of this section have been met.

35 Sec. 11. Section 36-3809, Arizona Revised Statutes, is amended to
36 read:

37 36-3809. Health care providers; duty to maintain medical
38 records; civil immunity

39 A. A health care provider ~~who participates~~ **PARTICIPATING** in a
40 health information organization is responsible for maintaining the
41 provider's own medical records pursuant to title 12, chapter 13,
42 article 7.1.

43 B. Participation in a health information organization does not
44 impact the content, use or disclosure of medical records or information

1 contained in medical records that are held in locations other than the
2 health information organization.

3 C. This chapter does not limit, change or otherwise affect a health
4 care provider's right or duty to exchange medical records or information
5 contained in medical records in accordance with applicable law.

6 D. A HEALTH INFORMATION ORGANIZATION IS NOT LIABLE FOR DAMAGES IN
7 ANY CIVIL ACTION FOR ANY OF THE FOLLOWING:

8 1. INACCURATE OR INCOMPLETE HEALTH INFORMATION THAT IS PROVIDED BY
9 THIRD PARTIES AND THAT IS ACCESSIBLE THROUGH THE HEALTH INFORMATION
10 ORGANIZATION.

11 2. ANOTHER PERSON'S USE OR DISCLOSURE OF HEALTH INFORMATION THROUGH
12 THE HEALTH INFORMATION ORGANIZATION.

13 3. THE USE OR DISCLOSURE OF HEALTH INFORMATION THAT IS MADE IN GOOD
14 FAITH PURSUANT TO THIS ARTICLE OR AS OTHERWISE PROVIDED BY LAW. THE
15 HEALTH INFORMATION ORGANIZATION IS PRESUMED TO HAVE ACTED IN GOOD FAITH.
16 THIS PRESUMPTION MAY BE REBUTTED BY CLEAR AND CONVINCING EVIDENCE.

17 E. SUBSECTION D OF THIS SECTION DOES NOT PRECLUDE LIABILITY FOR
18 THAT PORTION OF ANY DAMAGES RESULTING FROM INTENTIONAL MISCONDUCT OR GROSS
19 NEGLIGENCE BY A HEALTH INFORMATION ORGANIZATION.

APPROVED BY THE GOVERNOR JUNE 7, 2019.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 7, 2019.