

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

SENATE BILL 1352

AN ACT

AMENDING SECTIONS 36-3201, 36-3291 AND 36-3292, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 32, ARTICLE 7, ARIZONA REVISED STATUTES, BY ADDING SECTION 36-3292.01; AMENDING SECTIONS 36-3293, 36-3294, 36-3295, 36-3296 AND 36-3297, ARIZONA REVISED STATUTES; RELATING TO THE HEALTH CARE DIRECTIVES REGISTRY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 36-3201, Arizona Revised Statutes, is amended to
3 read:

4 36-3201. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Agent" means an adult who has the authority to make health care
7 treatment decisions for another person, referred to as the principal,
8 pursuant to a health care power of attorney.

9 2. "Artificially administered" means providing food or fluid
10 through a medically invasive procedure.

11 3. "Attending physician" means a physician who has the primary
12 responsibility for a principal's health care.

13 4. "Comfort care" means treatment given in an attempt to protect
14 and enhance the quality of life without artificially prolonging that life.

15 5. "Health care directive" means a document drafted in substantial
16 compliance with this chapter, including a mental health care power of
17 attorney, to deal with a person's future health care decisions.

18 6. "Health care power of attorney" means a written designation of
19 an agent to make health care decisions that meets the requirements of
20 section 36-3221 and that comes into effect and is durable as provided in
21 section 36-3223, subsection A.

22 7. "Health care provider" means a natural person who is licensed
23 under title 32, chapter 13, 15, 17 or 25, a hospice as defined in section
24 36-401 that is licensed under chapter 4 of this title or an organization
25 that is licensed under this title, that renders health care designed to
26 prevent, diagnose or treat illness or injury and that employs persons
27 licensed under title 32, chapter 13, 15, 17 or 25.

28 8. "Inpatient psychiatric facility" means a hospital that
29 contains an organized psychiatric services unit or a special hospital that
30 is licensed to provide psychiatric services.

31 9. "Interested person" means the patient, a person listed under
32 section 36-3231, subsection A, a health care provider directly involved in
33 the patient's medical care or an employee of a health care provider.

34 10. "Living will" means a statement written either by a person who
35 has not written a health care power of attorney or by the principal as an
36 attachment to a health care power of attorney and intended to guide or
37 control the health care treatment decisions that can be made on that
38 person's behalf.

39 11. "Mental health care power of attorney" means a written
40 designation of an agency to make mental health care decisions that meets
41 the requirements of section 36-3281.

42 12. "Physician" means a doctor of medicine licensed pursuant to
43 title 32, chapter 13 or doctor of osteopathy licensed pursuant to title
44 32, chapter 17.

1 13. "Principal" means a person who is the subject of a health care
2 power of attorney.

3 14. "QUALIFYING HEALTH INFORMATION EXCHANGE ORGANIZATION" MEANS A
4 NONPROFIT HEALTH INFORMATION ORGANIZATION AS DEFINED IN SECTION 36-3801
5 THAT IS DESIGNATED BY THE DEPARTMENT OF HEALTH SERVICES PURSUANT TO
6 SECTION 36-3291 TO OPERATE THE HEALTH CARE DIRECTIVES REGISTRY.

7 ~~14.~~ 15. "Surrogate" means a person authorized to make health care
8 decisions for a patient by a power of attorney, a court order or the
9 provisions of section 36-3231.

10 Sec. 2. Section 36-3291, Arizona Revised Statutes, is amended to
11 read:

12 36-3291. Health care directives registry; exemption

13 A. THE DEPARTMENT OF HEALTH SERVICES SHALL DESIGNATE A QUALIFYING
14 HEALTH INFORMATION EXCHANGE ORGANIZATION TO OPERATE A HEALTH CARE
15 DIRECTIVES REGISTRY.

16 ~~A.~~ B. Subject to the availability of monies, the ~~secretary of~~
17 ~~state~~ QUALIFYING HEALTH INFORMATION EXCHANGE ORGANIZATION shall establish
18 and maintain a health care directives registry.

19 ~~B. The registry shall be accessible through a website maintained by~~
20 ~~the secretary of state.~~

21 C. The ~~secretary of state~~ DEPARTMENT OF HEALTH SERVICES may accept
22 gifts, grants, donations, bequests and other forms of voluntary
23 contributions, WHICH SHALL BE DEPOSITED IN THE HEALTH CARE DIRECTIVES
24 REGISTRY FUND, to support, promote and maintain the registry.

25 D. CHAPTER 38 OF THIS TITLE DOES NOT APPLY TO THE HEALTH CARE
26 DIRECTIVES REGISTRY OR THE QUALIFYING HEALTH INFORMATION EXCHANGE
27 ORGANIZATION'S OPERATION OF THE REGISTRY.

28 Sec. 3. Section 36-3292, Arizona Revised Statutes, is amended to
29 read:

30 36-3292. Filing requirements

31 A. A person may submit to the ~~secretary of state~~ HEALTH CARE
32 DIRECTIVES REGISTRY, in a ~~form~~ MANNER prescribed by the ~~secretary of~~
33 ~~state, the following documents~~ QUALIFYING HEALTH INFORMATION EXCHANGE
34 ORGANIZATION, HEALTH CARE DIRECTIVES, INCLUDING PREHOSPITAL MEDICAL CARE
35 DIRECTIVES and any AMENDMENTS TO OR revocations of these documents. ~~for~~
36 ~~registration.~~

37 ~~1. A health care power of attorney.~~

38 ~~2. A living will.~~

39 ~~3. A mental health care power of attorney.~~

40 ~~B. The person who submits a document for registration pursuant to~~
41 ~~this section must provide a return address.~~

42 B. THE QUALIFYING HEALTH INFORMATION EXCHANGE ORGANIZATION SHALL
43 ESTABLISH A PROCESS FOR AUTHENTICATING THE IDENTITY OF THE PERSON WHO
44 SUBMITS A DOCUMENT TO THE HEALTH CARE DIRECTIVES REGISTRY.

1 C. Documents submitted pursuant to this section must be notarized
2 or witnessed as prescribed by this chapter.

3 Sec. 4. Title 36, chapter 32, article 7, Arizona Revised Statutes,
4 is amended by adding section 36-3292.01, to read:

5 36-3292.01. Transmission of records from a health information
6 exchange organization to the registry

7 NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, THE QUALIFYING
8 HEALTH INFORMATION EXCHANGE ORGANIZATION MAY ESTABLISH A PROCESS FOR
9 TRANSMITTING TO THE HEALTH CARE DIRECTIVES REGISTRY DOCUMENTS DESCRIBED IN
10 SECTION 36-3292 FROM A HEALTH INFORMATION ORGANIZATION AS DEFINED IN
11 SECTION 36-3801.

12 Sec. 5. Section 36-3293, Arizona Revised Statutes, is amended to
13 read:

14 36-3293. Effect of nonregistration or revocation

15 A. Failure to register a document with the ~~secretary of state~~
16 QUALIFYING HEALTH INFORMATION EXCHANGE ORGANIZATION pursuant to this
17 article does not affect the validity of a health care directive.

18 B. Failure to notify the ~~secretary of state~~ QUALIFYING HEALTH
19 INFORMATION EXCHANGE ORGANIZATION of the revocation of a document filed
20 pursuant to this article does not affect the validity of a revocation that
21 otherwise meets the requirements for a revocation pursuant to this
22 chapter.

23 Sec. 6. Section 36-3294, Arizona Revised Statutes, is amended to
24 read:

25 36-3294. Registration

26 ~~A. On receipt of a completed registration form, the secretary of~~
27 ~~state shall create a digital reproduction of the document, enter the~~
28 ~~reproduced document into the health care directives registry database and~~
29 ~~assign each registered document a unique file number and password.~~

30 A. THE QUALIFYING HEALTH INFORMATION EXCHANGE ORGANIZATION SHALL
31 ESTABLISH A PROCESS TO ALLOW PERSONS TO SUBMIT DOCUMENTS DESCRIBED IN
32 SECTION 36-3292 TO THE HEALTH CARE DIRECTIVES REGISTRY. THE QUALIFYING
33 HEALTH INFORMATION EXCHANGE ORGANIZATION SHALL ADOPT INDUSTRY STANDARD
34 SAFEGUARDS TO ENSURE THE SECURITY, PRIVACY AND INTEGRITY OF THE DOCUMENTS
35 SUBMITTED TO AND MAINTAINED IN THE HEALTH CARE DIRECTIVES REGISTRY.

36 B. The ~~secretary of state~~ QUALIFYING HEALTH INFORMATION EXCHANGE
37 ORGANIZATION is not required to review a document to ensure that it
38 complies with the particular statutory requirements applicable to the
39 document.

40 C. ~~After entering the reproduced document into the registry~~
41 ~~database, the secretary of state~~ THE QUALIFYING HEALTH INFORMATION
42 EXCHANGE ORGANIZATION shall provide ~~the~~ A person who submitted the
43 document TO THE HEALTH CARE DIRECTIVES REGISTRY with a ~~printed~~ VIEWABLE
44 record of the information entered into the ~~database under the file number~~

~~and a wallet size card that contains the document's file number and a password~~ REGISTRY AND ALLOW THE PERSON TO SUBMIT CORRECTED INFORMATION.

~~D. The person who submitted the document shall review the printed record. If the information is accurate, the person shall check the box marked "no corrections required" and sign and return the printed record to the secretary of state's office.~~

~~E. If the person who submitted the document determines that the printed record is inaccurate, the person shall correct the information and sign and return the corrected printed record to the secretary of state. On receipt of a corrected printed record, the secretary of state shall make the proper corrections and send a corrected printed record to the person who submitted the document. If the information is accurate, the person shall check the box marked "no corrections required" and sign and return the printed record to the secretary of state's office.~~

~~F. D. The secretary of state~~ QUALIFYING HEALTH INFORMATION EXCHANGE ORGANIZATION shall activate the entry OF A SUBMITTED DOCUMENT into the health care directives registry ~~database~~ only after receiving a ~~printed record marked "no corrections required" or when making changes that are indicated on the printed record~~ CONFIRMATION THAT THE INFORMATION SUBMITTED IS CORRECT.

E. THE QUALIFYING HEALTH INFORMATION EXCHANGE ORGANIZATION SHALL ESTABLISH A PROCESS TO ALLOW PERSONS WHO SUBMIT DOCUMENTS TO THE HEALTH CARE DIRECTIVES REGISTRY TO REVIEW, RETRIEVE, REVOKE AND REPLACE THE DOCUMENTS.

~~G. F. The secretary of state~~ QUALIFYING HEALTH INFORMATION EXCHANGE ORGANIZATION shall ~~delete a document filed with the registry pursuant to this section if the secretary of state receives a revocation of a document along with that document's file number and password. The secretary of state may delete a nonactive document filed with the registry pursuant to this section if the secretary of state does not receive a response pursuant to subsections D and E within ninety days after providing the information prescribed by subsections C and E~~ ESTABLISH A PROCESS FOR REMOVING OR DISTINGUISHING DOCUMENTS THAT HAVE BEEN REVOKED OR REPLACED BY MORE RECENT DOCUMENTS.

~~H. G.~~ G. The entry of a document pursuant to this article does not:
1. Affect the validity of the document.
2. Relate to the accuracy of information contained in the document.
3. Create a presumption regarding the validity of the document or the accuracy of information contained in the document.

~~I. The secretary of state shall purge a document filed with the registry on verification by the director of the department of health services of the death of the person who submitted the document. The secretary of state shall purge the registry of documents pursuant to this subsection at least once every five years. The director of the department~~

1 ~~of health services shall share its registry of death certificates with the~~
2 ~~secretary of state in order to conduct the document purge required by this~~
3 ~~subsection.~~

4 ~~J. The secretary of state may establish an electronic means of~~
5 ~~carrying out the requirements of this section.~~

6 Sec. 7. Section 36-3295, Arizona Revised Statutes, is amended to
7 read:

8 36-3295. Registry information; confidentiality; health care
9 provider access; use and transfer of information;
10 definition

11 ~~A. The registry established pursuant to this article is accessible~~
12 ~~only by entering the file number and password on the internet website.~~

13 ~~B. A. Registrations, file numbers, passwords and any other~~
14 Information maintained by the ~~secretary of state~~ QUALIFYING HEALTH
15 INFORMATION EXCHANGE ORGANIZATION pursuant to this article ~~are~~ IS
16 confidential and shall not be disclosed ~~to any person other than the~~
17 ~~person who submitted the document or the person's personal representative~~
18 EXCEPT AS ALLOWED BY STATE OR FEDERAL LAW.

19 B. THE PERSON WHO SUBMITS THE DOCUMENT AND THE PERSON WHO IS THE
20 SUBJECT OF THE DOCUMENT MAY ACCESS THE DOCUMENT IN THE HEALTH CARE
21 DIRECTIVES REGISTRY IN A MANNER PRESCRIBED BY THE QUALIFYING HEALTH
22 INFORMATION EXCHANGE ORGANIZATION.

23 C. Notwithstanding ~~subsections~~ SUBSECTION A ~~and B~~ of this section,
24 a health care provider may access the HEALTH CARE DIRECTIVES registry and
25 receive a patient's health care directive documents for the provision of
26 health care services. ~~On or before December 31, 2018, the secretary of~~
27 ~~state shall establish in rule a process for health care providers to~~
28 ~~access the registry.~~

29 D. The ~~secretary of state~~ QUALIFYING HEALTH INFORMATION EXCHANGE
30 ORGANIZATION shall use information contained in the registry only for
31 purposes prescribed in this article.

32 E. At the request of the person who submitted ~~the~~ A document
33 DESCRIBED IN SECTION 36-3292, the ~~secretary of state~~ QUALIFYING HEALTH
34 INFORMATION EXCHANGE ORGANIZATION may transmit the information received
35 regarding the ~~health care directive~~ DOCUMENT to the registry system of
36 another jurisdiction ~~as identified by the person.~~

37 F. For the purposes of this section, "health care ~~providers~~
38 PROVIDER" includes AN emergency medical service ~~providers~~ PROVIDER and
39 emergency service ~~technicians~~ TECHNICIAN providing emergency medical
40 services as defined in section 36-2201 AND THE ORGAN PROCUREMENT
41 ORGANIZATION THAT MAINTAINS THE DONOR REGISTRY ESTABLISHED PURSUANT TO
42 SECTION 36-858.

1 Sec. 8. Section 36-3296, Arizona Revised Statutes, is amended to
2 read:

3 36-3296. Liability: limitation

4 A. Except for acts of gross negligence, wilful misconduct or
5 intentional wrongdoing, ~~this state~~ THE QUALIFYING HEALTH INFORMATION
6 EXCHANGE ORGANIZATION and its contractors are not subject to civil
7 liability for any claims or demands arising out of the administration or
8 operation of, or the provision of access to information stored in, the
9 registry established pursuant to this article.

10 B. This article does not require a health care provider to request
11 from the registry information about whether a patient has executed a
12 health care directive. A health care provider who makes good faith health
13 care decisions in reliance on the provisions of an apparently genuine
14 health care directive received from the registry is immune from criminal
15 and civil liability to the same extent and under the same conditions as
16 prescribed in ~~section~~ SECTIONS 36-3205 AND 36-3251, EXCEPT THAT THE
17 REQUIREMENT THAT A PREHOSPITAL MEDICAL CARE DIRECTIVE BE ON AN ORANGE FORM
18 DOES NOT APPLY TO A HEALTH CARE PROVIDER WHO RELIES ON A PREHOSPITAL
19 MEDICAL CARE DIRECTIVE DISPLAYED THROUGH THE REGISTRY.

20 C. This article does not affect the duty of a health care provider
21 to provide information to a patient regarding health care directives
22 pursuant to federal law.

23 Sec. 9. Section 36-3297, Arizona Revised Statutes, is amended to
24 read:

25 36-3297. Health care directives registry fund

26 A. The health care directives registry fund is established
27 consisting of monies received pursuant to this article. The ~~secretary of~~
28 ~~state~~ DEPARTMENT OF HEALTH SERVICES shall administer the fund. Monies in
29 the fund are continuously appropriated.

30 B. On notice from the ~~secretary of state~~ DEPARTMENT, the state
31 treasurer shall invest and divest monies in the fund as provided by
32 section 35-313, and monies earned from investment shall be credited to the
33 fund.

34 C. The ~~secretary of state~~ DEPARTMENT shall ~~use~~ DISTRIBUTE THE fund
35 monies TO THE QUALIFYING HEALTH INFORMATION EXCHANGE ORGANIZATION to
36 support, promote and maintain the registry.

37 ~~D. Fund monies shall not include monies appropriated from the state~~
38 ~~general fund.~~

39 Sec. 10. Secretary of state; transfer of documents

40 On or before July 1, 2020, the secretary of state shall provide the
41 qualifying health information exchange organization as defined in section
42 36-3201, Arizona Revised Statutes, as amended by this act, with the
43 documents and contact information for persons who have submitted documents
44 to the health care directives registry maintained by the secretary of

1 state. The qualifying health information exchange organization shall
2 contact these persons to determine if they want documents previously
3 submitted to the health care directives registry to be transferred to the
4 registry that will be maintained by the qualifying health information
5 exchange organization. The qualifying health information exchange
6 organization shall export documents determined to be active into the new
7 health care directives registry.

8 Sec. 11. Effective date

9 This act is effective from and after December 31, 2020.