

ARIZONA STATE SENATE

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TO: MEMBERS OF THE SENATE
HEALTH & HUMAN SERVICES
COMMITTEE

DATE: February 14, 2022

SUBJECT: Strike everything amendment to S.B. 1078, relating to confidential medical information

Purpose

Prohibits an employer from disclosing any information contained within an employee's or prospective employee's medical records and outlines employee procedures for taking judicial action against an employer that breaches confidentiality.

Background

All medical records and the information contained in those medical records are privileged and confidential. A health care provider may only disclose a patient's medical records as authorized by state or federal law or by written authorization of the patient or the patient's health care decision maker. The health care provider must disclose medical records information, without patient authorization, in outlined circumstances including: 1) when required by law; 2) when ordered by a court or tribunal of competent jurisdiction; 3) to ambulance attendants for the purpose of providing care or transferring a patient; or 4) to a private agency that accredits health care providers and that has an agreement with the health care provider to protect the confidentiality of patient information. A person who receives medical records may not disclose those records without the written authorization of the patient or the patient's health care decision maker (A.R.S. §§ [12-2292](#) and [12-2294](#)).

There is no anticipated fiscal impact to the state General Fund associated with this legislation.

Provisions:

Medical Record Confidentiality

1. Prohibits an employer from disclosing any information contained within an employee's or prospective employee's medical records to any person, including all information obtained by the employer during the hiring process and the employee's course of employment.
2. States that the prohibition on disclosing employee medical record information does not apply to an employer who discloses an employee's or prospective employee's medical records to:
 - a) a supervisor or manager to be informed about an employee's necessary work and duty restrictions for making necessary accommodations;
 - b) first aid and safety personnel if the employee or prospective employee requires emergency treatment; and
 - c) a government official who is investigating an employer's compliance, if requested.

3. Requires confidential employee or prospective employee medical record information that is disclosed for an authorized purpose to be kept confidential by any person that receives the information.
4. Prohibits a state government official who obtains an employee's medical record information from disclosing the information to any other person, including any other state government entity, in a manner beyond what is strictly necessary to carry out the investigation.
5. Requires, in any judicial or administrative proceeding arising out of an investigation, the court or administrative body to receive the employee's medical record information in a confidential fashion.
6. States that immunity from damages in any civil action relating to the disclosure of medical records, payment records or clinical laboratory results does not apply to an employer who discloses an employee's or prospective employee's medical records information.
7. Specifies that it is unlawful employment practice for an employer to violate an employee's right to medical record confidentiality.

Medical Record Confidentiality Violation Lawsuit

8. Requires a Plaintiff, in order to prevail in a medical record confidentiality violation lawsuit, to:
 - a) demonstrate that the employer violated the Plaintiff's medical record confidentiality; and
 - b) the violation was the result of the employer's negligence.
9. Entitles a person who prevails against an employer in a medical record confidentiality violation lawsuit to recover \$20,000 in damages, reasonable attorneys' fees and the cost of suit.
10. States that an employee is not required to engage in any administrative process prior to bringing or maintaining a medical record confidentiality violation lawsuit.
11. Asserts that a person bringing or defending a medical record confidentiality violation lawsuit has the right to a trial by jury.
12. Specifies that the medical record confidentiality right and all causes of action that arise out of a violation of the right, as well as the right to a jury trial, may not be waived.
13. States that the provisions of this legislation do not abrogate any existing cause of action under federal or state law or limit the damages recoverable under the cause of action.
14. States that a medical record confidentiality violation is not considered to be provided, authorized or required by law by virtue of being required by the terms of an employer's contract with a government or government contractor or to be authorized or required by any federal law or federal agency rule.
15. States that the remedies for unlawful employment practice prescribed by this legislation are in addition to the remedies prescribed for courts and civil proceedings as well as any other federal or state law, including common law remedies.

Miscellaneous

16. Declares that it is the public policy of the state that the right to protect the confidentiality of patient and employee medical record information is both part of the police power vested in the states and a legitimate and desirable exercise of that power.
17. States that medical record confidentiality statutes do not limit the effect of any other federal or state law governing the confidentiality of medical records and payment records to the extent that the other federal or state law provides confidentiality protections that are greater.
18. Includes, in the definition of *information contained in medical records*, any information that is related to an individual's vaccination or vaccination exemption status, including whether the individual applied for or has been granted a vaccination exemption by any government body or employer.
19. Includes independent contractors in the definition of *employer*.
20. Contains a statement of legislative intent.
21. Makes a conforming change.
22. Becomes effective on the general effective date.

Prepared by Senate Research

February 14, 2022

MM/MC/sr