

State of Arizona  
House of Representatives  
Fiftieth Legislature  
First Regular Session  
2011

**CHAPTER 268**  
**HOUSE BILL 2620**

AN ACT

AMENDING SECTIONS 12-2291, 12-2294, 12-2296, 13-2316, 36-135, 36-470, 36-509  
AND 36-664, ARIZONA REVISED STATUTES; AMENDING TITLE 36, ARIZONA REVISED  
STATUTES, BY ADDING CHAPTER 38; RELATING TO MEDICAL RECORDS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 12-2291, Arizona Revised Statutes, is amended to  
3 read:

4 ~~12-2291.~~ Definitions

5 In this article, unless the context otherwise requires:

6 ~~1.~~ "CLINICAL LABORATORY" HAS THE SAME MEANING PRESCRIBED IN SECTION  
7 36-451.

8 ~~1.~~ 2. "Contractor" means an agency or service that duplicates medical  
9 records on behalf of health care providers.

10 ~~2.~~ 3. "Department" means the department of health services.

11 ~~3.~~ 4. "Health care decision maker" means an individual who is  
12 authorized to make health care treatment decisions for the patient, including  
13 a parent of a minor or an individual who is authorized pursuant to section  
14 8-514.05, title 14, chapter 5, article 2 or 3 or section 36-3221, 36-3231 or  
15 36-3281.

16 ~~4.~~ 5. "Health care provider" means:

17 (a) A person who is licensed pursuant to title 32 and who maintains  
18 medical records.

19 (b) A health care institution as defined in section 36-401.

20 (c) An ambulance service as defined in section 36-2201.

21 (d) A health care services organization licensed pursuant to title 20,  
22 chapter 4, article 9.

23 ~~5.~~ 6. "Medical records" means all communications related to a  
24 patient's physical or mental health or condition that are recorded in any  
25 form or medium and that are maintained for purposes of patient diagnosis or  
26 treatment, including medical records that are prepared by a health care  
27 provider or by other providers. Medical records do not include materials  
28 that are prepared in connection with utilization review, peer review or  
29 quality assurance activities, including records that a health care provider  
30 prepares pursuant to section 36-441, 36-445, 36-2402 or 36-2917. Medical  
31 records do not include recorded telephone and radio calls to and from a  
32 publicly operated emergency dispatch office relating to requests for  
33 emergency services or reports of suspected criminal activity, but ~~shall~~  
34 include communications that are recorded in any form or medium between  
35 emergency medical personnel and medical personnel concerning the diagnosis or  
36 treatment of a person.

37 ~~6.~~ 7. "Payment records" means all communications related to payment  
38 for a patient's health care that contain individually identifiable  
39 information.

40 ~~7.~~ 8. "Source data" means information that is summarized, interpreted  
41 or reported in the medical record, including x-rays and other diagnostic  
42 images.

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

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

8           B. A health care provider may disclose medical records or payment  
9 records, or the information contained in medical records or payment records,  
10 pursuant to written authorization signed by the patient or the patient's  
11 health care decision maker.

12           C. A health care provider may disclose medical records or payment  
13 records or the information contained in medical records or payment records  
14 **AND A CLINICAL LABORATORY MAY DISCLOSE CLINICAL LABORATORY RESULTS** without  
15 the written authorization of the patient or the patient's health care  
16 decision maker as otherwise authorized by state or federal law, including the  
17 health insurance portability and accountability act privacy standards  
18 (45 Code of Federal Regulations part 160 and part 164, subpart E), or as  
19 follows:

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

22           2. To health care providers who have previously provided treatment to  
23 the patient, to the extent that the records pertain to the provided  
24 treatment.

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

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

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

33           6. To health care providers for the purpose of conducting utilization  
34 review, peer review and quality assurance pursuant to section 36-441, 36-445,  
35 36-2402 or 36-2917.

36           7. To a person or entity that provides ~~billing, claims management,~~  
37 ~~medical data processing, utilization review or other administrative~~ services  
38 to the patient's health care providers **OR CLINICAL LABORATORIES** and with whom  
39 the health care provider has an agreement requiring the person or entity to  
40 protect the confidentiality of patient information **AND AS REQUIRED BY THE**  
41 **HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT PRIVACY STANDARDS, 45**  
42 **CODE OF FEDERAL REGULATIONS PART 164, SUBPART E.**

43           8. To the legal representative of a health care provider in possession  
44 of the medical records or payment records for the purpose of securing legal  
45 advice.

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

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

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

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

17           2. The acting trustee of a trust created by the deceased patient  
18 either alone or with the deceased patient's spouse if the trust was a  
19 revocable inter vivos trust during the deceased patient's lifetime and the  
20 deceased patient was a beneficiary of the trust during the deceased patient's  
21 lifetime.

22           3. An adult child of the deceased patient.

23           4. A parent of the deceased patient.

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

25           6. A guardian or conservator of the deceased patient at the time of  
26 the patient's death.

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

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

40           Sec. 3. Section 12-2296, Arizona Revised Statutes, is amended to read:

41           12-2296. Immunity

42           A health care provider, ~~or~~ contractor OR CLINICAL LABORATORY that acts  
43 in good faith under this article is not liable for damages in any civil  
44 action for the disclosure of medical records, ~~or~~ payment records OR CLINICAL  
45 LABORATORY RESULTS or information contained in medical records, ~~or~~ payment  
46 records OR CLINICAL LABORATORY RESULTS that is made pursuant to this article

1 or as otherwise provided by law. The health care provider, ~~or~~ contractor OR  
2 CLINICAL LABORATORY is presumed to have acted in good faith. The presumption  
3 may be rebutted by clear and convincing evidence.

4 Sec. 4. Section 13-2316, Arizona Revised Statutes, is amended to read:  
5 13-2316. Computer tampering; venue; forfeiture; classification

6 A. A person who acts without authority or who exceeds authorization of  
7 use commits computer tampering by:

8 1. Accessing, altering, damaging or destroying any computer, computer  
9 system or network, or any part of a computer, computer system or network,  
10 with the intent to devise or execute any scheme or artifice to defraud or  
11 deceive, or to control property or services by means of false or fraudulent  
12 pretenses, representations or promises.

13 2. Knowingly altering, damaging, deleting or destroying computer  
14 programs or data.

15 3. Knowingly introducing a computer contaminant into any computer,  
16 computer system or network.

17 4. Recklessly disrupting or causing the disruption of computer,  
18 computer system or network services or denying or causing the denial of  
19 computer or network services to any authorized user of a computer, computer  
20 system or network.

21 5. Recklessly using a computer, computer system or network to engage  
22 in a scheme or course of conduct that is directed at another person and that  
23 seriously alarms, torments, threatens or terrorizes the person. For the  
24 purposes of this paragraph, the conduct must both:

25 (a) Cause a reasonable person to suffer substantial emotional  
26 distress.

27 (b) Serve no legitimate purpose.

28 6. Preventing a computer user from exiting a site, computer system or  
29 network-connected location in order to compel the user's computer to continue  
30 communicating with, connecting to or displaying the content of the service,  
31 site or system.

32 7. Knowingly obtaining any information that is required by law to be  
33 kept confidential or any records that are not public records by accessing any  
34 computer, computer system or network that is operated by this state, a  
35 political subdivision of this state, ~~or a medical institution~~ A HEALTH CARE  
36 PROVIDER AS DEFINED IN SECTION 12-2291, A CLINICAL LABORATORY AS DEFINED IN  
37 SECTION 36-451 OR A PERSON OR ENTITY THAT PROVIDES SERVICES ON BEHALF OF A  
38 HEALTH CARE PROVIDER OR A CLINICAL LABORATORY.

39 8. Knowingly accessing any computer, computer system or network or any  
40 computer software, program or data that is contained in a computer, computer  
41 system or network.

42 B. In addition to section 13-109, a prosecution for a violation of  
43 this section may be tried in any of the following counties:

44 1. The county in which the victimized computer, computer system or  
45 network is located.

1           2. The county in which the computer, computer system or network that  
2 was used in the commission of the offense is located or in which any books,  
3 records, documents, property, financial instruments, computer software, data,  
4 access devices or instruments of the offense were used.

5           3. The county in which any authorized user was denied service or in  
6 which an authorized user's service was interrupted.

7           4. The county in which critical infrastructure resources were tampered  
8 with or affected.

9           C. On conviction of a violation of this section, the court shall order  
10 that any computer system or instrument of communication that was owned or  
11 used exclusively by the defendant and that was used in the commission of the  
12 offense be forfeited and sold, destroyed or otherwise properly disposed.

13           D. A violation of subsection A, paragraph 6 of this section  
14 constitutes an unlawful practice under section 44-1522 and is in addition to  
15 all other causes of action, remedies and penalties that are available to this  
16 state. The attorney general may investigate and take appropriate action  
17 pursuant to title 44, chapter 10, article 7.

18           E. Computer tampering pursuant to subsection A, paragraph 1 of this  
19 section is a class 3 felony. Computer tampering pursuant to subsection A,  
20 paragraph 2, 3 or 4 of this section is a class 4 felony, unless the computer,  
21 computer system or network tampered with is a critical infrastructure  
22 resource, in which case it is a class 2 felony. Computer tampering pursuant  
23 to subsection A, paragraph 5 of this section is a class 5 felony. Computer  
24 tampering pursuant to subsection A, paragraph 7 or 8 of this section is a  
25 class 6 felony.

26           Sec. 5. Section 36-135, Arizona Revised Statutes, is amended to read:

27           36-135. Child immunization reporting system; requirements;  
28                           access; confidentiality; immunity; violation;  
29                           classification; definitions

30           A. The child immunization reporting system is established in the  
31 department to collect, store, analyze, release and report immunization data.

32           B. ~~Beginning on January 1, 1998,~~ A health care professional who is  
33 licensed under title 32 to provide immunizations, except as provided in  
34 subsection I **OF THIS SECTION**, shall report the following information:

35           1. The health care professional's name, business address and business  
36 telephone number.

37           2. The child's name, address, social security number if known and not  
38 confidential, gender, date of birth and mother's maiden name.

39           3. The type of vaccine administered and the date it is administered.

40           C. The health care professional may submit this information to the  
41 department on a weekly or monthly basis by telephone, facsimile, mail,  
42 computer or any other method prescribed by the department.

43           D. Except as provided in subsection I **OF THIS SECTION**, the department  
44 shall release identifying information only to the ~~person's health care~~  
45 ~~professional~~ **PERSON, THE PERSON'S HEALTH CARE DECISION MAKER**, parent or  
46 guardian, ~~health care services organization,~~ **A HEALTH CARE PROVIDER, AN**

1 ENTITY REGULATED UNDER TITLE 20, the Arizona health care cost containment  
2 system and its providers as defined in chapter 29 of this title, ~~or~~ a school  
3 official who is authorized by law to receive and record immunization records  
4 OR A PERSON OR ENTITY THAT PROVIDES SERVICES TO A HEALTH CARE PROVIDER AND  
5 WITH WHOM THE HEALTH CARE PROVIDER HAS A BUSINESS ASSOCIATE AGREEMENT THAT  
6 REQUIRES THE PERSON OR ENTITY TO PROTECT THE CONFIDENTIALITY OF THE  
7 INFORMATION, AS REQUIRED BY THE HEALTH INSURANCE PORTABILITY AND  
8 ACCOUNTABILITY ACT PRIVACY STANDARDS, 45 CODE OF FEDERAL REGULATIONS  
9 PART 164, SUBPART E. THE DEPARTMENT MAY ALSO RELEASE IDENTIFYING INFORMATION  
10 TO AN ENTITY DESIGNATED BY THE PERSON OR THE PERSON'S HEALTH CARE DECISION  
11 MAKER, PARENT OR GUARDIAN. The department, by rule, may release immunization  
12 information to persons for a specified purpose. The department may release  
13 nonidentifying summary statistics.

14 E. Identifying information in the system is confidential. A person  
15 who is authorized to receive confidential information under subsection D OF  
16 THIS SECTION OR PURSUANT TO RULES ADOPTED BY THE DEPARTMENT shall ~~not~~  
17 disclose this information ~~to any other person~~ ONLY AS PERMITTED BY THIS  
18 SECTION OR RULES ADOPTED BY THE DEPARTMENT.

19 F. A health care ~~professional who~~ PROVIDER THAT provides information  
20 in good faith pursuant to this section is not subject to civil or criminal  
21 liability.

22 G. A health care ~~professional who~~ PROVIDER THAT does not comply with  
23 the requirements of this section violates a law applicable to the practice of  
24 medicine and commits an act of unprofessional conduct OR A VIOLATION OF  
25 CHAPTER 4 OF THIS TITLE.

26 H. Any agency or person receiving confidential information from the  
27 system who subsequently discloses that information to any other person OTHER  
28 THAN AS PERMITTED BY THIS SECTION is guilty of a class 3 misdemeanor.

29 I. At the request of the person, or if the person is a child the  
30 child's parent or guardian, the department of health services shall provide a  
31 form to be signed that allows confidential immunization information to be  
32 withheld from all persons including persons authorized to receive  
33 confidential information pursuant to subsection D OF THIS SECTION. If the  
34 request is delivered to the health care professional ~~prior to~~ BEFORE the  
35 immunization, the health care professional shall not forward the information  
36 required under subsection B OF THIS SECTION to the department.

37 J. FOR THE PURPOSES OF THIS SECTION, "HEALTH CARE DECISION MAKER" AND  
38 "HEALTH CARE PROVIDER" HAVE THE SAME MEANINGS PRESCRIBED IN SECTION 12-2291.

39 Sec. 6. Section 36-470, Arizona Revised Statutes, is amended to read:

40 36-470. Examination of specimens; written requests; reports of  
41 results; retention of test records

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

1 B. The result of a test shall be reported to the person who authorized  
2 it. A report of results issued from a clinical laboratory shall provide  
3 information required by the department by rule. ~~No~~ A clinical  
4 interpretation, diagnosis or prognosis or suggested treatment other than  
5 normal values shall NOT appear on the laboratory report form, except that a  
6 report made by a physician licensed to practice medicine and surgery in this  
7 state or another state may include this information.

8 C. THE RESULT OF A TEST MAY BE REPORTED TO A HEALTH CARE PROVIDER, AS  
9 DEFINED IN SECTION 12-2291, THAT HAS A TREATMENT RELATIONSHIP WITH A PATIENT,  
10 OR TO A PERSON OR ENTITY THAT PROVIDES SERVICES TO THE HEALTH CARE PROVIDER  
11 AND WITH WHOM THE HEALTH CARE PROVIDER HAS A BUSINESS ASSOCIATE AGREEMENT  
12 THAT REQUIRES THE PERSON OR ENTITY TO PROTECT THE CONFIDENTIALITY OF PATIENT  
13 INFORMATION AS REQUIRED BY THE HEALTH INSURANCE PORTABILITY AND  
14 ACCOUNTABILITY ACT PRIVACY STANDARDS, 45 CODE OF FEDERAL REGULATIONS PART  
15 164, SUBPART E.

16 ~~G.~~ D. All specimens accepted by a laboratory for specified tests  
17 shall be tested on its premises, except that specimens, other than those for  
18 proficiency testing purposes, may be forwarded for examination to another  
19 laboratory licensed under this article or exempted by section 36-461,  
20 paragraph 1.

21 ~~D.~~ E. When the laboratory performing the examination is other than  
22 the laboratory accepting the specimen, the report submitted shall include  
23 information required by the department by rule.

24 ~~E.~~ F. Records involving laboratory services and copies of reports of  
25 laboratory tests shall be kept in a manner as prescribed by the department by  
26 rule.

27 ~~F.~~ G. A person authorized to request clinical laboratory examinations  
28 pursuant to this section may direct that a clinical laboratory examine a  
29 person's specimens at that person's request if the authorization is given  
30 pursuant to department rules and specifies:

- 31 1. The name of the person authorized to request an examination and to  
32 receive the results of that examination.
- 33 2. The type of examinations to be performed by the laboratory.
- 34 3. The total number of examinations the authorized person may request.
- 35 4. The beginning and expiration dates of the authorization.
- 36 5. The identification of the person giving the authorization.

37 ~~G.~~ H. The laboratory shall report test results ordered pursuant to  
38 subsection ~~F~~ G OF THIS SECTION to the person who authorized the test and to  
39 the person who requested it.

40 Sec. 7. Section 36-509, Arizona Revised Statutes, is amended to read:

41 36-509. Confidential records; immunity

42 A. A health care entity must keep records and information contained in  
43 records confidential and not as public records, except as provided in this  
44 section. Records and information contained in records may only be disclosed  
45 to:



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

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

6           3. Persons authorized by a court order.

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

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

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

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

15           (b) Report a crime on the premises.

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

18          7. Persons, including family members, actively participating in the  
19 patient's care, treatment or supervision. A health care provider may only  
20 release information relating to the patient's diagnosis, prognosis, need for  
21 hospitalization, anticipated length of stay, discharge plan, medication,  
22 medication side effects and short-term and long-term treatment goals. A  
23 health care provider may make this release only after the treating  
24 professional or that person's designee interviews the patient or the  
25 patient's health care decision maker and the patient or the patient's health  
26 care decision maker does not object, unless federal or state law permits the  
27 disclosure. If the patient does not have the opportunity to object to the  
28 disclosure because of incapacity or an emergency circumstance and the  
29 patient's health care decision maker is not available to object to the  
30 release, the health care provider in the exercise of professional judgment  
31 may determine if the disclosure is in the best interests of the patient and,  
32 if so, may release the information authorized pursuant to this paragraph. A  
33 decision to release or withhold information is subject to review pursuant to  
34 section 36-517.01. The health care provider must record the name of any  
35 person to whom any information is given under this paragraph.

36          8. A state agency that licenses health professionals pursuant to title  
37 32, chapter 13, 15, 17, 19.1 or 33 and that requires these records in the  
38 course of investigating complaints of professional negligence, incompetence  
39 or lack of clinical judgment.

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

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

43          11. Human rights committees established pursuant to title 41, chapter  
44 35. Any information released pursuant to this paragraph shall comply with  
45 the requirements of section 41-3804 and applicable federal law and shall be  
46 released without personally identifiable information unless the personally

1 identifiable information is required for the official purposes of the human  
2 rights committee. Case information received by a human rights committee  
3 shall be maintained as confidential. For the purposes of this paragraph,  
4 "personally identifiable information" includes a person's name, address, date  
5 of birth, social security number, tribal enrollment number, telephone or  
6 telefacsimile number, driver license number, places of employment, school  
7 identification number and military identification number or any other  
8 distinguishing characteristic that tends to identify a particular person.

9 12. A patient or the patient's health care decision maker pursuant to  
10 section 36-507.

11 13. The department of public safety by the court to comply with the  
12 requirements of section 36-540, subsection N.

13 14. A third party payor or the payor's contractor ~~to obtain~~  
14 ~~reimbursement for health care, mental health care or behavioral health care~~  
15 ~~provided to the patient~~ AS PERMITTED BY THE HEALTH INSURANCE PORTABILITY AND  
16 ACCOUNTABILITY ACT PRIVACY STANDARDS, 45 CODE OF FEDERAL REGULATIONS PART 160  
17 AND PART 164, SUBPART E.

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

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

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

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

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

28 20. A person maintaining health statistics for public health purposes  
29 as authorized by law.

30 21. A grand jury as directed by subpoena.

31 22. A PERSON OR ENTITY THAT PROVIDES SERVICES TO THE PATIENT'S HEALTH  
32 CARE PROVIDER, AS DEFINED IN SECTION 12-2291, AND WITH WHOM THE HEALTH CARE  
33 PROVIDER HAS A BUSINESS ASSOCIATE AGREEMENT THAT REQUIRES THE PERSON OR  
34 ENTITY TO PROTECT THE CONFIDENTIALITY OF PATIENT INFORMATION AS REQUIRED BY  
35 THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT PRIVACY STANDARDS, 45  
36 CODE OF FEDERAL REGULATIONS PART 164, SUBPART E.

37 B. Information and records obtained in the course of evaluation,  
38 examination or treatment and submitted in any court proceeding pursuant to  
39 this chapter or title 14, chapter 5 are confidential and are not public  
40 records unless the hearing requirements of this chapter or title 14, chapter  
41 5 require a different procedure. Information and records that are obtained  
42 pursuant to this section and submitted in a court proceeding pursuant to  
43 title 14, chapter 5 and that are not clearly identified by the parties as  
44 confidential and segregated from nonconfidential information and records are  
45 considered public records.

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

6 D. A HEALTH CARE ENTITY THAT ACTS IN GOOD FAITH UNDER THIS ARTICLE IS  
7 NOT LIABLE FOR DAMAGES IN ANY CIVIL ACTION FOR THE DISCLOSURE OF RECORDS OR  
8 PAYMENT RECORDS THAT IS MADE PURSUANT TO THIS ARTICLE OR AS OTHERWISE  
9 PROVIDED BY LAW. THE HEALTH CARE ENTITY IS PRESUMED TO HAVE ACTED IN GOOD  
10 FAITH. THIS PRESUMPTION MAY BE REBUTTED BY CLEAR AND CONVINCING EVIDENCE.

11 Sec. 8. Section 36-664, Arizona Revised Statutes, is amended to read:  
12 36-664. Confidentiality; exceptions

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

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

19 2. The department or a local health department for purposes of  
20 notifying a good Samaritan pursuant to subsection E of this section.

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

24 4. A health facility or health care provider, in relation to the  
25 procurement, processing, distributing or use of a human body or a human body  
26 part, including organs, tissues, eyes, bones, arteries, blood, semen, milk or  
27 other body fluids, for use in medical education, research or therapy or for  
28 transplantation to another person.

29 5. A health facility or health care provider, or an organization,  
30 committee or individual designated by the health facility or health care  
31 provider, that is engaged in the review of professional practices, including  
32 the review of the quality, utilization or necessity of medical care, or an  
33 accreditation or oversight review organization responsible for the review of  
34 professional practices at a health facility or by a health care provider.

35 6. A private entity that accredits the health facility or health care  
36 provider and with whom the health facility or health care provider has an  
37 agreement requiring the agency to protect the confidentiality of patient  
38 information.

39 7. A federal, state, county or local health officer if disclosure is  
40 mandated by federal or state law.

41 8. A federal, state or local government agency authorized by law to  
42 receive the information. The agency is authorized to redisclose the  
43 information only pursuant to this article or as otherwise permitted by law.

44 9. An authorized employee or agent of a federal, state or local  
45 government agency that supervises or monitors the health care provider or  
46 health facility or administers the program under which the health service is

1 provided. An authorized employee or agent includes only an employee or agent  
2 who, in the ordinary course of business of the government agency, has access  
3 to records relating to the care or treatment of the protected person.

4 10. A person, health care provider or health facility to which  
5 disclosure is ordered by a court or administrative body pursuant to section  
6 36-665.

7 11. The industrial commission or parties to an industrial commission OF  
8 ARIZONA claim pursuant to section 23-908, subsection D and section  
9 23-1043.02.

10 12. Insurance entities pursuant to section 20-448.01 and third party  
11 payors or the payors' contractors.

12 13. Any person or entity as authorized by the patient or the patient's  
13 health care decision maker.

14 14. A person or entity as required by federal law.

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

17 16. A person or entity for research only if the research is conducted  
18 pursuant to applicable federal or state laws and regulations governing  
19 research.

20 17. A PERSON OR ENTITY THAT PROVIDES SERVICES TO THE PATIENT'S HEALTH  
21 CARE PROVIDER, AS DEFINED IN SECTION 12-2291, AND WITH WHOM THE HEALTH CARE  
22 PROVIDER HAS A BUSINESS ASSOCIATE AGREEMENT THAT REQUIRES THE PERSON OR  
23 ENTITY TO PROTECT THE CONFIDENTIALITY OF PATIENT INFORMATION AS REQUIRED BY  
24 THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT PRIVACY STANDARDS,  
25 45 CODE OF FEDERAL REGULATIONS PART 164, SUBPART E.

26 B. At the request of the department of economic security AND in  
27 conjunction with the placement of children in foster care or for adoption or  
28 court-ordered placement, a health care provider shall disclose communicable  
29 disease information, including HIV-related information, to the department of  
30 economic security.

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

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

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

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

39 4. For the purposes of research as authorized by state and federal  
40 law.

41 D. The director may authorize the release of information that  
42 identifies the protected person to the national center for health statistics  
43 of the United States public health service for the purposes of conducting a  
44 search of the national death index.

45 E. The department or a local health department shall disclose  
46 communicable disease related information to a good Samaritan who submits a

1 request to the department or the local health department. The request shall  
2 document the occurrence of the accident, fire or other life-threatening  
3 emergency and shall include information regarding the nature of the  
4 significant exposure risk. The department shall adopt rules that prescribe  
5 standards of significant exposure risk based on the best available medical  
6 evidence. The department shall adopt rules that establish procedures for  
7 processing requests from good Samaritans pursuant to this subsection. The  
8 rules shall provide that the disclosure to the good Samaritan shall not  
9 reveal the protected person's name and shall be accompanied by a written  
10 statement that warns the good Samaritan that the confidentiality of the  
11 information is protected by state law.

12 F. An authorization to release communicable disease related  
13 information shall be signed by the protected person or, if the protected  
14 person lacks capacity to consent, the protected person's health care decision  
15 maker. An authorization shall be dated and shall specify to whom disclosure  
16 is authorized, the purpose for disclosure and the time period during which  
17 the release is effective. A general authorization for the release of medical  
18 or other information, including communicable disease related information, is  
19 not an authorization for the release of HIV-related information unless the  
20 authorization specifically indicates its purpose as an authorization for the  
21 release of confidential HIV-related information and complies with the  
22 requirements of this section.

23 G. A person to whom communicable disease related information is  
24 disclosed pursuant to this section shall not disclose the information to  
25 another person except as authorized by this section. This subsection does  
26 not apply to the protected person or a protected person's health care  
27 decision maker.

28 ~~H. If a disclosure of communicable disease related information is made  
29 pursuant to an authorization under subsection F of this section, the  
30 disclosure shall be accompanied by a statement in writing that warns that the  
31 information is from confidential records protected by state law and that  
32 prohibits further disclosure of the information without the specific written  
33 authorization of the person to whom it pertains or as otherwise permitted by  
34 law.~~

35 ~~I.~~ H. This section does not prohibit the listing of communicable  
36 disease related information, including acquired immune deficiency syndrome,  
37 HIV-related illness or HIV infection, in a certificate of death, autopsy  
38 report or other related document that is prepared pursuant to law to document  
39 the cause of death or that is prepared to release a body to a funeral  
40 director. This section does not modify a law or rule relating to access to  
41 death certificates, autopsy reports or other related documents.

42 ~~J.~~ I. If a person in possession of HIV-related information reasonably  
43 believes that an identifiable third party is at risk of HIV infection, that  
44 person may report that risk to the department. The report shall be in  
45 writing and include the name and address of the identifiable third party and  
46 the name and address of the person making the report. The department shall

1 contact the person at risk pursuant to rules adopted by the department. The  
2 department employee making the initial contact shall have expertise in  
3 counseling persons who have been exposed to or tested positive for HIV or  
4 acquired immune deficiency syndrome.

5 ~~K~~ J. Except as otherwise provided pursuant to this article or  
6 subject to an order or search warrant issued pursuant to section 36-665, a  
7 person who receives HIV-related information in the course of providing a  
8 health service or pursuant to a release of HIV-related information shall not  
9 disclose that information to another person or legal entity or be compelled  
10 by subpoena, order, search warrant or other judicial process to disclose that  
11 information to another person or legal entity.

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

14 Sec. 9. Title 36, Arizona Revised Statutes, is amended by adding  
15 chapter 38, to read:

16 CHAPTER 38

17 HEALTH INFORMATION ORGANIZATIONS

18 ARTICLE 1. GENERAL PROVISIONS

19 36-3801. Definitions

20 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

21 1. "BREACH" HAS THE SAME MEANING PRESCRIBED IN 45 CODE OF FEDERAL  
22 REGULATIONS, PART 164, SUBPART D.

23 2. "CLINICAL LABORATORY" HAS THE SAME MEANING PRESCRIBED IN SECTION  
24 36-451.

25 3. "HEALTH CARE DECISION MAKER" HAS THE SAME MEANING PRESCRIBED IN  
26 SECTION 12-2291.

27 4. "HEALTH CARE PROVIDER" HAS THE SAME MEANING PRESCRIBED IN SECTION  
28 12-2291.

29 5. "HEALTH INFORMATION ORGANIZATION" MEANS AN ORGANIZATION THAT  
30 OVERSEES AND GOVERNS THE EXCHANGE OF INDIVIDUALLY IDENTIFIABLE HEALTH  
31 INFORMATION AMONG ORGANIZATIONS ACCORDING TO NATIONALLY RECOGNIZED STANDARDS.  
32 HEALTH INFORMATION ORGANIZATION DOES NOT INCLUDE A HEALTH CARE PROVIDER OR AN  
33 ELECTRONIC HEALTH RECORD MAINTAINED BY OR ON BEHALF OF A HEALTH CARE PROVIDER  
34 AND DOES NOT INCLUDE ENTITIES SUBJECT TO TITLE 20 OR THAT ARE HEALTH PLANS AS  
35 DEFINED IN 45 CODE OF FEDERAL REGULATIONS SECTION 160.103.

36 6. "INDIVIDUAL" MEANS THE PERSON WHO IS THE SUBJECT OF THE  
37 INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION.

38 7. "INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION" HAS THE SAME MEANING  
39 PRESCRIBED IN THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT PRIVACY  
40 STANDARDS, 45 CODE OF FEDERAL REGULATIONS PART 160 AND PART 164, SUBPART E.

41 8. "MEDICAL RECORDS" HAS THE SAME MEANING PRESCRIBED IN SECTION  
42 12-2291.

43 9. "OPT OUT" MEANS AN INDIVIDUAL'S WRITTEN DECISION THAT THE  
44 INDIVIDUAL'S INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION CANNOT BE SHARED  
45 THROUGH A HEALTH INFORMATION ORGANIZATION.

46 10. "PERSON" HAS THE SAME MEANING PRESCRIBED IN SECTION 1-215.

1 11. "TREATMENT" HAS THE SAME MEANING PRESCRIBED IN THE HEALTH INSURANCE  
2 PORTABILITY AND ACCOUNTABILITY ACT PRIVACY STANDARDS, 45 CODE OF FEDERAL  
3 REGULATIONS PART 160 AND PART 164, SUBPART E.

4 12. "WRITTEN" MEANS IN HANDWRITING OR THROUGH AN ELECTRONIC TRANSACTION  
5 THAT MEETS THE REQUIREMENTS OF TITLE 44, CHAPTER 26.

6 36-3802. Individual rights

7 A. A HEALTH INFORMATION ORGANIZATION MUST PROVIDE THE FOLLOWING RIGHTS  
8 TO INDIVIDUALS:

9 1. TO OPT OUT OF PARTICIPATING IN THE HEALTH INFORMATION ORGANIZATION  
10 PURSUANT TO SECTION 36-3803.

11 2. TO REQUEST A COPY OF THE INDIVIDUAL'S INDIVIDUALLY IDENTIFIABLE  
12 HEALTH INFORMATION THAT IS AVAILABLE THROUGH THE HEALTH INFORMATION  
13 ORGANIZATION. THE HEALTH INFORMATION ORGANIZATION MAY PROVIDE THIS RIGHT  
14 DIRECTLY OR MAY REQUIRE HEALTH CARE PROVIDERS PARTICIPATING IN THE HEALTH  
15 INFORMATION ORGANIZATION TO PROVIDE ACCESS TO INDIVIDUALS. THE COPY MAY BE  
16 PROVIDED ELECTRONICALLY, IF THE INDIVIDUAL REQUESTING THE COPY CONSENTS TO  
17 ELECTRONIC DELIVERY OF THE INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION, AND  
18 MUST BE PROVIDED TO THE INDIVIDUAL WITHIN THIRTY DAYS AFTER THE INDIVIDUAL'S  
19 REQUEST. CHARGES FOR COPIES ARE GOVERNED BY SECTION 12-2295.

20 3. TO REQUEST AMENDMENT OF INCORRECT INDIVIDUALLY IDENTIFIABLE HEALTH  
21 INFORMATION AVAILABLE THROUGH THE HEALTH INFORMATION ORGANIZATION.

22 4. TO REQUEST A LIST OF THE PERSONS WHO HAVE ACCESSED THE INDIVIDUAL'S  
23 INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION THROUGH THE HEALTH INFORMATION  
24 ORGANIZATION FOR A PERIOD OF AT LEAST THREE YEARS BEFORE THE INDIVIDUAL'S  
25 REQUEST. THIS LIST MUST BE PROVIDED TO THE INDIVIDUAL WITHIN THIRTY DAYS  
26 AFTER THE INDIVIDUAL'S REQUEST.

27 5. TO BE NOTIFIED, PURSUANT TO SECTION 44-7501 AND 45 CODE OF FEDERAL  
28 REGULATIONS PART 164, SUBPART D, OF A BREACH AT THE HEALTH INFORMATION  
29 ORGANIZATION THAT AFFECTS THE INDIVIDUAL'S INDIVIDUALLY IDENTIFIABLE HEALTH  
30 INFORMATION.

31 B. IF AN INDIVIDUAL DOES NOT HAVE THE CAPACITY TO MAKE HEALTH CARE  
32 DECISIONS, THE INDIVIDUAL'S HEALTH CARE DECISION MAKER MAY EXERCISE ALL  
33 INDIVIDUAL RIGHTS IN THIS CHAPTER ON BEHALF OF THE INDIVIDUAL.

34 36-3803. Voluntary participation in health information  
35 organizations

36 AN INDIVIDUAL HAS THE RIGHT TO OPT OUT OF PARTICIPATING IN A HEALTH  
37 INFORMATION ORGANIZATION BY PROVIDING NOTICE AS EXPLAINED IN THE HEALTH  
38 INFORMATION ORGANIZATION'S NOTICE OF HEALTH INFORMATION PRACTICES. AN  
39 INDIVIDUAL ALSO HAS THE RIGHT TO OPT OUT OF A PARTICULAR HEALTH CARE PROVIDER  
40 SHARING THE INDIVIDUAL'S INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION THROUGH  
41 THE HEALTH INFORMATION ORGANIZATION, PROVIDED THAT, IF THE HEALTH CARE  
42 PROVIDER IS AN EMPLOYEE OF AN ORGANIZATION, THE ORGANIZATION MAY APPLY SUCH  
43 OPT OUT TO ALL HEALTH CARE PROVIDERS EMPLOYED BY THE ORGANIZATION. IF AN  
44 INDIVIDUAL PROVIDES A NOTICE OF OPT OUT TO A HEALTH CARE PROVIDER, THE HEALTH  
45 CARE PROVIDER MUST PROVIDE THAT NOTICE TO THE HEALTH INFORMATION  
46 ORGANIZATION. A DECISION TO OPT OUT OF PARTICIPATING IN A HEALTH CARE

1 INFORMATION ORGANIZATION MAY BE CHANGED BY AN INDIVIDUAL AT ANY TIME BY  
2 PROVIDING NOTICE AS EXPLAINED IN THE HEALTH INFORMATION ORGANIZATION'S NOTICE  
3 OF HEALTH INFORMATION PRACTICES.

4 36-3804. Notice of health information practices

5 A. A HEALTH INFORMATION ORGANIZATION MUST MAINTAIN A WRITTEN NOTICE OF  
6 HEALTH INFORMATION PRACTICES DESCRIBING THE FOLLOWING:

7 1. INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION THAT THE HEALTH  
8 INFORMATION ORGANIZATION COLLECTS ABOUT INDIVIDUALS.

9 2. THE CATEGORIES OF PERSONS WHO HAVE ACCESS TO INFORMATION, INCLUDING  
10 INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION, THROUGH THE HEALTH INFORMATION  
11 ORGANIZATION.

12 3. THE PURPOSES FOR WHICH ACCESS TO THE INFORMATION, INCLUDING  
13 INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION, IS PROVIDED THROUGH THE HEALTH  
14 INFORMATION ORGANIZATION.

15 4. THE INDIVIDUAL'S RIGHT TO OPT OUT OF PARTICIPATING IN THE HEALTH  
16 INFORMATION ORGANIZATION.

17 5. AN EXPLANATION AS TO HOW AN INDIVIDUAL OPTS OUT OF PARTICIPATING IN  
18 THE HEALTH INFORMATION ORGANIZATION.

19 B. THE NOTICE SHALL INCLUDE A STATEMENT INFORMING THE PATIENT OF THE  
20 RIGHT TO CHOOSE TO KEEP THE PATIENT'S PERSONAL HEALTH INFORMATION OUT OF THE  
21 HEALTH INFORMATION ORGANIZATION AND THAT THIS RIGHT IS PROTECTED BY ARTICLE  
22 27, SECTION 2, CONSTITUTION OF ARIZONA.

23 C. A HEALTH INFORMATION ORGANIZATION MUST POST ITS CURRENT NOTICE OF  
24 HEALTH INFORMATION PRACTICES ON ITS WEBSITE IN A CONSPICUOUS MANNER.

25 D. NOTWITHSTANDING ANY OTHER REQUIREMENT IN THIS SECTION, A HEALTH  
26 INFORMATION ORGANIZATION MUST PROVIDE AN INDIVIDUAL WITH A COPY OF THE NOTICE  
27 OF HEALTH INFORMATION PRACTICES WITHIN THIRTY DAYS AFTER RECEIVING A WRITTEN  
28 REQUEST FOR THAT INFORMATION.

29 E. A HEALTH CARE PROVIDER PARTICIPATING IN A HEALTH INFORMATION  
30 ORGANIZATION MUST PROVIDE THE HEALTH INFORMATION ORGANIZATION'S NOTICE OF  
31 HEALTH INFORMATION PRACTICES IN AT LEAST TWELVE-POINT TYPE TO THE PROVIDER'S  
32 PATIENTS BEFORE OR AT THE PROVIDER'S FIRST ENCOUNTER WITH A PATIENT,  
33 BEGINNING ON THE FIRST DAY OF THE PROVIDER'S PARTICIPATION IN THE HEALTH  
34 INFORMATION ORGANIZATION. A HEALTH CARE PROVIDER MUST DOCUMENT THAT IT HAS  
35 PROVIDED THE HEALTH INFORMATION ORGANIZATION'S NOTICE OF HEALTH INFORMATION  
36 PRACTICES TO A PATIENT AND THAT THE PATIENT HAS RECEIVED AND READ AND  
37 UNDERSTANDS THE NOTICE. DOCUMENTATION MUST BE IN THE FORM OF A SIGNATURE BY  
38 THE PATIENT INDICATING THE PATIENT HAS RECEIVED AND READ AND UNDERSTANDS THE  
39 NOTICE OF HEALTH INFORMATION PRACTICES AND WHETHER THE PATIENT CHOOSES TO OPT  
40 OUT. AS TECHNOLOGY DEVELOPS AND ELECTRONIC METHODS OF RECEIVING  
41 DOCUMENTATION FROM THE PATIENT EXIST, THE HEALTH INFORMATION ORGANIZATION IS  
42 PERMITTED TO UTILIZE SUCH ELECTRONIC DOCUMENTATION.

43 F. IF THE PATIENT CHOOSES TO OPT OUT OF THE HEALTH INFORMATION  
44 ORGANIZATION, THE PATIENT'S PERSONAL HEALTH INFORMATION SHALL NOT BE  
45 ACCESSIBLE THROUGH THE HEALTH INFORMATION ORGANIZATION NO LATER THAN THIRTY  
46 DAYS AFTER THE PATIENT OPTS OUT.



1 G. IF THERE IS A MATERIAL CHANGE TO A HEALTH INFORMATION  
2 ORGANIZATION'S NOTICE OF HEALTH INFORMATION PRACTICES, A HEALTH CARE PROVIDER  
3 MUST REDISTRIBUTE THE NOTICE OF HEALTH INFORMATION PRACTICES AT THE NEXT  
4 POINT OF CONTACT WITH THE PATIENT OR IN THE SAME MANNER AND WITHIN THE SAME  
5 TIME PERIOD AS IS REQUIRED BY 45 CODE OF FEDERAL REGULATIONS SECTION 164.528  
6 IN RELATION TO THE HEALTH CARE PROVIDER'S NOTICE OF PRIVACY PRACTICES,  
7 WHICHEVER COMES FIRST.

8 36-3805. Disclosure of individually identifiable health  
9 information

10 A. A HEALTH INFORMATION ORGANIZATION MAY DISCLOSE AN INDIVIDUAL'S  
11 INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION ONLY IF:

12 1. THE INDIVIDUAL HAS NOT OPTED OUT OF PARTICIPATING IN THE HEALTH  
13 INFORMATION ORGANIZATION.

14 2. THE TYPE OF DISCLOSURE IS EXPLAINED IN THE HEALTH INFORMATION  
15 ORGANIZATION'S CURRENT NOTICE OF HEALTH INFORMATION PRACTICES.

16 3. THE DISCLOSURE COMPLIES WITH THE HEALTH INSURANCE PORTABILITY AND  
17 ACCOUNTABILITY ACT PRIVACY RULE, 45 CODE OF FEDERAL REGULATIONS PART 164,  
18 SUBPART E.

19 B. A HEALTH INFORMATION ORGANIZATION MAY NOT SELL OR OTHERWISE MAKE  
20 COMMERCIAL USE OF AN INDIVIDUAL'S INDIVIDUALLY IDENTIFIABLE HEALTH  
21 INFORMATION WITHOUT THE WRITTEN CONSENT OF THE INDIVIDUAL.

22 C. A HEALTH INFORMATION ORGANIZATION MAY NOT TRANSFER INDIVIDUALLY  
23 IDENTIFIABLE HEALTH INFORMATION OR DEIDENTIFIED HEALTH INFORMATION TO ANY  
24 PERSON OR ENTITY FOR THE PURPOSE OF RESEARCH OR USING THE INFORMATION AS PART  
25 OF A SET OF DATA FOR AN APPLICATION FOR GRANT OR OTHER RESEARCH FUNDING,  
26 UNLESS THE HEALTH CARE PROVIDER OBTAINS CONSENT FROM THE INDIVIDUAL FOR THE  
27 TRANSFER. A HEALTH CARE PROVIDER MUST DOCUMENT THAT IT HAS PROVIDED A NOTICE  
28 OF TRANSFER TO THE INDIVIDUAL AND THAT THE INDIVIDUAL HAS RECEIVED AND READ  
29 AND UNDERSTANDS THE NOTICE. DOCUMENTATION MUST BE IN THE FORM OF A SIGNATURE  
30 BY THE INDIVIDUAL INDICATING THE INDIVIDUAL HAS RECEIVED AND READ AND  
31 UNDERSTANDS THE NOTICE AND THAT THE PATIENT GIVES CONSENT TO THE TRANSFER OF  
32 INFORMATION. FOR THE PURPOSES OF THIS SUBSECTION, "CONSENT" MEANS THAT A  
33 HEALTH CARE PROVIDER PARTICIPATING IN A HEALTH INFORMATION ORGANIZATION HAS  
34 PROVIDED A NOTICE TO THE INDIVIDUAL THAT IS IN AT LEAST TWELVE-POINT TYPE AND  
35 THAT DESCRIBES THE PURPOSES OF THE TRANSFER.

36 D. THIS CHAPTER DOES NOT INTERFERE WITH ANY OTHER FEDERAL OR STATE  
37 LAWS OR REGULATIONS THAT PROVIDE MORE EXTENSIVE PROTECTION OF INDIVIDUALLY  
38 IDENTIFIABLE HEALTH INFORMATION THAN PROVIDED IN THIS CHAPTER.

39 36-3806. Required policies

40 A HEALTH INFORMATION ORGANIZATION MUST IMPLEMENT AND ENFORCE POLICIES  
41 GOVERNING THE PRIVACY AND SECURITY OF INDIVIDUALLY IDENTIFIABLE HEALTH  
42 INFORMATION AND COMPLIANCE WITH THIS CHAPTER. THESE POLICIES MUST:

43 1. IMPLEMENT THE INDIVIDUAL RIGHTS PRESCRIBED IN SECTION 36-3802.

44 2. ADDRESS THE INDIVIDUAL'S RIGHT TO OPT-OUT OF PARTICIPATING IN THE  
45 HEALTH INFORMATION ORGANIZATION PURSUANT TO SECTION 36-3803.

1 3. ADDRESS THE CONTENT AND DISTRIBUTION OF THE NOTICE OF HEALTH  
2 INFORMATION PRACTICES PRESCRIBED IN SECTION 36-3804.

3 4. IMPLEMENT THE RESTRICTIONS ON DISCLOSURE OF INDIVIDUALLY  
4 IDENTIFIABLE HEALTH INFORMATION PRESCRIBED IN SECTION 36-3805.

5 5. ADDRESS SECURITY SAFEGUARDS TO PROTECT INDIVIDUALLY IDENTIFIABLE  
6 HEALTH INFORMATION, AS REQUIRED BY THE HEALTH INSURANCE PORTABILITY AND  
7 ACCOUNTABILITY ACT SECURITY RULE, 45 CODE OF FEDERAL REGULATIONS PART 164,  
8 SUBPART C.

9 6. PRESCRIBE THE APPOINTMENT AND RESPONSIBILITIES OF A PERSON OR  
10 PERSONS WHO HAVE RESPONSIBILITY FOR MAINTAINING PRIVACY AND SECURITY  
11 PROCEDURES FOR THE HEALTH INFORMATION ORGANIZATION.

12 7. REQUIRE TRAINING OF EACH EMPLOYEE AND AGENT OF THE HEALTH  
13 INFORMATION ORGANIZATION ABOUT THE HEALTH INFORMATION ORGANIZATION'S  
14 POLICIES, INCLUDING THE NEED TO MAINTAIN THE PRIVACY AND SECURITY OF  
15 INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION AND THE PENALTIES PROVIDED FOR  
16 THE UNAUTHORIZED ACCESS, RELEASE, TRANSFER, USE OR DISCLOSURE OF INDIVIDUALLY  
17 IDENTIFIABLE HEALTH INFORMATION. THE HEALTH INFORMATION ORGANIZATION MUST  
18 PROVIDE THIS TRAINING BEFORE AN EMPLOYEE OR AGENT MAY HAVE ACCESS TO  
19 INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION AVAILABLE TO THE HEALTH  
20 INFORMATION ORGANIZATION, AND TWICE A YEAR FOR ALL EMPLOYEES AND AGENTS.

21 36-3807. Implementing individual preference for sharing  
22 individually identifiable health information; review

23 A HEALTH INFORMATION ORGANIZATION MUST HAVE TECHNOLOGY CAPABILITY TO  
24 IMPLEMENT INDIVIDUAL PREFERENCES FOR SHARING OR SEGREGATING INDIVIDUALLY  
25 IDENTIFIABLE HEALTH INFORMATION WITHIN THREE YEARS AFTER THE EFFECTIVE DATE  
26 OF THIS SECTION. AFTER THE HEALTH INFORMATION ORGANIZATION OBTAINS THE  
27 TECHNOLOGY CAPABILITY TO IMPLEMENT INDIVIDUAL PREFERENCES FOR SHARING OR  
28 SEGREGATING INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION, THE HEALTH CARE  
29 PROVIDER MUST PROVIDE NOTICE TO THE PATIENT OF THE CHANGE PURSUANT TO SECTION  
30 36-3804, SUBSECTION G.

31 36-3808. Subpoenas; certification requirements

32 A. INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION THAT IS MAINTAINED BY  
33 A HEALTH INFORMATION ORGANIZATION IS NOT SUBJECT TO A SUBPOENA DIRECTED TO  
34 THE HEALTH INFORMATION ORGANIZATION UNLESS SECTION 12-2294.01 IS FOLLOWED AND  
35 A COURT HAS DETERMINED ON MOTION AND NOTICE TO THE HEALTH INFORMATION  
36 ORGANIZATION AND THE PARTIES TO THE LITIGATION IN WHICH THE SUBPOENA IS  
37 SERVED THAT THE INFORMATION SOUGHT FROM THE HEALTH INFORMATION ORGANIZATION  
38 IS NOT AVAILABLE FROM THE ORIGINAL SOURCE AND EITHER IS RELEVANT TO THE  
39 SUBJECT MATTER INVOLVED IN THE PENDING ACTION OR IS REASONABLY CALCULATED TO  
40 LEAD TO THE DISCOVERY OF ADMISSIBLE EVIDENCE IN THE PENDING ACTION.

41 B. A PERSON WHO ISSUES A SUBPOENA TO THE HEALTH INFORMATION  
42 ORGANIZATION PURSUANT TO THIS SECTION MUST CERTIFY BEFORE THE ISSUANCE OF THE  
43 SUBPOENA THAT THE REQUIREMENTS OF SUBSECTION A OF THIS SECTION HAVE BEEN MET.

44 36-3809. Health care providers; duty to maintain medical  
45 records

- 1           A. A HEALTH CARE PROVIDER WHO PARTICIPATES IN A HEALTH INFORMATION  
2 ORGANIZATION IS RESPONSIBLE FOR MAINTAINING THE PROVIDER'S OWN MEDICAL  
3 RECORDS PURSUANT TO TITLE 12, CHAPTER 13, ARTICLE 7.1.
- 4           B. PARTICIPATION IN A HEALTH INFORMATION ORGANIZATION DOES NOT IMPACT  
5 THE CONTENT, USE OR DISCLOSURE OF MEDICAL RECORDS OR INFORMATION CONTAINED IN  
6 MEDICAL RECORDS THAT ARE HELD IN LOCATIONS OTHER THAN THE HEALTH INFORMATION  
7 ORGANIZATION.
- 8           C. THIS CHAPTER DOES NOT LIMIT, CHANGE OR OTHERWISE AFFECT A HEALTH  
9 CARE PROVIDER'S RIGHT OR DUTY TO EXCHANGE MEDICAL RECORDS OR INFORMATION  
10 CONTAINED IN MEDICAL RECORDS IN ACCORDANCE WITH APPLICABLE LAW.

APPROVED BY THE GOVERNOR APRIL 26, 2011.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 26, 2011.