Senate Engrossed

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
Senate
Fifty-first Legislature
Second Regular Session
2014

CHAPTER 222

SENATE BILL 1276

AN ACT

AMENDING SECTIONS 36-661, 36-663 AND 36-664, ARIZONA REVISED STATUTES; RELATING TO COMMUNICABLE DISEASE INFORMATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 36-661, Arizona Revised Statutes, is amended to read:

36-661. Definitions

In this article, unless the context otherwise requires:

1. "Acquired immune deficiency syndrome" has the same meaning as defined by the centers for disease control of the United States public health service.

2. "Capacity to consent" means a person's ability, determined without regard to the person's age, to understand and appreciate the nature and consequences of a proposed health care service, treatment or procedure and to make an informed decision concerning that service, treatment or procedure.

3. "Child" means an unemancipated person under eighteen years of age.

4. "Communicable disease" means a contagious, epidemic or infectious disease required to be reported to the local board of health or the department pursuant to chapter 1 of this title and this chapter.

5. "Communicable disease related information" means information regarding a communicable disease in the possession of a person who provides health services or who obtains the information pursuant to the release of communicable disease related information.

6. "Contact" means a spouse or sex partner of a protected person, a person who has shared hypodermic needles or syringes with a protected person or a person otherwise exposed to a protected person with a communicable disease in a manner that poses an epidemiologically significant risk of transmission of that disease.

7. "Department" means the department of health services.

8. "Director" means the director of the department of health services.

9. "FIRST RESPONDER" MEANS A LAW ENFORCEMENT OFFICER, A FIREFIGHTER OR AN AMBULANCE ATTENDANT AS DEFINED IN SECTION 36-2201.

~~9.~~ 10. "Good samaritan" means a person who renders emergency care or assistance in good faith and without compensation at the scene of any accident, fire or other life-threatening emergency and who believes that a significant exposure risk occurred while the person rendered care or assistance.

~~10.~~ 11. "Health care decision maker" has the same meaning prescribed in section 12-2801.

~~11.~~ 12. "Health care provider" means a physician, nurse or other person involved in providing health services.

~~12.~~ 13. "Health facility" means a health care institution as defined in section 36-401, a blood bank, blood center, milk bank, sperm bank, organ or tissue bank or clinical laboratory or a health care services organization holding a certificate of authority pursuant to section 20-1054.

~~13.~~ 14. "Health service" means public or private care, treatment, clinical laboratory tests, counseling or educational service for adults or children and acute, chronic, custodial, residential, outpatient, home or

other health care or activities related to the detection, reporting, prevention and control of communicable or preventable diseases.

~~14.~~ 15. "HIV" means the human immunodeficiency virus.

~~15.~~ 16. "HIV infection" means infection with the human immunodeficiency virus or a related virus identified as a probable causative agent of acquired immune deficiency syndrome.

~~16.~~ 17. "HIV-related illness" means an illness that may result from or be associated with HIV infection.

~~17.~~ 18. "HIV-related information" means information concerning whether a person has had an HIV-related test or has HIV infection, HIV-related illness or acquired immune deficiency syndrome and includes information that identifies or reasonably permits identification of that person or the person's contacts.

~~18.~~ 19. "HIV-related test" means a laboratory test or series of tests for the virus, components of the virus or antibodies to the virus thought to indicate the presence of HIV infection.

20. "OCCUPATIONAL SIGNIFICANT EXPOSURE RISK" MEANS A SIGNIFICANT EXPOSURE RISK THAT OCCURS IN THE PERFORMANCE OF A HEALTH CARE PROVIDER'S PROFESSIONAL DUTIES OR A FIRST RESPONDER'S OFFICIAL DUTIES.

~~19.~~ 21. "Protected person" means a person who takes an HIV-related test or who has been diagnosed as having HIV infection, acquired immune deficiency syndrome, HIV-related illness or another communicable disease.

~~20.~~ 22. "Significant exposure risk" means contact with another person in a manner that, if the other person has a communicable disease, poses an epidemiologically significant risk of transmission of that disease as determined by the department.

Sec. 2. Section 36-663, Arizona Revised Statutes, is amended to read:

36-663. <u>HIV-related testing; restrictions; exceptions</u>

A. Except as otherwise specifically authorized or required by this state or by federal law, before an HIV-related test is ordered by a health care provider, the health care provider shall ensure that oral or written informed consent information is provided to the subject of the test who has capacity to consent or, if the subject lacks capacity to consent, ~~of~~ TO a person authorized pursuant to law to consent to health care for that person. For the purposes of this subsection, "informed consent information" means information that explains HIV infection and the meaning of a positive test result and that indicates that the patient may ask questions and decline testing.

B. This section does not apply to the performance of an HIV-related test:

1. By a health care provider or health facility in relation to the procuring, processing, distributing or use of a human body or a human body part, including organs, tissues, eyes, bones, arteries, blood, semen, milk or other body fluids, for use in medical research or therapy or for transplantation to other persons.

2. IF TESTING IS REQUESTED BY A HEALTH CARE PROVIDER OR FIRST RESPONDER WHO HAS HAD AN OCCUPATIONAL SIGNIFICANT EXPOSURE RISK TO THE PATIENT'S BLOOD OR BODILY FLUID. HIV-RELATED TESTING UNDER THIS PARAGRAPH MAY BE PERFORMED UNDER A GENERAL CONSENT TO RECEIVE TREATMENT, EXCEPT IN AN EMERGENCY WHEN CONSENT MAY BE IMPLIED. SUCH TESTING MAY BE PERFORMED UNDER THIS PARAGRAPH ONLY ON RECEIPT OF A WRITTEN REQUEST FROM A HEALTH CARE PROVIDER OR FIRST RESPONDER WHO DOCUMENTS THE OCCURRENCE AND INFORMATION REGARDING THE NATURE OF THE OCCUPATIONAL SIGNIFICANT EXPOSURE RISK AND THE REPORT IS REVIEWED AND CONFIRMED BY A HEALTH CARE PROVIDER WHO IS BOTH LICENSED PURSUANT TO TITLE 32, CHAPTER 13, 15 OR 17 AND COMPETENT TO DETERMINE A SIGNIFICANT EXPOSURE RISK. A PATIENT MAY NOT BE FORCED TO PROVIDE A BLOOD SAMPLE FOR THE PURPOSES OF THIS PARAGRAPH. WHEN AN HIV-RELATED TEST IS ORDERED, A HEALTH CARE PROVIDER SHALL PROVIDE THE PATIENT WITH THE TEST RESULTS AND INFORMATION THAT EXPLAINS HIV INFECTION AND THE MEANING OF A POSITIVE OR NEGATIVE TEST RESULT AND THAT INDICATES THAT THE PATIENT MAY ASK QUESTIONS.

~~2.~~ 3. For the purpose of research if the testing is performed in a manner by which the identity of the test subject is not known and may not be retrieved by the researcher.

~~3.~~ 4. On a deceased person, if the test is conducted in order to determine the cause of death or for epidemiologic or public health purposes.

~~4.~~ 5. In the course of providing necessary emergency medical treatment to a patient who lacks capacity to consent to HIV-related testing and for whom no person authorized pursuant to law to consent to health care for that person can be identified on a timely basis if the testing is necessary for the diagnosis and treatment of the emergency condition. The attending physician shall document the existence of an emergency medical condition, the necessity of the HIV-related testing to diagnose and treat the emergency condition and the patient's lack of capacity.

~~5.~~ 6. On a patient who lacks capacity to consent and for whom no person authorized pursuant to law to consent to health care for that person can be identified on a timely basis if the HIV-related testing is directly related to and necessary for the diagnosis and treatment of the person's medical condition. HIV-related testing shall be performed under these circumstances only on written certification by the attending physician and a consulting physician that the HIV-related testing is directly related to and necessary for the diagnosis and treatment of the patient's medical condition.

~~6.~~ 7. That is performed on an anonymous basis at a public health agency.

C. A MEDICAL EXAMINER OR ALTERNATE MEDICAL EXAMINER MAY PROVIDE A BLOOD SAMPLE FROM A DECEASED PERSON FOR THE PURPOSE OF HIV-RELATED TESTING PURSUANT TO SUBSECTION B, PARAGRAPH 2 OF THIS SECTION. A MEDICAL EXAMINER OR ALTERNATE MEDICAL EXAMINER IS NOT REQUIRED TO PERFORM AN HIV-RELATED TEST FOR AN OCCUPATIONAL SIGNIFICANT EXPOSURE RISK.

Sec. 3. Section 36-664, Arizona Revised Statutes, is amended to read:

36-664. Confidentiality; exceptions

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

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

2. A HEALTH CARE PROVIDER OR FIRST RESPONDER WHO HAS HAD AN OCCUPATIONAL SIGNIFICANT EXPOSURE RISK TO THE PROTECTED PERSON'S BLOOD OR BODILY FLUID IF THE HEALTH CARE PROVIDER OR FIRST RESPONDER PROVIDES A WRITTEN REQUEST THAT DOCUMENTS THE OCCURRENCE AND INFORMATION REGARDING THE NATURE OF THE OCCUPATIONAL SIGNIFICANT EXPOSURE RISK AND THE REPORT IS REVIEWED AND CONFIRMED BY A HEALTH CARE PROVIDER WHO IS BOTH LICENSED PURSUANT TO TITLE 32, CHAPTER 13, 15 OR 17 AND COMPETENT TO DETERMINE A SIGNIFICANT EXPOSURE RISK. A HEALTH CARE PROVIDER WHO RELEASES COMMUNICABLE DISEASE INFORMATION PURSUANT TO THIS PARAGRAPH SHALL PROVIDE EDUCATION AND COUNSELING TO THE PERSON WHO HAS HAD THE OCCUPATIONAL SIGNIFICANT EXPOSURE RISK.

~~2.~~ 3. The department or a local health department for purposes of notifying a good samaritan pursuant to subsection E of this section.

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

~~4.~~ 5. A health facility or health care provider, in relation to the procurement, processing, distributing or use of a human body or a human body part, including organs, tissues, eyes, bones, arteries, blood, semen, milk or other body fluids, for use in medical education, research or therapy or for transplantation to another person.

~~5.~~ 6. A health facility or health care provider, or an organization, committee or individual designated by the health facility or health care provider, that is engaged in the review of professional practices, including the review of the quality, utilization or necessity of medical care, or an accreditation or oversight review organization responsible for the review of professional practices at a health facility or by a health care provider.

~~6.~~ 7. A private entity that accredits the health facility or health care provider and with whom the health facility or health care provider has an agreement requiring the agency to protect the confidentiality of patient information.

~~7.~~ 8. A federal, state, county or local health officer if disclosure is mandated by federal or state law.

~~8.~~ 9. A federal, state or local government agency authorized by law to receive the information. The agency is authorized to redisclose the information only pursuant to this article or as otherwise permitted by law.

~~9.~~ 10. An authorized employee or agent of a federal, state or local government agency that supervises or monitors the health care provider or health facility or administers the program under which the health service is provided. An authorized employee or agent includes only an employee or agent who, in the ordinary course of business of the government agency, has access to records relating to the care or treatment of the protected person.

~~10.~~ 11. A person, health care provider or health facility to which disclosure is ordered by a court or administrative body pursuant to section 36-665.

~~11.~~ 12. The industrial commission or parties to an industrial commission of Arizona claim pursuant to section 23-908, subsection D and section 23-1043.02.

~~12.~~ 13. Insurance entities pursuant to section 20-448.01 and third-party payors or the payors' contractors.

~~13.~~ 14. Any person or entity as authorized by the patient or the patient's health care decision maker.

~~14.~~ 15. A person or entity as required by federal law.

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

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

~~17.~~ 18. A person or entity that provides services to the patient's health care provider, as defined in section 12-2291, and with whom the health care provider has a business associate agreement that requires the person or entity to protect the confidentiality of patient information as required by the health insurance portability and accountability act privacy standards, 45 Code of Federal Regulations part 164, subpart E.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

APPROVED BY THE GOVERNOR APRIL 24, 2014.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 24, 2014.

Passed the House April 22, 2014,

by the following vote: 57 Ayes,

1 Nays, 2 Not Voting

Speaker of the House

Chief Clerk of the House

Passed the Senate March 17, 2014,

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

23rd day of April, 2014,

at 12:45 o'clock P M.

Secretary to the Governor

Approved this 24th day of

April, 2014,

at 2:53 o'clock P. M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 24th day of April, 2014,

at 5:31 o'clock P M.

Secretary of State

S.B. 1276