

Senate Engrossed

FILED
MICHELE REAGAN
SECRETARY OF STATE

State of Arizona
Senate
Fifty-second Legislature
Second Regular Session
2016

CHAPTER 281

SENATE BILL 1442

AN ACT

AMENDING SECTION 36-509, ARIZONA REVISED STATUTES; RELATING TO MENTAL HEALTH SERVICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 36-509, Arizona Revised Statutes, is amended to
3 read:

4 36-509. Confidential records; immunity; definition

5 A. A health care entity must keep records and information contained in
6 records confidential and not as public records, except as provided in this
7 section. Records and information contained in records may only be disclosed
8 to:

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

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

14 3. Persons authorized by a court order.

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

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

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

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

23 (b) Report a crime on the premises.

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

26 7. Persons, including family members, ~~actively participating in the~~
27 ~~patient's care, treatment or supervision. A health care provider may only~~
28 ~~release information relating to the patient's diagnosis, prognosis, need for~~
29 ~~hospitalization, anticipated length of stay, discharge plan, medication,~~
30 ~~medication side effects and short term and long term treatment goals. A~~
31 ~~health care provider may make this release only after the treating~~
32 ~~professional or that person's designee interviews the patient or the~~
33 ~~patient's health care decision maker and the patient or the patient's health~~
34 ~~care decision maker does not object, unless federal or state law permits the~~
35 ~~disclosure. If the patient does not have the opportunity to object to the~~
36 ~~disclosure because of incapacity or an emergency circumstance and the~~
37 ~~patient's health care decision maker is not available to object to the~~
38 ~~release, the health care provider in the exercise of professional judgment~~
39 ~~may determine if the disclosure is in the best interests of the patient and,~~
40 ~~if so, may release the information authorized pursuant to this paragraph. A~~
41 ~~decision to release or withhold information is subject to review pursuant to~~
42 ~~section 36-517.01. The health care provider must record the name of any~~
43 ~~person to whom any information is given under this paragraph. OTHER~~
44 ~~RELATIVES, CLOSE PERSONAL FRIENDS OR ANY OTHER PERSON IDENTIFIED BY THE~~
45 ~~PATIENT, AS OTHERWISE AUTHORIZED OR REQUIRED BY STATE OR FEDERAL LAW,~~

1 INCLUDING THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996
2 PRIVACY STANDARDS (45 CODE OF FEDERAL REGULATIONS PART 160 AND PART 164,
3 SUBPART E), OR PURSUANT TO ONE OF THE FOLLOWING:

4 (a) IF THE PATIENT IS PRESENT OR OTHERWISE AVAILABLE AND HAS THE
5 CAPACITY TO MAKE HEALTH CARE DECISIONS, THE HEALTH CARE ENTITY MAY DISCLOSE
6 THE INFORMATION IF ONE OF THE FOLLOWING APPLIES:

7 (i) THE PATIENT AGREES VERBALLY OR AGREES IN WRITING BY SIGNING A
8 CONSENT FORM THAT PERMITS DISCLOSURE.

9 (ii) THE PATIENT IS GIVEN AN OPPORTUNITY TO OBJECT AND DOES NOT
10 EXPRESS AN OBJECTION.

11 (iii) THE HEALTH CARE ENTITY REASONABLY INFERS FROM THE CIRCUMSTANCES,
12 BASED ON THE EXERCISE OF PROFESSIONAL JUDGMENT, THAT THE PATIENT DOES NOT
13 OBJECT TO THE DISCLOSURE.

14 (b) IF THE PATIENT IS NOT PRESENT OR THE OPPORTUNITY TO AGREE OR
15 OBJECT TO THE DISCLOSURE OF INFORMATION CANNOT PRACTICABLY BE PROVIDED
16 BECAUSE OF THE PATIENT'S INCAPACITY OR AN EMERGENCY CIRCUMSTANCE, THE HEALTH
17 CARE ENTITY MAY DISCLOSE THE INFORMATION IF THE ENTITY DETERMINES THAT THE
18 DISCLOSURE OF THE INFORMATION IS IN THE BEST INTERESTS OF THE PATIENT. IN
19 DETERMINING WHETHER THE DISCLOSURE OF INFORMATION IS IN THE BEST INTERESTS OF
20 THE PATIENT, IN ADDITION TO ALL OTHER RELEVANT FACTORS, THE HEALTH CARE
21 ENTITY SHALL CONSIDER ALL OF THE FOLLOWING:

22 (i) THE PATIENT'S MEDICAL AND TREATMENT HISTORY, INCLUDING THE
23 PATIENT'S HISTORY OF COMPLIANCE OR NONCOMPLIANCE WITH AN ESTABLISHED
24 TREATMENT PLAN BASED ON INFORMATION IN THE PATIENT'S MEDICAL RECORD AND ON
25 RELIABLE AND RELEVANT INFORMATION RECEIVED FROM THE PATIENT'S FAMILY MEMBERS,
26 FRIENDS OR OTHERS INVOLVED IN THE PATIENT'S CARE, TREATMENT OR SUPERVISION.

27 (ii) WHETHER THE INFORMATION IS NECESSARY OR, BASED ON PROFESSIONAL
28 JUDGMENT, WOULD BE USEFUL IN ASSISTING THE PATIENT IN COMPLYING WITH THE
29 CARE, TREATMENT OR SUPERVISION PRESCRIBED IN THE PATIENT'S TREATMENT PLAN.

30 (iii) WHETHER THE HEALTH CARE ENTITY HAS REASONABLE GROUNDS TO BELIEVE
31 THAT THE RELEASE OF THE INFORMATION MAY SUBJECT THE PATIENT TO DOMESTIC
32 VIOLENCE, ABUSE OR ENDANGERMENT BY FAMILY MEMBERS, FRIENDS OR OTHER PERSONS
33 INVOLVED IN THE PATIENT'S CARE, TREATMENT OR SUPERVISION.

34 (c) THE HEALTH CARE ENTITY BELIEVES THE PATIENT PRESENTS A SERIOUS AND
35 IMMINENT THREAT TO THE HEALTH OR SAFETY OF THE PATIENT OR OTHERS, AND THE
36 HEALTH CARE ENTITY BELIEVES THAT FAMILY MEMBERS, FRIENDS OR OTHERS INVOLVED
37 IN THE PATIENT'S CARE, TREATMENT OR SUPERVISION CAN HELP TO PREVENT THE
38 THREAT.

39 (d) IN ORDER FOR THE HEALTH CARE ENTITY TO NOTIFY A FAMILY MEMBER,
40 FRIEND OR OTHER PERSON INVOLVED IN THE PATIENT'S CARE, TREATMENT OR
41 SUPERVISION OF THE PATIENT'S LOCATION, GENERAL CONDITION OR DEATH.

42 8. A state agency that licenses health professionals pursuant to title
43 32, chapter 13, 15, 17, 19.1 or 33 and that requires these records in the
44 course of investigating complaints of professional negligence, incompetence
45 or lack of clinical judgment.

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

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

4 11. Human rights committees established pursuant to title 41,
5 chapter 35. Any information released pursuant to this paragraph shall comply
6 with the requirements of section 41-3804 and applicable federal law and shall
7 be released without personally identifiable information unless the personally
8 identifiable information is required for the official purposes of the human
9 rights committee. Case information received by a human rights committee
10 shall be maintained as confidential. For the purposes of this paragraph,
11 "personally identifiable information" includes a person's name, address, date
12 of birth, social security number, tribal enrollment number, telephone or
13 telefacsimile number, driver license number, places of employment, school
14 identification number and military identification number or any other
15 distinguishing characteristic that tends to identify a particular person.

16 12. A patient or the patient's health care decision maker ~~pursuant to~~
17 ~~section 36-507.~~

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

21 14. A ~~third-party~~ THIRD-PARTY payor or the payor's contractor as
22 permitted by the health insurance portability and accountability act privacy
23 standards, 45 Code of Federal Regulations part 160 and part 164, subpart E.

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

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

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

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

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

34 20. A person maintaining health statistics for public health purposes
35 as authorized by law.

36 21. A grand jury as directed by subpoena.

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

43 B. INFORMATION DISCLOSED PURSUANT TO SUBSECTION A, PARAGRAPH 7 OF THIS
44 SECTION MAY INCLUDE ONLY INFORMATION THAT IS DIRECTLY RELEVANT TO THE
45 PERSON'S INVOLVEMENT WITH THE PATIENT'S HEALTH CARE OR PAYMENT RELATED TO THE

1 PATIENT'S HEALTH CARE. SUBSECTION A, PARAGRAPH 7 OF THIS SECTION DOES NOT
2 PREVENT A HEALTH CARE ENTITY FROM OBTAINING OR RECEIVING INFORMATION ABOUT
3 THE PATIENT FROM A FAMILY MEMBER, FRIEND OR OTHER PERSON INVOLVED IN THE
4 PATIENT'S CARE, TREATMENT OR SUPERVISION. A HEALTH CARE ENTITY SHALL KEEP A
5 RECORD OF THE NAME AND CONTACT INFORMATION OF ANY PERSON TO WHOM ANY PATIENT
6 INFORMATION IS RELEASED PURSUANT TO SUBSECTION A, PARAGRAPH 7 OF THIS
7 SECTION. A DECISION TO RELEASE OR WITHHOLD INFORMATION PURSUANT SUBSECTION
8 A, PARAGRAPH 7 OF THIS SECTION IS SUBJECT TO REVIEW PURSUANT TO SECTION
9 36-517.01.

10 ~~B.~~ C. Information and records obtained in the course of evaluation,
11 examination or treatment and submitted in any court proceeding pursuant to
12 this chapter or title 14, chapter 5 are confidential and are not public
13 records unless the hearing requirements of this chapter or title 14, chapter
14 5 require a different procedure. Information and records that are obtained
15 pursuant to this section and submitted in a court proceeding pursuant to
16 title 14, chapter 5 and that are not clearly identified by the parties as
17 confidential and segregated from nonconfidential information and records are
18 considered public records.

19 ~~G.~~ D. Notwithstanding subsections A, ~~and B~~ AND C of this section, the
20 legal representative of a patient who is the subject of a proceeding
21 conducted pursuant to this chapter and title 14, chapter 5 has access to the
22 patient's information and records in the possession of a health care entity
23 or filed with the court.

24 ~~D.~~ E. A health care entity that acts in good faith under this article
25 is not liable for damages in any civil action for the disclosure of records
26 or payment records that is made pursuant to this article or as otherwise
27 provided by law. The health care entity is presumed to have acted in good
28 faith. This presumption may be rebutted by clear and convincing evidence.

29 F. FOR THE PURPOSES OF THIS SECTION, "INFORMATION" MEANS RECORDS AND
30 THE INFORMATION CONTAINED IN RECORDS.

APPROVED BY THE GOVERNOR MAY 17, 2016.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 17, 2016.

Passed the House May 7, 2016,

Passed the Senate February 25, 2016,

by the following vote: 54 Ayes,

by the following vote: 28 Ayes,

0 Nays, 6 Not Voting

0 Nays, 2 Not Voting

[Signature]
Speaker of the House

[Signature]
President of the Senate

[Signature]
Chief Clerk of the House

[Signature]
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

9th day of May, 2016,

at 10:07 o'clock A. M.

[Signature]
Secretary to the Governor

Approved this 17th day of

May, 2016,

at 1:29 o'clock P. M.

[Signature]
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 17th day of May, 2016

at 4:31 o'clock P. M.

[Signature]
Secretary of State

S.B. 1442