Senate Engrossed House Bill

FILED
JANICE K. BREWER
SECRETARY OF STATE

State of Arizona
House of Representatives
Forty-sixth Legislature
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CHAPTER 191

HOUSE BILL 2397

AN ACT

REPEALING TITLE 12, CHAPTER 13, ARTICLE 7, ARIZONA REVISED STATUTES; AMENDING SECTIONS 12-2291, 12-2292, 12-2293, 12-2294, 12-2295, 12-2297, 12-2801, 12-2802, 36-501, 36-509, 36-517.01, 36-661, 36-663, 36-664, 36-665, 36-666, 36-667, 36-2220, 36-3601 AND 36-3602, ARIZONA REVISED STATUTES; AMENDING TITLE 12, CHAPTER 13, ARTICLE 7.1, ARIZONA REVISED STATUTES, BY ADDING SECTION 12-2294.01; RELATING TO HEALTH CARE INSTITUTION RECORDS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Repeal

Title 12, chapter 13, article 7, Arizona Revised Statutes, is repealed.

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

12-2291. Definitions

In this article, unless the context otherwise requires:

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

2. "DEPARTMENT" MEANS THE DEPARTMENT OF HEALTH SERVICES.

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

~~3.~~ 4. "Health care provider" means:

(a) A person WHO IS licensed pursuant to title 32 AND who maintains medical records.

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

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

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

~~4.~~ 5. "Medical records" means all communications RELATED TO A PATIENT'S PHYSICAL OR MENTAL HEALTH OR CONDITION that are recorded in any form or medium and that are maintained for purposes of patient DIAGNOSIS OR treatment, ~~including reports, notes and orders, test results, diagnoses, treatments, photographs, videotapes, X rays, billing records and the results of independent medical examinations that describe patient care. Medical records include psychological records and all medical records held by a health care provider,~~ including medical records that are prepared BY A HEALTH CARE PROVIDER OR by other providers. Medical records do not include materials that are prepared in connection with utilization review, peer review or quality assurance activities, including records that a health care provider prepares pursuant to section 36-441, 36-445, ~~or~~ 36-2402 OR 36-2917. Medical records do not include recorded telephone and radio calls to and from a publicly operated emergency dispatch office relating to requests for emergency services or reports of suspected criminal activity, but shall include communications THAT ARE RECORDED IN ANY FORM OR MEDIUM between emergency medical personnel and medical personnel concerning the DIAGNOSIS OR treatment of a person.

6. "PAYMENT RECORDS" MEANS ALL COMMUNICATIONS RELATED TO PAYMENT FOR A PATIENT'S HEALTH CARE THAT CONTAIN INDIVIDUALLY IDENTIFIABLE INFORMATION.

7. "SOURCE DATA" MEANS INFORMATION THAT IS SUMMARIZED, INTERPRETED OR REPORTED IN THE MEDICAL RECORD, INCLUDING X-RAYS AND OTHER DIAGNOSTIC IMAGES.

Sec. 3. Section 12-2292, Arizona Revised Statutes, is amended to read:

12-2292. Confidentiality of medical records

A. Unless otherwise provided by law, all medical records AND PAYMENT RECORDS, and the information contained in medical records AND PAYMENT RECORDS, are privileged and confidential. A health care provider may only disclose that part or all of a patient's medical ~~record~~ RECORDS AND PAYMENT RECORDS ~~that is authorized pursuant to~~ AS AUTHORIZED BY STATE OR FEDERAL law or ~~the patient's~~ written authorization SIGNED BY THE PATIENT OR THE PATIENT'S HEALTH CARE DECISION MAKER.

~~B. If necessary for its own business operations or in response to a request for a copy of the patient's medical record, a health care provider may release a patient's medical record to a contractor for the purpose of duplicating or disclosing the record on behalf of a health care provider. A contractor shall not disclose any part or all of a patient's medical record in its custody except as provided in this article. After duplicating or disclosing a patient's medical record on behalf of a health care provider, a contractor shall return the record to the health care provider who released the medical record to the contractor.~~

~~C.~~ B. This article does not limit the effect of any other federal or state law governing the confidentiality of medical records.

Sec. 4. Section 12-2293, Arizona Revised Statutes, is amended to read:

12-2293. Release of medical records to patients and health care decision makers

A. EXCEPT AS PROVIDED IN SUBSECTION B OF THIS SECTION, on the written request of a patient OR THE PATIENT'S HEALTH CARE DECISION MAKER for access to or copies of the patient's medical records, the health care provider in possession of the record shall provide ACCESS TO OR COPIES OF the medical records to the patient or the ~~person designated in writing by the patient unless the attending physician or psychologist determines and notifies the health care provider in possession of the record that the patient's access to the patient's medical record is contraindicated due to treatment of the patient for a mental disorder as defined in section 36-501~~ PATIENT'S HEALTH CARE DECISION MAKER. ~~Psychologists are exempt from making available raw test data and psychometric testing materials. If the attending physician or psychologist determines that the patient should not have access to the patient's medical records, the physician or psychologist shall note this determination in the patient's medical record.~~

~~B. On written request of a patient's health care decision maker for access to or copies of the patient's medical records, the medical records shall be provided to the health care decision maker or the person designated in writing by the health care decision maker unless the access is limited by the patient.~~

~~C. Records that are not in written form shall be released only if the patient or patient's health care decision maker specifically requests and identifies in writing the type of record desired.~~

~~D. Notwithstanding subsection A of this section, if the patient receives treatment for a mental disorder as defined in section 36-501, on written request of a health care decision maker for access to or copies of the patient's medical records, the health care provider may refuse to provide records which indicate confidential information between the patient and the health care professional. If the attending physician determines that the health care decision maker should not have access to that part of the patient's medical record, the attending physician shall note this determination in the patient's medical record and shall provide to the health care decision maker a written explanation of the reason for such denial. The health care provider shall release medical record information to the health care decision maker which includes the patient's therapy treatment plan and medication information.~~

B. A HEALTH CARE PROVIDER MAY DENY A REQUEST FOR ACCESS TO OR COPIES OF MEDICAL RECORDS IF THE PATIENT RECEIVES TREATMENT FOR A MENTAL DISORDER AS DEFINED IN SECTION 36-501 AND THE ATTENDING PHYSICIAN OR PSYCHOLOGIST DETERMINES AND NOTIFIES THE HEALTH CARE PROVIDER IN POSSESSION OF THE MEDICAL RECORD THAT EITHER:

(a) ACCESS TO THE MEDICAL RECORD IS CONTRAINDICATED AND IS REASONABLY LIKELY TO ENDANGER THE LIFE OR PHYSICAL SAFETY OF THE PATIENT OR ANOTHER PERSON.

(b) THE INFORMATION IS RAW TEST DATA AND PSYCHOMETRIC TESTING MATERIALS AND ACCESS IS REASONABLY LIKELY TO ENDANGER THE LIFE OR PHYSICAL SAFETY OF THE PATIENT OR ANOTHER PERSON.

(c) ACCESS BY THE PATIENT'S HEALTH CARE DECISION MAKER WOULD REVEAL INFORMATION OBTAINED UNDER A PROMISE OF CONFIDENTIALITY BETWEEN THE PATIENT AND THE HEALTH CARE PROFESSIONAL.

C. IF THE HEALTH CARE PROVIDER DENIES A REQUEST FOR ACCESS TO OR COPIES OF THE MEDICAL RECORDS, THE HEALTH CARE PROVIDER MUST NOTE THIS DETERMINATION IN THE PATIENT'S MEDICAL RECORD AND PROVIDE TO THE PATIENT OR THE PATIENT'S HEALTH CARE DECISION MAKER A WRITTEN EXPLANATION OF THE REASON FOR THE DENIAL OF ACCESS. THE HEALTH CARE PROVIDER MUST RELEASE THE MEDICAL RECORD INFORMATION FOR WHICH THERE IS NOT A BASIS TO DENY ACCESS UNDER SUBSECTION B OF THIS SECTION.

Sec. 5. Section 12-2294, Arizona Revised Statutes, is amended to read:

12-2294. <u>Release of medical records to third parties</u>

A. A health care provider shall disclose medical records OR PAYMENT RECORDS, or the information contained in medical records OR PAYMENT RECORDS, without the patient's written authorization as otherwise required by law OR WHEN ORDERED BY A COURT OR TRIBUNAL OF COMPETENT JURISDICTION.

B. A HEALTH CARE PROVIDER MAY DISCLOSE MEDICAL RECORDS OR PAYMENT RECORDS, OR THE INFORMATION CONTAINED IN MEDICAL RECORDS OR PAYMENT RECORDS, PURSUANT TO WRITTEN AUTHORIZATION SIGNED BY THE PATIENT OR THE PATIENT'S HEALTH CARE DECISION MAKER.

~~B.~~ C. A health care provider may disclose medical records or the information contained in medical records without the ~~patient's~~ written authorization ~~as follows or~~ OF THE PATIENT OR THE PATIENT'S HEALTH CARE DECISION MAKER as otherwise authorized by STATE OR FEDERAL law, INCLUDING THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT PRIVACY STANDARDS (45 CODE OF FEDERAL REGULATIONS PART 160 AND PART 164, SUBPART E), OR AS FOLLOWS:

1. To attending and consulting health care providers who are currently providing health care to the patient for the purpose of diagnosis or treatment of the patient.

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

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

4. To a private agency that accredits health care providers and ~~to the Arizona medical board~~ WITH WHOM THE HEALTH CARE PROVIDER HAS AN AGREEMENT REQUIRING THE AGENCY TO PROTECT THE CONFIDENTIALITY OF PATIENT INFORMATION.

5. TO A HEALTH PROFESSION REGULATORY BOARD AS DEFINED IN SECTION 32-3201.

~~5.~~ 6. To health care providers for the purpose of conducting utilization review, peer review and quality assurance pursuant to section 36-441, 36-445, 36-2402 or 36-2917.

~~6.~~ 7. To a person or entity that provides billing, claims management, medical data processing, utilization review or other administrative services to the patient's health care providers.

~~7.~~ 8. To the legal representative of a health care provider in possession of the medical record for the purpose of securing legal advice.

~~8. To the personal representative or administrator of the estate of a deceased patient. If a personal representative or administrator has not been appointed, a health care provider may release medical records to the following persons and in the following order of priority, unless the deceased patient during the deceased patient's lifetime or a person in a higher order of priority has notified the health care provider in writing that he opposes the release of the medical records:~~

~~(a) The deceased patient's spouse, unless the patient and the patient's spouse were legally separated at the time of the patient's death.~~

~~(b) The acting trustee of a trust created by the deceased patient either alone or with the deceased patient's spouse if the trust was a revocable inter vivos trust during the deceased patient's lifetime and the deceased patient was a beneficiary of the trust during the deceased patient's lifetime.~~

~~(c) An adult child of the deceased patient.~~

~~(d) A parent of the deceased patient.~~

~~(e) An adult brother or sister of the deceased patient.~~

~~(f) A guardian or conservator of the deceased patient at the time of the patient's death.~~

9. To the patient's third party payor OR THE PAYOR'S CONTRACTOR ~~if the payor has separately obtained the patient's written authorization to disclose medical record information to the payor and furnishes a copy of this authorization to the health care provider~~.

10. TO THE INDUSTRIAL COMMISSION OF ARIZONA OR PARTIES TO AN INDUSTRIAL COMMISSION CLAIM PURSUANT TO THE PROVISIONS OF TITLE 23, CHAPTER 6.

~~C. In addition to the persons listed in subsection B, paragraph 8 of this section, a health care provider may release medical records or the information contained in medical records to the patient's health care decision maker at the time of the patient's death.~~

~~D. A health care provider shall disclose medical records to persons listed in subsection B, paragraphs 2, 4, 5 and 8 of this section only on written request. The person requesting the records shall sign the request and shall demonstrate the authority to have access to the records.~~

~~E. Medical records that are not in written form shall only be released if the written request specifically identifies the type of record desired.~~

D. A HEALTH CARE PROVIDER MAY DISCLOSE A DECEASED PATIENT'S MEDICAL RECORDS OR THE INFORMATION CONTAINED IN MEDICAL RECORDS TO THE PATIENT'S HEALTH CARE DECISION MAKER AT THE TIME OF THE PATIENT'S DEATH. A HEALTH CARE PROVIDER ALSO MAY DISCLOSE A DECEASED PATIENT'S MEDICAL RECORDS OR THE INFORMATION CONTAINED IN MEDICAL RECORDS TO THE PERSONAL REPRESENTATIVE OR ADMINISTRATOR OF THE ESTATE OF A DECEASED PATIENT, OR IF A PERSONAL REPRESENTATIVE OR ADMINISTRATOR HAS NOT BEEN APPOINTED, TO THE FOLLOWING PERSONS IN THE FOLLOWING ORDER OF PRIORITY, UNLESS THE DECEASED PATIENT DURING THE DECEASED PATIENT'S LIFETIME OR A PERSON IN A HIGHER ORDER OF PRIORITY HAS NOTIFIED THE HEALTH CARE PROVIDER IN WRITING THAT THE DECEASED PATIENT OPPOSED THE RELEASE OF THE MEDICAL RECORDS:

(a) THE DECEASED PATIENT'S SPOUSE, UNLESS THE PATIENT AND THE PATIENT'S SPOUSE WERE LEGALLY SEPARATED AT THE TIME OF THE PATIENT'S DEATH.

(b) THE ACTING TRUSTEE OF A TRUST CREATED BY THE DECEASED PATIENT EITHER ALONE OR WITH THE DECEASED PATIENT'S SPOUSE IF THE TRUST WAS A REVOCABLE INTER VIVOS TRUST DURING THE DECEASED PATIENT'S LIFETIME AND THE DECEASED PATIENT WAS A BENEFICIARY OF THE TRUST DURING THE DECEASED PATIENT'S LIFETIME.

(c) AN ADULT CHILD OF THE DECEASED PATIENT.

(d) A PARENT OF THE DECEASED PATIENT.

(e) AN ADULT BROTHER OR SISTER OF THE DECEASED PATIENT.

(f) A GUARDIAN OR CONSERVATOR OF THE DECEASED PATIENT AT THE TIME OF THE PATIENT'S DEATH.

~~F.~~ E. ~~Medical records that are disclosed pursuant to this section remain privileged.~~ A person who receives medical records pursuant to this section shall not disclose those records without the written authorization

of the patient or the patient's health care decision maker, unless otherwise ~~provided~~ AUTHORIZED by law.

F. IF A HEALTH CARE PROVIDER RELEASES A PATIENT'S MEDICAL RECORD TO A CONTRACTOR FOR THE PURPOSE OF DUPLICATING OR DISCLOSING THE RECORD ON BEHALF OF THE HEALTH CARE PROVIDER, THE CONTRACTOR SHALL NOT DISCLOSE ANY PART OR ALL OF A PATIENT'S MEDICAL RECORD IN ITS CUSTODY EXCEPT AS PROVIDED IN THIS ARTICLE. AFTER DUPLICATING OR DISCLOSING A PATIENT'S MEDICAL RECORD ON BEHALF OF A HEALTH CARE PROVIDER, A CONTRACTOR MUST RETURN THE RECORD TO THE HEALTH CARE PROVIDER WHO RELEASED THE MEDICAL RECORD TO THE CONTRACTOR.

Sec. 6. Title 12, chapter 13, article 7.1, Arizona Revised Statutes, is amended by adding section 12-2294.01, to read:

12-2294.01. Release of medical records to third parties pursuant to subpoena

A. A SUBPOENA SEEKING MEDICAL RECORDS SHALL BE SERVED ON THE HEALTH CARE PROVIDER AND ANY PARTY TO THE PROCEEDINGS AT LEAST TEN DAYS BEFORE THE PRODUCTION DATE ON THE SUBPOENA.

B. A HEALTH CARE PROVIDER SHALL RELEASE THE MEDICAL RECORDS TO THE PARTY SEEKING THE MEDICAL RECORDS IF THE SUBPOENA MEETS ONE OF THE FOLLOWING REQUIREMENTS:

1. THE SUBPOENA IS ACCOMPANIED BY A WRITTEN AUTHORIZATION SIGNED BY THE PATIENT OR THE PATIENT'S HEALTH CARE DECISION MAKER.

2. THE SUBPOENA IS ACCOMPANIED BY A COURT OR TRIBUNAL ORDER REQUIRING THE RELEASE OF THE MEDICAL RECORDS TO THE PARTY SEEKING THE MEDICAL RECORDS.

3. THE SUBPOENA IS A GRAND JURY SUBPOENA ISSUED IN A CRIMINAL INVESTIGATION.

4. THE SUBPOENA IS ISSUED BY A HEALTH PROFESSION REGULATORY BOARD AS DEFINED IN SECTION 32-3201.

5. THE HEALTH CARE PROVIDER IS REQUIRED BY ANOTHER LAW TO RELEASE THE MEDICAL RECORDS TO THE PARTY SEEKING THE MEDICAL RECORDS.

C. IF THE SUBPOENA DOES NOT MEET ANY OF THE REQUIREMENTS OF SUBSECTION B, A HEALTH CARE PROVIDER SHALL NOT PRODUCE THE RECORDS PURSUANT TO THE SUBPOENA, BUT MAY CHOOSE TO DELIVER THE RECORDS UNDER SEAL AS FOLLOWS:

1. THE HEALTH CARE PROVIDER MAY DELIVER BY CERTIFIED MAIL OR IN PERSON A COPY OF ALL THE MEDICAL RECORDS DESCRIBED IN THE SUBPOENA BY THE PRODUCTION DATE TO THE CLERK OF THE COURT OR TRIBUNAL OR IF THERE IS NO CLERK THEN TO THE COURT OR TRIBUNAL, TOGETHER WITH THE AFFIDAVIT DESCRIBED IN PARAGRAPH 4 OF THIS SUBSECTION.

2. THE HEALTH CARE PROVIDER SHALL SEPARATELY ENCLOSE AND SEAL A COPY OF THE RECORDS IN AN INNER ENVELOPE OR WRAPPER, WITH THE TITLE AND NUMBER OF THE ACTION, NAME OF THE HEALTH CARE PROVIDER AND DATE OF THE SUBPOENA CLEARLY INSCRIBED ON THE COPY OF THE RECORDS. THE HEALTH CARE PROVIDER SHALL ENCLOSE THE SEALED ENVELOPE OR WRAPPER IN AN OUTER ENVELOPE OR WRAPPER THAT IS SEALED AND DIRECTED TO THE CLERK OF THE COURT OR TRIBUNAL OR IF THERE IS NO CLERK THEN TO THE COURT OR TRIBUNAL.

3. THE COPY OF THE MEDICAL RECORDS SHALL REMAIN SEALED AND SHALL BE OPENED ONLY ON ORDER OF THE COURT OR TRIBUNAL CONDUCTING THE PROCEEDING.

4. THE MEDICAL RECORDS SHALL BE ACCOMPANIED BY THE AFFIDAVIT OF THE CUSTODIAN OR OTHER QUALIFIED WITNESS, STATING IN SUBSTANCE EACH OF THE FOLLOWING:

(a) THAT THE AFFIANT IS THE DULY AUTHORIZED CUSTODIAN OF THE RECORDS AND HAS AUTHORITY TO CERTIFY THE MEDICAL RECORDS.

(b) THAT THE COPY IS A TRUE COMPLETE COPY OF THE MEDICAL RECORDS DESCRIBED IN THE SUBPOENA.

(c) IF APPLICABLE, THAT THE HEALTH CARE PROVIDER IS SUBJECT TO THE CONFIDENTIALITY REQUIREMENTS IN 42 UNITED STATES CODE SECTIONS 290DD-3 AND 290EE-3 AND APPLICABLE REGULATIONS AND THAT THOSE CONFIDENTIALITY REQUIREMENTS MAY APPLY TO THE REQUESTED RECORDS. THE AFFIDAVIT SHALL REQUEST THAT THE COURT MAKE A DETERMINATION, IF REQUIRED UNDER APPLICABLE FEDERAL LAW AND REGULATIONS, AS TO THE CONFIDENTIALITY OF THE RECORDS SUBMITTED.

(d) IF APPLICABLE, THAT THE HEALTH CARE PROVIDER HAS NONE OF THE MEDICAL RECORDS DESCRIBED OR ONLY PART OF THE MEDICAL RECORDS DESCRIBED IN THE SUBPOENA.

5. THE COPY OF THE MEDICAL RECORDS IS ADMISSIBLE IN EVIDENCE AS PROVIDED UNDER ARIZONA RULES OF EVIDENCE, RULE 902(11). THE AFFIDAVIT IS ADMISSIBLE AS EVIDENCE OF THE MATTERS STATED IN THE AFFIDAVIT AND THE MATTERS STATED ARE PRESUMED TRUE. IF MORE THAN ONE PERSON HAS KNOWLEDGE OF THE FACTS, MORE THAN ONE AFFIDAVIT MAY BE MADE. THE PRESUMPTION ESTABLISHED BY THIS PARAGRAPH IS A PRESUMPTION AFFECTING THE BURDEN OF PRODUCING EVIDENCE.

D. IF THE SUBPOENA DOES NOT MEET ANY OF THE REQUIREMENTS OF SUBSECTION B, A HEALTH CARE PROVIDER SHALL NOT PRODUCE THE RECORDS PURSUANT TO THE SUBPOENA, BUT MAY CHOOSE TO FILE AN OBJECTION AS FOLLOWS:

1. ON FILING AN OBJECTION, THE HEALTH CARE PROVIDER SHALL SEND A COPY OF THE OBJECTION TO THE PATIENT AT THE PATIENT'S LAST KNOWN ADDRESS, TO THE PATIENT'S ATTORNEY IF KNOWN AND TO THE PARTY SEEKING THE MEDICAL RECORDS, UNLESS AFTER REASONABLE INQUIRY THE HEALTH CARE PROVIDER CANNOT DETERMINE THE LAST KNOWN ADDRESS OF THE PATIENT.

2. ON FILING THE OBJECTION, THE HEALTH CARE PROVIDER HAS NO FURTHER OBLIGATION TO ASSERT A STATE OR FEDERAL PRIVILEGE PERTAINING TO THE MEDICAL RECORDS OR TO APPEAR OR RESPOND TO A MOTION TO COMPEL PRODUCTION OF MEDICAL RECORDS, AND MAY PRODUCE THE MEDICAL RECORDS IF ORDERED BY A COURT OR TRIBUNAL. IF AN OBJECTION IS FILED, THE PATIENT OR THE PATIENT'S ATTORNEY IS RESPONSIBLE FOR ASSERTING OR WAIVING ANY STATE OR FEDERAL PRIVILEGE THAT PERTAINS TO THE MEDICAL RECORDS.

3. IF AN OBJECTION IS FILED, THE PARTY SEEKING PRODUCTION MAY REQUEST AN ORDER COMPELLING PRODUCTION OF THE MEDICAL RECORDS. IF THE COURT OR TRIBUNAL ISSUES AN ORDER COMPELLING PRODUCTION, A COPY OF THE ORDER SHALL BE PROVIDED TO THE HEALTH CARE PROVIDER. ON RECEIPT OF THE ORDER, THE HEALTH CARE PROVIDER SHALL PRODUCE THE RECORDS.

4. IF APPLICABLE, AN OBJECTION SHALL STATE THAT THE HEALTH CARE PROVIDER IS SUBJECT TO THE CONFIDENTIALITY REQUIREMENTS IN 42 UNITED STATES CODE SECTIONS 290DD-3 AND 290EE-3, SHALL STATE THAT THE RECORDS MAY BE SUBJECT TO THOSE CONFIDENTIALITY REQUIREMENTS AND SHALL REQUEST THAT THE COURT MAKE A DETERMINATION, IF REQUIRED UNDER APPLICABLE FEDERAL LAW AND REGULATIONS, ON WHETHER THE SUBMITTED RECORDS ARE SUBJECT TO DISCOVERY.

Sec. 7. Section 12-2295, Arizona Revised Statutes, is amended to read:

12-2295. Charges

A. Except as otherwise provided by law, a health care provider or contractor may charge a person who requests copies of medical records a reasonable fee for the production of the records. Except as necessary for continuity of care, a health care provider or contractor may require the payment of any fees in advance.

B. A health care provider or contractor shall not charge for the pertinent information contained in medical records provided to:

1. Another health care provider for the purpose of providing continuing care to the patient to whom the medical record pertains.

2. The patient to whom the medical record pertains for the demonstrated purpose of obtaining health care.

3. The health care decision maker ~~or surrogate~~ of the patient to whom the medical record pertains for the demonstrated purpose of obtaining health care FOR THE PATIENT.

4. The Arizona medical board, THE BOARD OF OSTEOPATHIC EXAMINERS IN MEDICINE AND SURGERY or an officer of the department of health services or the local health department requesting records pursuant to section 36-662.

Sec. 8. Section 12-2297, Arizona Revised Statutes, is amended to read:

12-2297. Retention of records

A. Unless otherwise required by statute or by federal law, a health care provider shall retain the original or copies of a patient's medical records as follows:

1. If the patient is an adult, for at least ~~seven~~ SIX years after the last date the adult patient received medical or health care services from that provider.

2. If the patient is a child, either for at least three years after the child's eighteenth birthday or for at least ~~seven~~ SIX years after the last date the child received medical or health care services from that provider, whichever date occurs ~~last~~ LATER.

3. SOURCE DATA MAY BE MAINTAINED SEPARATELY FROM THE MEDICAL RECORD AND MUST BE RETAINED FOR SIX YEARS FROM THE DATE OF COLLECTION OF THE SOURCE DATA.

B. When a health care provider retires or sells the provider's practice the provider shall take reasonable measures to ensure that the provider's records are retained pursuant to this section.

C. A person who is licensed pursuant to title 32 as an employee of a health care provider is not responsible for storing or retaining medical records but shall compile and record the records in the customary manner.

D. A nursing care institution as defined in section 36-401~~,~~ shall retain patient records for ~~five~~ SIX years after the date of the patient's discharge. For a minor, the nursing care institution shall retain the records for three years after the patient reaches eighteen years of age or for ~~three~~ SIX years after the date of the patient's discharge, whichever date occurs last.

Sec. 9. Section 12-2801, Arizona Revised Statutes, is amended to read:

12-2801. Definitions

In this chapter, unless the context otherwise requires:

~~1. "Authorized representative" means a person who is authorized pursuant to title 14, chapter 5, article 2 or 3 and sections 36-3221 and 36-3231.~~

~~2.~~ 1. "Genetic test" or "genetic testing":

(a) Means a test of a person's genes, genetic sequence, gene products or chromosomes for abnormalities or deficiencies, including carrier status, that:

(i) Are linked to physical or mental disorders or impairments.

(ii) Indicate a susceptibility to any illness, disease, impairment or other disorder, whether physical or mental.

(iii) Demonstrate genetic or chromosomal damage due to any environmental factor.

(b) Does not include:

(i) Chemical, blood and urine analyses that are widely accepted and used in clinical practice and that are not used to determine genetic traits.

(ii) Tests used in a criminal investigation or prosecution or as a result of a criminal conviction.

(iii) Tests for the presence of the human immunodeficiency virus.

(iv) Tests to determine paternity conducted pursuant to title 25, chapter 6, article 1.

(v) Tests given for use in biomedical research that is conducted to generate scientific knowledge about genes or to learn about the genetic basis of disease or for developing pharmaceutical and other treatment of disease.

2. "HEALTH CARE DECISION MAKER" MEANS A PERSON WHO IS AUTHORIZED TO MAKE HEALTH CARE TREATMENT DECISIONS FOR THE PATIENT, INCLUDING A PARENT OF A MINOR AND A PERSON WHO IS AUTHORIZED TO MAKE THESE DECISIONS PURSUANT TO TITLE 14, CHAPTER 5, ARTICLE 2 OR 3 OR SECTION 8-514.05, 36-3221, 36-3231 OR 36-3281.

3. "Health care provider" means physicians licensed pursuant to title 32, chapter 13 or 17, physician assistants licensed pursuant to title 32, chapter 25, REGISTERED nurse practitioners licensed pursuant to title 32, chapter 15, health care institutions as defined in section 36-401 and clinical laboratories licensed pursuant to title 36, chapter 4.1.

Sec. 10. Section 12-2802, Arizona Revised Statutes, is amended to read:

12-2802. Confidentiality of genetic testing results; disclosure

A. Except as otherwise provided in this article, genetic testing and information derived from genetic testing are confidential and considered privileged to the person tested and shall be released only to:

1. The person tested.

2. Any person who is specifically authorized in writing by the person tested or by that person's ~~authorized representative~~ HEALTH CARE DECISION MAKER to receive this information.

3. The ~~authorized representative~~ HEALTH CARE DECISION MAKER of the person tested.

4. A researcher for medical research or public health purposes only if the research is conducted pursuant to applicable federal or state laws and regulations governing clinical and biological research or if the identity of the individual providing the sample is not disclosed to the person collecting and conducting the research.

5. A third person if approved by a human subjects review committee or a human ethics committee, with respect to persons who are subject to an Arizona cancer registry.

6. An authorized agent or employee of a health care provider if all of the following are true:

(a) The health care provider performs the test or is authorized to obtain the test results by the person tested for the purposes of genetic counseling or treatment.

(b) The agent or employee provides patient care, treatment or counseling.

(c) The agent or employee needs to know the information in order to conduct the test or provide patient care, treatment or counseling.

7. A health care provider that procures, processes, distributes or uses:

(a) A human body part from a deceased person with respect to medical information regarding that person.

(b) Semen or ova for the purpose of artificial insemination.

8. A health care provider to conduct utilization review, peer review and quality assurance pursuant to section 36-441, 36-445, 36-2402 or 36-2917.

9. The authorized agent of a federal, state or county health department to conduct activities specifically authorized pursuant to the laws of this state for the birth defects registry, children's rehabilitative services, newborn screening and sickle cell diagnosis and treatment programs and chronic, ~~environmentally-provoked~~ ENVIRONMENTALLY PROVOKED and infectious disease programs.

10. To obtain legal advice, the legal representative of a health care provider that is in possession of the medical record.

11. A health care provider that assumes the responsibility to provide care for, or consultation to, the patient from another health care provider that had access to the patient's genetic records.

B. A person shall not disclose or be compelled to disclose the identity of any person on whom a genetic test is performed or the results of a genetic test in a manner that allows identification of the person tested except to the persons specified in the circumstances set forth in subsection A of this section.

C. If genetic testing information is subpoenaed, a health care provider shall respond pursuant to section ~~12-2282~~ 12-2294.01, ~~. If genetic testing information is subpoenaed or obtained pursuant to court order, the~~ SUBSECTION D. IN DETERMINING WHETHER TO ORDER PRODUCTION OF THE GENETIC TESTING INFORMATION, THE court shall take all steps necessary to prevent the disclosure or dissemination of that information. ~~pursuant to section 12-2282, subsection G.~~

D. EXCEPT AS PROVIDED IN THIS SECTION, chapter 13, article 7.1 of this title does not apply to genetic testing information that is contained within a patient's medical record.

E. Following the death of a person who had genetic testing performed, the release of the testing information is governed by section 12-2294, subsection ~~B, paragraph 8~~ D, except that the person may deny, release or limit release of the genetic testing results by adopting a provision in a testamentary document.

F. Except as specifically provided in this article, a person to whom test results have been disclosed pursuant to this article, other than the person tested, shall not disclose the test results to any other person.

G. A health care provider and the provider's agents and employees that act in good faith and that comply with this article are not subject to civil liability. The good faith of a health care provider that complies with this article is presumed. The presumption may be rebutted by a preponderance of the evidence.

H. This article does not limit the effect of title 20 provisions governing the confidentiality and use of genetic testing information.

Sec. 11. Section 36-501, Arizona Revised Statutes, is amended to read:

36-501. Definitions

In this chapter, unless the context otherwise requires:

1. "Admitting officer" means a psychiatrist or other physician with experience in performing psychiatric examinations who has been designated as an admitting officer of the evaluation agency by the person in charge of the evaluation agency.

2. "Chief medical officer" means the chief medical officer under the supervision of the superintendent of the state hospital.

3. "CONTRAINDICATED" MEANS THAT ACCESS IS REASONABLY LIKELY TO ENDANGER THE LIFE OR PHYSICAL SAFETY OF THE PATIENT OR ANOTHER PERSON.

~~3.~~ 4. "Court" means the superior court in the county in this state in which the patient resides or was found prior to screening or emergency admission under provisions of this title.

~~4.~~ 5. "Danger to others" means that the judgement of a person who has a mental disorder is so impaired that he is unable to understand his need for treatment and as a result of his mental disorder his continued behavior can reasonably be expected, on the basis of competent medical opinion, to result in serious physical harm.

~~5.~~ 6. "Danger to self" means:

(a) Behavior ~~which~~ THAT, as a result of a mental disorder, constitutes a danger of inflicting serious physical harm upon oneself, including attempted suicide or the serious threat thereof, if the threat is such that, when considered in the light of its context and in light of the individual's previous acts, it is substantially supportive of an expectation that the threat will be carried out.

(b) Behavior ~~which~~ THAT, as a result of a mental disorder, will, without hospitalization, result in serious physical harm or serious illness to the person, except that this definition shall not include behavior ~~which~~ THAT establishes only the condition of gravely disabled.

~~6.~~ 7. "Department" means the department of health services.

~~7.~~ 8. "Deputy director" means the deputy director of the division of behavioral health in the department of health services.

~~8.~~ 9. "Detention" means the taking into custody of a patient or proposed patient.

~~9.~~ 10. "Director" means the director of the department.

~~10.~~ 11. "Division" means the division of behavioral health in the department.

~~11.~~ 12. "Evaluation" means a professional multidisciplinary analysis based on data describing the person's identity, biography and medical, psychological and social conditions carried out by a group of persons consisting of not less than the following:

(a) Two licensed physicians, who shall be qualified psychiatrists, if possible, or at least experienced in psychiatric matters, and who shall examine and report their findings independently. The person against whom a petition has been filed shall be notified that he may select one of the physicians. A psychiatric resident in a training program approved by the American medical association or by the American osteopathic association may examine the person in place of one of the psychiatrists if he is supervised in the examination and preparation of the affidavit and testimony in court by a qualified psychiatrist appointed to assist in his training, and if the supervising psychiatrist is available for discussion with the attorneys for all parties and for court appearance and testimony if requested by the court or any of the attorneys.

(b) Two other individuals, one of whom, if available, shall be a psychologist and in any event a social worker familiar with mental health and

human services ~~which~~ THAT may be available placement alternatives appropriate for treatment. An evaluation may be conducted on an inpatient basis, an outpatient basis or a combination of both and every reasonable attempt shall be made to conduct the evaluation in any language preferred by the person.

~~12.~~ 13. "Evaluation agency" means a health care agency ~~which~~ THAT is licensed by the department and ~~which~~ THAT has been approved pursuant to this title, providing those services required of such agency by this chapter.

~~13.~~ 14. "Examination" means an exploration of the person's past psychiatric history and of the circumstances leading up to the person's presentation, a psychiatric exploration of the person's present mental condition and a complete physical examination.

~~14.~~ 15. "Family member" means a spouse, parent, adult child, adult sibling or other blood relative of a person undergoing treatment or evaluation pursuant to this chapter.

~~15.~~ 16. "Gravely disabled" means a condition evidenced by behavior in which a person, as a result of a mental disorder, is likely to come to serious physical harm or serious illness because he is unable to provide for his basic physical needs.

17. "HEALTH CARE DECISION MAKER" HAS THE SAME MEANING PRESCRIBED IN SECTION 12-2801.

18. "HEALTH CARE ENTITY" MEANS A HEALTH CARE PROVIDER, THE DEPARTMENT, THE ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM OR A REGIONAL BEHAVIORAL HEALTH AUTHORITY UNDER CONTRACT WITH THE DEPARTMENT.

19. "HEALTH CARE PROVIDER" MEANS A HEALTH CARE INSTITUTION AS DEFINED IN SECTION 36-401 THAT IS LICENSED AS A BEHAVIORAL HEALTH PROVIDER PURSUANT TO DEPARTMENT RULES OR A MENTAL HEALTH PROVIDER.

~~16.~~ 20. "Independent evaluator" means a licensed physician or psychologist selected by the person to be evaluated or by such person's attorney.

~~17.~~ 21. "Informed consent" means a voluntary decision following presentation of all facts necessary to form the basis of an intelligent consent by the patient or guardian with no minimizing of known dangers of any procedures.

~~18.~~ 22. "Least restrictive treatment alternative" means the treatment plan and setting ~~which~~ THAT infringe in the least possible degree with the patient's right to liberty and ~~which~~ THAT are consistent with providing needed treatment in a safe and humane manner.

~~19.~~ 23. "Licensed physician" means any medical doctor or doctor of osteopathy who is either:

(a) Licensed in this state.

(b) A full-time hospital physician licensed in another state and serving on the staff of a hospital operated or licensed by the United States government.

~~20.~~ 24. "Medical director of an evaluation agency" means a psychiatrist, or other licensed physician experienced in psychiatric matters,

who is designated in writing by the governing body of the agency as the person in charge of the medical services of the agency for the purposes of this chapter and may include the chief medical officer of the state hospital.

~~21.~~ 25. "Medical director of a mental health treatment agency" means a psychiatrist, or other licensed physician experienced in psychiatric matters, who is designated in writing by the governing body of the agency as the person in charge of the medical services of the agency for the purposes of this chapter and includes the chief medical officer of the state hospital.

~~22.~~ 26. "Mental disorder" means a substantial disorder of the person's emotional processes, thought, cognition or memory. Mental disorder is distinguished from:

(a) Conditions ~~which~~ THAT are primarily those of drug abuse, alcoholism or mental retardation, unless, in addition to one or more of these conditions, the person has a mental disorder.

(b) The declining mental abilities that directly accompany impending death.

(c) Character and personality disorders characterized by lifelong and deeply ingrained antisocial behavior patterns, including sexual behaviors ~~which~~ THAT are abnormal and prohibited by statute unless the behavior results from a mental disorder.

~~23.~~ 27. "Mental health provider" means any physician or provider of ~~health,~~ mental health or ~~social welfare~~ BEHAVIORAL HEALTH services involved in evaluating, caring for, treating or rehabilitating a patient.

~~24.~~ 28. "Mental health treatment agency" means the state hospital or a health care agency ~~which~~ THAT is licensed by the department and ~~which~~ THAT provides those services ~~which~~ THAT are required of the agency by this chapter.

~~25.~~ 29. "Outpatient treatment" or "combined inpatient and outpatient treatment" means any treatment program not requiring continuous inpatient hospitalization.

~~26.~~ 30. "Outpatient treatment plan" means a treatment plan that does not require continuous inpatient hospitalization.

~~27.~~ 31. "Patient" means any person undergoing ~~evaluation or treatment~~ EXAMINATION, EVALUATION OR BEHAVIORAL OR MENTAL HEALTH TREATMENT under the provisions of this chapter.

~~28.~~ 32. "Peace officers" means sheriffs of counties, constables, marshals and policemen of cities and towns.

~~29.~~ 33. "Persistently or acutely disabled" means a severe mental disorder that meets all the following criteria:

(a) If not treated has a substantial probability of causing the person to suffer or continue to suffer severe and abnormal mental, emotional or physical harm that significantly impairs judgment, reason, behavior or capacity to recognize reality.

(b) Substantially impairs the person's capacity to make an informed decision regarding treatment and this impairment causes the person to be

incapable of understanding and expressing an understanding of the advantages and disadvantages of accepting treatment and understanding and expressing an understanding of the alternatives to the particular treatment offered after the advantages, disadvantages and alternatives are explained to that person.

(c) Has a reasonable prospect of being treatable by outpatient, inpatient or combined inpatient and outpatient treatment.

~~30.~~ 34. "Prepetition screening" means the review of each application requesting court-ordered evaluation, including an investigation of facts alleged in such application, an interview with each applicant and an interview, if possible, with the proposed patient. The purpose of the interview with the proposed patient is to assess the problem, explain the application and, when indicated, attempt to persuade the proposed patient to receive, on a voluntary basis, evaluation or other services.

~~31.~~ 35. "Prescribed form" means a form established by a court or the rules of the division ~~which~~ THAT have been approved by the director or in accordance with the laws of this state.

~~32.~~ 36. "Professional" means a physician licensed pursuant to title 32, chapter 13 or 17 or a psychologist ~~certified~~ LICENSED pursuant to title 32, chapter 19.1.

~~33.~~ 37. "Proposed patient" means a person for whom an application for evaluation has been made or a petition for court-ordered evaluation has been filed.

~~34.~~ 38. "Psychiatrist" means a licensed physician who has completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association.

~~35.~~ 39. "Psychologist" means a person licensed under the provisions of title 32, chapter 19.1 and experienced in the practice of clinical psychology.

40. "RECORDS" MEANS ALL COMMUNICATIONS THAT ARE RECORDED IN ANY FORM OR MEDIUM AND THAT RELATE TO PATIENT EXAMINATION, EVALUATION OR BEHAVIORAL OR MENTAL HEALTH TREATMENT. RECORDS INCLUDE MEDICAL RECORDS THAT ARE PREPARED BY A HEALTH CARE PROVIDER OR OTHER PROVIDERS. RECORDS DO NOT INCLUDE:

(a) MATERIALS THAT ARE PREPARED IN CONNECTION WITH UTILIZATION REVIEW, PEER REVIEW OR QUALITY ASSURANCE ACTIVITIES, INCLUDING RECORDS THAT A HEALTH CARE PROVIDER PREPARES PURSUANT TO SECTION 36-441, 36-445, 36-2402 OR 36-2917.

(b) RECORDED TELEPHONE AND RADIO CALLS TO AND FROM A PUBLICLY OPERATED EMERGENCY DISPATCH OFFICE RELATING TO REQUESTS FOR EMERGENCY SERVICES OR REPORTS OF SUSPECTED CRIMINAL ACTIVITY.

~~36.~~ 41. "Screening agency" means a health care agency ~~which~~ THAT is licensed by the department and ~~which~~ THAT provides those services required of such agency by this chapter.

~~37.~~ 42. "Social worker" means a person who has completed two years of graduate training in social work in a program approved by the council of social work education and who has experience in mental health.

~~38.~~ 43. "State hospital" means the Arizona state hospital.

~~39.~~ 44. "Superintendent" means the superintendent of the state hospital.

Sec. 12. Section 36-509, Arizona Revised Statutes, is amended to read:

36-509. Confidential records

~~A. All information and records obtained in the course of evaluation, examination or treatment shall be kept~~ A HEALTH CARE ENTITY MUST KEEP RECORDS AND INFORMATION CONTAINED IN RECORDS confidential and not as public records, except as the requirements of a hearing pursuant to this chapter may necessitate a different procedure. Information and records may only be disclosed~~, pursuant to rules established by the department,~~ to:

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

2. Individuals to whom the patient OR THE PATIENT'S HEALTH CARE DECISION MAKER has given ~~consent~~ AUTHORIZATION to have information disclosed.

~~3. Persons legally representing the patient, and in such case, the department's rules shall not delay complete disclosure.~~

~~4.~~ 3. Persons authorized by a court order.

~~5.~~ 4. Persons doing research or maintaining health statistics, provided that the department establishes rules for the conduct of such research as will ensure the anonymity of the patient.

~~6.~~ 5. The state department of corrections in cases ~~where~~ IN WHICH prisoners confined to the state prison are patients in the state hospital on authorized transfers either by voluntary admission or by order of the court.

~~7.~~ 6. Governmental or law enforcement agencies if necessary to secure the return of a patient who is on unauthorized absence from any agency where the patient was undergoing evaluation and treatment.

~~8.~~ 7. ~~Family members~~ PERSONS, INCLUDING FAMILY MEMBERS, actively participating in the patient's care, treatment or supervision. ~~An agency or nonagency treating professional~~ A HEALTH CARE PROVIDER may only release information relating to the ~~person's~~ PATIENT'S diagnosis, prognosis, need for hospitalization, anticipated length of stay, discharge plan, medication, medication side effects and short-term and long-term treatment goals. A HEALTH CARE PROVIDER MAY MAKE THIS RELEASE ONLY AFTER THE TREATING PROFESSIONAL OR THAT PERSON'S DESIGNEE INTERVIEWS THE PATIENT AND THE PATIENT OR THE PATIENT'S HEALTH CARE DECISION MAKER DOES NOT OBJECT, UNLESS FEDERAL OR STATE LAW OTHERWISE PERMITS THE DISCLOSURE. A DECISION TO RELEASE OR WITHHOLD INFORMATION IS SUBJECT TO REVIEW PURSUANT TO SECTION 36-517.01. THE HEALTH CARE PROVIDER MUST RECORD THE NAME OF ANY PERSON TO WHOM ANY INFORMATION IS GIVEN UNDER THIS PARAGRAPH.

~~9.~~ 8. A state agency that licenses health professionals pursuant to title 32, chapter 13, 15, 17, ~~or~~ 19.1 OR 33 and that requires these records in the course of investigating complaints of professional negligence, incompetence or lack of clinical judgment.

~~10. The department of education or school district of residence of a person between three and twenty-two years of age for whom the information is necessary in order to provide educational services required by the individuals with disabilities education act (20 United States Code sections 1400 through 1415). The information provided is limited to evaluation and treatment information that affects the educational programming and placement decisions for the patient.~~

~~11.~~ 9. A governmental agency or a competent professional, as defined in section 36-3701, in order to comply with chapter 37 of this title.

~~12. An agent appointed pursuant to chapter 32 of this title.~~

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

11. A PATIENT OR THE PATIENT'S HEALTH CARE DECISION MAKER PURSUANT TO SECTION 36-507.

~~14.~~ 12. The department of public safety by the court to comply with the requirements of section 36-540, subsection N ~~only~~.

13. A THIRD PARTY PAYOR TO OBTAIN REIMBURSEMENT FOR HEALTH CARE, MENTAL HEALTH CARE OR BEHAVIORAL HEALTH CARE PROVIDED TO THE PATIENT.

14. A PRIVATE ENTITY THAT ACCREDITS THE HEALTH CARE PROVIDER AND WITH WHOM THE HEALTH CARE PROVIDER HAS AN AGREEMENT REQUIRING THE AGENCY TO PROTECT THE CONFIDENTIALITY OF PATIENT INFORMATION.

~~B. An agency or nonagency treating professional shall release information pursuant to subsection A, paragraph 8 of this section only after the treating professional or that person's designee interviews the person undergoing treatment or evaluation to determine whether or not release is in that person's best interests. A decision to release or withhold information is subject to review pursuant to section 36-517.01. The treating agency shall record the name of any person to whom any information is given.~~

Sec. 13. Section 36-517.01, Arizona Revised Statutes, is amended to read:

36-517.01. Review of decisions regarding release of treatment information; notice; appeal; immunity

A. An agency providing evaluation or treatment ~~shall~~, on request of a person undergoing evaluation or treatment, a member of his family or his guardian, SHALL review the treating professional's decision to release or withhold information requested pursuant to section 36-504, subsection B or section 36-509~~, subsection A,~~ paragraph ~~8~~ 7. The agency shall inform a person whose request is denied of his right to a review when it notifies that person of its decision. The agency director or his designee shall conduct the review within five business days after the request for review is made. The review shall include an interview of the person undergoing evaluation or treatment. The agency shall make a decision to uphold or reverse the treating professional's decision within five business days after initiating the review. The agency shall bear the costs of conducting the review. Agency review pursuant to this section does not apply to a decision to release or withhold information made by a nonagency treating professional.

B. A final agency decision made pursuant to subsection A of this section or a decision to release or withhold information made by a nonagency treating professional is subject to judicial review by filing a petition in the superior court within five business days after the agency or nonagency treating professional issues its decision. The court shall hold a hearing on the petition within five business days after the petition is filed. The agency or nonagency treating professional shall not release any treatment information during the period an appeal may be filed or is pending.

C. An agency or nonagency treating professional that makes a decision to release or withhold treatment information in good faith pursuant to section 36-504, subsection B or section 36-509, ~~subsection A,~~ paragraph ~~8~~ 7 is not subject to civil liability for this decision.

Sec. 14. 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. "~~Confidential~~ 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 ~~confidential~~ communicable disease related information.

~~6. "Confidential 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 which identifies or reasonably permits identification of that person or the person's contacts.~~

~~7.~~ 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.

~~8.~~ 7. "Department" means the department of health services.

~~9.~~ 8. "Director" means the director of the department of health services.

~~10.~~ 9. "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. "HEALTH CARE DECISION MAKER" HAS THE SAME MEANING PRESCRIBED IN SECTION 12-2801.

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

12. "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. "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. "HIV" means the human immunodeficiency virus.

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

17. "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.

~~17.~~ 18. "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.

~~18.~~ 19. "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.

~~19. "Release of confidential communicable disease related information" means a written authorization for disclosure of confidential communicable disease related information.~~

20. "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. 15. Section 36-663, Arizona Revised Statutes, is amended to read:

36-663. HIV-related testing; restrictions; exceptions

A. Except as otherwise specifically authorized or required by this state or by federal law, no person may order the performance of an HIV-related test within a hospital licensed pursuant to chapter 4, article 2 of this title without first receiving the specific written informed consent of the subject of the test who has capacity to consent or, if the subject lacks capacity to consent, of ~~a person authorized pursuant to law to consent to health care for that person~~ THE SUBJECT'S HEALTH CARE DECISION MAKER. Before ordering the performance of an HIV-related test as a part of a patient examination or consultation conducted outside a hospital licensed pursuant to chapter 4, article 2 of this title, a health care provider licensed pursuant to title 32, chapter 13, 17 or 29, a nurse practitioner certified pursuant to title 32, chapter 15 or a physician assistant certified pursuant to title 32, chapter 25 shall obtain specific oral or written informed consent of the subject of the test who has capacity to consent or, if the subject lacks capacity to consent, of a person authorized pursuant to law to consent to health care for that person. Other health care providers WHO ARE licensed pursuant to title 32 AND who are allowed to provide HIV-related tests within their scope of practice shall obtain specific written informed consent. Written consent shall be in a form as prescribed by the department except for entities complying with the form prescribed by section 20-448.01. Oral consent shall be documented in the medical record of the subject of the test. If the test is performed on an anonymous basis the consent shall be oral and no record shall be made containing the subject's name.

B. In order to obtain specific oral or written informed consent the health care provider licensed pursuant to title 32 shall provide the patient with an explanation of the following:

1. The test including its purpose, the meaning of its results and the benefits of early diagnosis and medical intervention.

2. The nature of acquired immune deficiency syndrome and HIV-related illness and information about behaviors known to pose risks for transmitting the human immunodeficiency virus.

3. The confidentiality protections afforded HIV-related information.

4. That an HIV-related test is voluntary and can be performed anonymously at a public health agency.

5. That a positive test result must be reported to a public health agency as required by law.

6. That the consent for the test may be withdrawn at any time before drawing the sample for the test and that the withdrawal of consent may be given orally if the consent was given orally or shall be in writing if the consent was given in writing.

C. The director shall provide in writing to all health care providers a form ~~which~~ THAT contains the list of informed consent explanations in subsection B of this section. If the health care provider chooses to use oral consent, the provider shall sign and return the form to the director.

D. 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. 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. 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. 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. 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.

Sec. 16. Section 36-664, Arizona Revised Statutes, is amended to read:

36-664. Confidentiality; exceptions

A. A person who obtains ~~confidential~~ communicable disease related information in the course of providing a health service or ~~pursuant to a release of confidential communicable disease related information~~ 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, ~~a person authorized pursuant to law to consent to health care for the person~~ THE PROTECTED PERSON'S HEALTH CARE DECISION MAKER.

2. THE DEPARTMENT OR A LOCAL HEALTH DEPARTMENT FOR PURPOSES OF NOTIFYING a ~~person to whom disclosure is authorized~~ GOOD SAMARITAN pursuant to subsection ~~D~~ E of this section ~~or as otherwise allowed by law~~.

3. An agent or employee of a health facility or health care provider ~~if the agent or employee is authorized to access medical records, the health facility or health care provider itself is authorized to obtain the communicable disease related information and the agent or employee provides health care to the protected individual or maintains or processes medical records for billing or reimbursement~~ TO PROVIDE HEALTH SERVICES TO THE PROTECTED PERSON OR THE PROTECTED PERSON'S CHILD OR FOR BILLING OR REIMBURSEMENT FOR HEALTH SERVICES.

~~4. A health care provider or health facility if knowledge of the communicable disease related information is necessary to provide appropriate care or treatment to the protected person or the person's child.~~

~~5.~~ 4. 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.

~~6.~~ 5. 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. ~~Confidential communicable disease related information disclosed to these organizations, committees or individuals shall include only that information necessary for the authorized review and shall not include information directly identifying the protected person.~~

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

8. A FEDERAL, STATE OR LOCAL government agency ~~specifically~~ 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. 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.

~~9.~~ 10. A person, health care provider or health ~~care~~ facility to which disclosure is ordered by a court or administrative body pursuant to section 36-665.

~~10. The department of economic security in conjunction with the placement of children for adoption.~~

11. The industrial commission or parties to an industrial commission claim pursuant to the provisions of section 23-908, subsection C and 23-1043.02.

12. Insurance entities pursuant to section 20-448.01 AND THIRD PARTY PAYORS OR THE PAYOR'S CONTRACTORS.

13. ANY PERSON OR ENTITY AS AUTHORIZED BY THE PATIENT OR THE PATIENT'S HEALTH CARE DECISION MAKER.

B. AT THE REQUEST OF THE DEPARTMENT OF ECONOMIC SECURITY 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.

~~B.~~ C. A state, county or local health department or officer may disclose ~~confidential~~ 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 a release of confidential communicable disease related information.~~

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.

~~C.~~ 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.

~~D.~~ E. The department or a local health department shall disclose ~~confidential~~ 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.

~~E.~~ F. ~~A release of confidential~~ AN AUTHORIZATION TO RELEASE communicable disease related information shall be signed by the protected person or, if the protected person lacks capacity to consent, ~~a person authorized pursuant to law to consent to health care for the person~~ THE PROTECTED PERSON'S HEALTH CARE DECISION MAKER. ~~A release~~ 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 ~~confidential~~ communicable disease related information, is not an authorization for the release of ~~confidential~~ HIV-related information unless the authorization specifically indicates its purpose as ~~a general authorization and~~ an authorization for the release of confidential HIV-related information and complies with the requirements of this section.

~~F.~~ G. A person to whom ~~confidential~~ 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 ~~person who is authorized pursuant to law to consent to health care for the protected person~~ PROTECTED PERSON'S HEALTH CARE DECISION MAKER.

~~G.~~ H. If a disclosure of ~~confidential~~ communicable disease related information is made pursuant to ~~a release~~ AN AUTHORIZATION UNDER SUBSECTION F OF THIS SECTION, the disclosure shall be accompanied by a statement in writing ~~which~~ THAT warns that the information is from confidential records ~~which are~~ protected by state law AND that prohibits further disclosure of the information without the specific written ~~consent~~ AUTHORIZATION of the person to whom it pertains or as otherwise permitted by law.

~~H. The person making a disclosure pursuant to a release of confidential communicable disease related information shall keep a record of all disclosures. On request, a protected person or a protected person's legal representative shall have access to the record.~~

~~I. A provider of a health service in possession of confidential communicable disease related information relating to a recipient of its~~

~~service may disclose that information to an authorized employee or agent of a federal, state or local government agency which supervises or monitors the provider or administers the program under which the service is provided or to the private entity that accredits the provider. An authorized employee or agent includes only an employee or agent who, in the ordinary course of business of the government agency or entity, has access to records relating to the care or treatment of the protected person. The information shall not disclose the protected person's name.~~

~~J.~~ I. 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.

~~K.~~ J. If a person in possession of ~~confidential~~ 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.

~~L.~~ K. 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 ~~confidential~~ HIV-related information in the course of providing a health service or pursuant to a release of ~~confidential~~ 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.

~~M.~~ L. ~~Nothing in~~ This section or sections 36-663, 36-666, 36-667 and 36-668 ~~shall~~ DO NOT apply to persons or entities subject to regulation under title 20.

Sec. 17. Section 36-665, Arizona Revised Statutes, is amended to read:

36-665. <u>Order for disclosure of communicable disease related information</u>

A. Notwithstanding any other law, no court or administrative body may issue an order for the disclosure of or a search warrant for ~~confidential~~ communicable disease related information, except as provided by this section. An administrative body includes any administrative law judge or hearing officer presiding over matters relating to the administrative body.

B. An order for disclosure of or a search warrant for ~~confidential~~ communicable disease related information may be issued on an application showing any one of the following:

1. A compelling need for disclosure of the information for the adjudication of a criminal, civil or administrative proceeding.

2. A clear and imminent danger to a person whose life or health may unknowingly be at significant risk as a result of contact with the person to whom the information pertains.

3. If the application is filed by a state, county or local health officer, a clear and imminent danger to the public health.

4. That the applicant is lawfully entitled to the disclosure and the disclosure is consistent with the provisions of this article.

5. A clear and imminent danger to a person or to public health or a compelling need requiring disclosure of the ~~confidential~~ communicable disease RELATED information.

C. On receiving an application pursuant to this section, the court or administrative body shall enter an order directing that the file be sealed and not made available to any person, except to the extent necessary to conduct a proceeding in connection with the determination of whether to grant or deny the application, including an appeal. The court or administrative body shall also order that all subsequent proceedings in connection with the application be conducted in camera and, if appropriate to prevent the unauthorized disclosure of ~~confidential~~ communicable disease related information, that pleadings, papers, affidavits, judgments, orders, briefs and memoranda of law ~~which~~ THAT are part of the application or the decision not state the name of the person concerning whom ~~confidential~~ communicable disease related information is sought.

D. The person concerning whom the information is sought and a person holding records from whom disclosure is sought shall be given adequate notice of the application in a manner which does not disclose to any other person the identity of the person and may file a written response to the application or appear in person for the limited purpose of providing evidence on the criteria for the issuance of an order pursuant to this section.

E. The court or administrative body may grant an order without notice and an opportunity to be heard if an ex parte application by a public health officer shows that a clear and imminent danger to a person whose life or health may unknowingly be at risk requires an immediate order and that notice to the individual about whom the information is sought is not reasonable under the circumstances.

F. Service of a subpoena is not required for actions brought pursuant to subsections D and E.

G. In assessing compelling need and clear and imminent danger, the court or administrative body shall provide written findings of fact, including scientific or medical findings, citing specific evidence in the record which supports each finding, and shall weigh the need for disclosure

against the privacy interest of the protected person and the public interest which may be disserved by disclosure which deters future testing or treatment or which may lead to discrimination.

H. An order authorizing disclosure of or a search warrant for ~~confidential~~ communicable disease related information shall:

1. Limit disclosure to that information which is necessary to fulfill the purpose for which the order is granted.

2. Limit disclosure to those persons whose need for the information is the basis for the order, and specifically prohibit redisclosure by persons to any other persons, whether or not they are parties to the action.

3. To the extent possible consistent with this section, conform to the provisions of this article.

4. Include other measures as deemed necessary to limit disclosures not authorized by the order.

I. Notwithstanding any other law, a court or administrative body shall not order the department, a county health department or a local health department to release ~~confidential~~ HIV-related information in its possession.

Sec. 18. Section 36-666, Arizona Revised Statutes, is amended to read:

36-666. Violation; classification; immunity

A. A person who knowingly does the following is guilty of a class 3 misdemeanor:

1. Performs, or permits or procures the performance of, an HIV-related test in violation of this article.

2. Discloses, compels another person to disclose or procures the disclosure of ~~confidential~~ communicable disease related information in violation of this article.

B. A person, health ~~care~~ facility or health care provider disclosing ~~confidential~~ communicable disease related information pursuant to or required by this article is immune from civil or criminal liability if the person, health care facility or health care provider acted in good faith and without malice.

C. A health ~~care~~ facility or health care provider, including a physician, the physician's employer or the health care facility or health care provider with which the physician is associated, is immune from civil or criminal liability for failing to disclose ~~confidential~~ communicable disease related information to a contact or a person authorized pursuant to law to consent to health care for a protected person if the health ~~care~~ facility or health care provider acted in good faith and without malice.

D. For the purposes of this section, good faith and the absence of malice are presumed unless the presumption is overcome by a demonstration of clear and convincing evidence to the contrary.

Sec. 19. Section 36-667, Arizona Revised Statutes, is amended to read:

36-667. Civil penalty

A. The department may impose a civil penalty of not more than five thousand dollars if a person does the following in violation of this article:

1. Performs, or permits or procures the performance of, an HIV-related test in violation of this article.

2. Discloses, compels another person to disclose or procures the disclosure of ~~confidential~~ communicable disease related information in violation of this article.

B. The director shall deposit, pursuant to sections 35-146 and 35-147, all monies collected pursuant to this section in the state general fund.

Sec. 20. Section 36-2220, Arizona Revised Statutes, is amended to read:

36-2220. Records; confidentiality; definition

A. Information developed and records kept by the department or a political subdivision of this state for the purpose of administering or evaluating the Arizona emergency medical services system or for the trauma system are available to the public except:

1. Any patient record including clinical records, prehospital care records, medical reports, laboratory statements and reports, any file, film, record or report or oral statement relating to diagnostic findings, treatment or outcome of patients, whether written or recorded, and any information from which a patient, the patient's family or the patient's health care provider or facility might be identified except records, files and information shall be available to the patient, the patient's guardian or the patient's agent.

2. Information obtained for purposes of chapter 25 or chapter 4, article 5 of this title.

B. Unless otherwise provided by law, all medical records developed and kept by a prehospital component of the statewide trauma system and information contained in these records are confidential and may not be released to the public without written authorization by the patient, the patient's guardian or the patient's agent.

C. Notwithstanding subsection B, a prehospital incident history report completed and kept by a nonhospital political subdivision of this state is available to the public except for information in that report that is protected from disclosure by the laws of this state or federal law including but not limited to confidential patient treatment information.

D. Patient records and medical records covered by this section may be obtained pursuant to ~~the provisions of title 12, chapter 13, article 7~~ SECTION 12-2294.01.

E. For the purposes of this section, "prehospital incident history report" means a record of the prehospital response, nature of the incident and transportation of an emergency medical services patient that is documented on a prehospital incident history report.

Sec. 21. Section 36-3601, Arizona Revised Statutes, is amended to read:

36-3601. Definitions

For the purposes of this chapter:

1. "HEALTH CARE DECISION MAKER" HAS THE SAME MEANING PRESCRIBED IN SECTION 12-2801.

~~1.~~ 2. "Health care provider" means a person licensed pursuant to title 32, chapter 7, 13, 15, 17, 18, 19.1, 25, 28, ~~or~~ 29 OR 33.

~~2.~~ 3. "Telemedicine" means the practice of health care delivery, diagnosis, consultation~~,~~ AND treatment and THE transfer of medical data through interactive audio, video or data communications that ~~occurs~~ OCCUR in the physical presence of the patient~~. For the purposes of this article~~, INCLUDING audio or video communications sent to a health care provider for diagnostic or treatment consultation ~~also constitute telemedicine~~.

Sec. 22. Section 36-3602, Arizona Revised Statutes, is amended to read:

36-3602. Delivery of health care through telemedicine; requirements; exceptions

A. EXCEPT AS PROVIDED IN SUBSECTION D OF THIS SECTION, before a health care provider delivers health care through telemedicine, the treating health care provider shall obtain verbal or written informed consent from the patient OR THE PATIENT'S HEALTH CARE DECISION MAKER. If the informed consent is obtained verbally, the health care provider shall document the ~~patient's~~ consent on the patient's medical record.

B. The patient is entitled to all existing confidentiality protections pursuant to section 12-2292.

C. All medical reports resulting from a telemedicine consultation are part of a patient's medical record as defined in section 12-2291.

D. Dissemination of any images or information identifiable to a specific patient for research or educational purposes shall not occur without the patient's consent, UNLESS AUTHORIZED BY STATE OR FEDERAL LAW.

~~E. The consent requirements of this section apply to a patient's parent or guardian if the patient is a minor or is not mentally competent to give consent.~~

~~F.~~ E. The consent requirements of this section do not apply:

1. If ~~the patient is not directly involved in~~ the telemedicine interaction DOES NOT TAKE PLACE IN THE PHYSICAL PRESENCE OF THE PATIENT.

2. In an emergency situation in which the patient or~~, in the case of a minor, the patient's parent or guardian~~ THE PATIENT'S HEALTH CARE DECISION MAKER is unable to give informed consent.

3. To the transmission of diagnostic images to a health care provider serving as a consultant or the reporting of diagnostic test results by that consultant.

APPROVED BY THE GOVERNOR MAY 4, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 4, 2004.