



Arizona Health-e Connection
Recommended Statutory and Regulatory Changes

Appendix A to CGSB Memorandum to Arizona Health-e Connection Legal Working Group regarding Proposed Statutory Amendments for Discussion

RECOMMENDED STATUTORY CHANGES

Title 12 (Courts and Civil Proceedings), Chapter 13 (Evidence), Article 7.1 (Medical Records)

12-2291. Definitions

In this article, unless the context otherwise requires:

1. "CLINICAL LABORATORY" HAS THE SAME MEANING AS IN ARIZONA REVISED STATUTES, SECTION 36-451.
2. "Contractor" means an agency or service that duplicates medical records on behalf of health care providers.
- ~~2.3.~~ "Department" means the department of health services.
- ~~3.4.~~ "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, 36-3231 or 36-3281.
- ~~4.5.~~ "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.
6. "HEALTH INFORMATION ORGANIZATION" MEAN A PERSON OR ENTITY THAT HANDLES MEDICAL RECORDS OR THE INFORMATION CONTAINED IN MEDICAL RECORDS ON BEHALF OF HEALTH CARE PROVIDERS OR INDIVIDUALS FOR THE PURPOSE OF MAKING MEDICAL RECORDS OR THE INFORMATION CONTAINED IN MEDICAL RECORDS AVAILABLE FOR CARE OR TREATMENT OF PATIENTS. "HEALTH INFORMATION ORGANIZATION" DOES NOT INCLUDE A HEALTH INFORMATION

SYSTEM UTILIZED WITHIN OR BY A HEALTH CARE PROVIDER OR HEALTH CARE ENTITY.

5.7 "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 BY THE HEALTH CARE PROVIDER, including medical records that are prepared by a health care provider or RECEIVED FROM ~~by~~ other providers THAT ARE USED IN THE PROVISION OF PATIENT CARE BY THE HEALTH CARE PROVIDER. 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, 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.

6.8. "Payment records" means all communications related to payment for a patient's health care that contain individually identifiable information.

7.9. "Source data" means information that is summarized, interpreted or reported in the medical record, including x-rays and other diagnostic images.

12-2292. Confidentiality of medical records and payment 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 OR A HEALTH INFORMATION ORGANIZATION may only disclose that part or all of a patient's medical records and payment records as authorized by state or federal law or written authorization signed by the patient or the patient's health care decision maker.

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

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

A. Except as provided in subsections B and C 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 and payment records, the health care provider in possession of the record shall provide access to or copies of the records to the patient or the patient's health care decision maker.

B. A health care provider may deny a request for access to or copies of medical records or payment records if a health professional determines that either:

Appendix A

Memorandum to the Arizona Health-e Connection Legal Working Group

September 4, 2008

Page 3

1. Access by the patient or the patient's health care decision maker is reasonably likely to endanger the life or physical safety of the patient or another person.
2. The records make reference to a person other than a health professional and access by the patient or the patient's health care decision maker is reasonably likely to cause substantial harm to that other person.
3. Access by the patient's health care decision maker is reasonably likely to cause substantial harm to the patient or another person.
4. Access by the patient or the patient's health care decision maker would reveal information obtained under a promise of confidentiality with someone other than a health professional and access would be reasonably likely to reveal the source of the information.

C. A health care provider may deny a request for access to or copies of medical records or payment records if the health care provider determines that either:

1. The information was created or obtained in the course of clinical research and the patient or the patient's health care decision maker agreed to the denial of access when consenting to participate in the research and was informed that the right of access will be reinstated on completion of the research.
2. A health care provider is a correctional institution or is acting under the direction of a correctional institution and access by a patient who is an inmate in the correctional institution would jeopardize the health, safety, security, custody or rehabilitation of the patient or other inmates or the safety of any officer, employee or other person at the correctional institution or of a person who is responsible for transporting the inmate.

D. If the health care provider denies a request for access to or copies of the medical records or payment records, the health care provider must note this determination in the patient's records 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 records or payment records information for which there is not a basis to deny access under subsection B of this section.

E. For the purposes of this section, "health professional" has the same meaning prescribed in section 32-3201.

12-2294. Release of medical records and payment records to third parties

A. A health care provider, CLINICAL LABORATORY OR HEALTH INFORMATION ORGANIZATION 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.

Appendix A

Memorandum to the Arizona Health-e Connection Legal Working Group

September 4, 2008

Page 4

B. A health care provider, CLINICAL LABORATORY OR HEALTH INFORMATION ORGANIZATION 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.

C. A health care provider, CLINICAL LABORATORY OR HEALTH INFORMATION ORGANIZATION may disclose medical records or payment records or the information contained in medical records or payment records without the written authorization 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 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 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.
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.
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, INCLUDING A HEALTH INFORMATION ORGANIZATION, and with whom the health care provider has an agreement requiring the person or entity to protect the confidentiality of patient information.
8. To the legal representative of a health care provider in possession of the medical records or payment records for the purpose of securing legal advice.
9. To the patient's third party payor or the payor's contractor.
10. To the industrial commission of Arizona or parties to an industrial commission claim pursuant to title 23, chapter 6.

D. A health care provider may disclose a deceased patient's medical records or payment records or the information contained in medical records or payment records to the patient's health care

Appendix A

Memorandum to the Arizona Health-e Connection Legal Working Group

September 4, 2008

Page 5

decision maker at the time of the patient's death. A health care provider also may disclose a deceased patient's medical records or payment records or the information contained in medical records or payment 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 or payment records:

1. The deceased patient's spouse, unless the patient and the patient's spouse were legally separated at the time of the patient's death.
 2. 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.
 3. An adult child of the deceased patient.
 4. A parent of the deceased patient.
 5. An adult brother or sister of the deceased patient.
 6. A guardian or conservator of the deceased patient at the time of the patient's death.
- E. A person who receives medical records or payment 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 authorized by law.
- F. If a health care provider releases a patient's medical records or payment records to a contractor for the purpose of duplicating or disclosing the records on behalf of the health care provider, the contractor shall not disclose any part or all of a patient's medical records or payment records in its custody except as provided in this article. After duplicating or disclosing a patient's medical records or payment records on behalf of a health care provider, a contractor must return the records to the health care provider who released the medical records or payment records to the contractor.

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

- A. A subpoena seeking medical records or payment 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 subpoena that seeks medical records or payments records must meet one of the following requirements:

Appendix A

Memorandum to the Arizona Health-e Connection Legal Working Group

September 4, 2008

Page 6

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 that requires the release of the records to the party seeking the records or that meets the requirements for a qualified protective order under the health insurance portability and accountability act privacy standards (42 Code of Federal Regulations section 164.512(e)).

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 records to the party seeking the records.

C. If a subpoena does not meet one of the requirements of subsection B of this section, a health care provider shall not produce the medical records or payment records to the party seeking the records, but may either file the records under seal pursuant to subsection D of this section, object to production under subsection E of this section or file a motion to quash or modify the subpoena under rule 45 of the Arizona rules of civil procedure.

D. It is sufficient compliance with a subpoena issued in a court or tribunal proceeding if a health care provider delivers the medical records or payment records under seal as follows:

1. The health care provider may deliver by certified mail or in person a copy of all the 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 records shall remain sealed and shall be opened only on order of the court or tribunal conducting the proceeding.

4. The 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 records.

(b) That the copy is a true complete copy of the records described in the subpoena.

Appendix A

Memorandum to the Arizona Health-e Connection Legal Working Group

September 4, 2008

Page 7

(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 records described or only part of the records described in the subpoena.

5. The copy of the records is admissible in evidence as provided under rule 902(11), Arizona rules of evidence. 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.

E. If a subpoena does not meet one of the requirements of subsection B of this section or if grounds for objection exist under rule 45 of the Arizona rules of civil procedure, a health care provider may file with the court or tribunal an objection to the inspection or copying of any or all of the records 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 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 records or to appear or respond to a motion to compel production of records, and may produce the 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 records.

3. If an objection is filed, the party seeking production may request an order compelling production of the 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.

F. IF A SUBPOENA MEETS ONE OF THE REQUIREMENTS OF SUBSECTION B OF THIS SECTION, A HEALTH CARE PROVIDER MAY FILE THE MEDICAL RECORDS OR PAYMENT RECORDS UNDER SEAL PURSUANT TO SUBSECTION D OF THIS SECTION OR

SHALL PRODUCE THE MEDICAL RECORDS OR PAYMENT RECORDS TO THE PARTY SEEKING THE RECORDS. IF PRODUCED TO THE PARTY SEEKING THE RECORDS, THE RECORDS SHALL BE ACCOMPANIED BY THE AFFIDAVIT OF THE CUSTODIAN OR OTHER QUALIFIED WITNESS, STATING IN SUBSTANCE THE ELEMENTS SET FORTH IN SUBSECTION D(4) OF THIS SECTION.

G. IF RECORDS PRODUCED UNDER SUBSECTION D OR SUBSECTION F OF THIS SECTION ARE ACCOMPANIED BY THE AFFIDAVIT PRESCRIBED BY SUBSECTION D(4) OF THIS SECTION, THE HEALTH CARE PROVIDER NEED NOT COMPLY WITH A NOTICE OF DEPOSITION OF THE CUSTODIAN OF RECORDS, UNLESS SO ORDERED BY A COURT OR TRIBUNAL.

~~F~~.H. If a party seeking medical records or payment records wishes to examine the original records maintained by a health care provider, the health care provider may permit the party to examine the original records if the subpoena meets one of the requirements of subsection B of this section. The party seeking the records also may petition a court or tribunal for an order directing the health care provider to allow the party to examine the original records or to file the original records under seal with the court or tribunal under subsection D of this section.

I. MEDICAL RECORDS OR PAYMENT RECORDS, OR INFORMATION CONTAINED IN MEDICAL RECORDS OR PAYMENT RECORDS, WHICH ARE MAINTAINED BY A HEALTH INFORMATION ORGANIZATION AS DEFINED IN SECTION 12-2291, ARE NOT SUBJECT TO SUBPOENA DIRECTED TO THE HEALTH INFORMATION ORGANIZATION UNLESS THE PROVISIONS OF THIS SECTION ARE FOLLOWED AND A DETERMINATION HAS BEEN MADE BY A COURT UPON MOTION AND NOTICE TO THE HEALTH INFORMATION ORGANIZATION AND THE PARTIES TO THE LITIGATION IN WHICH THE SUBPOENA IS SERVED THAT THE INFORMATION SOUGHT FROM THE HEALTH INFORMATION ORGANIZATION IS NOT AVAILABLE FROM ANOTHER SOURCE AND IS EITHER RELEVANT TO THE SUBJECT MATTER INVOLVED IN THE PENDING ACTION OR IS REASONABLY CALCULATED TO LEAD TO THE DISCOVERY OF ADMISSIBLE EVIDENCE IN SUCH PENDING ACTION. ANY PERSON ISSUING A SUBPOENA TO THE HEALTH INFORMATION ORGANIZATION PURSUANT TO THIS SECTION SHALL CERTIFY THAT SUCH MEASURES HAVE BEEN COMPLETED PRIOR TO THE ISSUANCE OF THE SUBPOENA.

12-2295. Charges

A. Except as otherwise provided by law, a health care provider, ~~or~~ contractor, OR HEALTH INFORMATION ORGANIZATION may charge a person who requests copies of medical records or payment records a reasonable fee for the production of the records. Except as necessary for continuity of care, a health care provider, ~~or~~ contractor, OR HEALTH INFORMATION ORGANIZATION 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:

Appendix A

Memorandum to the Arizona Health-e Connection Legal Working Group

September 4, 2008

Page 9

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 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.

12-2296. Immunity

A health care provider, ~~or~~ contractor OR HEALTH INFORMATION ORGANIZATION that acts in good faith under this article is not liable for damages in any civil action for the disclosure of medical records or payment records or information contained in medical records or payment records that is made pursuant to this article or as otherwise provided by law. The health care provider, ~~or~~ contractor OR HEALTH INFORMATION ORGANIZATION is presumed to have acted in good faith. The presumption may be rebutted by clear and convincing evidence.

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 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 six years after the last date the child received medical or health care services from that provider, whichever date occurs 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 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 six years after the date of the patient's discharge, whichever date occurs last.

12-2298. HEALTH INFORMATION ORGANIZATIONS

A. HEALTH INFORMATION ORGANIZATIONS MUST IMPLEMENT AND ENFORCE POLICIES GOVERNING THE PRIVACY AND SECURITY OF MEDICAL RECORDS AND THE INFORMATION CONTAINED IN MEDICAL RECORDS, INCLUDING:

1. THE USE OF APPROPRIATE SAFEGUARDS TO PREVENT USE OR DISCLOSURE OF MEDICAL RECORDS IN ACCORDANCE WITH THE HEALTH INFORMATION PORTABILITY AND ACCOUNTABILITY ACT OF 1996 AND THIS CHAPTER.
2. LIMITING AUTHORIZED ACCESS TO PERSONALLY IDENTIFIABLE MEDICAL RECORDS TO PERSONS HAVING A NEED TO KNOW THAT INFORMATION.
3. IDENTIFYING AN INDIVIDUAL OR INDIVIDUALS WHO HAVE RESPONSIBILITY FOR MAINTAINING SECURITY PROCEDURES FOR THE HEALTH INFORMATION ORGANIZATION.
4. PROVIDING AN ELECTRONIC OR WRITTEN STATEMENT TO EACH EMPLOYEE OR AGENT AS TO THE NEED TO MAINTAIN THE PRIVACY AND SECURITY OF MEDICAL RECORDS HANDLED BY THE HEALTH INFORMATION ORGANIZATION AND OF THE PENALTIES PROVIDED FOR THE UNAUTHORIZED ACCESS, RELEASE, TRANSFER, USE, OR DISCLOSURE OF MEDICAL RECORDS.

B. HEALTH INFORMATION ORGANIZATIONS MUST PROVIDE THE FOLLOWING RIGHTS TO PATIENTS:

1. THE RIGHT TO OBTAIN A COPY OF THE PATIENT'S MEDICAL RECORDS AVAILABLE THROUGH THE HEALTH INFORMATION ORGANIZATION. THE HEALTH INFORMATION ORGANIZATION MAY PROVIDE THIS RIGHT DIRECTLY OR MAY REQUIRE HEALTH CARE PROVIDERS PARTICIPATING IN THE HEALTH INFORMATION ORGANIZATION TO PROVIDE ACCESS TO PATIENTS OF MEDICAL RECORDS AVAILABLE THROUGH THE HEALTH INFORMATION ORGANIZATION.
2. THE RIGHT TO REQUEST AMENDMENT OF INCORRECT MEDICAL RECORDS AVAILABLE THROUGH THE HEALTH INFORMATION ORGANIZATION. THE HEALTH INFORMATION ORGANIZATION WILL PROVIDE THIS RIGHT BY REFERRING THE PATIENT TO THE HEALTH CARE PROVIDER THAT PROVIDED THE MEDICAL RECORDS TO THE HEALTH INFORMATION ORGANIZATION.
3. THE RIGHT TO OBTAIN A LIST OF THE PERSONS WHO HAVE ACCESSED THE PATIENT'S MEDICAL RECORDS THROUGH THE HEALTH INFORMATION ORGANIZATION.

4. THE RIGHT TO BE NOTIFIED AS REQUIRED IN SECTION 44-7501 OF A SECURITY BREACH AFFECTING THE PATIENT'S MEDICAL RECORDS.

C. ANY HEALTH CARE PROVIDER WHO RELIES IN GOOD FAITH UPON ANY INFORMATION PROVIDED THROUGH A HEALTH INFORMATION ORGANIZATION TO TREAT A PATIENT SHALL BE IMMUNE FROM ANY CRIMINAL OR CIVIL LIABILITY ARISING FROM ANY DAMAGES CAUSED BY SUCH GOOD FAITH RELIANCE.

Title 12 (Courts and Court Proceedings), Chapter 19 (Genetic Testing)

12-2801. Definitions

In this chapter, unless the context otherwise requires:

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.

4. "INFORMATION DERIVED FROM GENETIC TESTING" IS INFORMATION ABOUT THE RESULTS OF A GENETIC TEST AND DOES NOT INCLUDE INFORMATION REFLECTING A DIAGNOSIS OF OR TREATMENT FOR A DISEASE.

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 health care decision maker to receive this information.
3. The 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 OR OTHER DISEASE 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.

Appendix A

Memorandum to the Arizona Health-e Connection Legal Working Group

September 4, 2008

Page 13

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

87. 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.

98. 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 and infectious disease programs.

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

110. 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.~~

11. A HEALTH INFORMATION ORGANIZATION AS DEFINED IN SECTION 12-2291, IF THE HEALTH INFORMATION ORGANIZATION AGREES TO PROTECT THE CONFIDENTIALITY OF PATIENT INFORMATION AND TO ONLY DISCLOSE GENETIC TESTING AND INFORMATION DERIVED FROM GENETIC TESTING FOR THE PURPOSES PERMITTED IN THIS SECTION.

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 OR HEALTH INFORMATION ORGANIZATION shall respond pursuant to section 12-2294.01, subsection E. 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.

D. Except as provided in this section, chapter 13, article 7.1 of this title does not apply to GENETIC TESTING OR INFORMATION DERIVED FROM 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 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 EXCEPT AS PROVIDED IN THIS SECTION.

Appendix A

Memorandum to the Arizona Health-e Connection Legal Working Group

September 4, 2008

Page 14

G. A health care provider, A HEALTH INFORMATION ORGANIZATION, and ~~the~~ THEIR ~~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 AND HEALTH INFORMATION ORGANIZATION 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.

Title 13 (Criminal Code), Chapter 23 (Organized Crime, Fraud and Terrorism)

13-2301. Definitions

A. For the purposes of sections 13-2302, 13-2303 and 13-2304:

B. For the purposes of section 13-2305, 13-2306 or 13-2307:

C. For the purposes of this chapter:

1. "Animal activity" means a commercial enterprise that uses animals for food, clothing or fiber production, agriculture or biotechnology.

2. "Animal facility" means a building or premises where a commercial activity in which the use of animals is essential takes place, which may include a zoo, rodeo, circus, amusement park, hunting preserve and horse and dog event.

3. "Animal or ecological terrorism" means any felony in violation of section 13-2312, subsection B that involves at least three persons acting in concert, that involves the intentional or knowing infliction of property damage in an amount of more than ten thousand dollars to the property that is used by a person for the operation of a lawfully conducted animal activity or to a commercial enterprise that is engaged in a lawfully operated animal facility or research facility and that involves either:

(a) The use of a deadly weapon or dangerous instrument.

(b) The intentional or knowing infliction of serious physical injury on a person engaged in a lawfully conducted animal activity or participating in a lawfully conducted animal facility or research facility.

4. "Biological agent" means any microorganism, virus, infectious substance or biological product that may be engineered through biotechnology or any naturally occurring or bioengineered component of any microorganism, virus, infectious substance or biological product and that is capable of causing any of the following:

(a) Death, disease or physical injury in a human, animal, plant or other living organism.

Appendix A

Memorandum to the Arizona Health-e Connection Legal Working Group

September 4, 2008

Page 15

(b) The deterioration or contamination of air, food, water, equipment, supplies or material of any kind.

5. "Combination" means persons who collaborate in carrying on or furthering the activities or purposes of a criminal syndicate even though such persons may not know each other's identity, membership in the combination changes from time to time or one or more members may stand in a wholesaler-retailer or other arm's length relationship with others as to activities or dealings between or among themselves in an illicit operation.

6. "Communication service provider" has the same meaning prescribed in section 13-3001.

7. "Criminal syndicate" means any combination of persons or enterprises engaging, or having the purpose of engaging, on a continuing basis in conduct that violates any one or more provisions of any felony statute of this state.

8. "Explosive agent" means an explosive as defined in section 13-3101 and flammable fuels or fire accelerants in amounts over fifty gallons but excludes:

(a) Fireworks as defined in section 36-1601.

(b) Firearms.

(c) A propellant actuated device or propellant actuated industrial tool.

(d) A device that is commercially manufactured primarily for the purpose of illumination.

(e) A rocket having a propellant charge of less than four ounces.

9. "Material support or resources" includes money or other financial securities, financial services, lodging, sustenance, training, safehouses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, disguises and other physical assets but does not include medical assistance, legal assistance or religious materials.

10. "Public establishment" means a structure that is owned, leased or operated by this state or a political subdivision of this state or a health care institution as defined in section 36-401.

11. "Research facility" means a laboratory, institution, medical care facility, government facility, public or private educational institution or nature preserve at which a scientific test, experiment or investigation involving the use of animals is lawfully carried out, conducted or attempted.

12. "Terrorism" means any felony, including any completed or preparatory offense, that involves the use of a deadly weapon or a weapon of mass destruction or the intentional or knowing infliction of serious physical injury with the intent to either:

Appendix A

Memorandum to the Arizona Health-e Connection Legal Working Group

September 4, 2008

Page 16

(a) Influence the policy or affect the conduct of this state or any of the political subdivisions, agencies or instrumentalities of this state.

(b) Cause substantial damage to or substantial interruption of public communications, communication service providers, public transportation, common carriers, public utilities, public establishments or other public services.

13. "Toxin" means the toxic material of plants, animals, microorganisms, viruses, fungi or infectious substances or a recombinant molecule, whatever its origin or method of reproduction, including:

(a) Any poisonous substance or biological product that may be engineered through biotechnology and that is produced by a living organism.

(b) Any poisonous isomer or biological product, homolog or derivative of such substance.

14. "Vector" means a living organism or molecule, including a recombinant molecule or biological product that may be engineered through biotechnology, that is capable of carrying a biological agent or toxin to a host.

15. "Weapon of mass destruction" means:

(a) Any device or object that is designed or that the person intends to use to cause multiple deaths or serious physical injuries through the use of an explosive agent or the release, dissemination or impact of a toxin, biological agent, poisonous chemical, or its precursor, or any vector.

(b) Except as authorized and used in accordance with a license, registration or exemption by the radiation regulatory agency pursuant to section 30-672, any device or object that is designed or that the person intends to use to release radiation or radioactivity at a level that is dangerous to human life.

D. For the purposes of sections 13-2312, 13-2313, 13-2314 and 13-2315, unless the context otherwise requires:

E. For the purposes of sections 13-2316, 13-2316.01 and 13-2316.02:

1. "Access" means to instruct, communicate with, store data in, retrieve data from or otherwise make use of any resources of a computer, computer system or network.

2. "Access device" means any card, token, code, account number, electronic serial number, mobile or personal identification number, password, encryption key, biometric identifier or other means of account access, including a canceled or revoked access device, that can be used alone or in conjunction with another access device to obtain money, goods, services, computer

Appendix A

Memorandum to the Arizona Health-e Connection Legal Working Group

September 4, 2008

Page 17

or network access or any other thing of value or that can be used to initiate a transfer of any thing of value.

3. "Computer" means an electronic device that performs logic, arithmetic or memory functions by the manipulations of electronic or magnetic impulses and includes all input, output, processing, storage, software or communication facilities that are connected or related to such a device in a system or network.

4. "Computer contaminant" means any set of computer instructions that is designed to modify, damage, destroy, record or transmit information within a computer, computer system or network without the intent or permission of the owner of the information, computer system or network. Computer contaminant includes a group of computer instructions, such as viruses or worms, that is self-replicating or self-propagating and that is designed to contaminate other computer programs or computer data, to consume computer resources, to modify, destroy, record or transmit data or in some other fashion to usurp the normal operation of the computer, computer system or network.

5. "Computer program" means a series of instructions or statements, in a form acceptable to a computer, that permits the functioning of a computer system in a manner designed to provide appropriate products from the computer system.

6. "Computer software" means a set of computer programs, procedures and associated documentation concerned with the operation of a computer system.

7. "Computer system" means a set of related, connected or unconnected computer equipment, devices and software, including storage, media and peripheral devices.

8. "Critical infrastructure resource" means any computer or communications system or network that is involved in providing services necessary to ensure or protect the public health, safety or welfare, including services that are provided by any of the following:

(a) Medical personnel, ~~and~~ institutions, AND HEALTH INFORMATION ORGANIZATIONS AS DEFINED IN SECTION 12-2291.

(b) Emergency services agencies.

(c) Public and private utilities, including water, power, communications and transportation services.

(d) Fire departments, districts or volunteer organizations.

(e) Law enforcement agencies.

(f) Financial institutions.

(g) Public educational institutions.

(h) Government agencies.

9. "False or fraudulent pretense" means the unauthorized use of an access device or the use of an access device to exceed authorized access.

10. "Financial instrument" means any check, draft, money order, certificate of deposit, letter of credit, bill of exchange, credit card or marketable security or any other written instrument as defined in section 13-2001 that is transferable for value.

11. "Network" includes a complex of interconnected computer or communication systems of any type.

12. "Property" means financial instruments, information, including electronically produced data, computer software and programs in either machine or human readable form, and anything of value, tangible or intangible.

13. "Proprietary or confidential computer security information" means information about a particular computer, computer system or network that relates to its access devices, security practices, methods and systems, architecture, communications facilities, encryption methods and system vulnerabilities and that is not made available to the public by its owner or operator.

14. "Services" includes computer time, data processing, storage functions and all types of communication functions.

13-2316. Computer tampering; venue; forfeiture; classification

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

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

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

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

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

Appendix A

Memorandum to the Arizona Health-e Connection Legal Working Group

September 4, 2008

Page 19

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

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

(b) Serve no legitimate purpose.

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

7. Knowingly obtaining any information that is required by law to be kept confidential or any records that are not public records by accessing any computer, computer system or network that is operated by this state, a political subdivision of this state, ~~or~~ a medical institution, OR A HEALTH INFORMATION ORGANIZATION AS DEFINED IN SECTION 12-2291.

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

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

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

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

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

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

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

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

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

13-2316.01. Unlawful possession of an access device; classification

A. A person commits unlawful possession of an access device by knowingly possessing, trafficking in, publishing or controlling an access device without the consent of the issuer, owner or authorized user and with the intent to use or distribute that access device.

B. The possession, trafficking, publishing or control of five or more access devices without the consent of the issuer, owner or authorized user may give rise to an inference that the person possessing, trafficking in, publishing or controlling the access devices intended to use or distribute the devices.

C. Unlawful possession of one hundred or more access devices is a class 4 felony. Unlawful possession of five or more but fewer than one hundred access devices is a class 5 felony. Unlawful possession of fewer than five access devices is a class 6 felony.

13-2316.02. Unauthorized release of proprietary or confidential computer security information; exceptions; classification

A. A person commits unauthorized release of proprietary or confidential computer security information by communicating, releasing or publishing proprietary or confidential computer security information, security-related measures, algorithms or encryption devices relating to a particular computer, computer system or network without the authorization of its owner or operator.

B. The following are exempt from this section:

1. The release by publishers, vendors, users and researchers of warnings or information about security measures or defects in software, hardware or encryption products if the release of the warnings or information is not specific to a particular owner's or operator's computer, computer system or network.

2. The release of security information among the authorized users of a computer, computer system or network or the notification to the owner or operator of a computer, computer system or network of a perceived security threat.

3. The release of security information in connection with the research, development and testing of security-related measures, products or devices if the release of the security information is not specific to a particular owner's or operator's computer, computer system or network.

C. At the conclusion of any grand jury, hearing or trial, the court shall preserve pursuant to section 44-405 any proprietary computer security information that was admitted in evidence or any portion of a transcript that contains information relating to proprietary computer security information.

D. Unauthorized release of proprietary or confidential computer security information is a class 6 felony, unless the security information relates to a critical infrastructure resource, in which case it is a class 4 felony.

Title 20 (Insurance); Chapter 2 (Transaction of Insurance Business); Article 6 (Unfair Practices and Frauds)

20-448.01. Required insurance procedures relating to HIV information; confidentiality; violations; penalties; definitions

A. In this section unless the context otherwise requires:

1. "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.
2. "HIV" means the human immunodeficiency virus.
3. "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.
4. "Protected person" means a person who takes an HIV-related test or who has been diagnosed as having HIV infection, acquired immune deficiency syndrome or HIV-related illness.
5. "Person" includes all entities subject to regulation under title 20, the employees, contractors and agents thereof, and anyone performing insurance related tasks for such entities, employees, contractors or agents.

B. Except as otherwise specifically authorized or required by this state or by federal law, no person may require the performance of, or perform an HIV-related test 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 for that person. Written consent shall be in a form as prescribed by the director.

C. No person who obtains confidential HIV-related information in the course of processing insurance information or insurance applications or pursuant to a release of confidential HIV-related information may disclose or be compelled to disclose that information except AS PERMITTED IN SECTION 36-664, EXCEPT THAT IN A DISCLOSURE OF INFORMATION TO A CONSUMER REPORTING AGENCY OR OTHER ORGANIZATION WHOSE PURPOSE IS

TO DETECT FRAUD IN INSURANCE, SUCH AS THE MEDICAL INFORMATION BUREAU:
to the following:

- ~~1. The protected person or, if the protected person lacks capacity to consent, a person authorized pursuant to law to consent for the protected person.~~
- ~~2. A person to whom disclosure is authorized in writing pursuant to a release as set forth in subsection E of this section, including but not limited to a physician designated by the insured or a medical information exchange for insurers operated under procedures intended to ensure confidentiality, provided that~~
 1. In the case of a medical information exchange:

~~(a) 1. The insurer will not report that blood tests of an applicant showed the presence of the AIDS virus antibodies, but only that unspecified blood test results were abnormal.~~

~~(b) 2. Reports must use a general code that also covers results of tests for many diseases or conditions, such as abnormal blood counts that are not related to HIV, AIDS, AIDS related complex or similar diseases.~~

~~3. A government agency specifically authorized by law to receive the information. The agency is authorized to redisclose the information only pursuant to this section or as otherwise permitted by law.~~

~~4. A person regulated by this title to which disclosure is ordered by a court or administrative body ONLY pursuant to section 36-665.~~

~~5. The industrial commission or parties to an industrial commission claim pursuant to the provisions of section 23-908, subsection D and section 23-1043.02.~~

D. Test results and application responses may be shared with the underwriting departments of the insurer and reinsurers, or to those contractually retained medical personnel, laboratories, and insurance affiliates, excluding agents and brokers, which are involved in underwriting decisions regarding the individual's application if disclosure is reasonably necessary to make the underwriting decision regarding such application, and claims information may be shared with claims personnel and attorneys reviewing claims if disclosure is reasonably necessary to process and resolve claims.

~~E. A release of confidential HIV related information pursuant to subsection C, paragraph 2 of this section shall be signed by the protected person or, if the protected person lacks capacity to consent, a person authorized pursuant to law to consent for the protected person. A release 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 is not a 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.~~

~~FE. A person to whom confidential HIV-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 for the protected person.~~

~~G. If a disclosure of confidential HIV-related information is made pursuant to the provisions of a written release as permitted by subsection C, paragraph 2 of this section, the disclosure shall be accompanied by a statement in writing which warns that the information is from confidential records which are protected by state law that prohibits further disclosure of the information without the specific written consent of the person to whom it pertains or as otherwise permitted by law.~~

~~H. The person making a disclosure in accordance with subsection C, paragraphs 3, 4 and 5, and subsection G of this section shall keep a record of all disclosures for the time period prescribed by the director. On request, a protected person or his legal representative shall have access to the record.~~

~~I.F. Except as otherwise provided pursuant to this section or subject to an order or search warrant issued pursuant to section 36-665, no person who receives confidential HIV-related information pursuant to a release of confidential HIV-related information may 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.~~

~~JG. The director shall adopt rules to implement the allowable tests and testing procedures, written consent to perform a human immunodeficiency virus relate test, procedures for confidentiality and disclosure of medical information and procedures for gathering underwriting information and may adopt additional rules reasonable and necessary to implement this section.~~

~~KH. Notwithstanding any other provision of law to the contrary, nothing in this section shall be interpreted to restrict the director's authority to full access to records of any entity subject to regulation under title 20, including but not limited to all records containing confidential HIV-related information. The director may only redisclose confidential HIV-related information in accordance with this section.~~

~~LI. A protected person, whose rights provided in this section have been violated by a person or entity described in subsection A, paragraph 5 of this section, has those individual remedies specified in section 20-2118 against such a person or entity.~~

20-448.02. Genetic testing; informed consent; definitions

A. Except as otherwise specifically authorized or required by this state or by federal law, a person shall not require the performance of or perform a genetic test without first receiving the

specific written informed consent of the subject of the test who has the capacity to consent or, if the person subject to the test lacks the capacity to consent, of a person authorized pursuant to law to consent for that person. Written consent shall be in a form as prescribed by the director. The results of a genetic test performed pursuant to this subsection are privileged and confidential and may not be released to any party, ~~without the expressed consent of the subject of the test.~~ EXCEPT AS PERMITTED IN ARIZONA REVISED STATUTES, SECTION 12-2802.

B. As used in this section:

1. "Gene products" means gene fragments, nucleic acids or proteins derived from deoxyribonucleic acids that would be a reflection of or indicate DNA sequence information.
2. "Genetic test" means an analysis of an individual's DNA, gene products or chromosomes that indicates a propensity for or susceptibility to illness, disease, impairment or other disorders, whether physical or mental, or that demonstrates genetic or chromosomal damage due to environmental factors, or carrier status for disease or disorder.

Title 36 (Public Health and Safety); Chapter 1 (State and Local Boards and Departments of Health Services); Article 2 (Department of Health Services, Additional Functions)

36-135. Child immunization reporting system; requirements; access; confidentiality; immunity; violation; classification

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

B. Beginning on January 1, 1998, a health care professional who is licensed under title 32 to provide immunizations shall, except as provided in subsection I, report the following information:

1. The health care professional's name, business address and business telephone number.
2. The child's name, address, the child's social security number if known and not confidential, gender, date of birth and mother's maiden name.
3. The type of vaccine administered and the date it is administered.

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

D. Except as provided in subsection I, the department shall release identifying information only to the child's health care professional, parent, guardian, AN ENTITY REGULATED UNDER TITLE 20 ~~health care service organization~~, the Arizona health care cost containment system and its providers as defined in title 36, chapter 29, ~~or~~ a school official who is authorized by law to

Appendix A

Memorandum to the Arizona Health-e Connection Legal Working Group

September 4, 2008

Page 25

receive and record immunization records, OR A HEALTH INFORMATION ORGANIZATION AS DEFINED IN SECTION 12-2291, IF THE HEALTH INFORMATION ORGANIZATION AGREES TO PROTECT THE CONFIDENTIALITY OF IDENTIFYING INFORMATION AND TO DISCLOSE IDENTIFYING INFORMATION ONLY FOR THE PURPOSES PERMITTED IN THIS SECTION. The department may, by rule, release immunization information to persons for a specified purpose. The department may release nonidentifying summary statistics.

E. Identifying information in the system is confidential. A person who is authorized to receive confidential information under subsection D OR DEPARTMENT RULE shall ~~not~~ disclose this information ~~to any other person~~ ONLY AS PERMITTED BY THIS SECTION OR DEPARTMENT RULE.

F. A health care professional who provides information in good faith pursuant to this section is not subject to civil or criminal liability.

G. A health care professional who does not comply with the requirements of this section violates a law or task applicable to the practice of medicine and an act of unprofessional conduct.

H. Any agency or person receiving confidential information from the system who subsequently discloses that information to any other person is guilty of a class 3 misdemeanor.

I. At the request of the child's parent or guardian, the department of health services shall provide a form to be signed that allows confidential immunization information to be withheld from all persons including persons authorized to receive confidential information pursuant to subsection D. If the request is delivered to the health care professional prior to the immunization, the health care professional shall not forward the information required under subsection B to the department.

36-140. Violation; classification

A person who violates a provision of this article, or a regulation adopted pursuant to this article, is guilty of a class 3 misdemeanor for each violation. In the instance of continuing violation, each day constitutes a separate offense.

Title 36 (Public Health and Safety); Chapter 4.1 (Clinical Laboratories)

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

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

B. The result of a test shall be reported to the person who authorized it. A report of results issued from a clinical laboratory shall provide information required by the department by rule. No clinical interpretation, diagnosis or prognosis or suggested treatment other than normal values shall appear on the laboratory report form, except that a report made by a physician licensed to practice medicine and surgery in this state or another state may include this information.

C. THE RESULT OF A TEST MAY BE REPORTED TO A HEALTH CARE PROVIDER THAT HAS OR HAD A TREATMENT RELATIONSHIP WITH A PATIENT OR TO A HEALTH INFORMATION ORGANIZATION, AS DEFINED IN SECTION 12-2291.

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

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

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

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

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

~~G~~.H. The laboratory shall report test results ordered pursuant to subsection F to the person who authorized the test and to the person who requested it.

Title 36 (Public Health and Safety); Chapter 5 (Mental Health Services), Article 2 (Patient Civil and Legal Rights)

36-501. Definitions

In this chapter, unless the context otherwise requires:

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.

27. "Mental health provider" means any physician or provider of mental health or behavioral health services involved in evaluating, caring for, treating or rehabilitating a patient.

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

31. "Patient" means any person undergoing examination, evaluation or behavioral or mental health treatment under the provisions of this chapter.

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

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.

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.

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 RECEIVED FROM other providers THAT ARE USED IN THE PROVISION OF PATIENT CARE BY THE HEALTH CARE PROVIDER. Records do not include:

36-509. Confidential records

A. A health care entity must keep records and information contained in records confidential and not as public records, except as provided in this section. Records and information contained in records may only be disclosed 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 authorization to have information disclosed.
3. Persons authorized by a court order.
4. Persons doing research only if the activity is conducted pursuant to applicable federal or state laws and regulations governing research.
5. The state department of corrections in cases 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.
6. Governmental or law enforcement agencies if necessary to:
 - (a) Secure the return of a patient who is on unauthorized absence from any agency where the patient was undergoing evaluation and treatment.
 - (b) Report a crime on the premises.
 - (c) Avert a serious and imminent threat to an individual or the public.
7. Persons, including family members, actively participating in the patient's care, treatment or supervision. A health care provider may only release information relating to the 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 or the patient's health care decision maker and the patient or the patient's health care decision maker does not object, unless federal or state law permits the disclosure. If the patient does not have the opportunity to object to the disclosure because of incapacity or an emergency circumstance and the patient's health care decision maker is not available to object to the release, the health care provider in the exercise of professional judgment may determine if the disclosure is in the best interests of the patient and, if so, may release the information authorized pursuant to this paragraph. 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.

Appendix A

Memorandum to the Arizona Health-e Connection Legal Working Group

September 4, 2008

Page 29

8. A state agency that licenses health professionals pursuant to title 32, chapter 13, 15, 17, 19.1 or 33 and that requires these records in the course of investigating complaints of professional negligence, incompetence or lack of clinical judgment.
9. A state or federal agency that licenses health care providers.
10. A governmental agency or a competent professional, as defined in section 36-3701, in order to comply with chapter 37 of this title.
11. 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 a person's name, address, date of birth, social security number, tribal enrollment number, telephone or telefacsimile number, driver license number, places of employment, school identification number and military identification number or any other distinguishing characteristic that tends to identify a particular person.
12. A patient or the patient's health care decision maker pursuant to section 36-507.
13. The department of public safety by the court to comply with the requirements of section 36-540, subsection N.
14. A third party payor or the payor's contractor FOR PAYMENT, CASE MANAGEMENT AND DISEASE MANAGEMENT PURPOSES, AS DEFINED BY THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT PRIVACY STANDARDS (45 CODE OF FEDERAL REGULATIONS PART 160 AND PART 164, SUBPART E) ~~to obtain reimbursement for health care, mental health care or behavioral health care provided to the patient.~~
15. 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.
16. The legal representative of a health care entity in possession of the record for the purpose of securing legal advice.
17. A person or entity as otherwise required by state or federal law.
18. A person or entity as permitted by the federal regulations on alcohol and drug abuse treatment (42 Code of Federal Regulations part 2).
19. A person or entity to conduct utilization review, peer review and quality assurance pursuant to section 36-441, 36-445, 36-2402 or 36-2917.

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

21. A grand jury as directed by subpoena.

22. A HEALTH INFORMATION ORGANIZATION AS DEFINED IN SECTION 12-2291, IF THE HEALTH INFORMATION ORGANIZATION AGREES TO PROTECT THE CONFIDENTIALITY OF PATIENT INFORMATION AND TO DISCLOSE RECORDS AND INFORMATION CONTAINED IN RECORDS ONLY FOR THE PURPOSES PERMITTED IN THIS SECTION.

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

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

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

Title 36 (Public Health and Safety); Chapter 6 (Public Health Control); Article 4 (Communicable Diseases)

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.

Appendix A

Memorandum to the Arizona Health-e Connection Legal Working Group

September 4, 2008

Page 31

3. "Child" means an unemancipated person under eighteen years of age.
4. "Communicable disease" means a contagious, epidemic or infectious disease required to be reported to the local board of health or the department pursuant to chapter 1 of this title and this chapter.
5. "Communicable disease related information" means information regarding a communicable disease in the possession of a person who provides health services or who obtains the information pursuant to the release of communicable disease related information.
6. "Contact" means a spouse or sex partner of a protected person, a person who has shared hypodermic needles or syringes with a protected person or a person otherwise exposed to a protected person with a communicable disease in a manner that poses an epidemiologically significant risk of transmission of that disease.
7. "Department" means the department of health services.
8. "Director" means the director of the department of health services.
9. "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 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 INFORMATION ORGANIZATION" HAS THE SAME MEANING AS PROVIDED IN SECTION 12-2291.
- ~~13~~.14. "Health service" means public or private care, treatment, clinical laboratory tests, counseling or educational service for adults or children and acute, chronic, custodial, residential, outpatient, home or other health care or activities related to the detection, reporting, prevention and control of communicable or preventable diseases.
- ~~14~~.15. "HIV" means the human immunodeficiency virus.
- ~~15~~.16. "HIV infection" means infection with the human immunodeficiency virus or a related virus identified as a probable causative agent of acquired immune deficiency syndrome.

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

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

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

~~19~~.20. "Protected person" means a person who takes an HIV-related test or who has been diagnosed as having HIV infection, acquired immune deficiency syndrome, HIV-related illness or another communicable disease.

~~20~~.21. "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.

36-664. Confidentiality; exceptions

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

1. The protected person or, if the protected person lacks capacity to consent, the protected person's health care decision maker.
2. The department or a local health department for purposes of notifying a good Samaritan pursuant to subsection E of this section.
3. An agent or employee of a health facility or health care provider to provide health services to the protected person or the protected person's child or for billing or reimbursement for health services.
4. A health facility or health care provider, in relation to the procurement, processing, distributing or use of a human body or a human body part, including organs, tissues, eyes, bones, arteries, blood, semen, milk or other body fluids, for use in medical education, research or therapy or for transplantation to another person.
5. 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

Appendix A

Memorandum to the Arizona Health-e Connection Legal Working Group

September 4, 2008

Page 33

care, or an accreditation or oversight review organization responsible for the review of professional practices at a health facility or by a health care provider.

6. 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 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.
10. A person, health care provider or health facility to which disclosure is ordered by a court or administrative body pursuant to section 36-665.
11. The industrial commission or parties to an industrial commission claim pursuant to section 23-908, subsection D and section 23-1043.02.
12. Insurance entities pursuant to section 20-448.01 and third party payors or the payors' contractors.
13. Any person or entity as authorized by the patient or the patient's health care decision maker.
14. A person or entity as required by federal law.
15. The legal representative of the entity holding the information in order to secure legal advice.
16. A person or entity for research only if the research is conducted pursuant to applicable federal or state laws and regulations governing research.
17. A HEALTH INFORMATION ORGANIZATION AS DEFINED IN SECTION 12-2291, IF THE HEALTH INFORMATION ORGANIZATION AGREES TO PROTECT THE CONFIDENTIALITY OF PATIENT INFORMATION AND TO DISCLOSE COMMUNICABLE-DISEASE RELATED INFORMATION ONLY FOR THE PURPOSES PERMITTED IN THIS SECTION.

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

Appendix A

Memorandum to the Arizona Health-e Connection Legal Working Group

September 4, 2008

Page 34

disclose communicable disease information, including HIV-related information, to the department of economic security.

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

1. Specifically authorized or required by federal or state law.
2. Made pursuant to an authorization signed by the protected person or the protected person's health care decision maker.
3. Made to a contact of the protected person. The disclosure shall be made without identifying the protected person.
4. For the purposes of research as authorized by state and federal law.

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

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

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

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

Appendix A

Memorandum to the Arizona Health-e Connection Legal Working Group

September 4, 2008

Page 35

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

HH. 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.

JI. If a person in possession of HIV-related information reasonably believes that an identifiable third party is at risk of HIV infection, that person may report that risk to the department. The report shall be in writing and include the name and address of the identifiable third party and the name and address of the person making the report. The department shall contact the person at risk pursuant to rules adopted by the department. The department employee making the initial contact shall have expertise in counseling persons who have been exposed to or tested positive for HIV or acquired immune deficiency syndrome.

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

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

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 communicable disease related information in violation of this article.

B. A person, health facility, ~~or~~ health care provider, OR HEALTH INFORMATION ORGANIZATION disclosing 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 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 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 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.

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 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.

36-668. Private right of action

A protected person may bring an action in superior court for legal and equitable relief on his own behalf against a person who violates this article.

Title 36 (Public Health and Safety), Chapter 32 (Living Wills and Health Care Directives), Article 7 (Health Care Directives Registry)

36-3295. Registry information; confidentiality; transfer of information

~~A. The registry established pursuant to this article is accessible only by entering the file number and password on the internet web site.~~

~~B.A. Registrations, file numbers, passwords and any other information maintained by the secretary of state pursuant to this article are confidential and shall not be disclosed to any person other than the person who submitted the document or the person's personal representative, OR AS PERMITTED IN SUBSECTION B.~~

~~C.B. Notwithstanding subsection BA, a health care provider OR A HEALTH INFORMATION ORGANIZATION AS DEFINED IN SECTION 12-2291 may access the registry and receive a~~

patient's health care directive documents for the provision of health care services ~~by submitting the patient's file number and password.~~

~~D.C.~~ The secretary of state shall use information contained in the registry only for purposes prescribed in this article.

~~E.D.~~ At the request of a person who submitted the document, the secretary of state may transmit the information received regarding the health care directive to the registry system of another jurisdiction as identified by the person.

RECOMMENDED REGULATORY CHANGES

R20-6-1204. Release of Confidential HIV-related Information; Release Form

A. ~~Except as required by law or authorized pursuant to a written consent to be tested, a~~An insurer shall ~~not~~ disclose confidential HIV-related information ONLY AS PERMITTED BY ARIZONA REVISED STATUTES SECTION 20-448.0101 ~~to any person unless a written release form is executed by the applicant or, if the applicant lacks legal capacity to consent to such release, by a person authorized by law to consent to the release of information on behalf of the applicant. The applicant or the applicant's legal representative shall be entitled to receive a copy of the release. A photocopy shall be as valid as the original.~~

B. The applicant or the applicant's legal representative shall be entitled to receive a copy of the release FOR CONFIDENTIAL HIV-RELATED INFORMATION. A photocopy shall be as valid as the original. Such written release form shall contain the following information:

1. The name and address of the person to whom the information shall be disclosed;
2. The specific purpose for which disclosure is to be made; and
3. ~~The time period during which the written release is to be effective but in no case shall such time period exceed 180 days from the date the release is signed by the applicant or the applicant's legal representative;~~
43. The signature of the applicant or of the person authorized by law to consent to such release, and the date the release form was signed.

Adult Day Health Care Facility Regulations (ADHS), A.A.C. R9-10-511(C)

R9-10-511. Participant Records

A. The administrator shall ensure that up-to-date participant records are available to the participant or participant's representative upon 48 hours' written notice to the facility, excluding weekends and holidays.

B. Records for each participant shall include the following:

1. Full name, date of birth, social security number, and address;
2. Names, addresses, telephone numbers of participant's representative, medical provider, and other medical and nonmedical providers involved in the care of the participant;
3. Enrollment agreement;
4. Emergency information;
5. Written acknowledgment of the receipt of copies of participant rights and facility rules;
6. Signed medical provider's assessment;
7. Medical provider's orders;
8. Evidence of freedom from tuberculosis;
9. Comprehensive assessment;
10. Records of medical care and medications provided by the facility;
11. Vital signs and nutritional status;
12. Care plan;

Appendix A

Memorandum to the Arizona Health-e Connection Legal Working Group

September 4, 2008

Page 39

13. Documentation of any significant changes in participant behavior or condition, including injuries and accidents, and notification of the participant's medical provider and participant's representative;

14. Signed authorization if medical information is released;

15. Determination of participant's capability of signing in or out of the facility; and

16. Discharge date, if applicable.

C. Records shall be legibly recorded ~~in ink~~. Each entry shall be dated and signed. Records shall be protected at all times from possible loss, damage, or unauthorized use.

D. Records shall be retained for three years.

E. If the facility ceases operation, copies of records shall be available upon the request of the participant or participant's representative for three years from the date of closure.