

# The Arizona HIO Statute

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## Arizona Revised Statutes Title 36, Chapter 38, Article 1, Sections 3801 – 3809

### 36-3801. Definitions

In this chapter, unless the context otherwise requires:

1. "Breach" has the same meaning prescribed in 45 Code of Federal Regulations, part 164, subpart D.
2. "Clinical laboratory" has the same meaning prescribed in section 36-451.
3. "De-identified health information" has the same meaning as described in 45 Code of Federal Regulations section 164.514.
4. "Health care decision maker" has the same meaning prescribed in section 12-2291.
5. "Health care provider" has the same meaning prescribed in section 12-2291.
6. "Health information organization" means an organization that oversees and governs the exchange of individually identifiable health information among organizations according to nationally recognized standards. Health information organization does not include:
  - a. A health care provider or an electronic health record maintained by or on behalf of a health care provider.
  - b. Entities that are subject to title 20 or that are health plans as defined in 45 Code of Federal Regulations section 160.103.
  - c. The exchange of individually identifiable health information directly between health care providers without a separate organization governing that exchange.
7. "Individual":
  - a. Means the person who is the subject of the individually identifiable health information.
  - b. Does not include an inmate as defined under the health insurance portability and accountability act privacy standards prescribed in 45 Code of Federal Regulations section 164.501.
8. "Individually identifiable health information" has the same meaning prescribed in the health insurance portability and accountability act privacy standards, 45 Code of Federal Regulations part 160 and part 164, subpart E.
9. "Medical records" has the same meaning prescribed in section 12-2291.
10. "Opt-Out" means an individual's written decision that the individual's individually identifiable health information cannot be shared through a health information organization.
11. "Person" has the same meaning prescribed in section 1-215.
12. "Treatment" has the same meaning prescribed in the health insurance portability and accountability act privacy standards, 45 Code of Federal Regulations part 160 and part 164, subpart E.
13. "Written" means in handwriting or through an electronic transaction that meets the requirements of title 44, chapter 26.

### 36-3802. Individual rights

- A. A health information organization must provide the following rights to individuals:
1. To Opt-Out of participating in the health information organization pursuant to section 36-3803.
  2. To request a copy of the individual's individually identifiable health information that is 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 individuals. The copy may be provided electronically, if the individual requesting the copy consents to electronic delivery of the individually identifiable health information, and must be provided to the individual within thirty days after the individual's request. Charges for copies are governed by section 12-2295.
  3. To request amendment of incorrect individually identifiable health information available through the health information organization.
  4. To request a list of the persons who have accessed the individual's individually identifiable health information through the health information organization for a period of at least three years before the individual's request. This list must be provided to the individual within thirty days after the individual's request.
  5. To be notified, pursuant to section 44-7501 and 45 Code of Federal Regulations part 164, subpart D, of a breach at the health information organization that affects the individual's individually identifiable health information.
- B. If an individual does not have the capacity to make health care decisions, the individual's health care decision maker may exercise all individual rights in this chapter on behalf of the individual.

### 36-3803. Voluntary participation in health information organizations

An individual has the right to Opt-Out of participating in a health information organization by providing notice as explained in the health information organization's notice of health information practices. An individual also has the right to Opt-Out of a particular health care provider sharing the individual's individually identifiable health information through the health information organization, provided that, if the health care provider is an employee of an organization, the organization may apply such Opt-Out to all health care providers employed by the organization. If an individual provides a notice of Opt-Out to a health care provider, the health care provider must provide that notice to the health information organization. A decision to Opt-Out of participating in a health care information organization may be changed by an individual at any time by providing notice as explained in the health information organization's notice of health information practices.

### 36-3804. Notice of health information practices

- A. A health information organization must maintain a written notice of health information practices describing the following:
1. Individually identifiable health information that the health information organization collects about individuals.
  2. The categories of persons who have access to information, including individually identifiable health information, through the health information organization.
  3. The purposes for which access to the information, including individually identifiable health information, is provided through the health information organization.
  4. The individual's right to Opt-Out of participating in the health information organization.
  5. An explanation as to how an individual opts out of participating in the health information organization.

- B. The notice shall include a statement informing the patient of the right to choose to keep the patient's personal health information out of the health information organization and that this right is protected by article XXVII, section 2, Constitution of Arizona.
- C. A health information organization must post its current notice of health information practices on its website in a conspicuous manner.
- D. Notwithstanding any other requirement in this section, a health information organization must provide an individual with a copy of the notice of health information practices within thirty days after receiving a written request for that information.
- E. A health care provider participating in a health information organization must provide the health information organization's notice of health information practices in at least twelve-point type to the provider's patients before or at the provider's first encounter with a patient, beginning on the first day of the provider's participation in the health information organization. A health care provider must document that it has provided the health information organization's notice of health information practices to a patient and that the patient has received and read and understands the notice. Documentation must be in the form of a signature by the patient indicating the patient has received and read and understands the notice of health information practices and whether the patient chooses to Opt-Out. As technology develops and electronic methods of receiving documentation from the patient exist, the health information organization is permitted to utilize such electronic documentation.
- F. If the patient chooses to Opt-Out of the health information organization, the patient's personal health information shall not be accessible through the health information organization no later than thirty days after the patient opts out.
- G. If there is a material change to a health information organization's notice of health information practices, a health care provider must redistribute the notice of health information practices at the next point of contact with the patient or in the same manner and within the same time period as is required by 45 Code of Federal Regulations section 164.528 in relation to the health care provider's notice of privacy practices, whichever comes first.

### 36-3805. Disclosure of individually identifiable health information

- A. A health information organization may disclose an individual's individually identifiable health information only if:
  1. The individual has not opted out of participating in the health information organization.
  2. The type of disclosure is explained in the health information organization's current notice of health information practices.
  3. The disclosure complies with the health insurance portability and accountability act privacy rule, 45 Code of Federal Regulations part 164, subpart E.
- B. A health information organization may not sell or otherwise make commercial use of an individual's individually identifiable health information without the written consent of the individual.
- C. A health information organization may not transfer individually identifiable health information or deidentified health information to any person or entity for the purpose of research or using the information as part of a set of data for an application for grant or other research funding, unless the health care provider obtains consent from the individual for the transfer. A health care provider must document that it has provided a notice of transfer to the individual and that the individual has received and read and understands the notice. Documentation must be in the form of a signature by the individual indicating the individual has received and read and understands the notice and

that the patient gives consent to the transfer of information. For the purposes of this subsection, "consent" means that a health care provider participating in a health information organization has provided a notice to the individual that is in at least twelve-point type and that describes the purposes of the transfer.

- D. This chapter does not interfere with any other federal or state laws or regulations that provide more extensive protection of individually identifiable health information than provided in this chapter.

### 36-3806. Required policies

A health information organization must implement and enforce policies governing the privacy and security of individually identifiable health information and compliance with this chapter. These policies must:

1. Implement the individual rights prescribed in section 36-3802.
2. Address the individual's right to Opt-Out of participating in the health information organization pursuant to section 36-3803.
3. Address the content and distribution of the notice of health information practices prescribed in section 36-3804.
4. Implement the restrictions on disclosure of individually identifiable health information prescribed in section 36-3805.
5. Address security safeguards to protect individually identifiable health information, as required by the health insurance portability and accountability act security rule, 45 Code of Federal Regulations part 164, subpart C.
6. Prescribe the appointment and responsibilities of a person or persons who have responsibility for maintaining privacy and security procedures for the health information organization.
7. Require training of each employee and agent of the health information organization about the health information organization's policies, including the need to maintain the privacy and security of individually identifiable health information and the penalties provided for the unauthorized access, release, transfer, use or disclosure of individually identifiable health information. The health information organization must provide this training before an employee or agent may have access to individually identifiable health information available to the health information organization, and twice a year for all employees and agents.

### 36-3807. Implementing individual preference for sharing individually identifiable health information

A health information organization must have technology capability to implement individual preferences for sharing or segregating individually identifiable health information within three years after the effective date of this section. After the health information organization obtains the technology capability to implement individual preferences for sharing or segregating individually identifiable health information, the health care provider must provide notice to the patient of the change pursuant to section 36-3804, subsection G.

### 36-3808. Subpoenas; certification requirements

- A. Individually identifiable health information that is maintained by a health information organization is not subject to a subpoena directed to the health information organization unless section 12-2294.01 is followed and a court has determined on 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 the original source and either is relevant to the subject matter involved in the pending action or is reasonably calculated to lead to the discovery of admissible evidence in the pending action.

- B. A person who issues a subpoena to the health information organization pursuant to this section must certify before the issuance of the subpoena that the requirements of subsection A of this section have been met.

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

- A. A health care provider who participates in a health information organization is responsible for maintaining the provider's own medical records pursuant to title 12, chapter 13, article 7.1.
- B. Participation in a health information organization does not impact the content, use or disclosure of medical records or information contained in medical records that are held in locations other than the health information organization.
- C. This chapter does not limit, change or otherwise affect a health care provider's right or duty to exchange medical records or information contained in medical records in accordance with applicable law.