House Engrossed Senate Bill

State of Arizona
Senate
Fifty-fourth Legislature
First Regular Session
2019

CHAPTER 314
SENATE BILL 1352

AN ACT

AMENDING SECTIONS 36-3201, 36-3291 AND 36-3292, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 32, ARTICLE 7, ARIZONA REVISED STATUTES, BY ADDING SECTION 36-3292.01; AMENDING SECTIONS 36-3293, 36-3294, 36-3295 AND 36-3296, ARIZONA REVISED STATUTES; REPEALING SECTION 36-3297, ARIZONA REVISED STATUTES; RELATING TO THE HEALTH CARE DIRECTIVESRegistry.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 36-3201, Arizona Revised Statutes, is amended to read:

36-3201. Definitions
In this chapter, unless the context otherwise requires:
1. "Agent" means an adult who has the authority to make health care treatment decisions for another person, referred to as the principal, pursuant to a health care power of attorney.
2. "Artificially administered" means providing food or fluid through a medically invasive procedure.
3. "Attending physician" means a physician who has the primary responsibility for a principal's health care.
4. "Comfort care" means treatment given in an attempt to protect and enhance the quality of life without artificially prolonging that life.
5. "Health care directive" means a document drafted in substantial compliance with this chapter, including a mental health care power of attorney, to deal with a person's future health care decisions.
6. "Health care power of attorney" means a written designation of an agent to make health care decisions that meets the requirements of section 36-3221 and that comes into effect and is durable as provided in section 36-3223, subsection A.
7. "Health care provider" means a natural person who is licensed under title 32, chapter 13, 15, 17 or 25, a hospice as defined in section 36-401 that is licensed under chapter 4 of this title or an organization that is licensed under this title, that renders health care designed to prevent, diagnose or treat illness or injury and that employs persons licensed under title 32, chapter 13, 15, 17 or 25.
8. "Inpatient psychiatric facility" means a hospital that contains an organized psychiatric services unit or a special hospital that is licensed to provide psychiatric services.
9. "Interested person" means the patient, a person listed under section 36-3231, subsection A, a health care provider directly involved in the patient's medical care or an employee of a health care provider.
10. "Living will" means a statement written either by a person who has not written a health care power of attorney or by the principal as an attachment to a health care power of attorney and intended to guide or control the health care treatment decisions that can be made on that person's behalf.
11. "Mental health care power of attorney" means a written designation of an agency to make mental health care decisions that meets the requirements of section 36-3281.
12. "Physician" means a doctor of medicine licensed pursuant to title 32, chapter 13 or doctor of osteopathy licensed pursuant to title 32, chapter 17.
13. "Principal" means a person who is the subject of a health care power of attorney.

14. "QUALIFYING HEALTH INFORMATION EXCHANGE ORGANIZATION" MEANS A NONPROFIT HEALTH INFORMATION ORGANIZATION AS DEFINED IN SECTION 36-3801 THAT IS DESIGNATED BY THE DEPARTMENT OF HEALTH SERVICES PURSUANT TO SECTION 36-3291 TO OPERATE THE HEALTH CARE DIRECTIVES REGISTRY.

14. "Surrogate" means a person authorized to make health care decisions for a patient by a power of attorney, a court order or the provisions of section 36-3231.

Sec. 2. Section 36-3291, Arizona Revised Statutes, is amended to read:

36-3291. Health care directives registry; exemption
A. The Department of Health Services shall designate a qualifying health information exchange organization to operate a health care directives registry.

B. Subject to the availability of monies, the secretary of state QUALIFYING HEALTH INFORMATION EXCHANGE ORGANIZATION shall establish and maintain a health care directives registry.

B. The registry shall be accessible through a website maintained by the secretary of state.

C. The secretary of state may accept gifts, grants, donations, bequests and other forms of voluntary contributions to support, promote and maintain the registry.

C. CHAPTER 38 OF THIS TITLE DOES NOT APPLY TO THE HEALTH CARE DIRECTIVES REGISTRY OR THE QUALIFYING HEALTH INFORMATION EXCHANGE ORGANIZATION'S OPERATION OF THE REGISTRY.

Sec. 3. Section 36-3292, Arizona Revised Statutes, is amended to read:

36-3292. Filing requirements
A. A person may submit to the secretary of state HEALTH CARE DIRECTIVES REGISTRY, in a form manner prescribed by the secretary of state, the following documents QUALIFYING HEALTH INFORMATION EXCHANGE ORGANIZATION, HEALTH CARE DIRECTIVES, INCLUDING PREHOSPITAL MEDICAL CARE DIRECTIVES and any AMENDMENTS TO OR revocations of these documents, for registration:

1. A health care power of attorney.

2. A living will.

3. A mental health care power of attorney.

B. The person who submits a document for registration pursuant to this section must provide a return address.

B. THE QUALIFYING HEALTH INFORMATION EXCHANGE ORGANIZATION SHALL ESTABLISH A PROCESS FOR AUTHENTICATING THE IDENTITY OF THE PERSON WHO SUBMITS A DOCUMENT TO THE HEALTH CARE DIRECTIVES REGISTRY.
C. Documents submitted pursuant to this section must be notarized or witnessed as prescribed by this chapter.

Sec. 4. Title 36, chapter 32, article 7, Arizona Revised Statutes, is amended by adding section 36-3292.01, to read:

36-3292.01. Transmission of records from a health information exchange organization to the registry

NOTWITHSTANDING ANY OTHER PROVISION OF THIS ARTICLE, THE QUALIFYING HEALTH INFORMATION EXCHANGE ORGANIZATION MAY ESTABLISH A PROCESS FOR TRANSMITTING TO THE HEALTH CARE DIRECTIVES REGISTRY DOCUMENTS DESCRIBED IN SECTION 36-3292 FROM A HEALTH INFORMATION ORGANIZATION AS DEFINED IN SECTION 36-3801.

Sec. 5. Section 36-3293, Arizona Revised Statutes, is amended to read:

36-3293. Effect of nonregistration or revocation
A. Failure to register a document with the secretary of state QUALIFYING HEALTH INFORMATION EXCHANGE ORGANIZATION pursuant to this article does not affect the validity of a health care directive.
B. Failure to notify the secretary of state QUALIFYING HEALTH INFORMATION EXCHANGE ORGANIZATION of the revocation of a document filed pursuant to this article does not affect the validity of a revocation that otherwise meets the requirements for a revocation pursuant to this chapter.

Sec. 6. Section 36-3294, Arizona Revised Statutes, is amended to read:

36-3294. Registration
A. On receipt of a completed registration form, the secretary of state shall create a digital reproduction of the document, enter the reproduced document into the health care directives registry database and assign each registered document a unique file number and password.

A. THE QUALIFYING HEALTH INFORMATION EXCHANGE ORGANIZATION SHALL ESTABLISH A PROCESS TO ALLOW PERSONS TO SUBMIT DOCUMENTS DESCRIBED IN SECTION 36-3292 TO THE HEALTH CARE DIRECTIVES REGISTRY. THE QUALIFYING HEALTH INFORMATION EXCHANGE ORGANIZATION SHALL ADOPT INDUSTRY STANDARD SAFEGUARDS TO ENSURE THE SECURITY, PRIVACY AND INTEGRITY OF THE DOCUMENTS SUBMITTED TO AND MAINTAINED IN THE HEALTH CARE DIRECTIVES REGISTRY.
B. The secretary of state QUALIFYING HEALTH INFORMATION EXCHANGE ORGANIZATION is not required to review a document to ensure that it complies with the particular statutory requirements applicable to the document.
C. After entering the reproduced document into the registry database, the secretary of state THE QUALIFYING HEALTH INFORMATION EXCHANGE ORGANIZATION shall provide the A person who submitted the document TO THE HEALTH CARE DIRECTIVES REGISTRY with a printed VIEWABLE record of the information entered into the database under the file number.
and a wallet size card that contains the document's file number and a password registry and allow the person to submit corrected information.

B. The person who submitted the document shall review the printed record. If the information is accurate, the person shall check the box marked "no corrections required" and sign and return the printed record to the secretary of state's office.

E. If the person who submitted the document determines that the printed record is inaccurate, the person shall correct the information and sign and return the corrected printed record to the secretary of state. On receipt of a corrected printed record, the secretary of state shall make the proper corrections and send a corrected printed record to the person who submitted the document. If the information is accurate, the person shall check the box marked "no corrections required" and sign and return the printed record to the secretary of state's office.

F. D. The secretary of state QUALIFYING HEALTH INFORMATION EXCHANGE ORGANIZATION shall activate the entry of a SUBMITTED DOCUMENT into the health care directives registry database only after receiving a printed record marked "no corrections required" or when making changes that are indicated on the printed record CONFIRMATION THAT THE INFORMATION SUBMITTED IS CORRECT.

E. THE QUALIFYING HEALTH INFORMATION EXCHANGE ORGANIZATION SHALL ESTABLISH A PROCESS TO ALLOW PERSONS WHO SUBMIT DOCUMENTS TO THE HEALTH CARE DIRECTIVES REGISTRY TO REVIEW, RETRIEVE, REVOKE AND REPLACE THE DOCUMENTS.

G. F. The secretary of state QUALIFYING HEALTH INFORMATION EXCHANGE ORGANIZATION shall delete a document filed with the registry pursuant to this section if the secretary of state receives a revocation of a document along with that document's file number and password. The secretary of state may delete a nonactive document filed with the registry pursuant to this section if the secretary of state does not receive a response pursuant to subsections D and E within ninety days after providing the information prescribed by subsections C and E ESTABLISH A PROCESS FOR REMOVING OR DISTINGUISHING DOCUMENTS THAT HAVE BEEN REVOKED OR REPLACED BY MORE RECENT DOCUMENTS.

H. G. The entry of a document pursuant to this article does not:

1. Affect the validity of the document.
2. Relate to the accuracy of information contained in the document.
3. Create a presumption regarding the validity of the document or the accuracy of information contained in the document.

I. The secretary of state shall purge a document filed with the registry on verification by the director of the department of health services of the death of the person who submitted the document. The secretary of state shall purge the registry of documents pursuant to this subsection at least once every five years. The director of the department
of health services shall share its registry of death certificates with the secretary of state in order to conduct the document purge required by this subsection.

j. The secretary of state may establish an electronic means of carrying out the requirements of this section.

Sec. 7. Section 36-3295, Arizona Revised Statutes, is amended to read:

36-3295. Registry information; confidentiality; health care provider access; use and transfer of information; definition

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

B. A. Registrations, file numbers, passwords and any other information maintained by the secretary of state QUALIFYING HEALTH INFORMATION EXCHANGE ORGANIZATION 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 EXCEPT AS ALLOWED BY STATE OR FEDERAL LAW.

B. THE PERSON WHO SUBMITS A DOCUMENT DESCRIBED IN SECTION 36-3292 AND THE PERSON WHO IS THE SUBJECT OF THE DOCUMENT MAY ACCESS THE DOCUMENT IN THE HEALTH CARE DIRECTIVES REGISTRY IN A MANNER PRESCRIBED BY THE QUALIFYING HEALTH INFORMATION EXCHANGE ORGANIZATION.

C. Notwithstanding subsections SUBSECTION A and B of this section, a health care provider may access the HEALTH CARE DIRECTIVES registry and receive a patient's health care directive documents for the provision of health care services. On or before December 31, 2018, the secretary of state shall establish in rule a process for health care providers to access the registry.

D. The secretary of state QUALIFYING HEALTH INFORMATION EXCHANGE ORGANIZATION shall use information contained in the registry only for purposes prescribed in this article.

E. At the request of the person who submitted the A document DESCRIBED IN SECTION 36-3292, the secretary of state QUALIFYING HEALTH INFORMATION EXCHANGE ORGANIZATION may transmit the information received regarding the health care directive DOCUMENT to the registry system of another jurisdiction as identified by the person.

F. For the purposes of this section, "health care providers PROVIDER" includes AN emergency medical service providers PROVIDER AND emergency service technicians TECHNICIAN providing emergency medical services as defined in section 36-2201 AND THE ORGAN PROCUREMENT ORGANIZATION THAT MAINTAINS THE DONOR REGISTRY ESTABLISHED PURSUANT TO SECTION 36-858.
Sec. 8. Section 36-3296, Arizona Revised Statutes, is amended to read:

36-3296. Liability; limitation

A. Except for acts of gross negligence, wilful misconduct or intentional wrongdoing, this state THE QUALIFYING HEALTH INFORMATION EXCHANGE ORGANIZATION and its contractors are not subject to civil liability for any claims or demands arising out of the administration or operation of, or the provision of access to information stored in, the registry established pursuant to this article.

B. This article does not require a health care provider to request from the registry information about whether a patient has executed a health care directive. A health care provider who makes good faith health care decisions in reliance on the provisions of an apparently genuine health care directive received from the registry is immune from criminal and civil liability to the same extent and under the same conditions as prescribed in section SECTIONS 36-3205 AND 36-3251, EXCEPT THAT THE REQUIREMENT THAT A PREHOSPITAL MEDICAL CARE DIRECTIVE BE ON AN ORANGE FORM DOES NOT APPLY TO A HEALTH CARE PROVIDER WHO RELIES ON A PREHOSPITAL MEDICAL CARE DIRECTIVE DISPLAYED THROUGH THE REGISTRY.

C. This article does not affect the duty of a health care provider to provide information to a patient regarding health care directives pursuant to federal law.

Sec. 9. Repeal

Section 36-3297, Arizona Revised Statutes, is repealed.

Sec. 10. Secretary of state; transfer of documents

On or before July 1, 2020, the secretary of state shall provide the qualifying health information exchange organization as defined in section 36-3201, Arizona Revised Statutes, as amended by this act, with the documents and contact information for persons who have submitted documents to the health care directives registry maintained by the secretary of state. The qualifying health information exchange organization shall contact these persons to determine if they want documents previously submitted to the health care directives registry to be transferred to the registry that will be maintained by the qualifying health information exchange organization. The qualifying health information exchange organization shall export documents determined to be active into the new health care directives registry.

Sec. 11. Effective date

This act is effective from and after December 31, 2020.