

Healthcare and Medical Liability Reform Committee

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HEALTHCARE AND MEDICAL LIABILITY REFORM COMMITTEE

LEGISLATION ENACTED

nursing board; continuation (S.B. 1002) – Chapter 33

Retroactive to July 1, 2012, the Arizona State Board of Nursing is continued until July 1, 2022.

homeopathic board; qualifications of applicants (S.B. 1003) – Chapter 7

Requires applicants for a doctor of homeopathy license to have a professional record free from license revocations, refusals, suspensions or restrictions for reasons related to their ability to safely and competently practice medicine.

dental hygienists; local anesthetics (S.B. 1004) – Chapter 8

Expands the scope of practice of dental hygienists by allowing them to administer local anesthetics under general supervision, rather than direct supervision, if the patient of record is at least 18 years of age, has been examined by a dentist in the previous 12 months, and if there has been no change in the patient's medical history since the last examination. If a change in medical history has occurred since the previous examination, the hygienist must consult with the dentist prior to administering local anesthetics. Finally, before a hygienist may administer local anesthetics under general supervision, the examining dentist must document in the patient's record the dentist's approval of the administration.

dispensing opticians board; continuation (S.B. 1005) – Chapter 9

Retroactive to July 1, 2012, the State Board of Dispensing Opticians is continued until July 1, 2022.

medical board; continuation (S.B. 1006) – Chapter 10

Retroactive to July 1, 2012, the Arizona Medical Board is continued until July 1, 2022.

board of chiropractic examiners; continuation (S.B. 1007) – Chapter 11

Retroactive to July 1, 2012, the State Board of Chiropractic Examiners is continued until July 1, 2022.

child fatality review team (S.B. 1008) – Chapter 187

Adds duties to the Child Fatality Review Team (Team) that are currently performed by the Unexplained Infant Death Advisory Council (Council), as the Council sunsets July 1, 2012. Requires the Team to inform the Governor and Legislature of recommendations on unexplained infant death and to periodically review the infant death investigation checklist developed by the Department of Health Services using guidelines endorsed by national infant death organizations.

technical correction; AHCCCS; capitation rates (NOW: nursing board; executive director; authority) (S.B. 1010) – Chapter 132

Allows the Board of Nursing (Board) to delegate to the Executive Director (Director) the authority to order licensees, certificate holders or applicants to undergo substance abuse, psychological or other evaluations at their own expense on determination of reasonable cause. Requires the Director to report orders and refer all those who refuse to comply to the Board.

fingerprinting; central registry; background checks (S.B. 1136) – Chapter 188

SEE THE PUBLIC SAFETY AND HUMAN SERVICES COMMITTEE.

hospital internships; residencies; clinical fellowships (NOW: medical board; duties; meetings; procedures) (S.B. 1188) – Chapter 141

Requires Arizona Medical Board (Board) meetings to be audio recorded and allows medical records to be in electronic format. Prohibits the Board from acting on complaints for violations that occurred more than seven years prior to the complaint or if the complainant is unidentified. The seven-year limitation does not apply to medical malpractice settlements or judgments. Adds a training requirement for investigative personnel and requires the Board to use the standard of clear and convincing evidence, instead of preponderance of the evidence, for all disciplinary matters except those relating to sexual misconduct.

child care facilities (S.B. 1220) – Chapter 147

Exempts facilities providing educational instruction to three to six year olds from child care facility licensing requirements if all the following are true: 1) the facility instructs only in math, reading and science; 2) the facility does not accept state-subsidized tuition; 3) a child is present for no more than two and a quarter hours a day and no more than three days a week; 4) the instruction is not provided in place of care ordinarily provided by a parent or guardian; 5) the facility posts a notice stating it is not licensed to be a child care facility; and 6) the facility requires fingerprint cards of all personnel.

civil liability; wrongful life; birth (S.B. 1359) – Chapter 284

Stipulates a person is not liable for damages in a civil action for wrongful birth or wrongful life based on the claim a child should not or would not have been born, but for the defendant's action or omission. These provisions apply to any claim regardless of whether the child is born healthy or with a birth defect or other adverse medical condition. These provisions do not apply to any civil action for damages for an intentional or grossly negligent act or omission, including one that violates criminal law.

certified registered nurse anesthetists (S.B. 1362) – Chapter 152

Codifies the Board of Nursing (Board) rules relating to the scope of practice for certified registered nurse anesthetists (CRNAs), specifies when CRNAs may administer anesthetics, and authorizes CRNAs to issue medication orders in outlined settings. Clarifies that a CRNA's authority to administer anesthetics or issue a medication order does not constitute prescribing authority. Stipulates the initial application fee for CRNA certification shall not exceed \$150 and allows the

Board to issue and renew temporary certificates. Contains a grandfather clause providing certification for current CRNAs.

health; welfare; budget reconciliation; 2012-2013. (S.B. 1528/H.B. 2857) – Chapter 299

SEE THE APPROPRIATIONS COMMITTEE.

child care; day camps; exemption (H.B. 2029) – Chapter 218

Exempts facilities operating a day camp that provides recreational programs from child care facility licensure if the camp: 1) is accredited by an approved national organization, 2) operates less than 24 hours a day and less than 10 weeks each year, 3) posts notice at the facility and on its website that the camp is not licensed as a child care facility, 4) provides programs only to children who are at least five years of age, and 5) requires fingerprint cards of all personnel.

medical marijuana (H.B. 2035) – Chapter 112 RFEIR

Makes it an act of unprofessional conduct for a prescribed health professional to recommend medical marijuana for something other than an outlined debilitating medical condition. Requires the Arizona Medical Board, the Arizona Board of Osteopathic Examiners in Medicine and Surgery, the Naturopathic Physicians Medical Board, and the Board of Homeopathic and Integrated Medicine Examiners (Boards) to each submit an annual report on unprofessional conduct notifications and investigations relating to medical marijuana recommendations to the Governor, Legislature and the Department of Health Services (DHS). Allows DHS to notify the Boards if DHS believes a physician has committed an act of unprofessional conduct because of the licensee's failure to comply with the Arizona Medical Marijuana Act and adopted rules. This provision is subject to the requirements for enactment for initiatives and referendums (Proposition 105), which requires the affirmative vote of at least three-fourths of the members of each house of the Legislature.

physical therapy board; examination requirements (H.B. 2059) – Chapter 24 E

An emergency measure, effective March 15, 2012, that allows physical therapist and physical therapist assistant applicants to take examinations required for licensure up to 120 days prior to graduation, if all other existing criteria are met and a prescribed letter from the applicant's educational institution is submitted with the application.

~~home health agencies; technical correction~~ (NOW: community health centers; walk-in patients) (H.B. 2063) – Chapter 90

Allows contracts between the Department of Health Services and qualifying community health centers to include urgent care services for walk-in patients.

disease testing; public safety employees (H.B. 2130) – Chapter 25

Allows a public safety employee or volunteer to petition the court for disease testing of a person if there are reasonable grounds to believe an exposure occurred and there is probable cause to believe the person bit, scratched, spat or transferred blood or bodily fluid to the employee or volunteer who was performing an official duty.

nursing care board; membership (H.B. 2162) – Chapter 58

Modifies the membership of the Board of Examiners of Nursing Care Institution Administrators and Assisted Living Facility Managers (Board) by reducing the number of Board members from 11 to 9 and adjusting the composition of the Board. Contains instructions for Board appointments and term limits.

midwifery; regulation; DHS rules (H.B. 2247) – Chapter 93

Requires the Department of Health Services (DHS) by July 1, 2013, to consider adopting rules regarding midwifery that concern the following: 1) reducing the regulatory burden on licensed midwives and streamlining the regulation process; 2) revising the scope of practice; and 3) adopting national licensure testing standards. Stipulates that any party interested in increasing the midwifery scope of practice must submit a report as outlined to the Director of DHS; once a report is received, the Director is required to appoint an eight-member advisory committee to aid in adopting and amending midwifery rules.

dental board; omnibus (H.B. 2259) – Chapter 59

Allows the Executive Director of the Board of Dental Examiners (Board) or the Director's designee to refer cases to the Board for formal interview and, if delegated by the Board, enter into agreements with licensees for treatment of substance abuse.

emergency medical services (H.B. 2261) – Chapter 94

Reclassifies and updates emergency medical technician (EMT) levels and governing statutes. Requires the Department of Health Services (DHS) Director (Director) to consider recommendations by the outlined commission and council before approving emergency medical care technician (EMCT) training or certification tests, and removes requirements for the Director to certify sudden infant death syndrome training for firefighters and EMTs. Stipulates an EMT may recertify through the state by successfully completing a DHS approved course or for EMCTs who are currently certified at the EMT level, by attesting to certain training, education and experience. Clarifies DHS administrative decisions, the validity of electronic records, and accounting standards for ambulance services. Removes the requirement for an EMCT to provide a list of health care alternatives when responding to certain calls. Changes the timeframe in which an ambulance service must notify DHS of suboperation station changes. Deems current intermediate EMTs as meeting EMT I-99 requirements and provides that when certificates expire, they shall be recertified as EMT I-99s, if outlined requirements are met.

psychiatric hospitals; physical plant standards (H.B. 2359) – Chapter 117

Stipulates that a health care institution shall be licensed as a hospital and is exempt from compliance with physical plant standards for outlined hospitals if the institution was licensed as a Level 1 psychiatric acute behavioral health facility-inpatient facility as of January 1, 2012 and is not certified under Title XIX of the Social Security Act.

electronic medical records (H.B. 2369) – Chapter 184

Allows controlled substances contained in Schedules II, III, IV and V to be dispensed as electronically transmitted prescriptions if the prescribing medical practitioner is registered by the

U.S. Drug Enforcement Administration, licensed in good standing in the U.S. jurisdiction in which the practitioner practices, and authorized to issue such prescriptions in that jurisdiction.

Specifies that a health information organization (HIO) does not include health care providers exchanging identifiable health information with each other without a separate organization governing the exchange. Eliminates certain rights for inmates related to their health information. Defines *de-identified information* and prohibits a person who receives such information from an HIO from using the information, either alone or in combination with other information, to identify an individual. Clarifies information to be contained in HIO and opt-out option, and modifies notification requirements.

Permits clinical laboratory test results to be reported to the patient or patient's health care decision maker. Clarifies that a clinical laboratory may share results with a person or entity that provides services to the laboratory if there is an agreement requiring the person or entity to protect the confidentiality of patient information as required by federal law.

death certificates (H.B. 2370) – Chapter 60

Specifies that if a person under the current care of a provider for an acute or chronic medical condition dies of that condition, the provider or designee shall complete the medical certification of death (certification) within 72 hours. If a person dies of natural causes in a hospital, nursing care institution or facility (facility), the facility must designate a provider to complete the certification within 72 hours. A provider who completes a certification in good faith is protected from related civil liability and professional disciplinary action.

If current care has not been provided, the medical examiner (examiner) shall complete the certification within 72 hours after the examination. The examiner or alternate examiner is entitled to all medical records and related records of a person for whom the examiner is required to certify cause of death.

pesticide buffer zones; health care (H.B. 2520) – Chapter 101

SEE THE NATURAL RESOURCES AND TRANSPORTATION COMMITTEE.

skilled nursing home provider assessments (H.B. 2526) – Chapter 213 RFE

Nursing Facility Quality Assessment – Subject to the requirements for enactment (Proposition 108), which requires the affirmative vote of at least two-thirds of the members of each house of the Legislature, requires the Arizona Health Care Cost Containment System Administration (Administration) beginning October 1, 2012 to charge a quality assessment (assessment) on health care items and services provided by nursing facilities (facilities) in order to obtain federal monies for supplemental payments to facilities. Requires the Administration to adopt rules and request a federal waiver and state plan amendment to exclude certain facilities from the assessment and allow others to pay a lower assessment. Permits the Administration to modify the categories of exempted facilities if necessary to obtain approval by the Centers for Medicare and Medicaid Services (CMS) and if the modification is consistent with this act.

Nursing Facility Assessment Fund (Fund) – Establishes the Fund consisting of monies received from assessments, outlined federal monies, collected penalties and interest, legislative appropriations, private contributions and any other source as outlined and prescribes Fund uses.

Assessment and Adjustments– Provides deadlines and requirements for assessment and adjustment payments. Allows a facility to increase its charges to other payors to incorporate the assessment; however, the facility is prohibited from establishing a separate line-item bill charge.

Penalties – Stipulates that if a facility does not pay the full assessment when due, DOR shall impose a civil penalty, which may be waived for good cause. When subsequent payments are received, the payments are to be credited first to unpaid assessments as outlined. Additionally, the Administration may seek any of the following remedies for failure to pay an assessment: 1) withhold medical assistance reimbursement payments; 2) suspend or revoke a facility's license; or 3) require the facility to pay delinquent assessments in installments.

Discontinuance of Assessments – Requires the Department of Revenue (DOR) to discontinue collection of assessments if: 1) CMS does not approve the quarterly adjustment payments; 2) the Administration reduces funding for facility services as outlined; 3) any state agency attempts to use Fund monies for any non-prescribed purpose; or 4) federal matching funds become unavailable, in which case the Administration must terminate the assessments and return monies to the facilities. Repeals the assessments on September 30, 2015.

court-ordered treatment (H.B. 2532) – Chapter 334

Expands and clarifies protocol relating to continued court-ordered treatment (COT) for patients who continue to be gravely, persistently or acutely disabled as a result of a mental disorder. Prescribes requirements and timeframes for the annual review of a patient to determine whether continued COT is appropriate and to assess the patient's need for guardianship. Specifies that if the medical director believes continued COT is appropriate, the director shall appoint at least one psychiatrist to carry out an outlined examination. Establishes timeframes and protocols for when an application for COT is filed, including directions for the courts and attorneys. Expands the definition of *evaluation* to include physical examinations and specifies that telemedicine may be used for mental evaluations instead of physical evaluations.

AHCCCS; payment methodology (H.B. 2534) – Chapter 122

Stipulates that the current Arizona Health Care Cost Containment System (AHCCCS) methodology for reimbursing hospitals for inpatient services shall continue in effect through September 30, 2013, at the rate effective on September 30, 2011. Requires the AHCCCS Administration (Administration) to obtain legislative approval before adopting a hospital reimbursement methodology as outlined for inpatient services effective October 1, 2013. Requires the Administration to establish workgroups to provide input on a new methodology. States that before the effective date of a new or amended rule on a new methodology, the Director of AHCCCS shall provide for public hearings in both rural and critical access hospital communities on the proposed rule.

pharmacy board; transfer of monies (H.B. 2646) – Chapter 317

Allows the Board of Pharmacy Executive Director to transfer up to \$1 million annually from the Board's Fund to the Arizona Poison and Drug Information Center and specifies the monies are to supplement, not supplant, state General Fund appropriations.

Arizona medical board; disciplinary action (NOW: disciplinary action; Arizona medical board) (H.B. 2754) – Chapter 168

Allows the Arizona Medical Board to consider a competitive relationship between the complainant and the respondent as a mitigating factor in determining disciplinary action.

public funding; family planning; prohibition (H.B. 2800) – Chapter 288

Prohibits political subdivisions and the state from contracting with or making grants to any person that performs or oversees a facility that performs nonfederally qualified abortions. Prioritizes the use of public monies for family planning services. Allows the Attorney General, county attorney or specified entity to bring action related to the disbursement of public monies and provides direction for awards and recouped funds. Monies that have been appropriated in conflict with this law shall revert to the fund from which they were appropriated. Contains a severability clause.

skin cancer awareness month (S.C.R. 1028)

SEE THE MEMORIALS AND RESOLUTIONS SECTION.