

REFERENCE TITLE: **assisted living caregivers; regulation**

State of Arizona
Senate
Fiftieth Legislature
First Regular Session
2011

SB 1038

Introduced by
Senator Barto

AN ACT

AMENDING SECTIONS 32-3021, 36-405, 36-446, 36-446.03 AND 36-446.04, ARIZONA REVISED STATUTES; RELATING TO THE BOARD OF EXAMINERS OF NURSING CARE INSTITUTION ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 32-3021, Arizona Revised Statutes, is amended to
3 read:

4 32-3021. Private vocational program license; qualifications;
5 provision of information; exemptions

6 A. A person shall not operate a private vocational program unless the
7 person holds a private vocational program license issued pursuant to this
8 chapter. Each program offered by a private vocational program licensee shall
9 be authorized on a private vocational program license. The board shall
10 prescribe the manner in which the programs shall be identified on the
11 license.

12 B. An applicant for a private vocational program license shall meet
13 all of the following requirements:

14 1. Furnish a letter of credit, surety bond or cash deposit as provided
15 in section 32-3023.

16 2. Make specific information concerning educational programs,
17 including statements of purpose, objectives, course of study, policies, fees
18 and other pertinent information, available to prospective students and the
19 general public.

20 3. Be financially responsible and have management capability.

21 4. Maintain a qualified faculty.

22 5. Maintain facilities, equipment and materials ~~which~~ THAT are
23 appropriate for the stated program. All facilities shall meet applicable
24 state and local health and safety laws.

25 6. Maintain appropriate records as the board prescribes ~~which~~ THAT are
26 properly safeguarded and preserved.

27 7. Use only advertisements ~~which~~ THAT are consistent with the
28 information made available as provided in paragraph 2 of this subsection.

29 8. Provide courses of instruction ~~which~~ THAT meet stated objectives.

30 9. Provide a grievance procedure for students.

31 10. Comply with all federal and state laws relating to the operation of
32 a private postsecondary educational institution.

33 11. Other requirements the board deems necessary.

34 C. An applicant for a private vocational program license shall submit
35 evidence of meeting the requirements prescribed in subsection B of this
36 section to the board. The board shall verify the evidence submitted.
37 Verification shall include on-site verification.

38 D. The filing of an application grants the board the authority to
39 obtain information from any of the following:

40 1. A licensing board or agency in any state, district, territory or
41 county of the United States or any foreign country.

42 2. The Arizona criminal justice information system as defined in
43 section 41-1750.

44 3. The federal bureau of investigation.

1 E. The board, on application, may issue a private vocational program
2 license to a new educational institution as provided in this section, except
3 that the board shall establish separate minimum standards for licensure
4 requirements of new educational institutions. These minimum standards may
5 include the modification of licensure requirements as provided in subsection
6 B, paragraphs 3, 5, 6, 7 and 8 of this section to meet the circumstances of
7 new educational institutions. The board shall monitor the new educational
8 institution to ensure compliance with the licensure requirements. The board
9 shall issue a private vocational program license as provided in this
10 subsection one time only to new educational institutions.

11 F. This section does not apply to any of the following:

12 1. A school licensed pursuant to chapter 3 or 5 of this title.

13 2. An instructional program or course sponsored by a bona fide trade
14 association solely for its members.

15 3. Privately owned academic schools engaged in the process of general
16 education ~~which~~ THAT is designed to produce a level of development equivalent
17 to that necessary to meet the requirements for entrance into a public
18 community college or public university in this state and ~~which~~ THAT may
19 incidentally offer technical and vocational courses as part of the
20 curriculum.

21 4. Schools or private instruction conducted by any person engaged in
22 training, tutoring or teaching individuals or groups, if the instruction is
23 related to hobbies, avocations, academic improvement or recreation and may
24 only incidentally lead to gainful employment and if the instruction is for a
25 period of under forty hours and costs less than one thousand dollars.

26 5. Schools conducted by any person solely for training the person's
27 own employees.

28 6. An instructional program or course offered solely for employees and
29 for the purpose of improving the employees in their employment if both of the
30 following apply:

31 (a) The employee is not charged a fee.

32 (b) The employer provides or funds the program or course pursuant to a
33 valid written contract between the employer and a program or course provider.

34 7. Training conducted pursuant to 14 Code of Federal Regulations
35 part 141.

36 8. A school that solely provides an instructional program for
37 certified nursing assistants and is licensed by the nursing board pursuant to
38 section 32-1606, subsection B, paragraph 11.

39 9. A professional driving training school licensed by the department
40 of transportation pursuant to chapter 23, articles 1, 2 and 3 of this title.

41 10. A TRAINING PROGRAM APPROVED BY THE BOARD OF EXAMINERS OF NURSING
42 CARE INSTITUTION ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS THAT
43 SOLELY PROVIDES TRAINING FOR MANAGERS AND CAREGIVERS OF ASSISTED LIVING
44 FACILITIES.

1 Sec. 2. Section 36-405, Arizona Revised Statutes, is amended to read:
2 36-405. Powers and duties of the director

3 A. The director shall adopt rules to establish minimum standards and
4 requirements for the construction, modification and licensure of health care
5 institutions necessary to assure the public health, safety and welfare. The
6 standards and requirements shall relate to the construction, equipment,
7 sanitation, staffing for medical, nursing and personal care services, and
8 record keeping pertaining to the administration of medical, nursing and
9 personal care services, in accordance with generally accepted practices of
10 health care. The director shall use the current standards adopted by the
11 joint commission on accreditation of hospitals and the commission on
12 accreditation of the American osteopathic association or those adopted by any
13 recognized accreditation organization approved by the department as
14 guidelines in prescribing minimum standards and requirements under this
15 section.

16 B. The director, by rule, may:

17 1. Classify and subclassify health care institutions according to
18 character, size, range of services provided, medical or dental specialty
19 offered, duration of care and standard of patient care required for the
20 purposes of licensure. Classes of health care institutions may include
21 hospitals, infirmaries, outpatient treatment centers, health screening
22 services centers and residential care facilities. Whenever the director
23 reasonably deems distinctions in rules and standards to be appropriate among
24 different classes or subclasses of health care institutions, the director may
25 make such distinctions.

26 2. Prescribe standards for determining a health care institution's
27 substantial compliance with licensure requirements.

28 3. Prescribe the criteria for the licensure inspection process.

29 4. Prescribe standards for the selection of health care related
30 demonstration projects.

31 ~~5. Prescribe standards for training programs for assisted living~~
32 ~~facilities.~~

33 ~~6.~~ 5. Establish and collect nonrefundable fees for health care
34 institutions for license applications, initial licenses, renewal licenses and
35 architectural drawing reviews.

36 ~~C. The director may:~~

37 ~~1. Grant, deny, suspend and revoke approval of training programs for~~
38 ~~assisted living facilities.~~

39 ~~2. Impose a civil penalty pursuant to section 36-431.01 against a~~
40 ~~training program that violates this chapter or rules adopted pursuant to this~~
41 ~~chapter.~~

42 ~~D.~~ C. Beginning January 1, 2010, ninety per cent of the fees
43 collected pursuant to this section shall be deposited, pursuant to sections
44 35-146 and 35-147, in the health services licensing fund established by
45 section 36-414 and ten per cent of the fees collected pursuant to this

1 section shall be deposited, pursuant to sections 35-146 and 35-147, in the
2 state general fund.

3 ~~E.~~ D. Subsection B, paragraph ~~6-~~ 5 of this section does not apply to
4 a health care institution operated by a state agency pursuant to state or
5 federal law or to adult foster care residential settings.

6 Sec. 3. Section 36-446, Arizona Revised Statutes, is amended to read:
7 ~~36-446.~~ Definitions

8 In this article, unless the context otherwise requires:

9 1. "Administrator" or "nursing care institution administrator" means a
10 person who is charged with the general administration of a nursing care
11 institution, whether or not that person has an ownership interest in the
12 institution and whether or not the person's functions and duties are shared
13 with others.

14 2. "Assisted living facility" has the same meaning prescribed in
15 section 36-401.

16 3. "Assisted living facility manager" means a person who has
17 responsibility for the administration or management of an assisted living
18 facility, whether or not that person has an ownership interest in the
19 institution and whether or not the person's functions and duties are shared
20 with others.

21 4. "ASSISTED LIVING FACILITY TRAINING PROGRAM" INCLUDES:

22 (a) TRAINING REQUIRED FOR ASSISTED LIVING FACILITY MANAGER
23 CERTIFICATION.

24 (b) TRAINING REQUIRED BY THE DEPARTMENT FOR ASSISTED LIVING FACILITY
25 CAREGIVERS.

26 ~~4-~~ 5. "Board" means the board of examiners of nursing care
27 institution administrators and assisted living facility managers.

28 ~~5-~~ 6. "Department" means the department of health services.

29 ~~6-~~ 7. "Directed care services" has the same meaning prescribed in
30 section 36-401.

31 ~~7-~~ 8. "Director" means the director of the department of health
32 services.

33 ~~8-~~ 9. "Nursing care institution" means an institution or other place,
34 however named, whether for profit or not, including facilities operated by
35 the state or a subdivision of the state, ~~which~~ THAT is advertised, offered,
36 maintained or operated for the express or implied purpose of providing care
37 to persons who need nursing services on a continuing basis but who do not
38 require hospital care or care under the daily direction of a physician.
39 Nursing care institution does not include an institution for the care and
40 treatment of the sick that is operated only for those who rely solely on
41 treatment by prayer or spiritual means in accordance with the tenets of a
42 recognized religious denomination. Nursing care institution also does not
43 include nursing care services that are an integral part of a hospital
44 licensed pursuant to this chapter.

1 ~~9.~~ 10. "Unprofessional conduct" includes:

2 (a) Dishonesty, fraud, incompetency or gross negligence in the
3 performance of administrative duties.

4 (b) Gross immorality or proselytizing religious views on patients
5 without their consent.

6 (c) Other abuses of official responsibilities, which may include
7 intimidation or neglect of patients.

8 Sec. 4. Section 36-446.03, Arizona Revised Statutes, is amended to
9 read:

10 36-446.03. Powers and duties of the board; fees

11 A. The board may adopt, amend or repeal reasonable and necessary rules
12 and standards for the administration of this article in compliance with title
13 XIX of the social security act, as amended.

14 B. The board by rule may adopt nonrefundable fees for the following:

15 1. Initial application for certification as an assisted living
16 facility manager.

17 2. Examination for certification as an assisted living facility
18 manager.

19 3. Issuance of a certificate as an assisted living facility manager,
20 prorated monthly.

21 4. Biennial renewal of a certificate as an assisted living facility
22 manager.

23 5. Issuance of a temporary certificate as an assisted living facility
24 manager.

25 6. Readministering an examination for certification as an assisted
26 living facility manager.

27 7. Issuance of a duplicate certificate as an assisted living facility
28 manager.

29 8. Reviewing the sponsorship of continuing education programs, for
30 each credit hour.

31 9. Late renewal of an assisted living facility manager certificate.

32 10. Reviewing an individual's request for continuing education credit
33 hours, for each credit hour.

34 11. REVIEWING INITIAL APPLICATIONS FOR ASSISTED LIVING FACILITY
35 TRAINING PROGRAMS.

36 12. ANNUAL RENEWAL OF APPROVED ASSISTED LIVING FACILITY TRAINING
37 PROGRAMS.

38 C. The board may elect officers it deems necessary.

39 D. The board shall apply appropriate techniques, including
40 examinations and investigations, to determine if a person meets the
41 qualifications prescribed in section 36-446.04.

42 E. On its own motion or in response to any complaint against or report
43 of a violation by an administrator of a nursing care institution, or a
44 manager of an assisted living facility, the board may conduct investigations,

1 hearings and other proceedings concerning any violation of this article or of
2 rules adopted by the board or by the department.

3 F. In connection with an investigation or administrative hearing, the
4 board may administer oaths and affirmations, subpoena witnesses, take
5 evidence and require by subpoena the production of documents, records or
6 other information in any form concerning matters the board deems relevant to
7 the investigation or hearing. If any subpoena issued by the board is
8 disobeyed, the board may invoke the aid of any court in this state in
9 requiring the attendance and testimony of witnesses and the production of
10 evidence.

11 G. The board may employ persons to provide investigative, professional
12 and clerical assistance as required to perform its powers and duties under
13 this article. Compensation for board employees shall be as determined
14 pursuant to section 38-611. The board may contract with other state or
15 federal agencies as required to carry out this article.

16 H. The board may appoint review committees to make recommendations
17 concerning enforcement matters and the administration of this article.

18 I. The board by rule may establish a program to monitor licensees and
19 certificate holders who are chemically dependent and who enroll in
20 rehabilitation programs that meet board requirements. The board may take
21 disciplinary action if a licensee or a certificate holder refuses to enter
22 into an agreement to enroll in and complete a board approved rehabilitation
23 program or fails to abide by that agreement.

24 J. The board shall adopt and use an official seal.

25 K. The board shall adopt rules for the examination and licensure of
26 nursing care institution administrators and the examination and certification
27 of assisted living facility managers.

28 L. The board shall adopt rules governing payment to a person for the
29 direct or indirect solicitation or procurement of assisted living facility
30 patronage.

31 M. The board must provide the senate and the house of representatives
32 health committee chairmen with copies of all board minutes and executive
33 decisions.

34 N. The board by rule shall limit by percentage the amount it may
35 increase a fee above the amount of a fee previously prescribed by the board
36 pursuant to this section.

37 O. THE BOARD BY RULE SHALL PRESCRIBE STANDARDS FOR ASSISTED LIVING
38 FACILITY TRAINING PROGRAMS.

39 P. THE BOARD MAY:

40 1. GRANT, DENY, SUSPEND AND REVOKE APPROVAL OF, OR PLACE ON PROBATION,
41 AN ASSISTED LIVING FACILITY TRAINING PROGRAM.

42 2. IMPOSE A CIVIL PENALTY ON AN ASSISTED LIVING FACILITY TRAINING
43 PROGRAM THAT VIOLATES THIS CHAPTER OR RULES ADOPTED PURSUANT TO THIS CHAPTER.

1 Sec. 5. Section 36-446.04, Arizona Revised Statutes, is amended to
2 read:

3 36-446.04. Qualifications; period of validity; exemption

4 A. The board shall issue a license as a nursing care institution
5 administrator pursuant to its rules to any person who meets the following
6 qualifications:

7 1. Is of good character.

8 2. Has satisfactorily completed a course of instruction and training
9 approved by the board that:

10 (a) Is designed and sufficiently administered to give the applicant
11 knowledge of the proper needs to be served by nursing care institutions.

12 (b) Includes a thorough background in the laws and rules governing the
13 operation of nursing care institutions and the protection of the interests of
14 the patients in nursing care institutions.

15 (c) Includes thorough training in elements of good health care
16 facilities administration.

17 3. Has passed an examination administered by the board designed to
18 test for competency in the subject matter referred to in this subsection.

19 4. Has met one of the following fingerprinting requirements:

20 (a) Has a valid fingerprint clearance card issued pursuant to title
21 41, chapter 12, article 3.1.

22 (b) Has provided proof of the submission of an application for a
23 fingerprint clearance card. An applicant who has been denied a fingerprint
24 clearance card must also provide proof that the applicant qualifies for a
25 good cause exception hearing pursuant to section 41-619.55.

26 B. A person who is licensed pursuant to this section must maintain a
27 valid fingerprint clearance card during the valid period of the person's
28 license.

29 C. The board shall issue a certificate as an assisted living facility
30 manager pursuant to its rules to a person who meets the following
31 qualifications:

32 1. Is of good character.

33 2. Has satisfactorily completed a course of instruction and training
34 approved by the ~~department~~ BOARD THAT:

35 (a) IS DESIGNED AND SUFFICIENTLY ADMINISTERED TO GIVE THE APPLICANT
36 KNOWLEDGE OF THE PROPER NEEDS TO BE SERVED BY AN ASSISTED LIVING FACILITY.

37 (b) INCLUDES A THOROUGH BACKGROUND IN THE LAWS GOVERNING THE OPERATION
38 OF ASSISTED LIVING FACILITIES AND THE PROTECTION OF THE INTERESTS OF THE
39 PATIENTS IN ASSISTED LIVING FACILITIES.

40 (c) INCLUDES THOROUGH TRAINING IN ELEMENTS OF ASSISTED LIVING FACILITY
41 ADMINISTRATION.

42 3. Has passed an examination administered by the board THAT IS
43 DESIGNED TO TEST FOR COMPETENCY IN THE SUBJECT MATTER PRESCRIBED IN THIS
44 SUBSECTION.

1 4. Provides documentation satisfactory to the board that the applicant
2 has completed two thousand eighty hours of paid work experience in a health
3 related field within the preceding five years as prescribed by board rule.
4 5. Has met one of the following fingerprinting requirements:
5 (a) Has a valid fingerprint clearance card issued pursuant to title
6 41, chapter 12, article 3.1.
7 (b) Has provided proof of the submission of an application for a
8 fingerprint clearance card. An applicant who has been denied a fingerprint
9 clearance card must also provide proof that the applicant qualifies for a
10 good cause exception hearing pursuant to section 41-619.55.
11 D. A person who is certified pursuant to this section must maintain a
12 valid fingerprint clearance card during the valid period of the person's
13 certificate.
14 E. In lieu of the requirements contained in subsection A, paragraph 2
15 or subsection C, paragraph 2, an applicant may present satisfactory evidence
16 to the board of sufficient education and training in the areas listed in that
17 paragraph.
18 F. A license is nontransferable and remains in effect until the
19 following June 30 of an even numbered year, at which time the license may be
20 renewed if the licensee otherwise complies with this article and unless the
21 license has been surrendered, suspended or revoked.
22 G. A certificate is nontransferable and remains in effect until the
23 following June 30 of an odd numbered year, at which time the certificate may
24 be renewed if the certificate holder otherwise complies with this article and
25 the certificate has not been surrendered, suspended or revoked.
26 H. This section does not apply to managers of adult foster care homes
27 as defined in section 36-401.