

State of Arizona
Senate
Fifty-second Legislature
Second Regular Session
2016

CHAPTER 112
SENATE BILL 1457

AN ACT

AMENDING SECTIONS 15-2401, 15-2402, 36-2982 AND 36-2985, ARIZONA REVISED
STATUTES; RELATING TO ELIGIBILITY FOR PUBLIC PROGRAMS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 15-2401, Arizona Revised Statutes, is amended to
3 read:

4 15-2401. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "ANNUAL EDUCATION PLAN" MEANS AN INITIAL INDIVIDUALIZED EVALUATION
7 AND SUBSEQUENT ANNUAL REVIEWS THAT ARE DEVELOPED FOR A QUALIFIED STUDENT WHO
8 MEETS THE CRITERIA SPECIFIED IN PARAGRAPH 7, SUBDIVISION (a), ITEM (i), (ii)
9 OR (iii) OF THIS SECTION TO DETERMINE ONGOING ANNUAL ELIGIBILITY THROUGH THE
10 SCHOOL YEAR IN WHICH THE QUALIFIED STUDENT REACHES TWENTY-TWO YEARS OF AGE
11 AND WHETHER THE STUDENT MAY BE ELIGIBLE PURSUANT TO SECTION 36-2981 AND
12 SHOULD BE REFERRED FOR ELIGIBILITY DETERMINATION.

13 ~~1.~~ 2. "Curriculum" means a complete course of study for a particular
14 content area or grade level, including any supplemental materials required by
15 the curriculum.

16 ~~2.~~ 3. "Department" means the department of education.

17 ~~3.~~ 4. "Eligible postsecondary institution" means a community college
18 as defined in section 15-1401, a university under the jurisdiction of the
19 Arizona board of regents or an accredited private postsecondary institution.

20 ~~4.~~ 5. "Parent" means a resident of this state who is the parent or
21 legal guardian of a qualified student.

22 ~~5.~~ 6. "Qualified school" means a nongovernmental primary or secondary
23 school or a preschool for pupils with disabilities that is located in this
24 state and that does not discriminate on the basis of race, color or national
25 origin.

26 ~~6.~~ 7. "Qualified student" means a resident of this state who:

27 (a) Is any of the following:

28 (i) Identified as having a disability under section 504 of the
29 rehabilitation act of 1973 (29 United States Code section 794).

30 (ii) Identified by a school district or by an independent third party
31 pursuant to section 15-2403, subsection I as a child with a disability as
32 defined in section 15-761.

33 (iii) A child with a disability who is eligible to receive services
34 from a school district under section 15-763.

35 (iv) Attending a school or school district that has been assigned a
36 letter grade of D or F pursuant to section 15-241 or who is currently
37 eligible to attend kindergarten and who resides within the attendance
38 boundary of a school that has been assigned a letter grade of D or F pursuant
39 to section 15-241.

40 (v) A previous recipient of a scholarship issued pursuant to section
41 15-891 or this section.

42 (vi) A child of a parent who is a member of the armed forces of the
43 United States and who is on active duty or was killed in the line of duty. A
44 child who meets the requirements of this item is not subject to subdivision
45 (b) of this paragraph.

1 (vii) A child with a guardian who is a member of the armed forces of
2 the United States and who is on active duty or was killed in the line of
3 duty. A child who meets the requirements of this item is not subject to
4 subdivision (b) of this paragraph.

5 (viii) A child who is a ward of the juvenile court and who is residing
6 with a prospective permanent placement pursuant to section 8-862 and the case
7 plan is adoption or permanent guardianship.

8 (ix) A child who was a ward of the juvenile court and who achieved
9 permanency through adoption or permanent guardianship.

10 (x) A child who is the sibling of a current or previous empowerment
11 scholarship account recipient.

12 (xi) A child who resides within the boundaries of an Indian
13 reservation in this state.

14 (b) And, except as provided in subdivision (a), items (vi) and (vii)
15 of this paragraph, who meets any of the following requirements:

16 (i) Attended a governmental primary or secondary school as a full-time
17 student as defined in section 15-901 for at least the first one hundred days
18 of the prior fiscal year and who transferred from a governmental primary or
19 secondary school under a contract to participate in an empowerment
20 scholarship account.

21 (ii) Previously participated in the empowerment scholarship account
22 program.

23 (iii) Received a scholarship under section 43-1505 and who continues
24 to attend a qualified school if the student attended a governmental primary
25 or secondary school as a full-time student as defined in section 15-901 for
26 at least ninety days of the prior fiscal year or one full semester prior to
27 attending a qualified school.

28 (iv) Was eligible for an Arizona scholarship for pupils with
29 disabilities and received monies from a school tuition organization pursuant
30 to section 43-1505 or received an Arizona scholarship for pupils with
31 disabilities but did not receive monies from a school tuition organization
32 pursuant to section 43-1505 and who continues to attend a qualified school if
33 the student attended a governmental primary or secondary school as a
34 full-time student as defined in section 15-901 for at least ninety days of
35 the prior fiscal year or one full semester prior to attending a qualified
36 school.

37 (v) Has not previously attended a governmental primary or secondary
38 school but is currently eligible to enroll in a kindergarten program in a
39 school district or charter school in this state.

40 (vi) Has not previously attended a governmental primary or secondary
41 school but is currently eligible to enroll in a program for preschool
42 children with disabilities in this state.

43 ~~7.~~ 8. "Treasurer" means the office of the state treasurer.

1 Sec. 2. Section 15-2402, Arizona Revised Statutes, is amended to read:
2 15-2402. Arizona empowerment scholarship accounts: funds

3 A. Arizona empowerment scholarship accounts are established to provide
4 options for the education of students in this state.

5 B. To enroll a qualified student for an empowerment scholarship
6 account, the parent of the qualified student must sign an agreement to do all
7 of the following:

8 1. Use a portion of the empowerment scholarship account monies
9 allocated each quarter to provide an education for the qualified student in
10 at least the subjects of reading, grammar, mathematics, social studies and
11 science, unless the empowerment scholarship account is allocated monies
12 according to a transfer schedule other than quarterly transfers pursuant to
13 section 15-2403, subsection F.

14 2. Not enroll the qualified student in a school district or charter
15 school and release the school district from all obligations to educate the
16 qualified student. This paragraph does not relieve the school district or
17 charter school that the qualified student previously attended from the
18 obligation to conduct an evaluation pursuant to section 15-766.

19 3. Not accept a scholarship from a school tuition organization
20 pursuant to title 43 concurrently with an empowerment scholarship account for
21 the qualified student in the same year a parent signs the agreement pursuant
22 to this section.

23 4. Use the money deposited in the qualified student's Arizona
24 empowerment scholarship account only for the following expenses of the
25 qualified student:

26 (a) Tuition or fees at a qualified school.

27 (b) Textbooks required by a qualified school.

28 (c) Educational therapies or services from a licensed or accredited
29 practitioner or provider, including licensed or accredited paraprofessionals
30 or educational aides, if the qualified student meets any of the criteria
31 specified in section 15-2401, paragraph ~~6~~ 7, subdivision (a), item (i), (ii)
32 or (iii) as determined by a school district or by an independent third party
33 pursuant to section 15-2403, subsection I.

34 (d) Tutoring or teaching services provided by an individual or
35 facility accredited by a state, regional or national accrediting
36 organization.

37 (e) ~~Curriculum~~ CURRICULA.

38 (f) Tuition or fees for a nonpublic online learning program.

39 (g) Fees for a nationally standardized norm-referenced achievement
40 test, an advanced placement examination or any exams related to college or
41 university admission.

42 (h) Contributions to a Coverdell education savings account established
43 pursuant to 26 United States Code section 530 for the benefit of the
44 qualified student, except that money used for elementary or secondary
45 education expenses must be for expenses otherwise allowed under this section.

46 (i) Tuition or fees at an eligible postsecondary institution.

- 1 (j) Textbooks required by an eligible postsecondary institution.
- 2 (k) Fees for management of the empowerment scholarship account by
- 3 firms selected by the treasurer.
- 4 (l) Services provided by a public school, including individual classes
- 5 and extracurricular programs.
- 6 (m) Insurance or surety bond payments as required by the department of
- 7 education.
- 8 (n) BEGINNING JANUARY 1, 2017, IF THE QUALIFIED STUDENT MEETS THE
- 9 CRITERIA SPECIFIED IN SECTION 15-2401, PARAGRAPH 7, SUBDIVISION (a), ITEM
- 10 (i), (ii) OR (iii) AND IF THE QUALIFIED STUDENT IS IN THE SECOND YEAR PRIOR
- 11 TO THE FINAL YEAR OF A CONTRACT EXECUTED PURSUANT TO THIS ARTICLE, COSTS
- 12 ASSOCIATED WITH AN ANNUAL EDUCATION PLAN CONDUCTED BY AN INDEPENDENT
- 13 EVALUATION TEAM. THE DEPARTMENT SHALL PRESCRIBE MINIMUM QUALIFICATIONS FOR
- 14 INDEPENDENT EVALUATION TEAMS PURSUANT TO THIS SUBDIVISION AND FACTORS THAT
- 15 TEAMS MUST USE TO DETERMINE WHETHER THE QUALIFIED STUDENT SHALL BE ELIGIBLE
- 16 TO CONTINUE TO RECEIVE MONIES PURSUANT TO THIS ARTICLE THROUGH THE SCHOOL
- 17 YEAR IN WHICH THE QUALIFIED STUDENT REACHES TWENTY-TWO YEARS OF AGE. AN
- 18 INDEPENDENT EVALUATION TEAM THAT PROVIDES AN ANNUAL EDUCATION PLAN PURSUANT
- 19 TO THIS SUBDIVISION SHALL SUBMIT A WRITTEN REPORT THAT SUMMARIZES THE RESULTS
- 20 OF THE EVALUATION TO THE PARENT OF THE QUALIFIED STUDENT AND TO THE
- 21 DEPARTMENT ON OR BEFORE JULY 31. THE WRITTEN REPORT SUBMITTED BY THE
- 22 INDEPENDENT EVALUATION TEAM IS VALID FOR ONE YEAR. IF THE DEPARTMENT
- 23 DETERMINES THAT THE QUALIFIED STUDENT MEETS THE ELIGIBILITY CRITERIA
- 24 PRESCRIBED IN THE ANNUAL EDUCATION PLAN, THE QUALIFIED STUDENT IS ELIGIBLE TO
- 25 CONTINUE TO RECEIVE MONIES PURSUANT TO THIS ARTICLE UNTIL THE QUALIFIED
- 26 STUDENT REACHES TWENTY-TWO YEARS OF AGE, SUBJECT TO ANNUAL REVIEW. A PARENT
- 27 MAY APPEAL THE DEPARTMENT'S DECISION PURSUANT TO TITLE 41, CHAPTER 6, ARTICLE
- 28 10. AS AN ADDENDUM TO A QUALIFIED STUDENT'S FINAL-YEAR CONTRACT, THE
- 29 DEPARTMENT SHALL PROVIDE THE FOLLOWING WRITTEN INFORMATION TO THE PARENT OF
- 30 THE QUALIFIED STUDENT:
 - 31 (i) THAT THE QUALIFIED STUDENT WILL NOT BE ELIGIBLE TO CONTINUE TO
 - 32 RECEIVE MONIES PURSUANT TO THIS ARTICLE UNLESS THE RESULTS OF AN ANNUAL
 - 33 EDUCATION PLAN CONDUCTED PURSUANT TO THIS SUBDIVISION DEMONSTRATE THAT THE
 - 34 QUALIFIED STUDENT MEETS THE ELIGIBILITY CRITERIA PRESCRIBED IN THE ANNUAL
 - 35 EDUCATION PLAN.
 - 36 (ii) THAT THE PARENT IS ENTITLED TO OBTAIN AN ANNUAL EDUCATION PLAN
 - 37 PURSUANT TO THIS SUBDIVISION TO DETERMINE WHETHER THE QUALIFIED STUDENT MEETS
 - 38 THE ELIGIBILITY CRITERIA PRESCRIBED IN THE ANNUAL EDUCATION PLAN.
 - 39 (iii) A LIST OF INDEPENDENT EVALUATION TEAMS THAT MEET THE MINIMUM
 - 40 QUALIFICATIONS PRESCRIBED BY THE DEPARTMENT PURSUANT TO THIS SUBDIVISION.
- 41 5. Not file an affidavit of intent to homeschool pursuant to section
- 42 15-802, subsection B, paragraph 2 or 3.
- 43 6. Not use monies deposited in the qualified student's account for any
- 44 of the following:
 - 45 (a) Computer hardware or other technological devices.
 - 46 (b) Transportation of the pupil.

1 (c) Consumable educational supplies, including paper, pens or markers.

2 C. In exchange for the parent's agreement pursuant to subsection B of
3 this section, the department shall transfer from the monies that would
4 otherwise be allocated to a recipient's prior school district, or if the
5 child is currently eligible to attend kindergarten, the monies that the
6 department determines would otherwise be allocated to a recipient's expected
7 school district of attendance, to the treasurer for deposit into an Arizona
8 empowerment scholarship account an amount that is equivalent to ninety ~~per~~
9 ~~cent~~ PERCENT of the sum of the base support level and additional assistance
10 prescribed in sections 15-185 and 15-943 for that particular student if that
11 student were attending a charter school. The department may retain up to
12 five ~~per-cent~~ PERCENT of the sum of the base support level and additional
13 assistance prescribed in sections 15-185 and 15-943 for each student with an
14 empowerment scholarship account for deposit in the department of education
15 empowerment scholarship account fund established in subsection D of this
16 section, out of which the department shall transfer one ~~per-cent~~ PERCENT of
17 the sum of the base support level and additional assistance prescribed in
18 sections 15-185 and 15-943 for each student with an empowerment scholarship
19 account to the state treasurer for deposit in the state treasurer empowerment
20 scholarship account fund established in subsection E of this section.

21 D. The department of education empowerment scholarship account fund is
22 established consisting of monies retained by the department pursuant to
23 subsection C of this section. The department shall administer the fund.
24 Monies in the fund are subject to legislative appropriation. Monies in the
25 fund shall be used for the department's costs in administering empowerment
26 scholarship accounts under this chapter. Monies in the fund are exempt from
27 the provisions of section 35-190 relating to lapsing of appropriations. If
28 the number of empowerment scholarship accounts significantly increases after
29 fiscal year 2012-2013, the department may request an increase in the amount
30 appropriated to the fund in any subsequent fiscal year in the budget estimate
31 submitted pursuant to section 35-113.

32 E. The state treasurer empowerment scholarship account fund is
33 established consisting of monies transferred by the department to the state
34 treasurer pursuant to subsection C of this section. The state treasurer
35 shall administer the fund. Monies in the fund shall be used for the state
36 treasurer's costs in administering the empowerment scholarship accounts under
37 this chapter. If the number of empowerment scholarship accounts
38 significantly increases after fiscal year 2013-2014, the state treasurer may
39 request an increase in the amount appropriated to the fund in any subsequent
40 fiscal year in the budget estimate submitted pursuant to section 35-113.
41 Monies in the fund are subject to legislative appropriation. Monies in the
42 fund are exempt from the provisions of section 35-190 relating to lapsing of
43 appropriations.

44 F. A parent must renew the qualified student's empowerment scholarship
45 account on an annual basis. Notwithstanding any changes to the student's
46 multidisciplinary evaluation team plan, a student who has previously

1 qualified for an empowerment scholarship account shall remain eligible to
2 apply for renewal until the student finishes high school.

3 G. A signed agreement under this section constitutes school attendance
4 required by section 15-802.

5 H. A qualified school or a provider of services purchased pursuant to
6 subsection B, paragraph 4 of this section may not share, refund or rebate any
7 Arizona empowerment scholarship account monies with the parent or qualified
8 student in any manner.

9 I. On the qualified student's graduation from a postsecondary
10 institution or after any period of four consecutive years after high school
11 graduation in which the student is not enrolled in an eligible postsecondary
12 institution, the qualified student's Arizona empowerment scholarship account
13 shall be closed and any remaining funds shall be returned to the state.

14 J. Monies received pursuant to this article do not constitute taxable
15 income to the parent of the qualified student.

16 Sec. 3. Section 36-2982, Arizona Revised Statutes, is amended to read:
17 36-2982. Children's health insurance program; administration;
18 nonentitlement; enrollment; eligibility

19 A. The children's health insurance program is established for children
20 who are eligible pursuant to section 36-2981, paragraph 6. The
21 administration shall administer the program. All covered services shall be
22 provided by health plans that have contracts with the administration pursuant
23 to section 36-2906, by a qualifying plan or by either tribal facilities or
24 the Indian health service for Native Americans who are eligible for the
25 program and who elect to receive services through the Indian health service
26 or a tribal facility.

27 B. This article does not create a legal entitlement for any applicant
28 or member who is eligible for the program. ~~Total enrollment is limited based~~
29 ~~on the annual appropriations made by the legislature and the enrollment cap~~
30 ~~prescribed in section 36-2985.~~

31 C. The director shall take all steps necessary to implement the
32 administrative structure for the program and to begin delivering services to
33 persons within sixty days after approval of the state plan by the United
34 States department of health and human services.

35 D. The administration shall perform eligibility determinations for
36 persons applying for eligibility and annual redeterminations for continued
37 eligibility pursuant to this article.

38 E. The administration shall adopt rules for the collection of
39 copayments from members whose income does not exceed one hundred fifty ~~per~~
40 ~~cent~~ PERCENT of the federal poverty level and for the collection of
41 copayments and premiums from members whose income exceeds one hundred fifty
42 ~~per-cent~~ PERCENT of the federal poverty level. The director shall adopt
43 rules for disenrolling a member if the member does not pay the premium
44 required pursuant to this section. The director shall adopt rules to
45 prescribe the circumstances under which the administration shall grant a

1 hardship exemption to the disenrollment requirements of this subsection for a
2 member who is no longer able to pay the premium.

3 F. Before enrollment, a member, or if the member is a minor, that
4 member's parent or legal guardian, shall select an available health plan in
5 the member's geographic service area or a qualifying health plan offered in
6 the county, and may select a primary care physician or primary care
7 practitioner from among the available physicians and practitioners
8 participating with the contractor in which the member is enrolled. The
9 contractors shall only reimburse costs of services or related services
10 provided by or under referral from a primary care physician or primary care
11 practitioner participating in the contract in which the member is enrolled,
12 except for emergency services that shall be reimbursed pursuant to section
13 36-2987. The director shall establish requirements as to the minimum time
14 period that a member is assigned to specific contractors.

15 G. Eligibility for the program is creditable coverage as defined in
16 section 20-1379.

17 ~~H. On application for eligibility for the program, the member, or if~~
18 ~~the member is a minor, the member's parent or guardian, shall receive an~~
19 ~~application for and a program description of the premium sharing program.~~

20 ~~I.~~ H. Notwithstanding section 36-2983, the administration may
21 purchase for a member ~~employer-sponsored~~ EMPLOYER-SPONSORED group health
22 insurance with state and federal monies available pursuant to this article,
23 subject to any restrictions imposed by the ~~federal health care financing~~
24 ~~administration~~ CENTERS FOR MEDICARE AND MEDICAID SERVICES. This subsection
25 does not apply to members who are eligible for health benefits coverage under
26 a state health benefits plan based on a family member's employment with a
27 public agency in this state.

28 Sec. 4. Section 36-2985, Arizona Revised Statutes, is amended to read:
29 36-2985. Notice of program termination; spending limitation

30 A. If the director determines that monies may be insufficient for the
31 program, the director shall immediately notify the governor, the president of
32 the senate and the speaker of the house of representatives. After consulting
33 with the governor, the administration shall stop processing new applications
34 for the program until the administration is able to verify that funding is
35 sufficient to begin processing applications and the governor agrees that the
36 administration may begin processing applications.

37 B. If the federal government eliminates federal funding for the
38 program ~~or significantly reduces the federal funding below the estimated~~
39 ~~federal expenditures~~ AS SPECIFIED IN 42 UNITED STATES CODE SECTION 1397ee,
40 the administration shall immediately stop processing all applications and
41 shall provide at least thirty days' advance notice to contractors and members
42 that the program will terminate.

43 C. The total amount of state monies that may be spent in any fiscal
44 year by the administration for health care provided under this article shall
45 not exceed the amount appropriated or authorized by section 35-173.

1 D. This article does not impose a duty on an officer, agent or
2 employee of this state to discharge a responsibility or ~~to~~ create any right
3 in a person or group if the discharge or right would require an expenditure
4 of state monies in excess of the expenditure authorized by legislative
5 appropriation for that specific purpose.

6 Sec. 5. Annual education plan development council; membership;
7 duties; report; delayed repeal

8 A. The annual education plan development council is established in the
9 department of education to develop eligibility criteria to determine if a
10 qualified student who meets the criteria specified in section 15-2401,
11 paragraph 7, subdivision (a), item (i), (ii) or (iii), Arizona Revised
12 Statutes, as amended by this act, is eligible to receive empowerment
13 scholarship account monies beyond eighteen years of age.

14 B. The council shall:

15 1. Develop the eligibility criteria in the form of an annual education
16 plan.

17 2. Develop a request for proposals to be approved by the state board
18 of education and issued by the department of education for independent
19 evaluation teams to conduct annual education plans.

20 3. Review the department's policies concerning annual education plans.

21 4. Submit a report of its findings and recommendations to the
22 governor, the president of the senate, the speaker of the house of
23 representatives and the superintendent of public instruction on or before
24 December 31, 2016.

25 C. The council may make recommendations to the department of
26 education.

27 D. The department of education shall select the members of the council
28 and shall include practitioners in the field of special education and parents
29 of current or previous qualified students who meet the criteria specified in
30 section 15-2401, paragraph 7, subdivision (a), item (i), (ii) or (iii),
31 Arizona Revised Statutes.

32 E. The council is subject to open meeting laws prescribed in title 38,
33 chapter 3, article 3.1, Arizona Revised Statutes.

34 F. Members of the council are not eligible to receive compensation.

35 G. This section is repealed from and after December 31, 2016.

36 Sec. 6. 2015-2016 cohort year; eligibility; delayed repeal

37 A. For a qualified student who meets the criteria specified in section
38 15-2401, paragraph 7, subdivision (a), item (i), (ii) or (iii), Arizona
39 Revised Statutes, as amended by this act, and who is in the final year of a
40 contract, the department of education shall determine if that student may
41 continue to receive empowerment scholarship account monies until a
42 determination is made pursuant to section 15-2402, subsection B, paragraph 4,
43 subdivision (n), Arizona Revised Statutes, as amended by this act. The
44 department shall base the determination on the qualified student's likelihood
45 to meet graduation requirements prescribed by the state board of education
46 pursuant to section 15-701.01, Arizona Revised Statutes, or obtain a high

1 school equivalency diploma pursuant to section 15-702, Arizona Revised
2 Statutes.

3 B. This section is repealed from and after December 31, 2016.

4 Sec. 7. AHCCCS; children's health insurance program; state plan
5 amendment; request for funding

6 Within five days after the effective date of this section, the Arizona
7 health care cost containment system administration shall do both of the
8 following:

9 1. Submit to the centers for medicare and medicaid services a state
10 plan amendment for this state's title XXI children's health insurance program
11 to resume enrollment in the program.

12 2. Project the enrollment rate for the children's health insurance
13 program for the remainder of federal fiscal years 2015-2016 and 2016-2017 and
14 request from the centers for medicare and medicaid services any additional
15 allotment needed to resume enrollment in the children's health insurance
16 program.

17 Sec. 8. Conditional enactment; notice

18 A. Sections 36-2982 and 36-2985, Arizona Revised Statutes, as amended
19 by this act, do not become effective unless on or before July 1, 2017 the
20 centers for medicare and medicaid services approve this state's state plan
21 amendment to resume enrollment in the children's health insurance program.

22 B. The director of the Arizona health care cost containment system
23 shall notify in writing the director of the Arizona legislative council on or
24 before July 15, 2017 either:

25 1. Of the date on which the condition was met.

26 2. That the condition was not met.

APPROVED BY THE GOVERNOR MAY 6, 2016.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 6, 2016.