

State of Arizona
Senate
Fifty-third Legislature
Second Regular Session
2018

CHAPTER 257

SENATE BILL 1450

AN ACT

AMENDING SECTIONS 8-807, 36-509, 36-553 AND 36-557, ARIZONA REVISED STATUTES; AMENDING SECTION 41-3801, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2014, CHAPTER 215, SECTION 196; REPEALING SECTION 41-3801, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2017, CHAPTER 184, SECTION 1; AMENDING SECTIONS 41-3802, 41-3803 AND 41-3804, ARIZONA REVISED STATUTES; RELATING TO GOVERNMENTAL OVERSIGHT COMMITTEES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 8-807, Arizona Revised Statutes, is amended to
3 read:

4 8-807. DCS information; public record; use; confidentiality;
5 violation; classification; definition

6 A. DCS information shall be maintained by the department as
7 required by federal law as a condition of the allocation of federal monies
8 to this state. All exceptions for the public release of DCS information
9 shall be construed as openly as possible under federal law.

10 B. The department, or a person who receives DCS information
11 pursuant to this subsection, shall provide DCS information to a federal
12 agency, a state agency, a tribal agency, a county or municipal agency, a
13 law enforcement agency, a prosecutor, an attorney or a guardian ad litem
14 representing a child victim of crime pursuant to article II, section 2.1,
15 Constitution of Arizona, a school, a community service provider, a
16 contract service provider or any other person that is providing services
17 pursuant to this article or article 9, 10, 11, 12, 13 or 14 of this
18 chapter:

19 1. To meet its duties to provide for the safety and permanency of a
20 child, provide services to a parent, guardian or custodian or provide
21 services to family members to strengthen the family pursuant to this
22 article or article 9, 10, 11, 12, 13 or 14 of this chapter.

23 2. To enforce or prosecute any violation involving child abuse or
24 neglect or to assert the rights of the child as a victim of a crime.

25 3. To provide information to a defendant after a criminal charge
26 has been filed as required by an order of the criminal court.

27 4. To help investigate and prosecute any violation involving
28 domestic violence as defined in section 13-3601 or violent sexual assault
29 as prescribed in section 13-1423.

30 C. The department shall disclose DCS information to a court, a
31 party in a dependency or termination of parental rights proceeding or the
32 party's attorney, the foster care review board or a court appointed
33 special advocate for the purposes of and as prescribed in this title.

34 D. The department shall disclose DCS information to a domestic
35 relations, family or conciliation court if the DCS information is
36 necessary to promote the safety and well-being of children. The court
37 shall notify the parties that it has received the DCS information.

38 E. A person or agent of a person who is the subject of DCS
39 information shall have access to DCS information concerning that person.

40 F. The department may provide:

41 1. DCS information to confirm, clarify, correct or supplement
42 information concerning an allegation or actual instance of child abuse or
43 neglect that has been made public by a source or sources outside the
44 department.

1 2. DCS information to a person who is conducting bona fide
2 research, the results of which might provide DCS information that is
3 beneficial in improving the department.

4 3. Access to DCS information to the parent, guardian or custodian
5 of a child if the DCS information is reasonably necessary to promote the
6 safety, permanency and well-being of the child.

7 4. DCS information if an employee of the department has a
8 reasonable belief that exigent circumstances exist. For the purposes of
9 this paragraph, "exigent circumstances" means a condition or situation in
10 which the death of or serious injury to a child will likely result in the
11 near future without immediate intervention.

12 G. The department shall disclose DCS information to a county
13 medical examiner or an alternate medical examiner directing an
14 investigation into the circumstances surrounding a death pursuant to
15 section 11-593.

16 H. Access to DCS information in the central registry shall be
17 provided as prescribed in section 8-804.

18 I. To provide oversight of the department, the department shall
19 provide access to DCS information to the following persons, if the DCS
20 information is reasonably necessary for the person to perform the person's
21 official duties:

22 1. Federal or state auditors.

23 2. Persons conducting any accreditation deemed necessary by the
24 department.

25 3. A standing committee of the legislature or a committee appointed
26 by the president of the senate or the speaker of the house of
27 representatives for purposes of conducting investigations related to the
28 legislative oversight of the department. This information shall not be
29 further disclosed unless a court has ordered the disclosure of this
30 information, the information has been disclosed in a public or court
31 record, or the information has been disclosed in the course of a public
32 meeting or court proceeding.

33 4. A legislator who requests DCS information in the regular course
34 of the legislator's duties. A legislator may discuss this information
35 with another legislator if the other legislator has signed the form
36 prescribed in subdivision (d) of this paragraph in regard to the specific
37 file that will be discussed. This information shall not be further
38 disclosed unless a court has ordered the disclosure of this information,
39 the information has been disclosed in a public or court record, or the
40 information has been disclosed in the course of a public meeting or court
41 proceeding. To request a file pursuant to this paragraph:

42 (a) The legislator shall submit a written request for DCS
43 information to the presiding officer of the body of which the state
44 legislator is a member. The request shall state the name of the person

1 whose case file is to be reviewed and any other information that will
2 assist the department in locating the file.

3 (b) The presiding officer shall forward the request to the
4 department within five working days of the receipt of the request.

5 (c) The department shall make the necessary arrangements for the
6 legislator to review the file at an office of the department, chosen by
7 the legislator, within ten working days.

8 (d) The legislator shall sign a form, consistent with the
9 requirements of this paragraph and paragraph 3 of this subsection, before
10 reviewing the file, that outlines the confidentiality laws governing
11 department files and penalties for further release of the information.

12 5. A citizen review panel as prescribed by federal law, a child
13 fatality review team as provided in title 36, chapter 35 and the office of
14 ombudsman-citizens aide.

15 6. ~~A human rights~~ AN INDEPENDENT OVERSIGHT committee established
16 pursuant to section 41-3801.

17 7. The governor who shall not disclose any information unless a
18 court has ordered the disclosure of the information, the information has
19 been disclosed in a public or court record or the information has been
20 disclosed in the course of a public meeting or court proceeding.

21 J. A person who has been denied DCS information regarding a
22 fatality or near fatality caused by abuse, abandonment or neglect pursuant
23 to subsection L of this section or section 8-807.01 may bring a special
24 action pursuant to section 39-121.02 in the superior court to order the
25 department to release that DCS information. A legislator has standing to
26 bring or to join a special action regarding the release of DCS information
27 or to challenge the redaction of released DCS information. The plaintiff
28 shall provide notice to the county attorney, who has standing and may
29 participate in the action. The court shall review the requested records
30 in camera and order disclosure consistent with subsections A and L of this
31 section and section 8-807.01. The court shall take reasonable steps to
32 prevent any clearly unwarranted invasions of privacy and protect the
33 privacy and dignity of victims of crime pursuant to article II, section
34 2.1, subsection C, Constitution of Arizona.

35 K. The department or a person who is not specifically authorized by
36 this section to obtain DCS information may petition a judge of the
37 superior court to order the department to release DCS information. The
38 plaintiff shall provide notice to the county attorney and to the attorney
39 and guardian ad litem for the child, who have standing and may participate
40 in the action. The court shall review the requested records in camera and
41 shall balance the rights of the parties who are entitled to
42 confidentiality pursuant to this section against the rights of the parties
43 who are seeking the release of the DCS information. The court may release
44 otherwise confidential DCS information only if the rights of the parties
45 seeking the DCS information and any benefits from releasing the DCS

1 information outweigh the rights of the parties who are entitled to
2 confidentiality and any harm that may result from releasing the DCS
3 information. The court shall take reasonable steps to prevent any clearly
4 unwarranted invasions of privacy and protect the privacy and dignity of
5 victims of crime pursuant to article II, section 2.1, subsection C,
6 Constitution of Arizona.

7 L. Except as provided in subsection M of this section, before it
8 releases records under this section or section 8-807.01, the department
9 shall take whatever precautions it determines are reasonably necessary to
10 protect the identity and safety of a person who reports child abuse or
11 neglect and to protect any other person if the department believes that
12 disclosure of the DCS information would be likely to endanger the life or
13 safety of any person. The department is not required by this section to
14 disclose DCS information if the department demonstrates that disclosure
15 would cause a specific, material harm to a department investigation. The
16 department is not required by this section to disclose DCS information if,
17 in consultation with the county attorney, the county attorney demonstrates
18 that disclosure would cause a specific, material harm to a criminal
19 investigation or prosecution.

20 M. A person who is the subject of an unfounded report or complaint
21 made pursuant to this article or article 9, 10, 11, 12, 13 or 14 of this
22 chapter and who believes that the report or complaint was made in bad
23 faith or with malicious intent may petition a judge of the superior court
24 to order the department to release the DCS information. The petition
25 shall specifically set forth reasons supporting the person's belief that
26 the report or complaint was made in bad faith or with malicious intent.
27 The court shall review the DCS information in camera and the person filing
28 the petition shall be allowed to present evidence in support of the
29 petition. If the court determines that there is a reasonable question of
30 fact as to whether the report or complaint was made in bad faith or with
31 malicious intent and that disclosure of the identity of the person making
32 the report or complaint would not be likely to endanger the life or safety
33 of the person making the report or complaint, it shall provide a copy of
34 the DCS information to the person filing the petition and the original DCS
35 information is subject to discovery in a subsequent civil action regarding
36 the making of the report or complaint.

37 N. The department shall provide the person who conducts a forensic
38 medical evaluation with any records the person requests, including social
39 history and family history regarding the child, the child's siblings and
40 the child's parents or guardians.

41 O. The department shall provide DCS information on request to a
42 prospective adoptive parent, foster parent or guardian, if the information
43 concerns a child the prospective adoptive parent, foster parent or
44 guardian seeks to adopt or provide care for.

1 P. If the department receives information that is confidential by
2 law, the department shall maintain the confidentiality of the information
3 as prescribed in the applicable law.

4 Q. A person may authorize the release of DCS information about the
5 person but may not waive the confidentiality of DCS information concerning
6 any other person.

7 R. The department may provide a summary of the outcome of a
8 department investigation to the person who reported the suspected child
9 abuse or neglect.

10 S. The department shall adopt rules to facilitate the accessibility
11 of DCS information.

12 T. The department or a person who receives DCS information pursuant
13 to subsection B of this section shall provide DCS information to law
14 enforcement and a court to protect the safety of any employee of the
15 department or the office of the attorney general or to protect a family
16 member of such an employee.

17 U. A person who receives DCS information shall maintain the
18 confidentiality of the information and shall not further disclose the
19 information unless the disclosure is authorized by law or a court order.

20 V. The department may charge a fee for copying costs required to
21 prepare DCS information for release pursuant to this section or section
22 8-807.01.

23 W. A person who violates this section is guilty of a class 2
24 misdemeanor.

25 X. For the purposes of this section, "DCS information" includes all
26 information the department gathers during the course of an investigation
27 conducted under this chapter from the time a file is opened and until it
28 is closed. DCS information does not include information that is contained
29 in child welfare agency licensing records.

30 Sec. 2. Section 36-509, Arizona Revised Statutes, is amended to
31 read:

32 36-509. Confidential records; immunity; definition

33 A. A health care entity must keep records and information contained
34 in records confidential and not as public records, except as provided in
35 this section. Records and information contained in records may only be
36 disclosed to:

37 1. Physicians and providers of health, mental health or social and
38 welfare services involved in caring for, treating or rehabilitating the
39 patient.

40 2. Individuals to whom the patient or the patient's health care
41 decision maker has given authorization to have information disclosed.

42 3. Persons authorized by a court order.

43 4. Persons doing research only if the activity is conducted
44 pursuant to applicable federal or state laws and regulations governing
45 research.

1 5. The state department of corrections in cases in which prisoners
2 confined to the state prison are patients in the state hospital on
3 authorized transfers either by voluntary admission or by order of the
4 court.

5 6. Governmental or law enforcement agencies if necessary to:

6 (a) Secure the return of a patient who is on unauthorized absence
7 from any agency where the patient was undergoing evaluation and treatment.

8 (b) Report a crime on the premises.

9 (c) Avert a serious and imminent threat to an individual or the
10 public.

11 7. Persons, including family members, other relatives, close
12 personal friends or any other person identified by the patient, as
13 otherwise authorized or required by state or federal law, including the
14 health insurance portability and accountability act of 1996 privacy
15 standards (45 Code of Federal Regulations part 160 and part 164,
16 subpart E), or pursuant to one of the following:

17 (a) If the patient is present or otherwise available and has the
18 capacity to make health care decisions, the health care entity may
19 disclose the information if one of the following applies:

20 (i) The patient agrees verbally or agrees in writing by signing a
21 consent form that permits disclosure.

22 (ii) The patient is given an opportunity to object and does not
23 express an objection.

24 (iii) The health care entity reasonably infers from the
25 circumstances, based on the exercise of professional judgment, that the
26 patient does not object to the disclosure.

27 (b) If the patient is not present or the opportunity to agree or
28 object to the disclosure of information cannot practicably be provided
29 because of the patient's incapacity or an emergency circumstance, the
30 health care entity may disclose the information if the entity determines
31 that the disclosure of the information is in the best interests of the
32 patient. In determining whether the disclosure of information is in the
33 best interests of the patient, in addition to all other relevant factors,
34 the health care entity shall consider all of the following:

35 (i) The patient's medical and treatment history, including the
36 patient's history of compliance or noncompliance with an established
37 treatment plan based on information in the patient's medical record and on
38 reliable and relevant information received from the patient's family
39 members, friends or others involved in the patient's care, treatment or
40 supervision.

41 (ii) Whether the information is necessary or, based on professional
42 judgment, would be useful in assisting the patient in complying with the
43 care, treatment or supervision prescribed in the patient's treatment plan.

44 (iii) Whether the health care entity has reasonable grounds to
45 believe that the release of the information may subject the patient to

1 domestic violence, abuse or endangerment by family members, friends or
2 other persons involved in the patient's care, treatment or supervision.

3 (c) The health care entity believes the patient presents a serious
4 and imminent threat to the health or safety of the patient or others, and
5 the health care entity believes that family members, friends or others
6 involved in the patient's care, treatment or supervision can help to
7 prevent the threat.

8 (d) In order for the health care entity to notify a family member,
9 friend or other person involved in the patient's care, treatment or
10 supervision of the patient's location, general condition or death.

11 8. A state agency that licenses health professionals pursuant to
12 title 32, chapter 13, 15, 17, 19.1 or 33 and that requires these records
13 in the course of investigating complaints of professional negligence,
14 incompetence or lack of clinical judgment.

15 9. A state or federal agency that licenses health care providers.

16 10. A governmental agency or a competent professional, as defined
17 in section 36-3701, in order to comply with chapter 37 of this title.

18 11. ~~Human rights~~ INDEPENDENT OVERSIGHT committees established
19 pursuant to title 41, chapter 35. Any information released pursuant to
20 this paragraph shall comply with the requirements of section 41-3804 and
21 applicable federal law and shall be released without personally
22 identifiable information unless the personally identifiable information is
23 required for the official purposes of the ~~human rights~~ INDEPENDENT
24 OVERSIGHT committee. Case information received by ~~a human rights~~ AN
25 INDEPENDENT OVERSIGHT committee shall be maintained as confidential. For
26 the purposes of this paragraph, "personally identifiable information"
27 includes a person's name, address, date of birth, social security number,
28 tribal enrollment number, telephone or telefacsimile number, driver
29 license number, places of employment, school identification number and
30 military identification number or any other distinguishing characteristic
31 that tends to identify a particular person.

32 12. A patient or the patient's health care decision maker.

33 13. The department of public safety or another law enforcement
34 agency by the court to comply with the requirements of section 36-540,
35 subsections O and P.

36 14. A third-party payor or the payor's contractor as permitted by
37 the health insurance portability and accountability act privacy standards,
38 45 Code of Federal Regulations part 160 and part 164, subpart E.

39 15. A private entity that accredits the health care provider and
40 with whom the health care provider has an agreement requiring the agency
41 to protect the confidentiality of patient information.

42 16. The legal representative of a health care entity in possession
43 of the record for the purpose of securing legal advice.

44 17. A person or entity as otherwise required by state or federal
45 law.

1 18. A person or entity as permitted by the federal regulations on
2 alcohol and drug abuse treatment (42 Code of Federal Regulations part 2).

3 19. A person or entity to conduct utilization review, peer review
4 and quality assurance pursuant to section 36-441, 36-445, 36-2402 or
5 36-2917.

6 20. A person maintaining health statistics for public health
7 purposes as authorized by law.

8 21. A grand jury as directed by subpoena.

9 22. A person or entity that provides services to the patient's
10 health care provider, as defined in section 12-2291, and with whom the
11 health care provider has a business associate agreement that requires the
12 person or entity to protect the confidentiality of patient information as
13 required by the health insurance portability and accountability act
14 privacy standards, 45 Code of Federal Regulations part 164, subpart E.

15 B. Information disclosed pursuant to subsection A, paragraph 7 of
16 this section may include only information that is directly relevant to the
17 person's involvement with the patient's health care or payment related to
18 the patient's health care. Subsection A, paragraph 7 of this section does
19 not prevent a health care entity from obtaining or receiving information
20 about the patient from a family member, friend or other person involved in
21 the patient's care, treatment or supervision. A health care entity shall
22 keep a record of the name and contact information of any person to whom
23 any patient information is released pursuant to subsection A, paragraph 7
24 of this section. A decision to release or withhold information pursuant
25 subsection A, paragraph 7 of this section is subject to review pursuant to
26 section 36-517.01.

27 C. Information and records obtained in the course of evaluation,
28 examination or treatment and submitted in any court proceeding pursuant to
29 this chapter or title 14, chapter 5 are confidential and are not public
30 records unless the hearing requirements of this chapter or title 14,
31 chapter 5 require a different procedure. Information and records that are
32 obtained pursuant to this section and submitted in a court proceeding
33 pursuant to title 14, chapter 5 and that are not clearly identified by the
34 parties as confidential and segregated from nonconfidential information
35 and records are considered public records.

36 D. Notwithstanding subsections A, B and C of this section, the
37 legal representative of a patient who is the subject of a proceeding
38 conducted pursuant to this chapter and title 14, chapter 5 has access to
39 the patient's information and records in the possession of a health care
40 entity or filed with the court.

41 E. A health care entity that acts in good faith under this article
42 is not liable for damages in any civil action for the disclosure of
43 records or payment records that is made pursuant to this article or as
44 otherwise provided by law. The health care entity is presumed to have

1 acted in good faith. This presumption may be rebutted by clear and
2 convincing evidence.

3 F. For the purposes of this section, "information" means records
4 and the information contained in records.

5 Sec. 3. Section 36-553, Arizona Revised Statutes, is amended to
6 read:

7 36-553. Developmental disabilities advisory council;
8 membership; duties

9 A. The developmental disabilities advisory council is established
10 consisting of the following members:

11 1. One parent or guardian of a child who is under ~~the age of~~
12 eighteen years **OF AGE** and who has a developmental disability.

13 2. One parent or guardian of a child who is eighteen years of age
14 or older and who has a developmental disability.

15 3. One parent of a child who is served through the Arizona early
16 intervention program.

17 4. One member of the private sector who represents an agency that
18 is certified to provide in-home services to persons with developmental
19 disabilities.

20 5. Two members of the private sector who are contracted with the
21 division to deliver services to persons with developmental disabilities,
22 one who represents a provider of residential services and one who
23 represents a provider of adult day services including employment services.

24 6. Two members with a developmental disability who receive services
25 from the division.

26 7. Two members **WHO** each ~~representing~~ **REPRESENT** a different
27 developmental disability advocacy organization.

28 8. One member **WHO IS** from the designated protection and advocacy
29 organization.

30 9. ~~A~~ **ONE** member ~~representing~~ **WHO REPRESENTS** a nonprofit
31 organization providing direct advocacy to families with children with
32 developmental disabilities.

33 10. The director of the Arizona health care cost containment system
34 administration or the director's designee. This person is a nonvoting
35 member.

36 11. The assistant director of the division of developmental
37 disabilities. This person is a nonvoting member.

38 12. One member **WHO IS** from the developmental disabilities planning
39 council.

40 13. One member ~~representing~~ **WHO REPRESENTS** foster parents of
41 children with developmental disabilities.

42 14. One member from the ~~human rights~~ **INDEPENDENT OVERSIGHT**
43 committee on persons with developmental disabilities established by
44 section 41-3801.

1 B. The governor shall appoint all voting members. Voting members
2 and their families shall not be employees of the department of economic
3 security. In making these appointments the governor shall select at least
4 five members who are clients or guardians, parents or other family members
5 of persons with developmental disabilities. One of these five voting
6 members shall represent a person who is eligible for long-term care
7 services pursuant to chapter 29, article 2 of this title. The governor
8 shall also consider geographic representation in making these
9 appointments.

10 C. Council members appointed pursuant to subsection A, paragraphs 1
11 through 9 and 13 and 14 of this section shall serve staggered three year
12 terms. No members may serve more than two full terms. A vacancy
13 occurring on the council shall be filled by the governor appointing
14 another qualified person to serve the remainder of the term.

15 D. The council chairman shall be chosen annually by a majority vote
16 of the council. A majority of voting council members constitutes a
17 quorum.

18 E. The council shall meet in each district at least once a year.

19 F. The division must allow the council to review new policies and
20 major policy changes before the division submits the policies or changes
21 for public comment.

22 G. The council shall review auditor general reports regarding the
23 division and services provided by the department of health services.

24 H. Council members are not eligible to receive compensation, but
25 council members appointed pursuant to subsection A, paragraphs 1 through 9
26 and 13 and 14 of this section are eligible to receive reimbursement of
27 expenses pursuant to title 38, chapter 4, article 2.

28 I. The council shall review and make recommendations to the
29 division regarding:

30 1. Coordinating and integrating services provided by state agencies
31 and providers that have contracted with state agencies to provide
32 developmental disability programs.

33 2. The health, safety, welfare and legal rights of persons with
34 developmental disabilities.

35 3. The division's plan for service delivery and improvement.

36 4. Establishing and reviewing division policies and programs.

37 5. The cost-effectiveness of division services.

38 6. Assessing the division's annual needs.

39 7. Selecting the assistant director of the division.

40 8. Monitoring the division's annual budget.

41 9. The sale or lease of the real property and improvements on the
42 real property formerly used by the department of economic security for the
43 Arizona training program in Phoenix.

44 J. The council shall oversee and approve expenditures of monies
45 from the ~~persons with developmental disabilities~~ client DEVELOPMENTAL

1 ~~DISABILITY~~ services trust fund established ~~in~~ BY section 36-572 following
2 expenditure guidelines established by the council.

3 K. The council shall provide the public with an opportunity to
4 address the council at regularly publicized meetings.

5 L. The council shall submit an annual report of activities to the
6 director, the governor, the president of the senate and the speaker of the
7 house of representatives by December 31 of each year AND PROVIDE A COPY OF
8 THIS REPORT TO THE SECRETARY OF STATE.

9 M. The department shall make meeting space available to the
10 developmental disabilities advisory council at locations and times
11 convenient to the council and shall provide secretarial and other staff
12 support.

13 Sec. 4. Section 36-557, Arizona Revised Statutes, is amended to
14 read:

15 36-557. Community developmental disability services: service
16 providers

17 A. The department may use state and federal monies appropriated or
18 otherwise available to it for this purpose to assist in the establishment
19 and maintenance of local developmental disability services by public or
20 private nonprofit or profit agencies. The monies may be expended as
21 professional fees for service, in contracts for advancement or
22 reimbursement or in another appropriate manner and may be used for any
23 purpose necessary to the provision of local developmental disability
24 services. The monies may not be used for departmental salaries, care of
25 persons with developmental disabilities by the department or any other
26 purpose within the department, but may be used for consultation to the
27 department in the interest of local programs.

28 B. A local public or private nonprofit or profit agency providing
29 or intending to provide community developmental disability services and
30 desiring to contract with the department for the furnishing of these
31 services shall submit a program plan and budget to the department on the
32 forms and in the manner required by the department. If the program meets
33 departmental standards and is consistent with the state plan of the
34 department and the individualized service program plan of the client, the
35 department, notwithstanding the provisions of title 41, chapter 23,
36 relating to procurement and including services pursuant to section
37 36-2943, may contract with that agency for required services on terms the
38 department requires. The contracts shall provide that the provider of
39 services is subject to a continuing program evaluation by the department
40 through progress reports, expenditure reports, program audits or other
41 appropriate evaluation techniques to assure that the provider of service
42 is in continued compliance with the terms of the contract and the
43 department's community developmental disability service standards and
44 requirements.

1 C. Contracts between the department and a school district or
2 districts are subject to approval by the department of education.

3 D. This article does not make the department or the state
4 responsible for funding programs beyond the limits of legislative
5 appropriation for the programs. This article does not require a provider
6 of services to provide unreimbursed services to the department or its
7 clients.

8 E. Contracts to provide community developmental disability services
9 shall require that:

10 1. The contractor is obligated to operate a program or service in
11 strict accordance with the standards adopted for that program or service
12 by the department.

13 2. If state funding is provided for a particular program the
14 contractor, to the extent of positions available that are being purchased
15 by the department, shall provide services to a client with a developmental
16 disability who has been evaluated and placed by the department.

17 3. All contractors must carry liability insurance in amounts
18 approved by the risk management division of the department of
19 administration and file proof of insurance with the risk management
20 division. The director may waive that requirement on a case by case basis
21 on a finding that insurance for the program or service is not practicably
22 available at affordable rates and that it is necessary that the program or
23 service be provided by the contractor.

24 4. All clients enrolled in programs have all the same specified
25 rights as they would have if enrolled in a program operated directly by
26 the state.

27 5. Except for emergency placement pursuant to section 36-560,
28 subsection N, payment shall not be made based on program services provided
29 to a client if a placement evaluation has not been made, and no individual
30 program has been prepared and when, based on that placement evaluation, no
31 recommendation has been made to enroll the client in the particular
32 program service.

33 F. This article does not require a contracted agency to provide
34 unreimbursed services to the department or a client of the department.

35 G. Contracts for the purchase of residential care services other
36 than those community residential settings licensed pursuant to this
37 chapter, in addition to other general requirements applicable to purchase
38 of care contractors, shall:

39 1. Provide for mandatory inspection by the department every two
40 years for facilities other than group homes.

41 2. Provide for mandatory monitoring by the department for health,
42 safety, contractual and programmatic standards at least every six months,
43 unless the department has granted deemed status to the service provider or
44 the service provider received a score of at least ninety-five ~~per cent~~
45 PERCENT on the most recent monitoring visit. If the department has

1 granted deemed status or awarded the service provider with a score of at
2 least ninety-five ~~per cent~~ PERCENT on the most recent monitoring visit, it
3 shall monitor that provider once each year. On determination by the
4 department that there is reasonable cause to believe a service provider is
5 not adhering to the department's programmatic or contractual requirements,
6 the department and any duly designated employee or agent of the department
7 may enter on and into the premises at any reasonable time for the purpose
8 of determining the state of compliance with the programmatic or
9 contractual requirements of the department.

10 3. Provide for mandatory investigation by the department in
11 response to complaints within ten working days, except that in those
12 instances that pose a danger to the client, the department shall conduct
13 the investigation immediately. Health and safety complaints related to
14 group homes shall be referred to the department of health services on
15 receipt. The department of health services shall share all incident
16 reports related to health and safety with the division of developmental
17 disabilities.

18 4. Except for group homes licensed by the department of health
19 services, specify the health and safety and sanitation codes and other
20 codes or standards applicable to the facility or to the operation of the
21 facility by the contractor other than group homes.

22 5. Provide for mandatory periodic reports to be filed by the
23 provider contractor with the department with respect to the operation of
24 the facility.

25 6. Provide that the facility and the books and records of the
26 facility and of the provider are subject to inspection at any time by
27 employees of the department or designees of the department.

28 7. Provide that parents and guardians of persons with developmental
29 disabilities residing at the facility, members of the developmental
30 disabilities advisory council, and members of other recognized and ongoing
31 advocacy groups for persons with developmental disabilities may inspect
32 the facility at reasonable times.

33 H. Contracts for THE purchase of residential care services shall
34 require a community residential setting to be licensed pursuant to this
35 chapter other than group homes licensed by the department of health
36 services.

37 I. Contracts for the purchase of day program or employment
38 services, in addition to the other general requirements applicable to the
39 purchase of client services, must provide for mandatory monitoring by the
40 department for health, safety, contractual, programmatic and quality
41 assurance standards at least once every six months, unless the department
42 has granted deemed status to the service provider. If the department has
43 granted deemed status to the service provider, the department shall
44 monitor that provider once each year. The department and any duly
45 designated employee or agent of the department may enter on or into the

1 service provider's premises at any reasonable time for the purpose of
2 determining the state of compliance with the department's programmatic,
3 contractual and quality assurance requirements.

4 J. The division shall ensure that all contracted developmental
5 disabilities service providers rendering services pursuant to this chapter
6 are reimbursed in accordance with title XIX of the social security act.

7 K. Contracts for client services issued by the department shall
8 include language outlining the provisions for a grievance and appeal
9 procedure. The director shall provide notice to providers not less than
10 thirty days before the issuance of an amendment to a qualified vendor
11 agreement. The decision of the director regarding qualified vendor
12 agreement amendments may be appealed pursuant to title 41, chapter 6,
13 article 10. The grievance process applicable to these contracts shall
14 comply with title XIX requirements.

15 L. As a condition of contracts with any developmental disabilities
16 service provider, the director shall require terms that conform with state
17 and federal laws, title XIX statutes and regulations and quality
18 standards. The director shall further require contract terms that ensure
19 performance by the provider of the provisions of each contract executed
20 pursuant to this article.

21 M. The division shall establish a rate structure that ensures an
22 equitable funding basis for private nonprofit or for profit agencies for
23 services pursuant to subsection B of this section and section 36-2943. In
24 each fiscal year, the division shall review and adjust the rate structure
25 based on section 36-2959. A rate book shall be published and updated by
26 the division to announce the rate structure that shall be incorporated by
27 reference in contracts for client services.

28 N. The division shall disclose to a service provider in the
29 individual program plan ~~defined by section 36-551~~, and in all meetings
30 resulting from a response to a vendor call, any historical and behavioral
31 information necessary for the provider to be able to anticipate the
32 client's future behaviors and needs, including summary information from
33 the program review committee, unusual incident reports reviewed by the
34 ~~human rights~~ INDEPENDENT OVERSIGHT committee and behavioral treatment
35 plans. The division shall redact the client's identification from this
36 information.

37 O. Service providers are authorized to engage in the following
38 activities in accordance with a client's individual program plan:

39 1. Administer medications, including assisting with the client's
40 self-administration of medications.

41 2. Log, store, remove and dispose of medications.

42 3. Maintain medications and protocols for direct care.

43 4. Serve as the client's representative payee if requested by the
44 client or the client's guardian and approved by the payer.

1 P. The department may adopt rules establishing procedures for
2 engaging in the activities listed in subsection 0 of this section.

3 Q. To protect the health and safety of a client, a provider must
4 notify the division within twenty-four hours if an emergency situation
5 exists in which the provider is unable to meet the health or safety needs
6 of the client.

7 R. On notification of an emergency situation, the department shall
8 hold an individual program plan meeting within fifteen days after
9 notification to recommend any changes, including whether there is a need
10 for temporary additional staffing to provide appropriate care for a
11 client, and develop a plan within thirty days after notification to
12 resolve the situation.

13 Sec. 5. Heading change

14 The chapter heading of title 41, chapter 35, Arizona Revised
15 Statutes, is changed from "HUMAN RIGHTS COMMITTEES" to "INDEPENDENT
16 OVERSIGHT COMMITTEES".

17 Sec. 6. Section 41-3801, Arizona Revised Statutes, as amended by
18 Laws 2014, chapter 215, section 196, is amended to read:

19 41-3801. Independent oversight committee on persons with
20 developmental disabilities

21 A. The ~~human rights~~ INDEPENDENT OVERSIGHT committee on persons with
22 developmental disabilities is established in the department of ~~economic~~
23 ~~security~~ ADMINISTRATION to promote the rights of clients who are receiving
24 developmental disabilities services from the department pursuant to title
25 36, chapter 5.1.

26 B. The committee shall be organized pursuant to this section and
27 the requirements of section 41-3804.

28 C. The director of the department of ~~economic security~~ may
29 establish additional committees for each district office established
30 pursuant to section 41-1961 or to oversee the activities of any service
31 provider.

32 D. Each ~~human rights~~ INDEPENDENT OVERSIGHT committee established
33 pursuant to this section shall consist of at least seven and not more than
34 fifteen members appointed by the director of the department ~~of economic~~
35 ~~security~~ with expertise in at least one of the following areas:

- 36 1. Psychology.
- 37 2. Law.
- 38 3. Medicine.
- 39 4. Education.
- 40 5. Special education.
- 41 6. Social work.
- 42 7. CRIMINAL JUSTICE.

1 E. Each ~~human rights~~ INDEPENDENT OVERSIGHT committee shall include
2 at least two parents of children who receive services from the division of
3 developmental disabilities.

4 F. THE DIVISION OF DEVELOPMENTAL DISABILITIES SHALL PROVIDE TO EACH
5 INDEPENDENT OVERSIGHT COMMITTEE INFORMATION REGARDING INCIDENTS OF:

- 6 1. POSSIBLE ABUSE OR NEGLECT OR VIOLATIONS OF RIGHTS.
- 7 2. PHYSICAL ABUSE, SEXUAL ABUSE AND OTHER ABUSE.
- 8 3. ACCIDENTAL INJURY.
- 9 4. MISSING CLIENTS.
- 10 5. BEHAVIORAL EMERGENCY MEASURES.
- 11 6. MEDICATION ERRORS, INCLUDING THEFT OF MEDICATION OR MISSING
12 MEDICATION.
- 13 7. DEATH.
- 14 8. SUICIDE ATTEMPTS.
- 15 9. HOSPITALIZATIONS.
- 16 10. INCARCERATIONS.
- 17 11. THEFT OF CLIENT PROPERTY OR MONEY.
- 18 12. PROPERTY DESTRUCTION.

19 Sec. 7. Repeal

20 Section 41-3801, Arizona Revised Statutes, as amended by Laws 2017,
21 chapter 184, section 1, is repealed.

22 Sec. 8. Section 41-3802, Arizona Revised Statutes, is amended to
23 read:

24 41-3802. Independent oversight committee on children, youth
25 and families

26 A. The ~~human rights~~ INDEPENDENT OVERSIGHT committee on children,
27 youth and families is established in the department of ~~child safety~~
28 ADMINISTRATION to promote the rights of persons who receive services from
29 the department.

30 B. Notwithstanding section 8-807, the department shall disclose
31 confidential information and records to the committee established pursuant
32 to this section or designated pursuant to subsection C of this section,
33 subject to the requirements of section 41-3804 and applicable federal law.

34 C. The director of the department may designate a citizen review
35 panel, multidisciplinary case consultation team or other oversight entity
36 as the ~~human rights~~ INDEPENDENT OVERSIGHT committee on children, youth and
37 families if the panel, team or entity meets the requirements of this
38 section.

39 D. The committee shall be organized pursuant to this section and
40 the requirements of section 41-3804.

41 E. The director of the department may establish additional
42 committees for each district office established pursuant to section
43 41-1961 or to oversee the activities of any service provider.

1 F. Each ~~human rights~~ INDEPENDENT OVERSIGHT committee established
2 pursuant to this section shall consist of at least seven and not more than
3 fifteen members appointed by the director of the department with expertise
4 in at least one of the following areas:

- 5 1. Psychology.
- 6 2. Law.
- 7 3. Medicine.
- 8 4. Education.
- 9 5. Special education.
- 10 6. Social work.

11 G. Each ~~human rights~~ INDEPENDENT OVERSIGHT committee shall include
12 at least two parents of children who receive services from the department.
13 If a report of abuse has been substantiated against a parent, that parent
14 shall not serve on a ~~human rights~~ AN INDEPENDENT OVERSIGHT committee.

15 Sec. 9. Section 41-3803, Arizona Revised Statutes, is amended to
16 read:

17 41-3803. Independent oversight committee on the mentally ill;
18 training plan

19 A. The ~~human rights~~ INDEPENDENT OVERSIGHT committee on the mentally
20 ill is established in the ~~Arizona health care cost containment system~~
21 DEPARTMENT OF ADMINISTRATION to promote the rights of persons who receive
22 behavioral health services pursuant to title 36, chapters 5 and 34.

23 B. Each region of this state covered by a regional behavioral
24 health authority shall have at least one ~~human rights~~ INDEPENDENT
25 OVERSIGHT committee with the authority and responsibilities as prescribed
26 by the ~~Arizona health care cost containment system administration~~
27 DEPARTMENT OF ADMINISTRATION pursuant to rules adopted by the
28 ~~administration~~ DEPARTMENT relating to behavioral health services.

29 C. The director of the ~~Arizona health care cost containment system~~
30 ~~administration~~ DEPARTMENT may establish additional committees to serve
31 persons who receive behavioral health services or to oversee the
32 activities of any service provider.

33 D. Each committee established pursuant to this section shall
34 consist of at least seven and not more than fifteen members appointed by
35 the director of the ~~Arizona health care cost containment system~~
36 ~~administration~~ DEPARTMENT with expertise in at least one of the following
37 areas:

- 38 1. Psychology.
- 39 2. Law.
- 40 3. Medicine.
- 41 4. Education.
- 42 5. Special education.
- 43 6. Social work.

- 1 7. Mental health.
- 2 8. Housing for the mentally ill.
- 3 9. Criminal justice.
- 4 10. Public safety.

5 E. Each ~~human rights~~ INDEPENDENT OVERSIGHT committee, if
6 appropriate, shall include at least two parents of children who receive
7 behavioral health services pursuant to title 36, chapter 34.

8 F. Each ~~human rights~~ INDEPENDENT OVERSIGHT committee shall include
9 at least one member who is a current or former client of the behavioral
10 health system.

11 G. Current or former providers or employees of providers that have
12 contracted with a regional behavioral health authority may serve on
13 ~~a human rights~~ AN INDEPENDENT OVERSIGHT committee BUT MAY NOT HOLD MORE
14 THAN TWO POSITIONS ON THE COMMITTEE.

15 H. Each ~~human rights~~ INDEPENDENT OVERSIGHT committee may hold one
16 or more community forums annually to receive comments regarding the
17 experiences of individuals living with serious mental illness, and their
18 family members and caregivers, across the care continuum.

19 I. The ~~Arizona health care cost containment system administration~~
20 DEPARTMENT shall ensure that each regional behavioral health authority and
21 its providers develop and implement a human rights training plan to ensure
22 that providers are trained regarding clients' human rights and the duties
23 of the ~~human rights~~ INDEPENDENT OVERSIGHT committees.

24 J. Each committee shall be organized pursuant to this section and
25 the requirements of section 41-3804.

26 Sec. 10. Section 41-3804, Arizona Revised Statutes, is amended to
27 read:

28 41-3804. Independent oversight committees; membership;
29 duties; client information; immunity; violation;
30 classification

31 A. Subject to the approval of the ~~appropriate department~~ director
32 OF THE DEPARTMENT OF ADMINISTRATION, each committee established pursuant
33 to this article shall adopt guidelines that govern its operation,
34 including terms of members, quorum and attendance requirements and removal
35 of a committee member if necessary. Each committee shall adopt these
36 guidelines by majority vote within the first three months of its
37 formation. These guidelines shall not conflict with this article. The
38 director of the ~~appropriate~~ department shall approve the guidelines unless
39 they are inconsistent with the department's statutes, policies, procedures
40 or rules, or if the guidelines do not promote participation by all
41 interested members of the community that the committee serves. In
42 addition to the procedures in the guidelines, each ~~human rights~~
43 INDEPENDENT OVERSIGHT committee must approve the removal of any committee
44 member on majority vote of the committee. The ~~appropriate department~~

1 director shall provide committee members the opportunity to review
2 potential changes to rules or policies that affect the committee.

3 B. Employees of the department of economic security, the department
4 of child safety, the Arizona health care cost containment system and the
5 Arizona health care cost containment system administration and
6 subject-matter experts may serve on a committee only as nonvoting members
7 whose presence is not counted for the purpose of determining a quorum.

8 C. Advocacy groups, local advisory councils, committee members and
9 the director ~~of the appropriate department~~ may submit names of candidates
10 to fill committee vacancies. The ~~appropriate~~ director shall appoint a
11 person to fill a vacancy subject to the approval of the committee.

12 D. Each committee shall meet at least quarterly each calendar year.

13 E. Each committee shall provide independent oversight to:

14 1. Ensure that the rights of clients are protected.

15 2. Review incidents of possible abuse, neglect or denial of a
16 client's rights.

17 3. Make recommendations to the ~~appropriate department~~ director and
18 the legislature regarding laws, rules, policies, procedures and practices
19 to ensure the protection of the rights of clients receiving behavioral
20 health and developmental disability services.

21 F. Each committee shall submit written objections to specific
22 problems or violations of client rights by department employees or service
23 providers to the director ~~of the appropriate department~~ for review. The
24 ~~appropriate department~~ director shall respond, in writing, to written
25 objections within twenty-one days after receiving the objections.

26 G. Each committee shall issue an annual report of its activities
27 and recommendations for changes to the director ~~of the appropriate~~
28 ~~department~~, the president of the senate, the speaker of the house of
29 representatives and the chairpersons of the senate health and human
30 services committee and the house of representatives health committee, or
31 their successor committees.

32 H. A committee may request from the ~~appropriate~~ department the
33 services of a consultant or department employee to advise it on specific
34 issues. The consultant may be a member of another ~~human rights~~
35 **INDEPENDENT OVERSIGHT** committee, a department employee or a service
36 provider. Subject to the availability of monies, the ~~appropriate~~
37 department shall assume the cost of the consultant. A consultant shall
38 not participate in committee votes.

39 I. Subject to federal law, committee members and consultants have
40 access to client information and records, including quality of care
41 reports and, on request, case presentations, adult protective services
42 investigation case status and outcomes, substantiations, recommendations
43 and other quality of care findings from peer reviews or any successor
44 report or process, maintained by the ~~appropriate~~ department, provider or
45 regional behavioral health authorities to the extent necessary to conduct

1 committee duties. Each person who receives information or records
 2 pursuant to this subsection shall maintain the information or records as
 3 confidential and sign an agreement to comply with all confidentiality
 4 requirements. Any client information or records shall be released to the
 5 committee without the designation of personally identifiable information
 6 unless the personally identifiable information is required for the
 7 official purposes of the committee. A violation of this subsection is a
 8 class 2 misdemeanor. For the purposes of this subsection, "personally
 9 identifiable information" includes a person's name, address, date of
 10 birth, social security number, tribal enrollment number, telephone or fax
 11 number, e-mail address, social media identifier, driver license number,
 12 places of employment, school identification or military identification
 13 number or any other distinguishing characteristic that tends to identify a
 14 particular person.

15 J. If a committee's request for information or records from ~~a~~ THE
 16 department is denied, the committee may request in writing that the
 17 director ~~of the appropriate department~~ review this decision. The ~~agency~~
 18 director or designee shall conduct the review within five business days
 19 after receiving the request for review. The ~~agency~~ DEPARTMENT shall bear
 20 the costs of conducting the review. A final agency decision made pursuant
 21 to this subsection is subject to judicial review pursuant to title 12,
 22 chapter 7, article 6. The ~~agency~~ DEPARTMENT shall not release any
 23 information or records during the period an appeal may be filed or is
 24 pending.

25 K. Confidential records and information received by the committee
 26 or its consultant are subject to the same provisions concerning subpoenas,
 27 discovery and use in legal actions as are the original records and
 28 information.

29 L. The ~~human rights~~ INDEPENDENT OVERSIGHT committees may exchange
 30 information and engage in planning and coordination activities between
 31 committee members in the performance of committee duties pursuant to this
 32 section.

33 M. The ~~human rights~~ INDEPENDENT OVERSIGHT committees may encourage
 34 public awareness and involvement in their activities by supporting
 35 committee members with affiliation agreements with postsecondary
 36 education-sponsored internship placements pursuant to the ~~appropriate~~
 37 department's approved operating procedures.

38 N. The ~~appropriate departments~~ DEPARTMENT shall coordinate
 39 education and training programs for committee members to facilitate their
 40 role as ~~human rights~~ INDEPENDENT OVERSIGHT committee members. The
 41 ~~appropriate departments~~ DEPARTMENT shall coordinate statewide meetings of
 42 committees at least every two years and provide staff for the committees.

1 0. Any person who, in good faith and without malice and in
2 connection with duties or functions of a committee established pursuant to
3 this article, takes an action or makes a decision or recommendation as a
4 member or agent of a committee or who furnishes records, information or
5 assistance that is related to the duties of a committee is not subject to
6 liability for civil damages in consequence of that action. The court
7 shall determine the presence of malice by clear and convincing evidence.

8 P. Title 38, chapter 3, article 8, relating to conflict of
9 interest, applies to all committee members.

APPROVED BY THE GOVERNOR APRIL 17, 2018.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 17, 2018.