

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

CHAPTER 251

SENATE BILL 1218

AN ACT

AMENDING SECTIONS 36-551, 36-591, 36-592, 36-593, 36-594, 36-594.02 AND 36-595.01, ARIZONA REVISED STATUTES; RELATING TO COMMUNITY RESIDENTIAL SETTINGS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 36-551, Arizona Revised Statutes, is amended to read:

36-551. Definitions

In this chapter, unless the context otherwise requires:

1. "Adaptive behavior" means the effectiveness or degree to which the individual meets the standards of personal independence and social responsibility expected of the person's age and cultural group.

2. "Adult developmental home" means a residential setting in a family home in which the care, physical custody and supervision of the adult client are the responsibility, under a twenty-four-hour care model, of the licensee who, in that capacity, is not an employee of the division or of a service provider and the home provides the following services for a group of siblings or up to three adults with developmental disabilities:

(a) Room and board.

(b) Habilitation.

(c) Appropriate personal care.

(d) Appropriate supervision.

3. "Adult household member":

(a) Means a person who is at least eighteen years of age and who resides in an adult developmental home, child developmental home or other home and community based service setting for at least thirty days or who resides in the household throughout the year for more than a cumulative total of thirty days.

(b) DOES NOT INCLUDE A PERSON WHO IS RECEIVING DEVELOPMENTAL DISABILITIES SERVICES FROM THE DEPARTMENT.

4. "Advisory council" means the developmental disabilities advisory council.

5. "Arizona training program facility" means a state-operated institution for clients of the department with developmental disabilities.

6. "Attributable to cognitive disability, epilepsy, cerebral palsy or autism" means that there is a causal relationship between the presence of an impairing condition and the developmental disability.

7. "Autism" means a condition characterized by severe disorders in communication and behavior resulting in limited ability to communicate, understand, learn and participate in social relationships.

8. "Case management" means coordinating the assistance needed by persons with developmental disabilities and their families in order to ensure that persons with developmental disabilities attain their maximum potential for independence, productivity and integration into the community.

9. "Case manager" means a person who coordinates the implementation of the individual program plan of goals, objectives and appropriate services for persons with developmental disabilities.

10. "Cerebral palsy" means a permanently disabling condition resulting from damage to the developing brain that may occur before, after

1 or during birth and that results in loss or impairment of control over
2 voluntary muscles.

3 11. "Child developmental certified home" means a regular foster
4 home as defined in section 8-501 that is licensed pursuant to section
5 8-509 and that is certified by the department pursuant to section
6 36-593.01.

7 12. "Child developmental home" means a residential setting in a
8 family home in which the care and supervision of the child are the
9 responsibility, under a twenty-four-hour care model, of the licensee who
10 serves as the developmental home provider of the child in the home setting
11 and who, in that capacity, is not an employee of the division or of a
12 service provider and the home provides the following services for a group
13 of siblings or up to three children with developmental disabilities:

14 (a) Room and board.

15 (b) Habilitation.

16 (c) Appropriate personal care.

17 (d) Appropriate supervision.

18 13. "Client" means a person receiving developmental disabilities
19 services from the department.

20 14. "Cognitive disability" means a condition that involves
21 subaverage general intellectual functioning, that exists concurrently with
22 deficits in adaptive behavior manifested before the age of eighteen and
23 that is sometimes referred to as intellectual disability.

24 15. "Community residential setting" means a residential setting in
25 which persons with developmental disabilities live and are provided with
26 appropriate supervision by the service provider responsible for the
27 operation of the residential setting. Community residential setting
28 includes a child developmental home or an adult developmental home
29 operated or contracted by the department or the department's contracted
30 vendor or a group home operated or contracted by the department.

31 16. "Consent" means voluntary informed consent. Consent is
32 voluntary if not given as the result of coercion or undue influence.
33 Consent is informed if the person giving the consent has been informed of
34 and comprehends the nature, purpose, consequences, risks and benefits of
35 the alternatives to the procedure, and has been informed and comprehends
36 that withholding or withdrawal of consent will not prejudice the future
37 provision of care and services to the client. In cases of unusual or
38 hazardous treatment procedures performed pursuant to section 36-561,
39 subsection A, experimental research, organ transplantation and
40 nontherapeutic surgery, consent is informed if, in addition to the
41 foregoing, the person giving the consent has been informed of and
42 comprehends the method to be used in the proposed procedure.

43 17. "Daily habilitation" means habilitation as defined in this
44 section except that the method of payment is for one unit per residential
45 day.

46 18. "Department" means the department of economic security.

1 19. "Developmental disability" means either a strongly demonstrated
2 potential that a child under six years of age has a developmental
3 disability or will develop a developmental disability, as determined by a
4 test performed pursuant to section 36-694 or by other appropriate tests,
5 or a severe, chronic disability that:

6 (a) Is attributable to cognitive disability, cerebral palsy,
7 epilepsy or autism.

8 (b) Is manifested before the age of eighteen.

9 (c) Is likely to continue indefinitely.

10 (d) Results in substantial functional limitations in three or more
11 of the following areas of major life activity:

12 (i) Self-care.

13 (ii) Receptive and expressive language.

14 (iii) Learning.

15 (iv) Mobility.

16 (v) Self-direction.

17 (vi) Capacity for independent living.

18 (vii) Economic self-sufficiency.

19 (e) Reflects the need for a combination and sequence of
20 individually planned or coordinated special, interdisciplinary or generic
21 care, treatment or other services that are of lifelong or extended
22 duration.

23 20. "Director" means the director of the department of economic
24 security.

25 21. "Division" means the division of developmental disabilities in
26 the department of economic security.

27 22. "Epilepsy" means a neurological condition characterized by
28 abnormal electrical-chemical discharge in the brain. This discharge is
29 manifested in various forms of physical activities called seizures.

30 23. "Group home" means a community residential setting for not more
31 than six persons with developmental disabilities that is operated by a
32 service provider under contract with the department and that provides room
33 and board and daily habilitation, and other assessed medically necessary
34 services and supports to meet the needs of each person. Group home does
35 not include an adult developmental home, a child developmental home or an
36 intermediate care facility for persons with an intellectual disability.

37 24. "Guardian" means the person who, under court order, is
38 appointed to fulfill the powers and duties prescribed in section 14-5312.
39 Guardian does not include a guardian pursuant to section 14-5312.01.

40 25. "Habilitation" means the process by which a person is assisted
41 to acquire and maintain those life skills that enable the person to cope
42 more effectively with personal and environmental demands and to raise the
43 level of the person's physical, mental and social efficiency.

44 26. "Indigent" means a person with a developmental disability whose
45 estate or parent is unable to bear the full cost of maintaining or

1 providing services for that person in a developmental disabilities
2 program.

3 27. "Individual program plan" means a written statement of services
4 to be provided to a person with developmental disabilities, including
5 habilitation goals and objectives, that is developed following initial
6 placement evaluation and revised after periodic evaluations.

7 28. "Intermediate care facility for persons with an intellectual
8 disability" means a facility that primarily provides health and
9 rehabilitative services to persons with developmental disabilities that
10 are above the service level of room and board or supervisory care services
11 or personal care services as defined in section 36-401 but that are less
12 intensive than skilled nursing services.

13 29. "Large group setting" means a setting that in addition to
14 residential care provides support services such as therapy, recreation and
15 transportation to seven or more persons with developmental disabilities
16 who require intensive supervision.

17 30. "Least restrictive alternative" means an available program or
18 facility that fosters independent living, that is the least confining for
19 the client's condition and where service and treatment are provided in the
20 least intrusive manner reasonably and humanely appropriate to the
21 individual's needs.

22 31. "Likely to continue indefinitely" means that the developmental
23 disability has a reasonable likelihood of continuing for a protracted
24 period of time or for life.

25 32. "Manifested before the age of eighteen" means that the
26 disability must be apparent and have a substantially limiting effect on a
27 person's functioning before the age of eighteen.

28 33. "Physician" means a person who is licensed to practice pursuant
29 to title 32, chapter 13 or 17.

30 34. "Placement evaluation" means an interview and evaluation of a
31 person with a developmental disability and a review of the person's prior
32 medical and program histories to determine the appropriate developmental
33 disability programs and services for the person and recommendations for
34 specific program placements for the person.

35 35. "Psychologist" means a person who is licensed pursuant to
36 title 32, chapter 19.1.

37 36. "Respite services" means services that provide a short-term or
38 long-term interval of rest or relief to the care provider of a person with
39 a developmental disability.

40 37. "Responsible person" means the parent or guardian of a minor
41 with a developmental disability, the guardian of an adult with a
42 developmental disability or an adult with a developmental disability who
43 is a client or an applicant for whom no guardian has been appointed.

44 38. "Service provider" means a person or agency that provides
45 services to clients pursuant to a contract, service agreement or qualified
46 vendor agreement with the division.

1 39. "State operated service center" means a state owned or leased
2 facility that is operated by the department and that provides temporary
3 residential care and space for child and adult services that include
4 respite care, crisis intervention and diagnostic evaluation.

5 40. "Subaverage general intellectual functioning" means measured
6 intelligence on standardized psychometric instruments of two or more
7 standard deviations below the mean for the tests used.

8 41. "Substantial functional limitation" means a limitation so
9 severe that extraordinary assistance from other people, programs, services
10 or mechanical devices is required to assist the person in performing
11 appropriate major life activities.

12 42. "Supervision" means the process by which the activities of an
13 individual with developmental disabilities are directed, influenced or
14 monitored.

15 Sec. 2. Section 36-591, Arizona Revised Statutes, is amended to
16 read:

17 36-591. Adult developmental homes; child developmental homes;
18 licensing; notification requirements; exception;
19 annual inspection

20 A. An adult developmental home or child developmental home shall be
21 licensed pursuant to this article.

22 B. Group homes, except for those described in subsection E of this
23 section, shall be licensed for health and safety by the department of
24 health services pursuant to section 36-132.

25 C. The division shall notify the department of health services of:

26 1. Service providers who enter into contracts with the division for
27 group homes.

28 2. Any violation of health and safety standards observed during
29 monitoring visits.

30 D. The department of health services shall immediately notify the
31 division:

32 1. When a group home license has been denied, suspended or revoked.

33 2. Of any other licensing action taken on a group home by the
34 department of health services.

35 3. Of substantiated complaints regarding health and safety.

36 E. The division shall ensure that state-operated residential
37 settings that are owned or leased facilities operated by the division meet
38 the same standards as group homes unless they are certified as
39 intermediate care facilities for persons with an intellectual disability
40 pursuant to 42 Code of Federal Regulations section 483.400. An
41 intermediate care facility for persons with an intellectual disability
42 that is operated by the division or a private entity is not required to be
43 licensed under this section if the facility is certified pursuant to 42
44 Code of Federal Regulations section 483.400.

45 F. The department shall **ANNUALLY** visit each adult developmental
46 home and child developmental home and inspect the premises used for the

1 care of children or vulnerable adults for sanitation, fire and other
2 actual and potential hazards. The department shall take any action it
3 deems necessary to carry out the duties imposed by this section, including
4 the denial of the application for licensure and the suspension or
5 revocation of the home's license.

6 Sec. 3. Section 36-592, Arizona Revised Statutes, is amended to
7 read:

8 36-592. Adult developmental homes; child developmental homes;
9 license applications; investigation and operation;
10 third-party contractors; rules; definitions

11 A. An applicant for an adult developmental home or child
12 developmental home license shall submit an application on a form
13 prescribed by the department.

14 B. Before issuing **OR RENEWING** a license to an applicant, the
15 department shall investigate the activities and standards of care within
16 the setting, the financial stability of the applicant, the character and
17 training of the applicant and the adequacy of services. **BEFORE ISSUING OR**
18 **RENEWING A LICENSE, THE DEPARTMENT SHALL DETERMINE THAT THE APPLICANT IS**
19 **ABLE TO MEET THE EMOTIONAL, PHYSICAL, SOCIAL, DEVELOPMENTAL, EDUCATIONAL,**
20 **CULTURAL AND INTELLECTUAL NEEDS OF CLIENTS.** The department by rule shall
21 establish standards for licensure. **THE DEPARTMENT SHALL MAINTAIN A SYSTEM**
22 **OF INDEPENDENT OVERSIGHT OF LICENSING. THE DEPARTMENT MAY CONTRACT WITH**
23 **THIRD PARTIES TO PERFORM SERVICES IN CONNECTION WITH OVERSIGHT AND**
24 **LICENSING. THE DEPARTMENT MAY NOT CONTRACT WITH THE SAME THIRD PARTY FOR**
25 **BOTH OVERSIGHT AND LICENSURE UNDER THIS SUBSECTION.**

26 C. Each license shall state in general terms the kind of setting
27 the licensee is authorized to operate and shall prescribe the number, ages
28 and sex of clients.

29 D. A licensee who holds an adult developmental home or child
30 developmental home license shall:

- 31 1. Comply with applicable health, safety and sanitation codes or
32 standards and document its compliance.
- 33 2. File reports as prescribed by the department.
- 34 3. Allow the department to inspect or monitor its services and
35 facility and the facility's books and records.
- 36 4. Comply with rules adopted by the department.
- 37 5. Provide for the health, safety and welfare of the licensee's
38 clients.

39 **6. ALLOW THE INSPECTION OF THE DEVELOPMENTAL HOME AT REASONABLE**
40 **TIMES PURSUANT TO SECTION 36-595.01.**

41 E. A license expires one year from the date of issuance.

42 F. For each adult developmental home and child developmental home,
43 the department shall:

- 44 1. Conduct an annual **LICENSING** home visit.
- 45 2. Monitor the settings for compliance with ~~department rules~~
46 **HEALTH, SAFETY, CONTRACTUAL, PROGRAMMATIC AND QUALITY ASSURANCE STANDARDS**

1 at least two times per year. THE DEPARTMENT SHALL MAINTAIN A SYSTEM OF
2 INDEPENDENT OVERSIGHT OF MONITORING. THE DEPARTMENT MAY ENTER INTO A
3 CONTRACT WITH THIRD PARTIES TO PERFORM SERVICES IN CONNECTION WITH
4 OVERSIGHT AND MONITORING. THE DEPARTMENT MAY NOT CONTRACT WITH THE SAME
5 THIRD PARTY FOR BOTH OVERSIGHT AND MONITORING UNDER THIS PARAGRAPH.

6 3. INVESTIGATE A COMPLAINT WITHIN TEN WORKING DAYS AFTER RECEIVING
7 NOTICE OF THE COMPLAINT, EXCEPT THAT IF THERE IS A DANGER TO A CLIENT, THE
8 DEPARTMENT SHALL CONDUCT THE INVESTIGATION IMMEDIATELY.

9 G. THE DEPARTMENT SHALL ESTABLISH BY RULE MINIMUM QUALIFICATIONS,
10 RESPONSIBILITIES AND OVERSIGHT FOR THE LICENSING AND MONITORING OF ADULT
11 DEVELOPMENTAL HOMES AND CHILD DEVELOPMENTAL HOMES. THE RULES REGARDING
12 MINIMUM QUALIFICATIONS SHALL ADDRESS PROFESSIONAL JUDGMENT, CONFLICTS OF
13 INTEREST AND TRAINING. THE RULES SHALL ESTABLISH THE FREQUENCY AND TYPE
14 OF VISITS FOR LICENSING AND MONITORING, MAXIMUM CASELOAD RATIOS FOR THOSE
15 PERFORMING LICENSING AND MONITORING SERVICES AND A SYSTEM FOR APPROPRIATE
16 PUBLIC ACCESS TO INFORMATION REGARDING LICENSING AND MONITORING FINDINGS.

17 H. THE DEPARTMENT MAY CONTRACT WITH THE SAME THIRD PARTY TO PERFORM
18 SERVICES IN CONNECTION WITH THE LICENSING AND MONITORING OF AN ADULT
19 DEVELOPMENTAL HOME OR A CHILD DEVELOPMENTAL HOME.

20 I. FOR THE PURPOSES OF THIS SECTION:

21 1. "LICENSING" INCLUDES RECRUITING AND VERIFYING QUALIFICATIONS OF
22 APPLICANTS.

23 2. "MONITORING" INCLUDES MONITORING HEALTH, SAFETY, CONTRACTUAL,
24 PROGRAMMATIC AND QUALITY ASSURANCE STANDARDS OF AN ADULT DEVELOPMENTAL
25 HOME OR CHILD DEVELOPMENTAL HOME.

26 Sec. 4. Section 36-593, Arizona Revised Statutes, is amended to
27 read:

28 36-593. Adult developmental homes; child developmental homes;
29 provisional licenses

30 A. The department may issue a provisional license to ~~an applicant~~
31 ~~or~~ A licensee WHO IS SEEKING RENEWAL OF A REGULAR LICENSE AND who is
32 temporarily unable to conform to standards of care established by the
33 department if the deficiencies can be remedied within ~~six~~ THREE months.

34 B. A provisional license is valid for ~~six~~ THREE months and shall
35 not be renewed.

36 C. The department shall not issue a provisional license if
37 conditions exist that could endanger the health, ~~and~~ safety OR WELFARE of
38 clients residing in the setting.

39 D. If the department determines that the ~~applicant or~~ licensee
40 meets the standards established by the department, the department shall
41 issue a regular license. The regular license is valid for one year from
42 the date the department issued the provisional license.

1 Sec. 5. Section 36-594, Arizona Revised Statutes, is amended to
2 read:

3 36-594. Denial, suspension or revocation of license;
4 definition

5 A. The department may deny, suspend or revoke a license pursuant to
6 title 41, chapter 6, article 6 for any one or a combination of the
7 following:

8 1. An applicant or licensee violates this chapter, rules adopted
9 pursuant to this chapter, federal or state statutes or city or county
10 ordinances or codes.

11 2. An applicant or licensee refuses to cooperate in obtaining or
12 providing information the department deems necessary to determine if the
13 department's standards have been met.

14 3. An employee, applicant, licensee or adult household member of an
15 adult developmental home or child developmental home has been convicted
16 of, has been found by a court to have committed or is reasonably believed
17 to have committed a sex offense, a drug related offense, a theft related
18 offense, a violence related offense, child abuse, child neglect,
19 contributing to the delinquency of a minor or abuse or neglect of a
20 vulnerable adult. ~~For the purposes of this paragraph, "vulnerable adult"~~
21 ~~has the same meaning prescribed in section 13-3623.~~

22 4. AN EMPLOYEE, APPLICANT, LICENSEE OR ADULT HOUSEHOLD MEMBER OF AN
23 ADULT DEVELOPMENTAL HOME OR CHILD DEVELOPMENTAL HOME IS THE SUBJECT OF A
24 PROPOSED SUBSTANTIATED OR A SUBSTANTIATED FINDING OF ABUSE, NEGLECT OR
25 EXPLOITATION BY ADULT PROTECTIVE SERVICES OR THE DEPARTMENT OF CHILD
26 SAFETY.

27 ~~4.~~ 5. An applicant or licensee materially misrepresents or
28 wilfully fails to disclose information to the department relating to the
29 applicant's or licensee's qualifications, experience or performance of
30 responsibilities.

31 ~~5.~~ 6. The department determines, using criteria established in
32 statute or rule, that an applicant or licensee is unable or unwilling to
33 meet the physical or emotional needs of clients.

34 7. AN APPLICANT, LICENSEE OR ADULT HOUSEHOLD MEMBER OF AN ADULT
35 DEVELOPMENTAL HOME OR CHILD DEVELOPMENTAL HOME FAILS TO OBTAIN OR MAINTAIN
36 A FINGERPRINT CLEARANCE CARD AS REQUIRED BY SECTION 36-594.02.

37 8. AN EMPLOYEE, APPLICANT, LICENSEE, VOLUNTEER OR ADULT HOUSEHOLD
38 MEMBER OF AN ADULT DEVELOPMENTAL HOME OR CHILD DEVELOPMENTAL HOME IS
39 ALLEGED TO HAVE ABUSED, NEGLECTED OR EXPLOITED A VULNERABLE ADULT AND THE
40 DEPARTMENT OF ECONOMIC SECURITY INTENDS TO ENTER, PURSUANT TO SECTION
41 46-458, A SUBSTANTIATED FINDING OF ABUSE, NEGLECT OR EXPLOITATION OF A
42 VULNERABLE ADULT IN THE ADULT PROTECTIVE SERVICES REGISTRY.

43 B. FOR THE PURPOSES OF THIS SECTION, "VULNERABLE ADULT" HAS THE
44 SAME MEANING PRESCRIBED IN SECTION 13-3623.

1 Sec. 6. Section 36-594.02, Arizona Revised Statutes, is amended to
2 read:

3 36-594.02. Fingerprinting of adult developmental home
4 licensees and child developmental home licensees

5 ~~A person who applies for a license for an adult developmental home~~
6 ~~or a child developmental home~~ AN APPLICANT, LICENSEE OR ADULT HOUSEHOLD
7 MEMBER OF AN ADULT DEVELOPMENTAL HOME OR CHILD DEVELOPMENTAL HOME shall
8 have a valid fingerprint clearance card issued pursuant to section
9 41-1758.07. The person shall certify on forms that are provided by the
10 department whether the person is awaiting trial on or has been convicted
11 of any of the offenses listed in section 41-1758.07, subsections B and C
12 in this state or similar offenses in another state or jurisdiction.

13 Sec. 7. Section 36-595.01, Arizona Revised Statutes, is amended to
14 read:

15 36-595.01. Access to facilities

16 A group home, ADULT DEVELOPMENTAL HOME OR CHILD DEVELOPMENTAL HOME
17 shall allow the following to inspect the facility at reasonable times:

- 18 1. Parents and guardians of facility residents.
- 19 2. Members of the developmental disabilities advisory council.

20 ~~3. Members of recognized, established groups that advocate for~~
21 ~~persons with developmental disabilities.~~

22 3. EMPLOYEES OR AGENTS OF AN ARIZONA NONPROFIT ADVOCACY
23 ORGANIZATION THAT IS A STATE CHAPTER OF A NATIONAL ADVOCACY ORGANIZATION,
24 THAT HAS AFFILIATED LOCAL CHAPTERS WITHIN THIS STATE AND THAT HAS
25 HISTORICAL EXPERTISE WITH MONITORING RESIDENTIAL SETTINGS FOR PERSONS WITH
26 INTELLECTUAL AND DEVELOPMENTAL DISABILITIES.

27 Sec. 8. Effective date

28 This act is effective from and after June 30, 2019.

APPROVED BY THE GOVERNOR APRIL 17, 2018.

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