

State of Arizona
House of Representatives
Fifty-fourth Legislature
First Regular Session
2019

CHAPTER 121
HOUSE BILL 2070

AN ACT

AMENDING SECTIONS 36-401 AND 36-421, ARIZONA REVISED STATUTES; RELATING TO
ADULT BEHAVIORAL HEALTH.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 36-401, Arizona Revised Statutes, is amended to
3 read:
4 36-401. Definitions: adult foster care
5 A. In this chapter, unless the context otherwise requires:
6 1. "Accredited health care institution" means a health care
7 institution, other than a hospital, that is currently accredited by a
8 nationally recognized accreditation organization.
9 2. "Accredited hospital" means a hospital that is currently
10 accredited by a nationally recognized organization on hospital
11 accreditation.
12 3. "ADULT BEHAVIORAL HEALTH THERAPEUTIC HOME" MEANS A RESIDENCE FOR
13 INDIVIDUALS WHO ARE AT LEAST EIGHTEEN YEARS OF AGE, HAVE BEHAVIORAL HEALTH
14 ISSUES AND NEED BEHAVIORAL HEALTH SERVICES THAT DOES ALL OF THE FOLLOWING
15 FOR THOSE INDIVIDUALS:
16 (a) PROVIDES ROOM AND BOARD.
17 (b) ASSISTS IN ACQUIRING DAILY LIVING SKILLS.
18 (c) COORDINATES TRANSPORTATION TO SCHEDULED APPOINTMENTS.
19 (d) MONITORS BEHAVIORS.
20 (e) ASSISTS IN THE SELF-ADMINISTRATION OF MEDICATION.
21 (f) PROVIDES FEEDBACK TO CASE MANAGERS RELATED TO BEHAVIOR.
22 ~~3.~~ 4. "Adult day health care facility" means a facility that
23 provides adult day health services during a portion of a continuous
24 twenty-four-hour period for compensation on a regular basis for five or
25 more adults who are not related to the proprietor.
26 ~~4.~~ 5. "Adult day health services" means a program that provides
27 planned care supervision and activities, personal care, personal living
28 skills training, meals and health monitoring in a group setting during a
29 portion of a continuous twenty-four-hour period. Adult day health
30 services may also include preventive, therapeutic and restorative
31 health-related services that do not include behavioral health services.
32 ~~5.~~ 6. "Adult foster care home" means a residential setting that
33 provides room and board and adult foster care services for at least one
34 and no more than four adults who are participants in the Arizona long-term
35 care system pursuant to chapter 29, article 2 of this title or contracts
36 for services with the United States department of veterans affairs and in
37 which the sponsor or the manager resides with the residents and integrates
38 the residents who are receiving adult foster care into that person's
39 family.
40 ~~6.~~ 7. "Adult foster care services" means supervision, assistance
41 with eating, bathing, toileting, dressing, self-medication and other
42 routines of daily living or services authorized by rules adopted pursuant
43 to section 36-405 and section 36-2939, subsection C.

1 ~~7.~~ 8. "Assisted living center" means an assisted living facility
2 that provides resident rooms or residential units to eleven or more
3 residents.

4 ~~8.~~ 9. "Assisted living facility" means a residential care
5 institution, including an adult foster care home, that provides or
6 contracts to provide supervisory care services, personal care services or
7 directed care services on a continuous basis.

8 ~~9.~~ 10. "Assisted living home" means an assisted living facility
9 that provides resident rooms to ten or fewer residents.

10 ~~10.~~ 11. "Behavioral health services" means services that pertain
11 to mental health and substance use disorders and that are either:
12 (a) Performed by or under the supervision of a professional who is
13 licensed pursuant to title 32 and whose scope of practice allows for the
14 provision of these services.
15 (b) Performed on behalf of patients by behavioral health staff as
16 prescribed by rule.

17 ~~11.~~ 12. "Construction" means the building, erection, fabrication
18 or installation of a health care institution.

19 ~~12.~~ 13. "Continuous" means available at all times without
20 cessation, break or interruption.

21 ~~13.~~ 14. "Controlling person" means a person who:
22 (a) Through ownership, has the power to vote at least ten percent
23 of the outstanding voting securities.
24 (b) If the applicant or licensee is a partnership, is the general
25 partner or a limited partner who holds at least ten percent of the voting
26 rights of the partnership.
27 (c) If the applicant or licensee is a corporation, an association
28 or a limited liability company, is the president, the chief executive
29 officer, the incorporator or any person who owns or controls at least ten
30 percent of the voting securities. For the purposes of this subdivision,
31 corporation does not include nonprofit corporations.
32 (d) Holds a beneficial interest in ten percent or more of the
33 liabilities of the applicant or the licensee.

34 ~~14.~~ 15. "Department" means the department of health services.

35 ~~15.~~ 16. "Directed care services" means programs and services,
36 including supervisory and personal care services, that are provided to
37 persons who are incapable of recognizing danger, summoning assistance,
38 expressing need or making basic care decisions.

39 ~~16.~~ 17. "Direction" means authoritative policy or procedural
40 guidance for the accomplishment of a function or activity.

41 ~~17.~~ 18. "Director" means the director of the department of health
42 services.

43 ~~18.~~ 19. "Facilities" means buildings that are used by a health
44 care institution for providing any of the types of services as defined in
45 this chapter.

1 ~~19.~~ 20. "Freestanding urgent care center":
2 (a) Means an outpatient treatment center that, regardless of its
3 posted or advertised name, meets any of the following requirements:
4 (i) Is open twenty-four hours a day, excluding at its option
5 weekends or certain holidays, but is not licensed as a hospital.
6 (ii) Claims to provide unscheduled medical services not otherwise
7 routinely available in primary care physician offices.
8 (iii) By its posted or advertised name, gives the impression to the
9 public that it provides medical care for urgent, immediate or emergency
10 conditions.
11 (iv) Routinely provides ongoing unscheduled medical services for
12 more than eight consecutive hours for an individual patient.
13 (b) Does not include the following:
14 (i) A medical facility that is licensed under a hospital's license
15 and that uses the hospital's medical provider number.
16 (ii) A qualifying community health center pursuant to section
17 36-2907.06.
18 (iii) Any other health care institution licensed pursuant to this
19 chapter.
20 (iv) A physician's office that offers extended hours or same-day
21 appointments to existing and new patients and that does not meet the
22 requirements of subdivision (a), item (i), (iii) or (iv) of this
23 paragraph.
24 ~~20.~~ 21. "Governing authority" means the individual, agency,
25 partners, group or corporation, appointed, elected or otherwise
26 designated, in which the ultimate responsibility and authority for the
27 conduct of the health care institution are vested.
28 ~~21.~~ 22. "Health care institution" means every place, institution,
29 building or agency, whether organized for profit or not, that provides
30 facilities with medical services, nursing services, behavioral health
31 services, health screening services, other health-related services,
32 supervisory care services, personal care services or directed care
33 services and includes home health agencies as defined in section 36-151,
34 outdoor behavioral health care programs and hospice service agencies.
35 Health care institution does not include a community residential setting
36 as defined in section 36-551.
37 ~~22.~~ 23. "Health-related services" means services, other than
38 medical, that pertain to general supervision, protective, preventive and
39 personal care services, supervisory care services or directed care
40 services.
41 ~~23.~~ 24. "Health screening services" means the acquisition,
42 analysis and delivery of health-related data of individuals to aid in the
43 determination of the need for medical services.
44 ~~24.~~ 25. "Hospice" means a hospice service agency or the provision
45 of hospice services in an inpatient facility.

1 ~~25.~~ 26. "Hospice service" means a program of palliative and
2 supportive care for terminally ill persons and their families or
3 caregivers.

4 ~~26.~~ 27. "Hospice service agency" means an agency or organization,
5 or a subdivision of that agency or organization, that is engaged in
6 providing hospice services at the place of residence of its clients.

7 ~~27.~~ 28. "Inpatient beds" or "resident beds" means accommodations
8 with supporting services, such as food, laundry and housekeeping, for
9 patients or residents who generally stay in excess of twenty-four hours.

10 ~~28.~~ 29. "Licensed capacity" means the total number of persons for
11 whom the health care institution is authorized by the department to
12 provide services as required pursuant to this chapter if the person is
13 expected to stay in the health care institution for more than twenty-four
14 hours. For a hospital, licensed capacity means only those beds specified
15 on the hospital license.

16 ~~29.~~ 30. "Medical services" means the services that pertain to
17 medical care and that are performed at the direction of a physician on
18 behalf of patients by physicians, dentists, nurses and other professional
19 and technical personnel.

20 ~~30.~~ 31. "Modification" means the substantial improvement,
21 enlargement, reduction or alteration of or other change in a health care
22 institution.

23 ~~31.~~ 32. "Nonproprietary institution" means any health care
24 institution that is organized and operated exclusively for charitable
25 purposes, no part of the net earnings of which inures to the benefit of
26 any private shareholder or individual, or that is operated by the state or
27 any political subdivision of the state.

28 ~~32.~~ 33. "Nursing care institution" means a health care institution
29 that provides inpatient beds or resident beds and nursing services to
30 persons who need continuous nursing services but who do not require
31 hospital care or direct daily care from a physician.

32 ~~33.~~ 34. "Nursing services" means those services that pertain to
33 the curative, restorative and preventive aspects of nursing care and that
34 are performed at the direction of a physician by or under the supervision
35 of a registered nurse licensed in this state.

36 ~~34.~~ 35. "Organized medical staff" means a formal organization of
37 physicians, and dentists where appropriate, with the delegated authority
38 and responsibility to maintain proper standards of medical care and to
39 plan for continued betterment of that care.

40 ~~35.~~ 36. "Outdoor behavioral health care program" means an agency
41 that provides behavioral health services in an outdoor environment as an
42 alternative to behavioral health services that are provided in a health
43 care institution with facilities. Outdoor behavioral health care programs
44 do not include:

1 (a) Programs, facilities or activities that are operated by a
2 government entity or that are licensed by the department as a child care
3 program pursuant to chapter 7.1 of this title.

4 (b) Outdoor activities for youth that are designated to be
5 primarily recreational and that are organized by church groups, scouting
6 organizations or similar groups.

7 (c) Outdoor youth programs licensed by the department of economic
8 security.

9 ~~36.~~ 37. "Personal care services" means assistance with activities
10 of daily living that can be performed by persons without professional
11 skills or professional training and includes the coordination or provision
12 of intermittent nursing services and the administration of medications and
13 treatments by a nurse who is licensed pursuant to title 32, chapter 15 or
14 as otherwise provided by law.

15 ~~37.~~ 38. "Physician" means any person who is licensed pursuant to
16 title 32, chapter 13 or 17.

17 ~~38.~~ 39. "Recidivism reduction services" means services that are
18 delivered by an adult residential care institution to its residents to
19 encourage lawful behavior and to discourage or prevent residents who are
20 suspected of, charged with or convicted of one or more criminal offenses,
21 or whose mental health and substance use can be reasonably expected to
22 place them at risk for the future threat of prosecution, diversion or
23 incarceration, from engaging in future unlawful behavior.

24 ~~39.~~ 40. "Recidivism reduction staff" means a person who provides
25 recidivism reduction services.

26 ~~40.~~ 41. "Residential care institution" means a health care
27 institution other than a hospital or a nursing care institution that
28 provides resident beds or residential units, supervisory care services,
29 personal care services, behavioral health services, directed care services
30 or health-related services for persons who do not need continuous nursing
31 services.

32 ~~41.~~ 42. "Residential unit" means a private apartment, unless
33 otherwise requested by a resident, that includes a living and sleeping
34 space, kitchen area, private bathroom and storage area.

35 ~~42.~~ 43. "Respite care services" means services that are provided
36 by a licensed health care institution to persons otherwise cared for in
37 foster homes and in private homes to provide an interval of rest or relief
38 of not more than thirty days to operators of foster homes or to family
39 members.

40 ~~43.~~ 44. "Substantial compliance" means that the nature or number
41 of violations revealed by any type of inspection or investigation of a
42 health care institution does not pose a direct risk to the life, health or
43 safety of patients or residents.

44 ~~44.~~ 45. "Supervision" means direct overseeing and inspection of
45 the act of accomplishing a function or activity.

1 ~~45.~~ 46. "Supervisory care services" means general supervision,
2 including daily awareness of resident functioning and continuing needs,
3 the ability to intervene in a crisis and assistance in the
4 self-administration of prescribed medications.

5 ~~46.~~ 47. "Temporary license" means a license that is issued by the
6 department to operate a class or subclass of a health care institution at
7 a specific location and that is valid until an initial licensing
8 inspection.

9 ~~47.~~ 48. "Unscheduled medical services" means medically necessary
10 periodic health care services that are unanticipated or cannot reasonably
11 be anticipated and that require medical evaluation or treatment before the
12 next business day.

13 B. If there are fewer than four Arizona long-term care system
14 participants receiving adult foster care in an adult foster care home,
15 nonparticipating adults may receive other types of services that are
16 authorized by law to be provided in the adult foster care home as long as
17 the number of adults served, including the Arizona long-term care system
18 participants, does not exceed four.

19 C. Nursing care services may be provided by the adult foster care
20 licensee if the licensee is a nurse who is licensed pursuant to title 32,
21 chapter 15 and the services are limited to those allowed pursuant to law.
22 The licensee shall keep a record of nursing services rendered.

23 Sec. 2. Section 36-421, Arizona Revised Statutes, is amended to
24 read:

25 36-421. Construction or modification of a health care
26 institution

27 A. A license application for a health care institution shall
28 include architectural plans and specifications or the department's
29 approval of the architectural plans and specifications. These plans and
30 specifications shall meet the minimum standards for licensure within the
31 class or subclass of health care institution for which it is intended.
32 The application shall include the name and address of each owner and
33 lessee of any agricultural land that is regulated pursuant to section
34 3-365.

35 B. Construction or modification of a licensed health care
36 institution shall meet the minimum standards for licensure within the
37 class or subclass of health care institution for which it is intended.

38 C. An applicant shall comply with all state statutes and rules and
39 local codes and ordinances required for the health care institution's
40 construction.

41 D. A health care institution or its facility shall not be licensed
42 if it is located on property that is less than four hundred feet from
43 agricultural land that is regulated pursuant to section 3-365, except that
44 the owner of the agricultural land may agree to comply with the buffer
45 zone requirements of section 3-365. If the owner agrees in writing to

1 comply with the buffer zone requirements and records the agreement in the
2 office of the county recorder as a restrictive covenant running with the
3 title to the land, the health care institution or facility may be licensed
4 and located within the affected buffer zone. The agreement may include
5 any stipulations regarding the health care institution or facility,
6 including conditions for future expansion of the health care institution
7 or facility and changes in the operational status of the health care
8 institution or facility that will result in a breach of the
9 agreement. This subsection does not apply to the issuance of a license
10 for a health care institution located in the same location for which a
11 health care institution license was previously issued.

12 E. Notwithstanding any law to the contrary, a health care
13 institution that was licensed as a level 1 psychiatric acute behavioral
14 health facility-inpatient facility as of January 1, 2012 and that is not
15 certified under title XIX of the social security act shall be licensed as
16 a hospital and is not required to comply with the physical plant standards
17 for a general hospital, rural general hospital or special hospital
18 prescribed by the department.

19 F. AN ADULT BEHAVIORAL HEALTH THERAPEUTIC HOME IS NOT REQUIRED TO
20 COMPLY WITH THE BUILDING CODES OR ZONING STANDARDS FOR A HEALTH CARE
21 INSTITUTION PRESCRIBED BY THE DEPARTMENT.

22 ~~F.~~ G. For the purposes of this section, health care institution
23 does not include a home health agency or a hospice service agency.

APPROVED BY THE GOVERNOR APRIL 23, 2019.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 23, 2019.