

Senate Engrossed House Bill

~~nursing shortage; workforce preparation; plan.~~  
(now: long-term care services; allowed practitioner)

State of Arizona  
House of Representatives  
Fifty-fifth Legislature  
First Regular Session  
2021

# HOUSE BILL 2633

AN ACT

AMENDING SECTION 36-2939, ARIZONA REVISED STATUTES; AMENDING SECTION 36-2939, ARIZONA REVISED STATUTES, AS AMENDED BY HOUSE BILL 2521, SECTION 4, FIFTY-FIFTH LEGISLATURE, FIRST REGULAR SESSION, AS TRANSMITTED TO THE GOVERNOR; RELATING TO LONG-TERM CARE SERVICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 36-2939, Arizona Revised Statutes, is amended to  
3 read:

4 36-2939. Long-term care system services; definition

5 A. The following services shall be provided by the program  
6 contractors to members who are determined to need institutional services  
7 pursuant to this article:

8 1. Nursing facility services other than services in an institution  
9 for tuberculosis or mental disease.

10 2. Notwithstanding any other law, behavioral health services if  
11 these services are not duplicative of long-term care services provided as  
12 of January 30, 1993 under this subsection and are authorized by the  
13 program contractor through the long-term care case management system. If  
14 the administration is the program contractor, the administration may  
15 authorize these services.

16 3. Hospice services. For the purposes of this paragraph, "hospice"  
17 means a program of palliative and supportive care for terminally ill  
18 members and their families or caregivers.

19 4. Case management services as provided in section 36-2938.

20 5. Health and medical services as provided in section 36-2907.

21 6. Dental services as follows:

22 (a) Except as provided in subdivision (b) of this paragraph, in an  
23 annual amount of not more than \$1,000 per member.

24 (b) Subject to approval by the centers for medicare and medicaid  
25 services, for persons treated at an Indian health service or tribal  
26 facility, adult dental services that are eligible for a federal medical  
27 assistance percentage of one hundred percent and that are in excess of the  
28 limit prescribed in subdivision (a) of this paragraph.

29 B. In addition to the services prescribed in subsection A of this  
30 section, the department, as a program contractor, shall provide the  
31 following services if appropriate to members who have a developmental  
32 disability as defined in section 36-551 and who are determined to need  
33 institutional services pursuant to this article:

34 1. Intermediate care facility services for a member who has a  
35 developmental disability as defined in section 36-551. For purposes of  
36 this article, a facility shall meet all federally approved standards and  
37 may only include the Arizona training program facilities, a state owned  
38 and operated service center, state owned or operated community residential  
39 settings and private facilities that contract with the department.

40 2. Home and community based services that may be provided in a  
41 member's home, at an alternative residential setting as prescribed in  
42 section 36-591 or at other behavioral health alternative residential  
43 facilities licensed by the department of health services and approved by  
44 the director of the Arizona health care cost containment system  
45 administration and that may include:

1 (a) Home health, which means the provision of nursing services,  
2 skilled home health aide services, home health aide services or medical  
3 supplies, equipment and appliances, that are provided on a part-time or  
4 intermittent basis by a licensed home health agency within a member's  
5 residence based on a physician's OR ALLOWED PRACTITIONER'S orders and in  
6 accordance with federal law. Physical therapy, occupational therapy, or  
7 speech and audiology services provided by a home health agency may be  
8 provided in accordance with federal law. Home health agencies shall  
9 comply with federal bonding requirements in a manner prescribed by the  
10 administration.

11 (b) Skilled home health aide, which means a home health service  
12 ordered by a physician OR AN ALLOWED PRACTITIONER on the member's plan of  
13 care and provided by a licensed nursing assistant under the supervision of  
14 a registered nurse pursuant to subsection G of this section.

15 (c) Home health aide, which means a service that provides  
16 intermittent health maintenance, continued treatment or monitoring of a  
17 health condition and supportive care for activities of daily living  
18 provided within a member's residence.

19 (d) Homemaker, which means a service that provides assistance in  
20 the performance of activities related to household maintenance within a  
21 member's residence.

22 (e) Personal care, which means a service that provides assistance  
23 to meet essential physical needs within a member's residence.

24 (f) Day care for persons with developmental disabilities, which  
25 means a service that provides planned care supervision and activities,  
26 personal care, activities of daily living skills training and habilitation  
27 services in a group setting during a portion of a continuous  
28 twenty-four-hour period.

29 (g) Habilitation, which means the provision of physical therapy,  
30 occupational therapy, speech or audiology services or training in  
31 independent living, special developmental skills, sensory-motor  
32 development, behavior intervention, and orientation and mobility in  
33 accordance with federal law.

34 (h) Respite care, which means a service that provides short-term  
35 care and supervision available on a twenty-four-hour basis.

36 (i) Transportation, which means a service that provides or assists  
37 in obtaining transportation for the member.

38 (j) Other services or licensed or certified settings approved by  
39 the director.

40 C. In addition to services prescribed in subsection A of this  
41 section, home and community based services may be provided in a member's  
42 home, in an adult foster care home as prescribed in section 36-401, in an  
43 assisted living home or assisted living center as defined in section  
44 36-401 or in a level one or level two behavioral health alternative  
45 residential facility approved by the director by program contractors to

1 all members who do not have a developmental disability as defined in  
2 section 36-551 and are determined to need institutional services pursuant  
3 to this article. Members residing in an assisted living center must be  
4 provided the choice of single occupancy. The director may also approve  
5 other licensed residential facilities as appropriate on a case-by-case  
6 basis for traumatic brain injured members. Home and community based  
7 services may include the following:

8 1. Home health, which means the provision of nursing services, home  
9 health aide services or medical supplies, equipment and appliances, that  
10 are provided on a part-time or intermittent basis by a licensed home  
11 health agency within a member's residence based on a physician's **OR**  
12 **ALLOWED PRACTITIONER'S** orders and in accordance with federal law.  
13 Physical therapy, occupational therapy, or speech and audiology services  
14 provided by a home health agency may be provided in accordance with  
15 federal law. Home health agencies shall comply with federal bonding  
16 requirements in a manner prescribed by the administration.

17 2. Home health aide, which means a service that provides  
18 intermittent health maintenance, continued treatment or monitoring of a  
19 health condition and supportive care for activities of daily living  
20 provided within a member's residence.

21 3. Homemaker, which means a service that provides assistance in the  
22 performance of activities related to household maintenance within a  
23 member's residence.

24 4. Personal care, which means a service that provides assistance to  
25 meet essential physical needs within a member's residence.

26 5. Adult day health, which means a service that provides planned  
27 care supervision and activities, personal care, personal living skills  
28 training, meals and health monitoring in a group setting during a portion  
29 of a continuous twenty-four-hour period. Adult day health may also  
30 include preventive, therapeutic and restorative health related services  
31 that do not include behavioral health services.

32 6. Habilitation, which means the provision of physical therapy,  
33 occupational therapy, speech or audiology services or training in  
34 independent living, special developmental skills, sensory-motor  
35 development, behavior intervention, and orientation and mobility in  
36 accordance with federal law.

37 7. Respite care, which means a service that provides short-term  
38 care and supervision available on a twenty-four-hour basis.

39 8. Transportation, which means a service that provides or assists  
40 in obtaining transportation for the member.

41 9. Home delivered meals, which means a service that provides for a  
42 nutritious meal that contains at least one-third of the recommended  
43 dietary allowance for an individual and that is delivered to the member's  
44 residence.

1           10. Other services or licensed or certified settings approved by  
2 the director.

3           D. The amount of monies expended by program contractors on home and  
4 community based services pursuant to subsection C of this section shall be  
5 limited by the director in accordance with the federal monies made  
6 available to this state for home and community based services pursuant to  
7 subsection C of this section. The director shall establish methods for  
8 allocating monies for home and community based services to program  
9 contractors and shall monitor expenditures on home and community based  
10 services by program contractors.

11           E. Notwithstanding subsections A, B, C, F and G of this section, a  
12 service may not be provided that does not qualify for federal monies  
13 available under title XIX of the social security act or the section 1115  
14 waiver.

15           F. In addition to services provided pursuant to subsections A, B  
16 and C of this section, the director may implement a demonstration project  
17 to provide home and community based services to special populations,  
18 including persons with disabilities who are eighteen years of age or  
19 younger, are medically fragile, reside at home and would be eligible for  
20 supplemental security income for the aged, blind or disabled or the state  
21 supplemental payment program, except for the amount of their parent's  
22 income or resources. In implementing this project, the director may  
23 provide for parental contributions for the care of their child.

24           G. In addition to services provided pursuant to subsections A, B, C  
25 and F of this section, the director shall implement a program under which  
26 skilled home health aide services may be provided to members who have  
27 developmental disabilities, who are under eighteen years of age and who  
28 are eligible to receive continuous skilled nursing or skilled nursing  
29 respite care services pursuant to chapter 5.1, article 1 of this title by  
30 a parent, guardian or family member who is a licensed nursing assistant  
31 employed by a medicare-certified home health agency service provider. The  
32 director shall request any necessary approvals from the centers for  
33 medicare and medicaid services to implement this subsection and to qualify  
34 for federal monies available under title XIX of the social security act or  
35 the section 1115 waiver.

36           H. Subject to section 36-562, the administration by rule shall  
37 prescribe a deductible schedule for programs provided to members who are  
38 eligible pursuant to subsection B of this section, except that the  
39 administration shall implement a deductible based on family income. In  
40 determining deductible amounts and whether a family is required to have  
41 deductibles, the department shall use adjusted gross income. Families  
42 whose adjusted gross income is at least four hundred percent and less than  
43 or equal to five hundred percent of the federal poverty guidelines shall  
44 have a deductible of two percent of adjusted gross income. Families whose  
45 adjusted gross income is more than five hundred percent of adjusted gross

1 income shall have a deductible of four percent of adjusted gross income.  
2 Only families whose children are under eighteen years of age and who are  
3 members who are eligible pursuant to subsection B of this section may be  
4 required to have a deductible for services. For the purposes of this  
5 subsection, "deductible" means an amount a family, whose children are  
6 under eighteen years of age and who are members who are eligible pursuant  
7 to subsection B of this section, pays for services, other than  
8 departmental case management and acute care services, before the  
9 department will pay for services other than departmental case management  
10 and acute care services.

11 I. FOR THE PURPOSES OF THIS SECTION, "ALLOWED PRACTITIONER" MEANS A  
12 NURSE PRACTITIONER WHO IS CERTIFIED PURSUANT TO TITLE 32, CHAPTER 15, A  
13 CLINICAL NURSE SPECIALIST WHO IS CERTIFIED PURSUANT TO TITLE 32, CHAPTER  
14 15 OR A PHYSICIAN ASSISTANT WHO IS CERTIFIED PURSUANT TO TITLE 32,  
15 CHAPTER 25.

16 Sec. 2. Section 36-2939, Arizona Revised Statutes, as amended by  
17 House Bill 2521, section 4, fifty-fifth legislature, first regular  
18 session, as transmitted to the governor, is amended to read:

19 36-2939. Long-term care system services; definition

20 A. The following services shall be provided by the program  
21 contractors to members who are determined to need institutional services  
22 pursuant to this article:

23 1. Nursing facility services other than services in an institution  
24 for tuberculosis or mental disease.

25 2. Notwithstanding any other law, behavioral health services if  
26 these services are not duplicative of long-term care services provided as  
27 of January 30, 1993 under this subsection and are authorized by the  
28 program contractor through the long-term care case management system. If  
29 the administration is the program contractor, the administration may  
30 authorize these services.

31 3. Hospice services. For the purposes of this paragraph, "hospice"  
32 means a program of palliative and supportive care for terminally ill  
33 members and their families or caregivers.

34 4. Case management services as provided in section 36-2938.

35 5. Health and medical services as provided in section 36-2907.

36 6. Dental services as follows:

37 (a) Except as provided in subdivision (b) of this paragraph, in an  
38 annual amount of not more than \$1,000 per member.

39 (b) Subject to approval by the centers for medicare and medicaid  
40 services, for persons treated at an Indian health service or tribal  
41 facility, adult dental services that are eligible for a federal medical  
42 assistance percentage of one hundred percent and that are in excess of the  
43 limit prescribed in subdivision (a) of this paragraph.

44 B. In addition to the services prescribed in subsection A of this  
45 section, the department, as a program contractor, shall provide the

1 following services if appropriate to members who have a developmental  
2 disability as defined in section 36-551 and who are determined to need  
3 institutional services pursuant to this article:

4 1. Intermediate care facility services for a member who has a  
5 developmental disability as defined in section 36-551. For purposes of  
6 this article, a facility shall meet all federally approved standards and  
7 may only include the Arizona training program facilities, a state owned  
8 and operated service center, state owned or operated community residential  
9 settings and private facilities that contract with the department.

10 2. Home and community based services that may be provided in a  
11 member's home, at an alternative residential setting as prescribed in  
12 section 36-591 or at other behavioral health alternative residential  
13 facilities licensed by the department of health services and approved by  
14 the director of the Arizona health care cost containment system  
15 administration and that may include:

16 (a) Home health, which means the provision of nursing services,  
17 licensed health aide services, home health aide services or medical  
18 supplies, equipment and appliances, that are provided on a part-time or  
19 intermittent basis by a licensed home health agency within a member's  
20 residence based on a physician's OR ALLOWED PRACTITIONER'S orders and in  
21 accordance with federal law. Physical therapy, occupational therapy, or  
22 speech and audiology services provided by a home health agency may be  
23 provided in accordance with federal law. Home health agencies shall  
24 comply with federal bonding requirements in a manner prescribed by the  
25 administration.

26 (b) Licensed health aide services, which means a home health agency  
27 service provided pursuant to subsection G of this section that is ordered  
28 by a physician OR AN ALLOWED PRACTITIONER on the member's plan of care and  
29 provided by a licensed health aide who is licensed pursuant to title 32,  
30 chapter 15.

31 (c) Home health aide, which means a service that provides  
32 intermittent health maintenance, continued treatment or monitoring of a  
33 health condition and supportive care for activities of daily living  
34 provided within a member's residence.

35 (d) Homemaker, which means a service that provides assistance in  
36 the performance of activities related to household maintenance within a  
37 member's residence.

38 (e) Personal care, which means a service that provides assistance  
39 to meet essential physical needs within a member's residence.

40 (f) Day care for persons with developmental disabilities, which  
41 means a service that provides planned care supervision and activities,  
42 personal care, activities of daily living skills training and habilitation  
43 services in a group setting during a portion of a continuous  
44 twenty-four-hour period.

1 (g) Habilitation, which means the provision of physical therapy,  
2 occupational therapy, speech or audiology services or training in  
3 independent living, special developmental skills, sensory-motor  
4 development, behavior intervention, and orientation and mobility in  
5 accordance with federal law.

6 (h) Respite care, which means a service that provides short-term  
7 care and supervision available on a twenty-four-hour basis.

8 (i) Transportation, which means a service that provides or assists  
9 in obtaining transportation for the member.

10 (j) Other services or licensed or certified settings approved by  
11 the director.

12 C. In addition to services prescribed in subsection A of this  
13 section, home and community based services may be provided in a member's  
14 home, in an adult foster care home as prescribed in section 36-401, in an  
15 assisted living home or assisted living center as defined in section  
16 36-401 or in a level one or level two behavioral health alternative  
17 residential facility approved by the director by program contractors to  
18 all members who do not have a developmental disability as defined in  
19 section 36-551 and are determined to need institutional services pursuant  
20 to this article. Members residing in an assisted living center must be  
21 provided the choice of single occupancy. The director may also approve  
22 other licensed residential facilities as appropriate on a case-by-case  
23 basis for traumatic brain injured members. Home and community based  
24 services may include the following:

25 1. Home health, which means the provision of nursing services, home  
26 health aide services or medical supplies, equipment and appliances, that  
27 are provided on a part-time or intermittent basis by a licensed home  
28 health agency within a member's residence based on a physician's **OR**  
29 **ALLOWED PRACTITIONER'S** orders and in accordance with federal  
30 law. Physical therapy, occupational therapy, or speech and audiology  
31 services provided by a home health agency may be provided in accordance  
32 with federal law. Home health agencies shall comply with federal bonding  
33 requirements in a manner prescribed by the administration.

34 2. Licensed health aide services, which means a home health agency  
35 service provided pursuant to subsection G of this section that is ordered  
36 by a physician **OR AN ALLOWED PRACTITIONER** on the member's plan of care and  
37 provided by a licensed health aide who is licensed pursuant to title 32,  
38 chapter 15.

39 3. Home health aide, which means a service that provides  
40 intermittent health maintenance, continued treatment or monitoring of a  
41 health condition and supportive care for activities of daily living  
42 provided within a member's residence.

43 4. Homemaker, which means a service that provides assistance in the  
44 performance of activities related to household maintenance within a  
45 member's residence.

1           5. Personal care, which means a service that provides assistance to  
2 meet essential physical needs within a member's residence.

3           6. Adult day health, which means a service that provides planned  
4 care supervision and activities, personal care, personal living skills  
5 training, meals and health monitoring in a group setting during a portion  
6 of a continuous twenty-four-hour period. Adult day health may also  
7 include preventive, therapeutic and restorative health related services  
8 that do not include behavioral health services.

9           7. Habilitation, which means the provision of physical therapy,  
10 occupational therapy, speech or audiology services or training in  
11 independent living, special developmental skills, sensory-motor  
12 development, behavior intervention, and orientation and mobility in  
13 accordance with federal law.

14           8. Respite care, which means a service that provides short-term  
15 care and supervision available on a twenty-four-hour basis.

16           9. Transportation, which means a service that provides or assists  
17 in obtaining transportation for the member.

18           10. Home delivered meals, which means a service that provides for a  
19 nutritious meal that contains at least one-third of the recommended  
20 dietary allowance for an individual and that is delivered to the member's  
21 residence.

22           11. Other services or licensed or certified settings approved by  
23 the director.

24           D. The amount of monies expended by program contractors on home and  
25 community based services pursuant to subsection C of this section shall be  
26 limited by the director in accordance with the federal monies made  
27 available to this state for home and community based services pursuant to  
28 subsection C of this section. The director shall establish methods for  
29 allocating monies for home and community based services to program  
30 contractors and shall monitor expenditures on home and community based  
31 services by program contractors.

32           E. Notwithstanding subsections A, B, C, F and G of this section, a  
33 service may not be provided that does not qualify for federal monies  
34 available under title XIX of the social security act or the section 1115  
35 waiver.

36           F. In addition to services provided pursuant to subsections A, B  
37 and C of this section, the director may implement a demonstration project  
38 to provide home and community based services to special populations,  
39 including persons with disabilities who are eighteen years of age or  
40 younger, are medically fragile, reside at home and would be eligible for  
41 supplemental security income for the aged, blind or disabled or the state  
42 supplemental payment program, except for the amount of their parent's  
43 income or resources. In implementing this project, the director may  
44 provide for parental contributions for the care of their child.

1 G. Consistent with the services provided pursuant to subsections A,  
2 B, C and F of this section and subject to approval by the centers for  
3 medicare and medicaid services, the director shall implement a program  
4 under which licensed health aide services may be provided to members who  
5 are under twenty-one years of age, who are eligible pursuant to section  
6 36-2934, including members with developmental disabilities as defined in  
7 chapter 5.1, article 1 of this title, and who require continuous skilled  
8 nursing or skilled nursing respite care services. The licensed health  
9 aide services may be provided only by a parent, guardian or family member  
10 who is a licensed health aide employed by a medicare-certified home health  
11 agency service provider. Not later than sixty days after the approval of  
12 the rules implementing section 32-1645, subsection C, the director shall  
13 request any necessary approvals from the centers for medicare and medicaid  
14 services to implement this subsection and to qualify for federal monies  
15 available under title XIX of the social security act or the section 1115  
16 waiver. The reimbursement rate for services provided under this  
17 subsection shall reflect the special skills needed to meet the health care  
18 needs of these members and shall exceed the reimbursement rate for home  
19 health aide services.

20 H. Subject to section 36-562, the administration by rule shall  
21 prescribe a deductible schedule for programs provided to members who are  
22 eligible pursuant to subsection B of this section, except that the  
23 administration shall implement a deductible based on family income. In  
24 determining deductible amounts and whether a family is required to have  
25 deductibles, the department shall use adjusted gross income. Families  
26 whose adjusted gross income is at least four hundred percent and less than  
27 or equal to five hundred percent of the federal poverty guidelines shall  
28 have a deductible of two percent of adjusted gross income. Families whose  
29 adjusted gross income is more than five hundred percent of adjusted gross  
30 income shall have a deductible of four percent of adjusted gross income.  
31 Only families whose children are under eighteen years of age and who are  
32 members who are eligible pursuant to subsection B of this section may be  
33 required to have a deductible for services. For the purposes of this  
34 subsection, "deductible" means an amount a family, whose children are  
35 under eighteen years of age and who are members who are eligible pursuant  
36 to subsection B of this section, pays for services, other than  
37 departmental case management and acute care services, before the  
38 department will pay for services other than departmental case management  
39 and acute care services.

40 I. FOR THE PURPOSES OF THIS SECTION, "ALLOWED PRACTITIONER" MEANS A  
41 NURSE PRACTITIONER WHO IS CERTIFIED PURSUANT TO TITLE 32, CHAPTER 15, A  
42 CLINICAL NURSE SPECIALIST WHO IS CERTIFIED PURSUANT TO TITLE 32, CHAPTER  
43 15 OR A PHYSICIAN ASSISTANT WHO IS CERTIFIED PURSUANT TO TITLE 32,  
44 CHAPTER 25.

1           Sec. 3. Conditional enactment

2           A. Section 36-2939, Arizona Revised Statutes, as amended by section  
3 1 of this act, becomes effective only if House Bill 2521, fifty-fifth  
4 legislature, first regular session, relating to the Arizona long-term care  
5 system, does not become law.

6           B. Section 36-2939, Arizona Revised Statutes, as amended by House  
7 Bill 2521, section 4, fifty-fifth legislature, first regular session, as  
8 transmitted to the governor and as amended by section 2 of this act,  
9 becomes effective only if House Bill 2521, fifty-fifth legislature, first  
10 regular session, relating to the Arizona long-term care system, becomes  
11 law.