

Senate Engrossed

nursing-supported group homes; licensure

State of Arizona
Senate
Fifty-fifth Legislature
First Regular Session
2021

SENATE BILL 1085

AN ACT

AMENDING SECTIONS 36-401 AND 36-421, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 4, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 36-425.07; AMENDING SECTIONS 36-551, 36-557, 36-568, 36-581, 36-591 AND 36-595.01, ARIZONA REVISED STATUTES; RELATING TO HEALTH CARE INSTITUTIONS.

(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 4. "Adult day health care facility" means a facility that provides
23 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 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 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~~ NOT more than four adults who are participants in the Arizona
35 long-term care system pursuant to chapter 29, article 2 of this title or
36 contracts for services with the United States department of veterans
37 affairs and in which the sponsor or the manager resides with the residents
38 and integrates the residents who are receiving adult foster care into that
39 person's family.

40 7. "Adult foster care services" means supervision, assistance with
41 eating, bathing, toileting, dressing, self-medication and other routines
42 of daily living or services authorized by rules adopted pursuant to
43 section 36-405 and section 36-2939, subsection C.

44 8. "Assisted living center" means an assisted living facility that
45 provides resident rooms or residential units to eleven or more residents.

1 9. "Assisted living facility" means a residential care institution,
2 including an adult foster care home, that provides or contracts to provide
3 supervisory care services, personal care services or directed care
4 services on a continuous basis.

5 10. "Assisted living home" means an assisted living facility that
6 provides resident rooms to ten or fewer residents.

7 11. "Behavioral health services" means services that pertain to
8 mental health and substance use disorders and that are either:

9 (a) Performed by or under the supervision of a professional who is
10 licensed pursuant to title 32 and whose scope of practice allows ~~for~~ the
11 ~~provision of~~ PROFESSIONAL TO PROVIDE these services.

12 (b) Performed on behalf of patients by behavioral health staff as
13 prescribed by rule.

14 12. "Construction" means ~~the~~ building, ~~erection~~ ERECTING,
15 ~~fabrication~~ FABRICATING or ~~installation of~~ INSTALLING a health care
16 institution.

17 13. "Continuous" means available at all times without cessation,
18 break or interruption.

19 14. "Controlling person" means a person who:

20 (a) Through ownership, has the power to vote at least ten percent
21 of the outstanding voting securities.

22 (b) If the applicant or licensee is a partnership, is the general
23 partner or a limited partner who holds at least ten percent of the voting
24 rights of the partnership.

25 (c) If the applicant or licensee is a corporation, an association
26 or a limited liability company, is the president, the chief executive
27 officer, the incorporator or any person who owns or controls at least ten
28 percent of the voting securities. For the purposes of this subdivision,
29 corporation does not include nonprofit corporations.

30 (d) Holds a beneficial interest in ten percent or more of the
31 liabilities of the applicant or the licensee.

32 15. "Department" means the department of health services.

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

37 17. "Direction" means authoritative policy or procedural guidance
38 ~~for the accomplishment of~~ TO ACCOMPLISH a function or activity.

39 18. "Director" means the director of the department ~~of health~~
40 ~~services~~.

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

44 20. "Freestanding urgent care center":

1 (a) Means an outpatient treatment center that, regardless of its
2 posted or advertised name, meets any of the following requirements:

3 (i) Is open twenty-four hours a day, excluding at its option
4 weekends or certain holidays, but is not licensed as a hospital.

5 (ii) Claims to provide unscheduled medical services THAT ARE not
6 otherwise routinely available in primary care physician offices.

7 (iii) By its posted or advertised name, gives the impression to the
8 public that it provides medical care for urgent, immediate or emergency
9 conditions.

10 (iv) Routinely provides ongoing unscheduled medical services for
11 more than eight consecutive hours for an individual patient.

12 (b) Does not include the following:

13 (i) A medical facility that is licensed under a hospital's license
14 and that uses the hospital's medical provider number.

15 (ii) A qualifying community health center pursuant to section
16 36-2907.06.

17 (iii) Any other health care institution licensed pursuant to this
18 chapter.

19 (iv) A physician's office that offers extended hours or same-day
20 appointments to existing and new patients and that does not meet the
21 requirements of subdivision (a), item (i), (iii) or (iv) of this
22 paragraph.

23 21. "Governing authority" means the individual, agency, partners,
24 group or corporation, WHETHER appointed, elected or otherwise designated,
25 in which the ultimate responsibility and authority for the conduct of the
26 health care institution are vested.

27 22. "Health care institution" means every place, institution,
28 building or agency, whether organized for profit or not, that provides
29 facilities with medical services, nursing services, behavioral health
30 services, health screening services, other health-related services,
31 supervisory care services, personal care services or directed care
32 services and includes home health agencies as defined in section 36-151,
33 outdoor behavioral health care programs and hospice service agencies.
34 ~~Health care institution does not include a community residential setting~~
35 ~~as defined in section 36-551.~~

36 23. "Health-related services" means services, other than medical,
37 that pertain to general supervision, protective, preventive and personal
38 care services, supervisory care services or directed care services.

39 24. "Health screening services" means the acquisition, analysis and
40 delivery of health-related data of individuals to aid in ~~the determination~~
41 ~~of~~ DETERMINING the need for medical services.

42 25. "Hospice" means a hospice service agency or the provision of
43 hospice services in an inpatient facility.

44 26. "Hospice service" means a program of palliative and supportive
45 care for terminally ill persons and their families or caregivers.

1 27. "Hospice service agency" means an agency or organization, or a
2 subdivision of that agency or organization, that ~~is engaged in providing~~
3 PROVIDES hospice services at the place of residence of its clients.

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

7 29. "Intermediate care facility for individuals with intellectual
8 disabilities" has the same meaning prescribed in section 36-551.

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

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

19 32. "Modification" means the substantial improvement, enlargement,
20 reduction or alteration of or other change in a health care institution.

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

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

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

34 36. "NURSING-SUPPORTED GROUP HOME" MEANS A HEALTH CARE INSTITUTION
35 THAT IS A COMMUNITY RESIDENTIAL SETTING AS DEFINED IN SECTION 36-551 FOR
36 NOT MORE THAN SIX PERSONS WITH DEVELOPMENTAL DISABILITIES, THAT IS
37 OPERATED BY A SERVICE PROVIDER UNDER CONTRACT WITH THE DEPARTMENT OF
38 ECONOMIC SECURITY AND THAT PROVIDES ROOM AND BOARD, DAILY HABILITATION AND
39 CONTINUOUS NURSING SUPPORT AND INTERVENTION.

40 ~~36-~~ 37. "Organized medical staff" means a formal organization of
41 physicians, and dentists ~~where~~ IF appropriate, with the delegated
42 authority and responsibility to maintain proper standards of medical care
43 and to plan for continued betterment of that care.

~~37.~~ 38. "Outdoor behavioral health care program" means an agency that provides behavioral health services in an outdoor environment as an alternative to behavioral health services that are provided in a health care institution with facilities. Outdoor behavioral health care programs do not include:

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

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

(c) Outdoor youth programs **THAT ARE** licensed by the department of economic security.

~~38.~~ 39. "Personal care services" means assistance with activities of daily living that can be performed by persons without professional skills or professional training and includes the coordination or provision of intermittent nursing services and the administration of medications and treatments by a nurse who is licensed pursuant to title 32, chapter 15 or as otherwise provided by law.

~~39.~~ 40. "Physician" means any person who is licensed pursuant to title 32, chapter 13 or 17.

~~40.~~ 41. "Recidivism reduction services" means services that are delivered by an adult residential care institution to its residents to encourage lawful behavior and to discourage or prevent residents who are suspected of, charged with or convicted of one or more criminal offenses, or whose mental health and substance use can be reasonably expected to place them at risk for the future threat of prosecution, diversion or incarceration, from engaging in future unlawful behavior.

~~41.~~ 42. "Recidivism reduction staff" means a person who provides recidivism reduction services.

~~42.~~ 43. "Residential care institution" means a health care institution other than a hospital or a nursing care institution that provides resident beds or residential units, supervisory care services, personal care services, behavioral health services, directed care services or health-related services for persons who do not need continuous nursing services.

~~43.~~ 44. "Residential unit" means a private apartment, unless otherwise requested by a resident, that includes a living and sleeping space, kitchen area, private bathroom and storage area.

~~44.~~ 45. "Respite care services" means services that are provided by a licensed health care institution to persons **WHO ARE** otherwise cared for in foster homes and in private homes to provide an interval of rest or relief of not more than thirty days to operators of foster homes or to family members.

1 ~~45-~~ 46. "Substantial compliance" means that the nature or number
2 of violations revealed by any type of inspection or investigation of a
3 health care institution does not pose a direct risk to the life, health or
4 safety of patients or residents.

5 ~~46-~~ 47. "Supervision" means ~~direct~~ DIRECTLY overseeing and
6 ~~inspection of~~ INSPECTING the act of accomplishing a function or activity.

7 ~~47-~~ 48. "Supervisory care services" means general supervision,
8 including daily awareness of resident functioning and continuing needs,
9 the ability to intervene in a crisis and assistance in ~~the~~
10 ~~self-administration of~~ SELF-ADMINISTERING prescribed medications.

11 ~~48-~~ 49. "Temporary license" means a license that is issued by the
12 department to operate a class or subclass of a health care institution at
13 a specific location and that is valid until an initial licensing
14 inspection.

15 ~~49-~~ 50. "Unscheduled medical services" means medically necessary
16 periodic health care services that are unanticipated or cannot reasonably
17 be anticipated and that require medical evaluation or treatment before the
18 next business day.

19 B. If there are fewer than four Arizona long-term care system
20 participants receiving adult foster care in an adult foster care home,
21 nonparticipating adults may receive other types of services that are
22 authorized by law to be provided in the adult foster care home as long as
23 the number of adults served, including the Arizona long-term care system
24 participants, does not exceed four.

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

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

31 36-421. Construction or modification of a health care
32 institution

33 A. A license application for a health care institution shall
34 include architectural plans and specifications or the department's
35 approval of the architectural plans and specifications. These plans and
36 specifications shall meet the minimum standards for licensure within the
37 class or subclass of health care institution for which it is intended.
38 The application shall include the name and address of each owner and
39 lessee of any agricultural land that is regulated pursuant to section
40 3-365.

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

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

4 D. A health care institution or its facility shall not be licensed
5 if it is located on property that is less than four hundred feet from
6 agricultural land that is regulated pursuant to section 3-365, except that
7 the owner of the agricultural land may agree to comply with the buffer
8 zone requirements of section 3-365. If the owner agrees in writing to
9 comply with the buffer zone requirements and records the agreement in the
10 office of the county recorder as a restrictive covenant running with the
11 title to the land, the health care institution or facility may be licensed
12 and located within the affected buffer zone. The agreement may include
13 any stipulations regarding the health care institution or facility,
14 including conditions for future expansion of the health care institution
15 or facility and changes in the operational status of the health care
16 institution or facility that will result in a breach of the agreement.
17 This subsection does not apply to the issuance of a license for a health
18 care institution located in the same location for which a health care
19 institution license was previously issued.

20 E. Notwithstanding any law to the contrary, a health care
21 institution that was licensed as a level 1 psychiatric acute behavioral
22 health facility-inpatient facility as of January 1, 2012 and that is not
23 certified under title XIX of the social security act shall be licensed as
24 a hospital and is not required to comply with the physical plant standards
25 for a general hospital, rural general hospital or special hospital
26 prescribed by the department.

27 F. An adult behavioral health therapeutic home is not required to
28 comply with the building codes or zoning standards for a health care
29 institution prescribed by the department.

30 G. The Arizona pioneers' home is not required to comply with
31 subsection A of this section and the physical plant standards for a health
32 care institution prescribed by the department.

33 H. A NURSING-SUPPORTED GROUP HOME IS NOT REQUIRED TO COMPLY WITH
34 THE ZONING STANDARDS FOR A HEALTH CARE INSTITUTION PRESCRIBED BY THE
35 DEPARTMENT.

36 ~~H.~~ I. For the purposes of this section, health care institution
37 does not include a home health agency or a hospice service agency.

38 Sec. 3. Title 36, chapter 4, article 2, Arizona Revised Statutes,
39 is amended by adding section 36-425.07, to read:

40 36-425.07. Nursing-supported group homes; licensure

41 ON OR BEFORE JULY 1, 2022, A NURSING-SUPPORTED GROUP HOME THAT IS
42 OPERATED IN THIS STATE BY A SERVICE PROVIDER UNDER CONTRACT WITH THE
43 DEPARTMENT OF ECONOMIC SECURITY SHALL BE LICENSED PURSUANT TO THIS
44 CHAPTER.

1 Sec. 4. Section 36-551, Arizona Revised Statutes, is amended to
2 read:

3 36-551. Definitions

4 In this chapter, unless the context otherwise requires:

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

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

14 (a) Room and board.

15 (b) Habilitation.

16 (c) Appropriate personal care.

17 (d) Appropriate supervision.

18 3. "Adult household member":

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

24 (b) Does not include a person who is receiving developmental
25 disabilities services from the department.

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

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

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

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

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

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

1 10. "Cerebral palsy" means a permanently disabling condition
2 resulting from damage to the developing brain that may occur before, after
3 or during birth and that results in loss or impairment of control over
4 voluntary muscles.

5 11. "Child developmental certified home" means a regular foster
6 home as defined in section 8-501 that is licensed pursuant to section
7 8-509 and that is certified by the department pursuant to section
8 36-593.01.

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

16 (a) Room and board.

17 (b) Habilitation.

18 (c) Appropriate personal care.

19 (d) Appropriate supervision.

20 13. "Client" means a person receiving developmental disabilities
21 services from the department.

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

26 15. "Community residential setting":

27 (a) Means a residential setting in which persons with developmental
28 disabilities live and are provided with appropriate supervision by the
29 service provider responsible for ~~the operation of~~ OPERATING the
30 residential setting. ~~Community residential setting~~

31 (b) Includes a child developmental home or an adult developmental
32 home operated or contracted by the department or the department's
33 contracted vendor, ~~or~~ a group home operated or contracted by the
34 department OR A NURSING-SUPPORTED GROUP HOME CONTRACTED BY THE DEPARTMENT.

35 16. "Consent" means voluntary informed consent. Consent is
36 voluntary if not given as the result of coercion or undue influence.
37 Consent is informed if the person giving the consent has been informed of
38 and comprehends the nature, purpose, consequences, risks and benefits of
39 the alternatives to the procedure, and has been informed and comprehends
40 that withholding or ~~withdrawal of~~ WITHDRAWING consent will not prejudice
41 the future provision of care and services to the client. In cases of
42 unusual or hazardous treatment procedures performed pursuant to section
43 36-561, subsection A, experimental research, organ transplantation and
44 nontherapeutic surgery, consent is informed if, in addition to the

1 foregoing, the person giving the consent has been informed of and
2 comprehends the method to be used in the proposed procedure.

3 17. "Daily habilitation" means habilitation as defined in this
4 section, except that the method of payment is for one unit per residential
5 day.

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

7 19. "Developmental disability" means either a strongly demonstrated
8 potential that a child WHO IS under six years of age has a developmental
9 disability or will develop a developmental disability, as determined by a
10 test performed pursuant to section 36-694 or by other appropriate tests,
11 or a severe, chronic disability that:

12 (a) Is attributable to A cognitive disability, cerebral palsy,
13 epilepsy or autism.

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

15 (c) Is likely to continue indefinitely.

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

18 (i) Self-care.

19 (ii) Receptive and expressive language.

20 (iii) Learning.

21 (iv) Mobility.

22 (v) Self-direction.

23 (vi) Capacity for independent living.

24 (vii) Economic self-sufficiency.

25 (e) Reflects the need for a combination and sequence of
26 individually planned or coordinated special, interdisciplinary or generic
27 care, treatment or other services that are of lifelong or extended
28 duration.

29 20. "Director" means the director of the department of economic
30 security.

31 21. "Division" means the division of developmental disabilities in
32 the department of economic security.

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

36 23. "Group home":

37 (a) Means a community residential setting for not more than six
38 persons with developmental disabilities that is operated by a service
39 provider under contract with the department and that provides room and
40 board and daily habilitation and other assessed medically necessary
41 services and supports to meet the needs of each person. ~~Group home~~

42 (b) Does not include an adult developmental home, a child
43 developmental home, A NURSING-SUPPORTED GROUP HOME or an intermediate care
44 facility for individuals with intellectual disabilities.

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

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

8 26. "Indigent" means a person with a developmental disability whose
9 estate or parent is unable to bear the full cost of maintaining or
10 providing services for that person in a developmental disabilities
11 program.

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

16 28. "Intermediate care facility for individuals with intellectual
17 disabilities" means a facility that primarily provides health and
18 rehabilitative services to persons with developmental disabilities that
19 are above the service level of room and board or supervisory care services
20 or personal care services as defined in section 36-401.

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

25 30. "Least restrictive alternative" means an available program or
26 facility that fosters independent living, that is the least confining for
27 the client's condition and ~~where~~ **THAT PROVIDES** service and treatment ~~are~~
28 ~~provided~~ in the least intrusive manner reasonably and humanely appropriate
29 to the individual's needs.

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

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

36 33. **"NURSING-SUPPORTED GROUP HOME" HAS THE SAME MEANING PRESCRIBED**
37 **IN SECTION 36-401.**

38 ~~33.~~ 34. "Physician" means a person who is licensed to practice
39 pursuant to title 32, chapter 13 or 17.

40 ~~34.~~ 35. "Placement evaluation" means an interview and evaluation
41 of a person with a developmental disability and a review of the person's
42 prior medical and program histories to determine the appropriate
43 developmental disability programs and services for the person and
44 recommendations for specific program placements for the person.

1 ~~35.~~ 36. "Psychologist" means a person who is licensed pursuant to
2 title 32, chapter 19.1.

3 ~~36.~~ 37. "Respite services" means services that provide a
4 short-term or long-term interval of rest or relief to the care provider of
5 a person with a developmental disability.

6 ~~37.~~ 38. "Responsible person" means the parent or guardian of a
7 minor with a developmental disability, the guardian of an adult with a
8 developmental disability or an adult with a developmental disability who
9 is a client or an applicant for whom no guardian has been appointed.

10 ~~38.~~ 39. "Service provider" means a person or agency that provides
11 services to clients pursuant to a contract, service agreement or qualified
12 vendor agreement with the division.

13 ~~39.~~ 40. "State operated service center" means a state owned or
14 leased facility that is operated by the department and that provides
15 temporary residential care and space for child and adult services that
16 include respite care, crisis intervention and diagnostic evaluation.

17 ~~40.~~ 41. "Subaverage general intellectual functioning" means
18 measured intelligence on standardized psychometric instruments of two or
19 more standard deviations below the mean for the tests used.

20 ~~41.~~ 42. "Substantial functional limitation" means a limitation so
21 severe that extraordinary assistance from other people, programs, services
22 or mechanical devices is required to assist the person in performing
23 appropriate major life activities.

24 ~~42.~~ 43. "Supervision" means the process by which the activities of
25 an individual with developmental disabilities are directed, influenced or
26 monitored.

27 Sec. 5. Section 36-557, Arizona Revised Statutes, is amended to
28 read:

29 36-557. Community developmental disability services; service
30 providers

31 A. The department may use state and federal monies THAT ARE
32 appropriated or otherwise available to it for this purpose to assist in
33 ~~the establishment~~ ESTABLISHING and ~~maintenance of~~ MAINTAINING local
34 developmental disability services by public or private nonprofit or profit
35 agencies. The monies may be expended as professional fees for service, in
36 contracts for advancement or reimbursement or in another appropriate
37 manner and may be used for any purpose necessary to ~~the provision of~~
38 PROVIDE local developmental disability services. The monies may not be
39 used for departmental salaries, care of persons with developmental
40 disabilities by the department or any other purpose within the department,
41 but may be used for consultation to the department in the interest of
42 local programs.

43 B. A local public or private nonprofit or profit agency providing
44 or intending to provide community developmental disability services and
45 desiring to contract with the department ~~for the furnishing of~~ TO FURNISH

1 these services shall submit a program plan and budget to the department on
2 the forms and in the manner required by the department. If the program
3 meets departmental standards and is consistent with the state plan of the
4 department and the individualized service program plan of the client, the
5 department, notwithstanding the provisions of title 41, chapter 23,
6 relating to procurement and including services pursuant to section
7 36-2943, may contract with that agency for required services on terms the
8 department requires. The contracts shall provide that the provider of
9 services is subject to a continuing program evaluation by the department
10 through progress reports, expenditure reports, program audits or other
11 appropriate evaluation techniques to ~~assure~~ ENSURE that the provider of
12 service is in continued compliance with the terms of the contract and the
13 department's community developmental disability service standards and
14 requirements.

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

17 D. This article does not make the department or the state
18 responsible for funding programs beyond the limits of legislative
19 appropriation for the programs. This article does not require a SERVICE
20 provider ~~of services~~ to provide unreimbursed services to the department or
21 its clients.

22 E. Contracts to provide community developmental disability services
23 shall require that:

24 1. The contractor is obligated to operate a program or service in
25 strict accordance with the standards adopted for that program or service
26 by the department.

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

31 3. All contractors must carry liability insurance in amounts
32 approved by the risk management division of the department of
33 administration and file proof of insurance with the risk management
34 division. The director may waive that requirement on a ~~case by case~~
35 CASE-BY-CASE basis on a finding that insurance for the program or service
36 is not practicably available at affordable rates and that it is necessary
37 that the program or service be provided by the contractor.

38 4. All clients enrolled in programs have all the same specified
39 rights as they would have if enrolled in a program operated directly by
40 the state.

41 5. Except for emergency placement pursuant to section 36-560,
42 subsection N, payment shall not be made based on program services provided
43 to a client if a placement evaluation has not been made, and no individual
44 program has been prepared and when, based on that placement evaluation, no

1 recommendation has been made to enroll the client in the particular
2 program service.

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

5 G. Contracts ~~for the~~ TO purchase ~~of~~ residential care services other
6 than those community residential settings licensed pursuant to this
7 chapter, in addition to other general requirements applicable to purchase
8 of care contractors, shall:

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

11 2. Provide for mandatory monitoring by the department for health,
12 safety, contractual and programmatic standards at least every six months,
13 unless the department has granted deemed status to the service provider or
14 the service provider received a score of at least ninety-five percent on
15 the most recent monitoring visit. If the department has granted deemed
16 status or awarded the service provider with a score of at least
17 ninety-five percent on the most recent monitoring visit, ~~it~~ THE DEPARTMENT
18 shall monitor that SERVICE provider once each year. On A determination by
19 the department that there is reasonable cause to believe a service
20 provider is not adhering to the department's programmatic or contractual
21 requirements, the department and any duly designated employee or agent of
22 the department may enter on and into the premises at any reasonable time
23 for the purpose of determining the SERVICE PROVIDER'S state of compliance
24 with the DEPARTMENT'S programmatic or contractual requirements ~~of the~~
25 ~~department~~.

26 3. Provide for mandatory investigation by the department in
27 response to complaints within ten working days, except that in those
28 instances that pose a danger to the client, the department shall conduct
29 the investigation immediately. Health and safety complaints related to
30 group homes shall be referred to the department of health services on
31 receipt. The department of health services shall share all incident
32 reports related to health and safety with the division of developmental
33 disabilities.

34 4. Except for group homes licensed by the department of health
35 services, specify the health and safety and sanitation codes and other
36 codes or standards applicable to the facility or to the operation of the
37 facility by the contractor other than group homes.

38 5. Provide for mandatory periodic reports to be filed by the
39 provider contractor with the department with respect to the operation of
40 the facility.

41 6. Provide that the facility and the books and records of the
42 facility and of the provider are subject to inspection at any time by
43 employees of the department or designees of the department.

1 7. Provide that parents and guardians of persons with developmental
2 disabilities residing at the facility, members of the developmental
3 disabilities advisory council, and members of other recognized and ongoing
4 advocacy groups for persons with developmental disabilities may inspect
5 the facility at reasonable times.

6 H. Contracts for the purchase of residential care services shall
7 require a community residential setting to be licensed pursuant to this
8 chapter other than group homes AND NURSING-SUPPORTED GROUP HOMES THAT ARE
9 licensed by the department of health services.

10 I. Contracts for the purchase of day program or employment
11 services, in addition to the other general requirements applicable to the
12 purchase of client services, must provide for mandatory monitoring by the
13 department for health, safety, contractual, programmatic and quality
14 assurance standards at least once every six months, unless the department
15 has granted deemed status to the service provider. If the department has
16 granted deemed status to the service provider, the department shall
17 monitor that SERVICE provider once each year. The department and any duly
18 designated employee or agent of the department may enter on or into the
19 service provider's premises at any reasonable time for the purpose of
20 determining the SERVICE PROVIDER'S state of compliance with the
21 department's programmatic, contractual and quality assurance requirements.

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

25 K. Contracts for client services issued by the department shall
26 include language outlining the provisions for a grievance and appeal
27 procedure. The director shall provide notice to SERVICE providers not
28 less than thirty days before the issuance of an amendment to a qualified
29 vendor agreement. The decision of the director regarding qualified vendor
30 agreement amendments may be appealed pursuant to title 41, chapter 6,
31 article 10. The grievance process applicable to these contracts shall
32 comply with title XIX requirements.

33 L. As a condition of contracts with any developmental disabilities
34 service provider, the director shall require terms that conform with state
35 and federal laws, title XIX statutes and regulations and quality
36 standards. The director shall further require contract terms that ensure
37 performance by the provider of the provisions of each contract executed
38 pursuant to this article.

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

1 N. The division shall disclose to a service provider in the
2 individual program plan, and in all meetings resulting from a response to
3 a vendor call, any historical and behavioral information necessary for the
4 SERVICE provider to be able to anticipate the client's future behaviors
5 and needs, including summary information from the program review
6 committee, unusual incident reports reviewed by the independent oversight
7 committee and behavioral treatment plans. The division shall redact the
8 client's identification from this information.

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

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

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

14 3. Maintain medications and protocols for direct care.

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

17 P. The department may adopt rules establishing procedures for
18 engaging in the activities listed in subsection O of this section.

19 Q. To protect the health and safety of a client, a SERVICE provider
20 must notify the division within twenty-four hours if an emergency
21 situation exists in which the SERVICE provider is unable to meet the
22 health or safety needs of the client.

23 R. On notification of an emergency situation, the department shall
24 hold an individual program plan meeting within fifteen days after
25 notification to recommend any changes, including whether there is a need
26 for temporary additional staffing to provide appropriate care for a
27 client, and develop a plan within thirty days after notification to
28 resolve the situation.

29 Sec. 6. Section 36-568, Arizona Revised Statutes, is amended to
30 read:

31 36-568. Group homes; intermediate care facilities; electronic
32 monitoring; rules; policies; definition

33 A. A service provider that operates a group home, A
34 NURSING-SUPPORTED GROUP HOME or an intermediate care facility for persons
35 with an intellectual disability DISABILITIES may install, oversee and
36 monitor electronic monitoring devices in common areas, including hallways,
37 of the group home, NURSING-SUPPORTED GROUP HOME or intermediate care
38 facility. The service provider may contract with a third party to
39 install, oversee and monitor the electronic monitoring device.

40 B. The director shall adopt rules regarding the use of electronic
41 monitoring in group homes and intermediate care facilities that include at
42 a minimum:

43 1. Consent requirements consistent with section 13-3019.

44 2. Public disclosure that an electronic monitoring device is in use
45 on the property.

1 3. The maintenance, storage and retention schedule of the
2 electronic record.

3 4. Who may access the electronic record and under what
4 circumstances.

5 5. How confidentiality and privacy are maintained.

6 6. How often the electronic monitoring device is monitored or
7 reviewed by the service provider or the service provider's designee.

8 7. Ensuring that all staff who have access to the electronic record
9 are properly trained in the facility policies and the protection of client
10 rights.

11 8. Ensuring that adherence to the facility policies is monitored
12 and the risks or breaches of the facility policies are promptly addressed.

13 C. The rules adopted pursuant to subsection B of this section may
14 not:

15 1. Prohibit accessing the electronic record from the service
16 provider, the member or the member's family or guardian unless the
17 electronic record contains evidence of a suspected criminal offense.

18 2. Require a service provider to be financially responsible for
19 purchasing, installing, maintaining or monitoring an electronic monitoring
20 device that is not voluntarily installed by the service provider in the
21 group home or intermediate care facility.

22 D. If a service provider has installed and uses an electronic
23 monitoring device before August 27, 2019, the service provider shall
24 establish policies consistent with rules adopted pursuant to subsection B
25 of this section and submit the policies to the department within ninety
26 days after the rules are adopted.

27 E. For the purposes of this section, "electronic monitoring
28 device":

29 1. Means a video surveillance camera or audio device that is
30 installed in a common area, including a hallway, of a group home or
31 intermediate care facility.

32 2. Does not include an electronic, mechanical or other device that
33 is specifically used for the nonconsensual interception of wire or
34 electronic communications.

35 Sec. 7. Section 36-581, Arizona Revised Statutes, is amended to
36 read:

37 36-581. Definitions

38 In this article, unless the context otherwise requires:

39 1. "Developmental disability" means autism, cerebral palsy,
40 epilepsy or A cognitive disability.

41 2. "Residential facility" means a ~~home~~ COMMUNITY RESIDENTIAL
42 SETTING in which persons with developmental disabilities live and that is
43 licensed, operated, supported or supervised by the department.

1 Sec. 8. Section 36-591, Arizona Revised Statutes, is amended to
2 read:

3 36-591. Adult developmental homes; child developmental homes;
4 licensing; notification requirements; exception;
5 annual inspection

6 A. An adult developmental home or child developmental home shall be
7 licensed pursuant to this article.

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

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

12 1. Service providers ~~who~~ **THAT** enter into contracts with the
13 division for group homes or intermediate care facilities for individuals
14 with intellectual disabilities.

15 2. Any violation of health and safety standards observed during
16 monitoring visits.

17 D. The department of health services shall immediately notify the
18 division:

19 1. When **THE LICENSE OF** a group home, **NURSING-SUPPORTED GROUP HOME**
20 or intermediate care facility for individuals with intellectual
21 disabilities ~~license~~ has been denied, suspended or revoked.

22 2. Of any other licensing action taken on a group home,
23 **NURSING-SUPPORTED GROUP HOME** or intermediate care facility for individuals
24 with intellectual disabilities by the department of health services.

25 3. Of substantiated complaints regarding health and safety.

26 E. The division shall ensure that state-operated residential
27 settings that are owned or leased facilities operated by the division meet
28 the same standards as group homes unless they are required to be:

29 1. Licensed and certified as intermediate care facilities for
30 individuals with intellectual disabilities pursuant to 42 Code of Federal
31 Regulations part 483, subpart I. An intermediate care facility for
32 individuals with intellectual disabilities that is operated by the
33 division or a private entity is required to be licensed pursuant to
34 chapter 4 of this title and certified pursuant to 42 Code of Federal
35 Regulations part 483, subpart I.

36 2. **LICENSED AS A NURSING-SUPPORTED GROUP HOME AS REQUIRED BY**
37 **CHAPTER 4 OF THIS TITLE.**

38 F. The department shall annually visit each adult developmental
39 home and child developmental home and inspect the premises used for the
40 care of children or vulnerable adults for sanitation, fire and other
41 actual and potential hazards. The department shall take any action it
42 deems necessary to carry out the duties imposed by this section, including
43 ~~the denial of~~ **DENYING** the application for licensure and ~~the suspension~~
44 **SUSPENDING** or ~~revocation of~~ **REVOKING** the home's license.

1 Sec. 9. Section 36-595.01, Arizona Revised Statutes, is amended to
2 read:

3 36-595.01. Access to facilities

4 A group home, NURSING-SUPPORTED GROUP HOME, adult developmental home
5 or child developmental home shall allow the following to inspect the
6 facility at reasonable times:

7 1. Parents and guardians of facility residents.

8 2. Members of the developmental disabilities advisory council.

9 3. Employees or agents of an Arizona nonprofit advocacy
10 organization that is a state chapter of a national advocacy organization,
11 that has affiliated local chapters within this state and that has
12 historical expertise with monitoring residential settings for persons with
13 intellectual and developmental disabilities.

14 Sec. 10. Department of health services; rulemaking exemption

15 For the purposes of this act, the department of health services is
16 exempt from the rulemaking requirements of title 41, chapters 6 and 6.1,
17 Arizona Revised Statutes, for eighteen months after the general effective
18 date of the fifty-fifth legislature, first regular session.

19 Sec. 11. Effective date

20 Except for section 36-401, Arizona Revised Statutes, as amended by
21 this act, section 36-425.07, Arizona Revised Statutes, as added by this
22 act, and section 10 of this act, this act is effective from and after
23 June 30, 2022.