

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

CHAPTER 265

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.

APPROVED BY THE GOVERNOR APRIL 20, 2021.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 20, 2021.