~~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)

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

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

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

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

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

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

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

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

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

6. Dental services as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 2. 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, is amended to read:

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

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

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

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

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

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

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

6. Dental services as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 3. Conditional enactment

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

B. 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 and as amended by section 2 of this act, becomes effective only if House Bill 2521, fifty-fifth legislature, first regular session, relating to the Arizona long-term care system, becomes law.

APPROVED BY THE GOVERNOR APRIL 20, 2021.

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