

House Engrossed

mental health; voluntary evaluations; payment

State of Arizona
House of Representatives
Fifty-sixth Legislature
First Regular Session
2023

HOUSE BILL 2041

AN ACT

AMENDING SECTIONS 36-501, 36-522 AND 36-545.05, ARIZONA REVISED STATUTES;
RELATING TO MENTAL HEALTH SERVICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 36-501, Arizona Revised Statutes, is amended to
3 read:

4 36-501. Definitions

5 In this chapter, unless the context otherwise requires:

6 1. "Administration" means the Arizona health care cost containment
7 system administration.

8 2. "Admitting officer" means a psychiatrist or other physician or
9 psychiatric and mental health nurse practitioner with experience in
10 performing psychiatric examinations who has been designated as an
11 admitting officer of the evaluation agency by the person in charge of the
12 evaluation agency.

13 3. "Authorized transporter" means a transportation entity that is
14 contracted with a city, town or county to provide services pursuant to
15 this chapter and that is either:

16 (a) An ambulance service that holds a valid certificate of
17 necessity.

18 (b) A transportation provider authorized by this state to provide
19 safe behavioral health transportation for individuals requiring
20 transportation pursuant to this chapter.

21 4. "Chief medical officer" means the chief medical officer under
22 the supervision of the superintendent of the state hospital.

23 5. "Contraindicated" means that access is reasonably likely to
24 endanger the life or physical safety of the patient or another person.

25 6. "Court" means the superior court in the county in this state in
26 which the patient resides or was found before screening or emergency
27 admission under this title.

28 7. "Criminal history" means police reports, lists of prior arrests
29 and convictions, criminal case pleadings and court orders, including a
30 determination that the person has been found incompetent to stand trial
31 pursuant to section 13-4510.

32 8. "Danger to others" means that the judgment of a person who has a
33 mental disorder is so impaired that the person is unable to understand the
34 person's need for treatment and as a result of the person's mental
35 disorder the person's continued behavior can reasonably be expected, on
36 the basis of competent medical opinion, to result in serious physical
37 harm.

38 9. "Danger to self":

39 (a) Means behavior that, as a result of a mental disorder:

40 (i) Constitutes a danger of inflicting serious physical harm on
41 oneself, including attempted suicide or the serious threat thereof, if the
42 threat is such that, when considered in the light of its context and in
43 light of the individual's previous acts, it is substantially supportive of
44 an expectation that the threat will be carried out.

45 (ii) Without hospitalization will result in serious physical harm
46 or serious illness to the person.

1 (b) Does not include behavior that establishes only the condition
2 of having a grave disability.

3 10. "Department" means the department of health services.

4 11. "Detention" means the taking into custody of a patient or
5 proposed patient.

6 12. "Director" means the director of the administration.

7 13. "Evaluation" means:

8 (a) A professional multidisciplinary analysis that may include
9 firsthand observations or remote observations by interactive audiovisual
10 media and that is based on data describing the person's identity,
11 biography and medical, psychological and social conditions carried out by
12 a group of persons consisting of not less than the following:

13 (i) Two licensed physicians who are qualified psychiatrists, if
14 possible, or at least experienced in psychiatric matters, and who shall
15 examine and report their findings independently. The person against whom
16 a petition has been filed shall be notified that the person may select one
17 of the physicians. A psychiatric resident in a training program approved
18 by the American medical association or by the American osteopathic
19 association may examine the person in place of one of the psychiatrists if
20 the resident is supervised in the examination and preparation of the
21 affidavit and testimony in court by a qualified psychiatrist appointed to
22 assist in the resident's training, and if the supervising psychiatrist is
23 available for discussion with the attorneys for all parties and for court
24 appearance and testimony if requested by the court or any of the
25 attorneys.

26 (ii) Two other individuals, one of whom, if available, is a
27 psychologist and in any event a social worker familiar with mental health
28 and human services that may be available placement alternatives
29 appropriate for treatment. An evaluation may be conducted on an inpatient
30 basis, an outpatient basis or a combination of both, and every reasonable
31 attempt shall be made to conduct the evaluation in any language preferred
32 by the person.

33 (b) A physical examination that is consistent with the existing
34 standards of care and that is performed by one of the evaluating
35 physicians or by or under the supervision of a physician who is licensed
36 pursuant to title 32, chapter 13 or 17 or a registered nurse practitioner
37 who is licensed pursuant to title 32, chapter 15 if the results of that
38 examination are reviewed or augmented by one of the evaluating physicians.

39 14. "Evaluation agency" means a health care agency that is licensed
40 by the department, ~~and~~ that has been approved pursuant to this
41 title, ~~providing~~ AND THAT PROVIDES those services required of ~~such~~ THE
42 agency by this chapter.

43 15. "Family member" means a spouse, parent, adult child, adult
44 sibling or other blood relative of a person undergoing treatment or
45 evaluation pursuant to this chapter.

1 16. "Grave disability" means a condition evidenced by behavior in
2 which a person, as a result of a mental disorder, is likely to come to
3 serious physical harm or serious illness because the person is unable to
4 provide for the person's own basic physical needs.

5 17. "Health care decision maker" has the same meaning prescribed in
6 section 12-2801.

7 18. "Health care entity" means a health care provider, the
8 department, the administration or a regional behavioral health authority
9 that is under contract with the administration.

10 19. "Health care provider" means a health care institution as
11 defined in section 36-401 that is licensed as a behavioral health provider
12 pursuant to department rules or a mental health provider.

13 20. "Independent evaluator" means a licensed physician, psychiatric
14 and mental health nurse practitioner or psychologist who is selected by
15 the person to be evaluated or by ~~such~~ THE person's attorney.

16 21. "Informed consent" means a voluntary decision following
17 presentation of all facts necessary to form the basis of an intelligent
18 consent by the patient or guardian with no minimizing of known dangers of
19 any procedures.

20 22. "Least restrictive treatment alternative" means the treatment
21 plan and setting that infringe in the least possible degree with the
22 patient's right to liberty and that are consistent with providing needed
23 treatment in a safe and humane manner.

24 23. "Licensed physician" means any medical doctor or doctor of
25 osteopathy who is either:

26 (a) Licensed in this state.

27 (b) A full-time hospital physician licensed in another state and
28 serving on the staff of a hospital operated or licensed by the United
29 States government.

30 24. "Medical director of an evaluation agency" means a
31 psychiatrist, or other licensed physician experienced in psychiatric
32 matters, who is designated in writing by the governing body of the agency
33 as the person in charge of the medical services of the agency for the
34 purposes of this chapter and may include the chief medical officer of the
35 state hospital.

36 25. "Medical director of a mental health treatment agency" means a
37 psychiatrist, or other licensed physician experienced in psychiatric
38 matters, who is designated in writing by the governing body of the agency
39 as the person in charge of the medical services of the agency for the
40 purposes of this chapter and includes the chief medical officer of the
41 state hospital.

42 26. "Mental disorder" means a substantial disorder of the person's
43 emotional processes, thought, cognition or memory. Mental disorder is
44 distinguished from:

1 (a) Conditions that are primarily those of drug abuse, alcoholism
2 or intellectual disability, unless, in addition to one or more of these
3 conditions, the person has a mental disorder.

4 (b) The declining mental abilities that directly accompany
5 impending death.

6 (c) Character and personality disorders characterized by lifelong
7 and deeply ingrained antisocial behavior patterns, including sexual
8 behaviors that are abnormal and prohibited by statute unless the behavior
9 results from a mental disorder.

10 27. "Mental health provider" means any physician or provider of
11 mental health or behavioral health services who is involved in evaluating,
12 caring for, treating or rehabilitating a patient.

13 28. "Mental health treatment agency" means the state hospital or a
14 health care agency that is licensed by the department and that provides
15 those services that are required of the agency by this chapter.

16 29. "Outpatient treatment" or "combined inpatient and outpatient
17 treatment" means any treatment program not requiring continuous inpatient
18 hospitalization.

19 30. "Outpatient treatment plan" means a treatment plan that does
20 not require continuous inpatient hospitalization.

21 31. "Patient" means any person who is undergoing examination,
22 evaluation or behavioral or mental health treatment under this chapter.

23 32. "Peace officers" means sheriffs of counties, constables,
24 marshals and policemen of cities and towns.

25 33. "Persistent or acute disability" means a severe mental disorder
26 that meets all the following criteria:

27 (a) Significantly impairs judgment, reason, behavior or capacity to
28 recognize reality.

29 (b) If not treated, has a substantial probability of causing the
30 person to suffer or continue to suffer severe and abnormal mental,
31 emotional or physical harm.

32 (c) Substantially impairs the person's capacity to make an informed
33 decision regarding treatment, and this impairment causes the person to be
34 incapable of understanding and expressing an understanding of the
35 advantages and disadvantages of accepting treatment and understanding and
36 expressing an understanding of the alternatives to the particular
37 treatment offered after the advantages, disadvantages and alternatives are
38 explained to that person.

39 (d) Has a reasonable prospect of being treatable by outpatient,
40 inpatient or combined inpatient and outpatient treatment.

41 34. "Prepetition screening" means the review of each application
42 requesting court-ordered evaluation, including an investigation of facts
43 alleged in the application, an interview with each applicant and an
44 interview, if possible, with the proposed patient. The purpose of the
45 interview with the proposed patient is to assess the problem, explain the

1 application and, when indicated, attempt to persuade the proposed patient
2 to receive, on a voluntary basis, evaluation or other services.

3 35. "Prescribed form" means a form established by a court or the
4 rules of the administration in accordance with the laws of this state.

5 36. "Professional" means a physician who is licensed pursuant to
6 title 32, chapter 13 or 17, a psychologist who is licensed pursuant to
7 title 32, chapter 19.1 or a psychiatric and mental health nurse
8 practitioner who is certified pursuant to title 32, chapter 15.

9 37. "Proposed patient" means a person for whom an application for
10 evaluation has been made or a petition for court-ordered evaluation has
11 been filed.

12 38. "Prosecuting agency" means the county attorney, attorney
13 general or city attorney who applied or petitioned for an evaluation or
14 treatment pursuant to this chapter.

15 39. "Psychiatric and mental health nurse practitioner" means a
16 registered nurse practitioner as defined in section 32-1601 who has
17 completed an adult or family psychiatric and mental health nurse
18 practitioner program and who is certified as an adult or family
19 psychiatric and mental health nurse practitioner by the state board of
20 nursing.

21 40. "Psychiatrist" means a licensed physician who has completed
22 three years of graduate training in psychiatry in a program approved by
23 the American medical association or the American osteopathic association.

24 41. "Psychologist" means a person who is licensed under title 32,
25 chapter 19.1 and who is experienced in the practice of clinical
26 psychology.

27 42. "Records" means all communications that are recorded in any
28 form or medium and that relate to patient examination, evaluation or
29 behavioral or mental health treatment. Records include medical records
30 that are prepared by a health care provider or other providers. Records
31 do not include:

32 (a) Materials that are prepared in connection with utilization
33 review, peer review or quality assurance activities, including records
34 that a health care provider prepares pursuant to section 36-441, 36-445,
35 36-2402 or 36-2917.

36 (b) Recorded telephone and radio calls to and from a publicly
37 operated emergency dispatch office relating to requests for emergency
38 services or reports of suspected criminal activity.

39 43. "Regional behavioral health authority" has the same meaning
40 prescribed in section 36-3401.

41 44. "Screening agency" means a health care agency that is licensed
42 by the department and that provides those services required of ~~such~~ THE
43 agency by this chapter.

44 45. "Social worker" means a person who has completed two years of
45 graduate training in social work in a program approved by the council of
46 social work education and who has experience in mental health.

1 46. "State hospital" means the Arizona state hospital.

2 47. "Superintendent" means the superintendent of the state
3 hospital.

4 48. "VOLUNTARY EVALUATION" MEANS THE ONGOING COLLECTION AND
5 ANALYSIS OF A PERSON'S MEDICAL, PSYCHOLOGICAL, PSYCHIATRIC AND SOCIAL
6 CONDITIONS IN ORDER TO INITIALLY DETERMINE IF A HEALTH DISORDER EXISTS AND
7 IF THERE IS A NEED FOR BEHAVIORAL HEALTH SERVICES AND, ON AN ONGOING
8 BASIS, TO ENSURE THAT THE PERSON'S SERVICE PLAN IS DESIGNED TO MEET THE
9 PERSON'S AND THE PERSON'S FAMILY'S CURRENT NEEDS AND LONG-TERM GOALS.

10 Sec. 2. Section 36-522, Arizona Revised Statutes, is amended to
11 read:

12 36-522. Voluntary evaluations; consent; failure to complete;
13 definitions

14 A. ON RECEIPT OF AN APPLICATION FOR COURT-ORDERED EVALUATION, if
15 the petition for court-ordered evaluation is not filed because it has been
16 determined that the proposed patient will voluntarily receive an
17 evaluation and is unlikely to present a danger to self or others until the
18 voluntary evaluation, the evaluation agency provided for by the county, or
19 A LICENSED BEHAVIORAL HEALTH PROVIDER selected by the proposed patient,
20 shall be immediately notified BY THE EVALUATION AGENCY and shall provide A
21 VOLUNTARY evaluation of the proposed patient at a scheduled time and place
22 within ~~five~~ TEN days ~~of~~ AFTER the notice. The voluntary evaluation may be
23 on an inpatient or outpatient basis AND ON COMPLETION SHALL BE IMMEDIATELY
24 DELIVERED TO THE EVALUATION AGENCY PROVIDED FOR BY THE COUNTY. THE
25 EVALUATION AGENCY PROVIDED FOR BY THE COUNTY SHALL CONFIRM RECEIPT OF THE
26 VOLUNTARY EVALUATION. IF THE VOLUNTARY EVALUATION RECOMMENDS THAT THE
27 PATIENT RECEIVE A COURT-ORDERED EVALUATION, THE RECOMMENDATION MUST BE
28 ACCOMPANIED WITH AN APPLICATION FOR COURT-ORDERED EVALUATION.

29 B. Voluntary inpatient evaluation is subject to article 3 of this
30 chapter.

31 C. Voluntary outpatient evaluation shall conform to the
32 requirements of section 36-530, subsection D and section 36-531,
33 subsections B, C and D and shall proceed only after the person to be
34 evaluated has given consent to be evaluated by signing a form prescribed
35 by the director that includes information to the proposed patient that the
36 patient-physician privilege does not apply and that the evaluation may
37 result in a petition for the person to undergo court-ordered treatment or
38 for guardianship. ~~Voluntary evaluation may be carried out only if chosen~~
39 ~~by the patient during the course of a prepetition screening after an~~
40 ~~application for evaluation has been made.~~

41 D. IF THE PERSON WHO REQUESTED A VOLUNTARY EVALUATION DOES NOT
42 APPEAR OR DOES NOT COMPLETE THE APPOINTMENTS SCHEDULED, THE EVALUATION
43 AGENCY PROVIDED FOR BY THE COUNTY SHALL BE IMMEDIATELY NOTIFIED BY THE
44 PROVIDER WHO WAS TO CONDUCT THE EVALUATION. THE EVALUATION AGENCY SHALL
45 THEN PROVIDE PREPETITION SCREENING OF THE APPLICATION FOR COURT-ORDERED
46 EVALUATION IN ACCORDANCE WITH SECTIONS 36-521 AND 36-521.01.

1 E. FOR THE PURPOSES OF THIS SECTION:
2 1. "LICENSED BEHAVIORAL HEALTH PROVIDER" MEANS ANY OF THE
3 FOLLOWING:
4 (a) A PERSON WHO IS LICENSED PURSUANT TO TITLE 32, CHAPTER 33 AND
5 WHOSE SCOPE OF PRACTICE ALLOWS THE PERSON TO EITHER:
6 (i) INDEPENDENTLY ENGAGE IN THE PRACTICE OF BEHAVIORAL HEALTH.
7 (ii) EXCEPT FOR A LICENSED SUBSTANCE ABUSE TECHNICIAN, ENGAGE IN
8 THE PRACTICE OF BEHAVIORAL HEALTH UNDER DIRECT SUPERVISION.
9 (b) A PSYCHIATRIST.
10 (c) A PSYCHOLOGIST WHO IS LICENSED PURSUANT TO TITLE 32, CHAPTER
11 19.1.
12 (d) A REGISTERED NURSE PRACTITIONER WHO IS LICENSED PURSUANT TO
13 TITLE 32, CHAPTER 15 AND WHO IS CERTIFIED AS AN ADULT PSYCHIATRIC AND
14 MENTAL HEALTH NURSE.
15 2. "PRACTICE OF BEHAVIORAL HEALTH" HAS THE SAME MEANING PRESCRIBED
16 IN SECTION 32-3251.
17 Sec. 3. Section 36-545.05, Arizona Revised Statutes, is amended to
18 read:
19 36-545.05. Treatment by agencies under administration
20 contract; charges; voluntary evaluations;
21 prepetition screenings; court-ordered
22 evaluations; prohibitions
23 A. When a person is given a prepetition screening, or a
24 court-ordered evaluation by a screening agency or evaluation agency
25 pursuant to article 4 of this chapter, the person shall not be charged.
26 B. WHEN A PERSON IS GIVEN A VOLUNTARY EVALUATION PURSUANT TO
27 SECTION 36-522, THE PERSON SHALL PAY ALL OR SUCH PORTION OF THE
28 ESTABLISHED CHARGES AS THE PERSON CAN AFFORD. IF THE PERSON IS INDIGENT,
29 CHARGES MAY NOT BE MADE AGAINST THE PERSON.
30 ~~B.~~ C. When a patient is given voluntary treatment pursuant to
31 article 3 of this chapter or court-ordered treatment pursuant to article 5
32 of this chapter, the patient or proposed patient shall pay all or such
33 portion of the established charges as the patient can afford. If the
34 patient is indigent, no charges shall be made against the patient.