State of Arizona
House of Representatives
Fifty-sixth Legislature
Second Regular Session
2024

HOUSE BILL 2764

AN ACT

AMENDING SECTION 36-405, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 4, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 36-405.03; AMENDING SECTIONS 36-424, 36-425 AND 36-431.01, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 4, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 36-431.03; AMENDING SECTION 36-446.02, ARIZONA REVISED STATUTES; RELATING TO HEALTH CARE INSTITUTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 36-405, Arizona Revised Statutes, is amended to read:

36-405. Powers and duties of the director

A. The director shall adopt rules to establish minimum standards and requirements for constructing, modifying and licensing health care institutions necessary to ensure the public health, safety and welfare. The standards and requirements shall relate to the construction, equipment, sanitation, staffing for medical, nursing and personal care services, and recordkeeping pertaining to administering medical, nursing, behavioral health and personal care services, in accordance with generally accepted practices of health care. The standards shall require that a physician who is licensed pursuant to title 32, chapter 13 or 17 medically discharge patients from surgery and shall allow an outpatient surgical center to require that either an anesthesia provider who is licensed pursuant to title 32, chapter 13, 15 or 17 or a physician who is licensed pursuant to title 32, chapter 13 or 17 remain present on the premises until all patients are discharged from the recovery room. Except as otherwise provided in this subsection, the director shall use the current standards adopted by the joint commission on accreditation of hospitals and the commission on accreditation of the American osteopathic association or those adopted by any recognized accreditation organization approved by the department as guidelines in prescribing minimum standards and requirements under this section.

B. The director, by rule, may:

1. Classify and subclassify health care institutions according to character, size, range of services provided, medical or dental specialty offered, duration of care and standard of patient care required for the purposes of licensure. Classes of health care institutions may include hospitals, infirmaries, outpatient treatment centers, health screening services centers and residential care facilities. Whenever the director reasonably deems distinctions in rules and standards to be appropriate among different classes or subclasses of health care institutions, the director may make such distinctions.

2. Prescribe standards for determining a health care institution's substantial compliance with licensure requirements.

3. Prescribe the criteria for the licensure inspection process.

4. Prescribe standards for selecting health care-related demonstration projects.

5. Establish nonrefundable application and licensing fees for health care institutions, including a grace period and a fee for the late payment of licensing fees.

6. Establish a process for the department to notify a licensee of the licensee's licensing fee due date.
7. Establish a process for a licensee to request a different licensing fee due date, including any limits on the number of requests by the licensee.

C. The director, by rule, shall adopt licensing provisions that facilitate the colocation and integration of outpatient treatment centers that provide medical, nursing and health-related services with behavioral health services consistent with article 3.1 of this chapter.

D. The director shall establish a model in rule for the department to monitor health care institutions on-site that are found to not be in substantial compliance with the applicable licensure requirements. The director shall establish on-site monitoring fees for health care institutions that are subject to the on-site monitoring requirements.

E. The department may provide in-service training to health care institutions that request in-service training relating to regulatory compliance outside of the survey process. The director shall establish in rule in-service training fees for health care institutions that request in-service training from the department.

F. Ninety percent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the health services licensing fund established by section 36-414 and ten percent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

G. Subsection B, paragraph 5 of this section does not apply to a health care institution operated by a state agency pursuant to state or federal law or to adult foster care residential settings.

Sec. 2. Title 36, chapter 4, article 1, Arizona Revised Statutes, is amended by adding section 36-405.03, to read:

36-405.03. Memory care services; required licensure; rules; fees; advertisement; staff training requirements; definition

A. The director shall establish by rule licensure subclass, including fees, for an assisted living facility that wishes to provide memory care services.

B. An assisted living facility that represents to the public or advertises that the entity provides memory care services must be licensed to provide memory care services.

C. The director shall establish by rule minimum training standards for staff and contractors who work in an assisted living facility that is licensed to provide memory care services. The training standards shall include a minimum of eight hours of initial memory care services training and four hours of annual continuing education. In addition to the eight hours of initial training, the training standards for assisted living facility managers shall include a minimum of four hours of memory care services training that is specifically for assisted living facility managers. The department shall approve the memory care services training
PROGRAMS, AND THE TRAINING PROGRAMS SHALL PROVIDE STAFF AND CONTRACTORS WHO COMPLETE THE TRAINING A CERTIFICATE OF COMPLETION THAT MAY BE USED TO WORK AT ANY ASSISTED LIVING FACILITY THAT IS LICENSED TO PROVIDE MEMORY CARE SERVICES. IF A STAFF MEMBER OR CONTRACTOR HAS NOT WORKED AT AN ASSISTED LIVING FACILITY THAT IS LICENSED TO PROVIDE MEMORY CARE SERVICES FOR A PERIOD OF TWELVE MONTHS, THE PERSON IS REQUIRED TO REPEAT THE INITIAL TRAINING.

D. AN ASSISTED LIVING FACILITY THAT IS LICENSED TO PROVIDE MEMORY CARE SERVICES IS REQUIRED TO PROVIDE TO THE DEPARTMENT DURING AN INVESTIGATION OR COMPLIANCE SURVEY DOCUMENTATION OF STAFF TRAINING AS PRESCRIBED IN SUBSECTION C OF THIS SECTION. FAILURE TO PROVIDE COMPLETE STAFF TRAINING DOCUMENTATION SHALL BE CITED AS A DEFICIENCY.

E. FOR THE PURPOSES OF THIS SECTION, "MEMORY CARE SERVICES" MEANS SERVICES THAT SUPPORT INDIVIDUALS WITH DEMENTIA AND OTHER PROGRESSIVE AND NEURODEGENERATIVE BRAIN DISORDERS, INCLUDING SPECIALIZED ENVIRONMENTAL FEATURES, CARE PLANNING, DIRECTED CARE SERVICES, MEDICATION ADMINISTRATION SERVICES, SPECIALIZED ACCOMMODATIONS, ACTIVITY PROGRAMMING OR OTHER SERVICES REQUIRED BY THE DEPARTMENT IN RULE.

Sec. 3. Section 36-424, Arizona Revised Statutes, is amended to read:

36-424. Inspections; suspension or revocation of license; report to board of examiners of nursing care institution administrators and assisted living facility managers

A. Except as provided in subsection B of this section, the director shall inspect the premises of the health care institution and investigate the character and other qualifications of the applicant to ascertain whether the applicant and the health care institution are in substantial compliance with the requirements of this chapter and the rules established pursuant to this chapter. The director may prescribe rules regarding department background investigations into an applicant's character and qualifications.

B. The director may accept proof that a health care institution is an accredited hospital or is an accredited health care institution in lieu of all compliance inspections required by this chapter if the director receives a copy of the health care institution's accreditation report for the licensure period and the health care institution is accredited by an independent, nonprofit accrediting organization approved by the secretary of the United States department of health and human services. If the health care institution's accreditation report is not valid for the entire licensure period, the department may conduct a compliance inspection of the health care institution during the time period the department does not have a valid accreditation report for the health care institution. For the purposes of this subsection, each licensed premises of a health care
institution must have its own accreditation report. The director may not accept an accreditation report in lieu of a compliance inspection of:

1. An intermediate care facility for individuals with intellectual disabilities.
2. A nursing-supported group home.
3. A health care institution if the health care institution has been subject to an enforcement action pursuant to section 36-427 or 36-431.01 within the year preceding the annual licensing fee anniversary date.
4. A RESIDENTIAL CARE INSTITUTION, UNLESS IT HAS THE SAME DIRECT OWNER OR INDIRECT OWNER AS A HOSPITAL LICENSED PURSUANT TO THIS CHAPTER.
5. A NURSING CARE INSTITUTION, UNLESS IT HAS THE SAME DIRECT OWNER OR INDIRECT OWNER AS A HOSPITAL LICENSED PURSUANT TO THIS CHAPTER.

C. On a determination by the director that there is reasonable cause to believe a health care institution is not adhering to the licensing requirements of this chapter, the director and any duly designated employee or agent of the director, including county health representatives and county or municipal fire inspectors, consistent with standard medical practices, may enter on and into the premises of any health care institution that is licensed or required to be licensed pursuant to this chapter at any reasonable time for the purpose of determining the state of compliance with this chapter, the rules adopted pursuant to this chapter and local fire ordinances or rules. Any application for licensure under this chapter constitutes permission for and complete acquiescence in any entry or inspection of the premises during the pendency of the application and, if licensed, during the term of the license. If an inspection reveals that the health care institution is not adhering to the licensing requirements established pursuant to this chapter, the director may take action authorized by this chapter. Any health care institution, including an accredited hospital, whose license has been suspended or revoked in accordance with this section is subject to inspection on application for relicensure or reinstatement of license.

D. The director shall immediately report to the board of examiners of nursing care institution administrators and assisted living facility managers information identifying that a nursing care institution administrator's conduct may be grounds for disciplinary action pursuant to section 36-446.07.

Sec. 4. Section 36-425, Arizona Revised Statutes, is amended to read:

36-425. Inspections; issuance of license; posting requirements; provisional license; denial of license

A. On receipt of a properly completed application for a health care institution license, the director shall conduct an inspection of the health care institution as prescribed by this chapter. If an application
for a license is submitted due to a planned change of ownership, the
director shall determine the need for an inspection of the health care
institution. Based on the results of the inspection and after the
submission of the applicable licensing fee, the director shall either deny
the license or issue a regular or provisional license. A license issued
by the department shall be posted in a conspicuous location in the
reception area of that HEALTH CARE institution.

B. The director shall issue a license if the director determines
that an applicant and the health care institution for which the license is
sought substantially comply with the requirements of this chapter and
rules adopted pursuant to this chapter and the applicant agrees to carry
out a plan acceptable to the director to eliminate any deficiencies. The
director shall not require a health care institution that was designated
as a critical access hospital to make any modifications required by this
chapter or rules adopted pursuant to this chapter in order to obtain an
amended license with the same licensed capacity the health care
institution had before it was designated as a critical access hospital if
all of the following are true:

1. The health care institution has subsequently terminated its
critical access hospital designation.

2. The licensed capacity of the health care institution does not
 exceed its licensed capacity before its designation as a critical access
hospital.

3. The health care institution remains in compliance with the
applicable codes and standards that were in effect at the time the
facility was originally licensed with the higher licensed capacity.

C. A health care institution license does not expire and remains
valid unless:

1. The department subsequently revokes or suspends the license.

2. The license is considered void because the licensee did not pay
the licensing fee, CIVIL PENALTIES OR PROVIDER AGREEMENT FEES before the
licensing fee RELEVANT due date OR DID NOT ENTER INTO AN AGREEMENT WITH
THE DEPARTMENT BEFORE THE RELEVANT DUE DATE TO PAY ALL OUTSTANDING FEES OR
CIVIL PENALTIES.

D. Except as provided in section 36-424, subsection B and
subsection E of this section, the department shall conduct a compliance
inspection of a health care institution to determine compliance with this
chapter and rules adopted pursuant to this chapter at least once annually.

E. If the department determines a facility, EXCEPT FOR A
RESIDENTIAL CARE INSTITUTION OR A NURSING CARE INSTITUTION THAT DOES NOT
HAVE THE SAME DIRECT OWNER OR INDIRECT OWNER AS A HOSPITAL LICENSED
PURSUANT TO THIS CHAPTER, to be deficiency free on a compliance survey,
the department shall not conduct a compliance survey of that facility for
twenty-four months after the date of the deficiency free survey. This
subsection does not prohibit the department from enforcing licensing
requirements as authorized by section 36-424.

F. A hospital licensed as a rural general hospital may provide
intensive care services.

G. The director shall issue a provisional license for a period of
not more than one year if an inspection or investigation of a currently
licensed health care institution or a health care institution for which an
applicant is seeking a license reveals that the HEALTH CARE institution is
not in substantial compliance with department licensure requirements and
the director believes that the immediate interests of the patients and the
general public are best served if the HEALTH CARE institution is given an
opportunity to correct deficiencies. The applicant or licensee shall
agree to carry out a plan to eliminate deficiencies that is acceptable to
the director. The director shall not issue consecutive provisional
licenses to a single health care institution. The director shall not
issue a license to the current licensee or a successor applicant before
the expiration of the provisional license unless the health care
institution submits an application for a substantial compliance survey and
is found to be in substantial compliance. The director may issue a
license only if the director determines that the HEALTH CARE institution
is in substantial compliance with the licensure requirements of the
department and this chapter. This subsection does not prevent the
director from taking action to protect the safety of patients pursuant to
section 36-427.

H. Subject to the confidentiality requirements of articles 4 and 5
of this chapter, title 12, chapter 13, article 7.1 and section 12-2235,
the licensee shall keep current department inspection reports at the
health care institution. Unless federal law requires otherwise, the
licensee shall post in a conspicuous location a notice that identifies the
location at that HEALTH CARE institution where the inspection reports are
available for review.

I. A health care institution shall immediately notify the
department in writing when there is a change of the chief administrative
officer specified in section 36-422, subsection A, paragraph 1,
subdivision (g).

J. When the department issues an original license or an original
provisional license to a health care institution, it shall notify the
owners and lessees of any agricultural land within one-fourth mile of the
health care institution. The health care institution shall provide the
department with the names and addresses of owners or lessees of
agricultural land within one-fourth mile of the proposed health care
institution.

K. In addition to the grounds for denial of licensure prescribed
pursuant to subsection A of this section, the director may deny a license
because an applicant or anyone in a business relationship with the
applicant, including stockholders and controlling persons, has had a
license to operate a health care institution denied, revoked or suspended
or a license or certificate issued by a health profession regulatory board
pursuant to title 32 or issued by a state agency pursuant to chapter 6,
article 7 or chapter 17 of this title denied, revoked or suspended or has
a licensing history of recent serious violations occurring in this state
or in another state that posed a direct risk to the life, health or safety
of patients or residents.

L. In addition to the requirements of this chapter, the director
may prescribe by rule other licensure requirements.

Sec. 5. Section 36-431.01, Arizona Revised Statutes, is amended to
read:

36-431.01. Violations; civil penalties; enforcement
A. The director may assess a civil penalty against a person who
violates this chapter or a rule adopted pursuant to this chapter in an
amount of not to exceed five hundred dollars more than $1,000 for each
violation, which may be assessed for each resident or patient who the
department determines was impacted by the violation. Each day that a
violation occurs constitutes a separate violation.

B. The director may issue a notice of assessment that shall include
the proposed amount of the assessment. A person may appeal the assessment
by requesting a hearing pursuant to title 41, chapter 6, article 10. When
an assessment is appealed, the director shall take no further action to
enforce and collect the assessment until after the hearing.

C. In determining the amount of the civil penalty pursuant to
subsection A of this section, the department shall consider the following:

1. Repeated violations of statutes or rules.
2. Patterns of noncompliance.
3. Types of violations.
4. The severity of violations.
5. The potential for and occurrences of actual harm, including to
   patients, staff or residents.
6. Threats to health and safety, including to patients, staff or
   residents.
7. The number of persons affected by the violations.
8. The number of violations.
9. The size of the facility.
10. The length of time that the violations have been occurring.
11. The type of health care institution.

D. Pursuant to interagency agreement specified in section 36-409,
the director may assess a civil penalty, including interest, in accordance
with 42 United States Code section 1396r. A person may appeal this
assessment by requesting a hearing before the director in accordance with
subsection B of this section. Civil penalty amounts may be established by
rules adopted by the director that conform to guidelines or regulations adopted by the secretary of the United States department of health and human services pursuant to 42 United States Code section 1396r.

E. Actions to enforce the collection of penalties assessed pursuant to subsections A and D of this section shall be brought by the attorney general or the county attorney in the name of the state in the justice court or the superior court in the county in which the violation occurred.

F. Penalties assessed under subsection D of this section are in addition to and not in limitation of other penalties imposed pursuant to this chapter. All civil penalties and interest assessed pursuant to subsection D of this section shall be deposited, PURSUANT TO SECTIONS 35-146 AND 35-147, in the nursing care institution resident protection revolving fund established by section 36-431.02. The director shall use these monies for the purposes prescribed by 42 United States Code section 1396r, including payment for the costs of relocation of residents to other facilities, maintenance of operation of a facility pending correction of the deficiencies or closure and reimbursement of residents for personal monies lost.

G. The department shall transmit DEPOSIT CIVIL penalties assessed under subsection A of this section to IN the state general fund.

Sec. 6. Title 36, chapter 4, article 2, Arizona Revised Statutes, is amended by adding section 36-431.03, to read:

36-431.03. Legal action or sale; effect on licensure

A. THE DIRECTOR MAY CONTINUE TO PURSUE ANY COURT, ADMINISTRATIVE OR ENFORCEMENT ACTION AGAINST A LICENSEE EVEN IF THE HEALTH CARE INSTITUTION IS IN THE PROCESS OF BEING SOLD OR TRANSFERRED, OR IF THE HEALTH CARE INSTITUTION HAS CLOSED.

B. IF THE DEPARTMENT DETERMINES PATIENT SAFETY MAY BE IN JEOPARDY DUE TO THE ACTIONS OF A LICENSEE, THE DEPARTMENT MAY DENY A NEW APPLICATION FOR LICENSURE OF A CURRENTLY LICENSED HEALTH CARE INSTITUTION WHILE ANY ENFORCEMENT OR COURT ACTION RELATED TO THE LICENSURE OR OPERATION OF THE HEALTH CARE INSTITUTION IS PENDING AGAINST THAT HEALTH CARE INSTITUTION'S CURRENT LICENSEE.

C. THE DEPARTMENT MAY DENY THE APPROVAL OF A CHANGE IN OWNERSHIP OF A CURRENTLY LICENSED HEALTH CARE INSTITUTION IF THE DEPARTMENT DETERMINES THAT THE TRANSFER OF OWNERSHIP, WHETHER INVOLVING A DIRECT OWNER OR INDIRECT OWNER, MAY JEOPARDIZE PATIENT SAFETY.

Sec. 7. Section 36-446.02, Arizona Revised Statutes, is amended to read:

36-446.02. Board of examiners; terms; meetings; quorum; effect of vacancies; compensation

A. The board of examiners of nursing care institution administrators and assisted living facility managers is established consisting of eleven THIRTEEN members appointed by the governor.
B. The board shall include:

1. One administrator who holds an active license issued pursuant to this article.
2. One ASSISTED LIVING FACILITY manager who holds an active license issued pursuant to this article.
3. One administrator of a nonprofit or faith-based skilled nursing facility.
4. One administrator of a proprietary skilled nursing facility.
5. Two managers of an assisted living center as defined in section 36-401.
6. One manager of an assisted living home as defined in section 36-401.
7. Two public members who are not affiliated with a nursing care institution or an assisted living facility.
8. One public member who represents an organization that advocates for the elderly.
9. One person who is a family member of a resident in either a skilled nursing facility or an assisted living facility at the time the person is appointed to the board.
10. ONE PERSON WHO IS A CURRENT OR FORMER RESIDENT OF A SKILLED NURSING FACILITY OR AN ASSISTED LIVING FACILITY.
11. ONE PUBLIC MEMBER WHO REPRESENTS AN ORGANIZATION THAT ADVOCATES FOR INDIVIDUALS WITH ALZHEIMER'S DISEASE, DEMENTIA OR OTHER RELATED NEUROCOGNITIVE DISEASES OR DISORDERS.
12. ONE PERSON WHO REPRESENTS AN ORGANIZATION THAT ADVOCATES FOR PERSONS WHO HAVE PHYSICAL DISABILITIES.
13. ONE PERSON WHO REPRESENTS AN ORGANIZATION THAT ADVOCATES FOR PERSONS WHO HAVE INTELLECTUAL OR DEVELOPMENTAL DISABILITIES.

C. Board members who are not affiliated with a nursing care institution or an assisted living facility shall not have a direct financial interest in nursing care institutions or assisted living facilities.

D. A board member shall not serve on any other board relating to long-term care during the member's term with the board.

E. The term of a board member automatically ends when that member no longer meets the qualifications for appointment to the board. The board shall notify the governor of the board vacancy.

F. Board members who are not affiliated with a nursing care institution or an assisted living facility shall be appointed for two-year terms. Board members who are the administrator of a nursing care institution or the manager of an assisted living facility shall be appointed for three-year terms.

G. A board member shall not serve for more than two consecutive terms.
H.B. 2764

H. The board shall meet at least twice a year.
I. A majority of the board members constitutes a quorum.
J. Board members are eligible to receive compensation as determined pursuant to section 38-611 for each day actually spent performing their duties under this chapter.
K. A board member who is absent from three consecutive regular meetings or who fails to attend more than fifty percent of board meetings over the course of one calendar year vacates the board member's position.
The board shall notify the governor of the vacancy.

Sec. 8. Rulemaking exemption
Notwithstanding any other law, for the purposes of this act, the department of health services is exempt from the rulemaking requirements of title 41, chapters 6 and 6.1, Arizona Revised Statutes, until July 1, 2025, except that the department shall hold at least two public meetings.

Sec. 9. Effective date
Section 36-405.03, Arizona Revised Statutes, as added by this act, is effective from and after June 30, 2025.