

REFERENCE TITLE: long-term care; enforcement; memory care

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

## **HB 2764**

Introduced by  
Representative Dunn

### 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)

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

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

4 36-405. Powers and duties of the director

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

25 B. The director, by rule, may:

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

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

37 3. Prescribe the criteria for the licensure inspection process.

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

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

43 6. Establish a process for the department to notify a licensee of  
44 the licensee's licensing fee due date.



1 D. FOR THE PURPOSES OF THIS SECTION, "ENHANCED MEMORY CARE  
2 SERVICES" MEANS SERVICES THAT SUPPORT INDIVIDUALS WITH MEMORY LOSS,  
3 INCLUDING SPECIALIZED ENVIRONMENTAL FEATURES, CARE PLANNING, DIRECTED CARE  
4 SERVICES, MEDICATION ADMINISTRATION SERVICES, SPECIALIZED ACCOMMODATIONS,  
5 ACTIVITY PROGRAMMING OR OTHER SERVICES REQUIRED BY THE DEPARTMENT IN RULE.

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

8 36-424. Inspections; suspension or revocation of license;  
9 report to board of examiners of nursing care  
10 institution administrators and assisted living  
11 facility managers

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

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

34 1. An intermediate care facility for individuals with intellectual  
35 disabilities.

36 2. A nursing-supported group home.

37 3. A health care institution if the health care institution has  
38 been subject to an enforcement action pursuant to section 36-427 or  
39 36-431.01 within the year preceding the annual licensing fee anniversary  
40 date.

41 4. A RESIDENTIAL CARE INSTITUTION, UNLESS IT HAS THE SAME DIRECT  
42 OWNER OR INDIRECT OWNER AS A HOSPITAL LICENSED PURSUANT TO THIS CHAPTER.

43 5. A NURSING CARE INSTITUTION, UNLESS IT HAS THE SAME DIRECT OWNER  
44 OR INDIRECT OWNER AS A HOSPITAL LICENSED PURSUANT TO THIS CHAPTER.

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

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

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

27 36-425. Inspections; issuance of license; posting  
28 requirements; provisional license; denial of  
29 license

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

40 B. The director shall issue a license if the director determines  
41 that an applicant and the health care institution for which the license is  
42 sought substantially comply with the requirements of this chapter and  
43 rules adopted pursuant to this chapter and the applicant agrees to carry  
44 out a plan acceptable to the director to eliminate any deficiencies. The  
45 director shall not require a health care institution that was designated

1 as a critical access hospital to make any modifications required by this  
2 chapter or rules adopted pursuant to this chapter in order to obtain an  
3 amended license with the same licensed capacity the health care  
4 institution had before it was designated as a critical access hospital if  
5 all of the following are true:

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

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

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

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

16 1. The department subsequently revokes or suspends the license.

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

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

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

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

36 G. The director shall issue a provisional license for a period of  
37 not more than one year if an inspection or investigation of a currently  
38 licensed health care institution or a health care institution for which an  
39 applicant is seeking a license reveals that the HEALTH CARE institution is  
40 not in substantial compliance with department licensure requirements and  
41 the director believes that the immediate interests of the patients and the  
42 general public are best served if the HEALTH CARE institution is given an  
43 opportunity to correct deficiencies. The applicant or licensee shall  
44 agree to carry out a plan to eliminate deficiencies that is acceptable to  
45 the director. The director shall not issue consecutive provisional

1 licenses to a single health care institution. The director shall not  
2 issue a license to the current licensee or a successor applicant before  
3 the expiration of the provisional license unless the health care  
4 institution submits an application for a substantial compliance survey and  
5 is found to be in substantial compliance. The director may issue a  
6 license only if the director determines that the HEALTH CARE institution  
7 is in substantial compliance with the licensure requirements of the  
8 department and this chapter. This subsection does not prevent the  
9 director from taking action to protect the safety of patients pursuant to  
10 section 36-427.

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

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

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

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

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

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

3           36-431.01. Violations; civil penalties; enforcement

4           A. The director may assess a civil penalty against a person who  
5 violates this chapter or a rule adopted pursuant to this chapter in an  
6 amount of not ~~to exceed five hundred dollars~~ MORE THAN \$1,000 for each  
7 violation, WHICH MAY BE ASSESSED FOR EACH RESIDENT OR PATIENT WHO THE  
8 DEPARTMENT DETERMINES WAS IMPACTED BY THE VIOLATION. Each day that a  
9 violation occurs constitutes a separate violation.

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

15          C. In determining the AMOUNT OF THE civil penalty pursuant to  
16 subsection A of this section, the department shall ~~consider~~ ESTABLISH A  
17 MODEL IN RULE THAT CONSIDERS the following:

- 18           1. Repeated violations of statutes or rules.
- 19           2. Patterns of noncompliance.
- 20           3. Types of violations.
- 21           4. THE severity of violations.
- 22           5. THE potential for and occurrences of actual harm, INCLUDING TO  
23 PATIENTS, STAFF OR RESIDENTS.
- 24           6. Threats to health and safety, INCLUDING TO PATIENTS, STAFF OR  
25 RESIDENTS.
- 26           7. THE number of persons affected by the violations.
- 27           8. THE number of violations.
- 28           9. THE size of the facility.
- 29           10. THE length of time that the violations have been occurring.
- 30           11. THE TYPE OF HEALTH CARE INSTITUTION.

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

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

43          F. Penalties assessed under subsection D of this section are in  
44 addition to and not in limitation of other penalties imposed pursuant to  
45 this chapter. All civil penalties and interest assessed pursuant to



1 subsection D of this section shall be deposited, PURSUANT TO SECTIONS  
2 35-146 AND 35-147, in the nursing care institution resident protection  
3 revolving fund established by section 36-431.02. The director shall use  
4 these monies for the purposes prescribed by 42 United States Code section  
5 1396r, including payment for the costs of relocation of residents to other  
6 facilities, maintenance of operation of a facility pending correction of  
7 the deficiencies or closure and reimbursement of residents for personal  
8 monies lost.

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

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

13 36-431.03. Legal action or sale; effect on licensure

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

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

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

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

30 36-446.02. Board of examiners; terms; meetings; quorum;  
31 effect of vacancies; compensation

32 A. The board of examiners of nursing care institution  
33 administrators and assisted living facility managers is established  
34 consisting of ~~eleven~~ THIRTEEN members appointed by the governor.

35 B. The board shall include:

36 1. One administrator who holds an active license issued pursuant to  
37 this article.

38 2. One ASSISTED LIVING FACILITY manager who holds an active license  
39 issued pursuant to this article.

40 3. One administrator of a nonprofit or faith-based skilled nursing  
41 facility.

42 4. One administrator of a proprietary skilled nursing facility.

43 5. Two managers of an assisted living center ~~as defined in section~~  
44 ~~36-401.~~

- 1           6. One manager of an assisted living home ~~as defined in section~~  
2 ~~36-401.~~
- 3           ~~7. Two public members who are not affiliated with a nursing care~~  
4 ~~institution or an assisted living facility.~~
- 5           ~~8.~~ 7. One public member who represents an organization that  
6 advocates for the elderly.
- 7           ~~9.~~ 8. One person who is a family member of a resident in either a  
8 skilled nursing facility or an assisted living facility at the time the  
9 person is appointed to the board.
- 10           9. ONE PERSON WHO IS A CURRENT OR FORMER RESIDENT OF A SKILLED  
11 NURSING FACILITY OR AN ASSISTED LIVING FACILITY.
- 12           10. ONE PUBLIC MEMBER WHO REPRESENTS AN ORGANIZATION THAT ADVOCATES  
13 FOR INDIVIDUALS WITH ALZHEIMER'S DISEASE, DEMENTIA OR OTHER RELATED  
14 NEUROCOGNITIVE DISEASES OR DISORDERS.
- 15           11. ONE PERSON WHO REPRESENTS AN ORGANIZATION THAT ADVOCATES FOR  
16 PERSONS WHO HAVE PHYSICAL DISABILITIES.
- 17           12. ONE PERSON WHO REPRESENTS AN ORGANIZATION THAT ADVOCATES FOR  
18 PERSONS WHO HAVE INTELLECTUAL OR DEVELOPMENTAL DISABILITIES.
- 19           C. Board members who are not affiliated with a nursing care  
20 institution or an assisted living facility shall not have a direct  
21 financial interest in nursing care institutions or assisted living  
22 facilities.
- 23           D. A board member shall not serve on any other board relating to  
24 long-term care during the member's term with the board.
- 25           E. The term of a board member automatically ends when that member  
26 no longer meets the qualifications for appointment to the board. The  
27 board shall notify the governor of the board vacancy.
- 28           F. Board members who are not affiliated with a nursing care  
29 institution or an assisted living facility shall be appointed for two-year  
30 terms. Board members who are the administrator of a nursing care  
31 institution or the manager of an assisted living facility shall be  
32 appointed for three-year terms.
- 33           G. A board member shall not serve for more than two consecutive  
34 terms.
- 35           H. The board shall meet at least twice a year.
- 36           I. A majority of the board members constitutes a quorum.
- 37           J. Board members are eligible to receive compensation as determined  
38 pursuant to section 38-611 for each day actually spent performing their  
39 duties under this chapter.
- 40           K. A board member who is absent from three consecutive regular  
41 meetings or who fails to attend more than fifty percent of board meetings  
42 over the course of one calendar year vacates the board member's position.  
43 The board shall notify the governor of the vacancy.

1           Sec. 8. Rulemaking exemption  
2           Notwithstanding any other law, for the purposes of this act, the  
3 department of health services is exempt from the rulemaking requirements  
4 of title 41, chapters 6 and 6.1, Arizona Revised Statutes, until July 1,  
5 2025, except that the department shall hold at least two public meetings.  
6           Sec. 9. Effective date  
7           Section 36-405.03, Arizona Revised Statutes, as added by this act,  
8 is effective from and after June 30, 2025.