

REFERENCE TITLE: DHS; licensure; group homes

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

HB 2166

Introduced by
Representative Dunn: Senator Fernandez

AN ACT

AMENDING SECTIONS 36-401, 36-421 AND 36-424, ARIZONA REVISED STATUTES;
AMENDING TITLE 36, CHAPTER 4, ARTICLE 2, ARIZONA REVISED STATUTES, BY
ADDING SECTION 36-425.09; AMENDING SECTIONS 36-551 AND 36-557, ARIZONA
REVISED STATUTES; RELATING TO DEVELOPMENTAL DISABILITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 36-401, Arizona Revised Statutes, is amended to
3 read:

4 36-401. Definitions; adult foster care

5 A. In this chapter, unless the context otherwise requires:

6 1. "Accredited health care institution" means a health care
7 institution, other than a hospital, that is currently accredited by a
8 nationally recognized accreditation organization.

9 2. "Accredited hospital" means a hospital that is currently
10 accredited by a nationally recognized organization on hospital
11 accreditation.

12 3. "Adult behavioral health therapeutic home" means a residence for
13 individuals who are at least eighteen years of age, have behavioral health
14 issues and need behavioral health services that does all of the following
15 for those individuals:

16 (a) Provides room and board.

17 (b) Assists in acquiring daily living skills.

18 (c) Coordinates transportation to scheduled appointments.

19 (d) Monitors behaviors.

20 (e) Assists in the self-administration of medication.

21 (f) Provides feedback to case managers related to behavior.

22 4. "Adult day health care facility" means a facility that provides
23 adult day health services during a portion of a continuous
24 twenty-four-hour period for compensation on a regular basis for five or
25 more adults who are not related to the proprietor.

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

32 6. "Adult foster care home" means a residential setting that
33 provides room and board and adult foster care services for at least one
34 and not more than four adults who are participants in the Arizona
35 long-term care system pursuant to chapter 29, article 2 of this title or
36 contracts for services with the United States department of veterans
37 affairs and in which the sponsor or the manager resides with the residents
38 and integrates the residents who are receiving adult foster care into that
39 person's family.

40 7. "Adult foster care services" means supervision, assistance with
41 eating, bathing, toileting, dressing, self-medication and other routines
42 of daily living or services authorized by rules adopted pursuant to
43 section 36-405 and section 36-2939, subsection C.

44 8. "Assisted living center" means an assisted living facility that
45 provides resident rooms or residential units to eleven or more residents.

1 9. "Assisted living facility" means a residential care institution,
2 including an adult foster care home, that provides or contracts to provide
3 supervisory care services, personal care services or directed care
4 services on a continuous basis.

5 10. "Assisted living home" means an assisted living facility that
6 provides resident rooms to ten or fewer residents.

7 11. "Behavioral health services" means services that pertain to
8 mental health and substance use disorders and that are either:

9 (a) Performed by or under the supervision of a professional who is
10 licensed pursuant to title 32 and whose scope of practice allows the
11 professional to provide these services.

12 (b) Performed on behalf of patients by behavioral health staff as
13 prescribed by rule.

14 12. "BEHAVIORAL-SUPPORTED GROUP HOME" MEANS A HEALTH CARE
15 INSTITUTION THAT MEETS ALL OF THE FOLLOWING:

16 (a) IS A COMMUNITY RESIDENTIAL SETTING AS DEFINED IN SECTION 36-551
17 FOR NOT MORE THAN SIX PERSONS WITH DEVELOPMENTAL DISABILITIES.

18 (b) IS OPERATED BY A SERVICE PROVIDER UNDER CONTRACT WITH THE
19 DEPARTMENT OF ECONOMIC SECURITY.

20 (c) PROVIDES ROOM AND BOARD, DAILY HABILITATION, ASSISTANCE IN
21 SELF-ADMINISTERING MEDICATION AND MEDICATION ADMINISTRATION AND BEHAVIORAL
22 HEALTH SERVICES FOR CLIENTS AS DEFINED IN SECTION 36-551 WITH DUAL
23 DISORDERS, INCLUDING PSYCHIATRIC DISORDERS AND DEVELOPMENTAL DISABILITIES,
24 WHO ENGAGE IN BEHAVIORS THAT ARE DISRUPTIVE, SOCIALLY INAPPROPRIATE OR
25 HARMFUL OR DANGEROUS TO SELF OR OTHERS, THAT INTERFERE WITH FUNCTIONING
26 AND QUALITY OF LIFE OR THAT MAY CAUSE DESTRUCTION OF PROPERTY.

27 ~~12.~~ 13. "Construction" means building, erecting, fabricating or
28 installing a health care institution.

29 ~~13.~~ 14. "Continuous" means available at all times without
30 cessation, break or interruption.

31 ~~14.~~ 15. "Controlling person" means a person who:

32 (a) Through ownership, has the power to vote at least ten percent
33 of the outstanding voting securities.

34 (b) If the applicant or licensee is a partnership, is the general
35 partner or a limited partner who holds at least ten percent of the voting
36 rights of the partnership.

37 (c) If the applicant or licensee is a corporation, an association
38 or a limited liability company, is the president, the chief executive
39 officer, the incorporator or any person who owns or controls at least ten
40 percent of the voting securities. For the purposes of this subdivision,
41 corporation does not include nonprofit corporations.

42 (d) Holds a beneficial interest in ten percent or more of the
43 liabilities of the applicant or the licensee.

44 ~~15.~~ 16. "Department" means the department of health services.

1 17. "DEVELOPMENTAL DISABILITY" HAS THE SAME MEANING PRESCRIBED IN
2 SECTION 36-551.

3 ~~16.~~ 18. "Directed care services" means programs and services,
4 including supervisory and personal care services, that are provided to
5 persons who are incapable of recognizing danger, summoning assistance,
6 expressing need or making basic care decisions.

7 ~~17.~~ 19. "Direction" means authoritative policy or procedural
8 guidance to accomplish a function or activity.

9 ~~18.~~ 20. "Director" means the director of the department.

10 ~~19.~~ 21. "Facilities" means buildings that are used by a health
11 care institution for providing any of the types of services as defined in
12 this chapter.

13 ~~20.~~ 22. "Freestanding urgent care center":

14 (a) Means an outpatient treatment center that, regardless of its
15 posted or advertised name, meets any of the following requirements:

16 (i) Is open twenty-four hours a day, excluding at its option
17 weekends or certain holidays, but is not licensed as a hospital.

18 (ii) Claims to provide unscheduled medical services that are not
19 otherwise routinely available in primary care physician offices.

20 (iii) By its posted or advertised name, gives the impression to the
21 public that it provides medical care for urgent, immediate or emergency
22 conditions.

23 (iv) Routinely provides ongoing unscheduled medical services for
24 more than eight consecutive hours for an individual patient.

25 (b) Does not include the following:

26 (i) A medical facility that is licensed under a hospital's license
27 and that uses the hospital's medical provider number.

28 (ii) A qualifying community health center pursuant to section
29 36-2907.06.

30 (iii) Any other health care institution licensed pursuant to this
31 chapter.

32 (iv) A physician's office that offers extended hours or same-day
33 appointments to existing and new patients and that does not meet the
34 requirements of subdivision (a), item (i), (iii) or (iv) of this
35 paragraph.

36 ~~21.~~ 23. "Governing authority" means the individual, agency,
37 partners, owner, group or corporation, whether appointed, elected or
38 otherwise designated, in which the ultimate responsibility and authority
39 for the conduct of the health care institution are vested. For the
40 purposes of this paragraph, "owner" means a person who has an ownership
41 interest of at least fifty-one percent of a health care institution.

42 24. "GROUP HOME" HAS THE SAME MEANING PRESCRIBED IN SECTION 36-551.

43 25. "HABILITATION" HAS THE SAME MEANING PRESCRIBED IN SECTION
44 36-551.

1 ~~22.~~ 26. "Health care institution" means every place, institution,
2 building or agency, whether organized for profit or not, that provides
3 facilities with medical services, nursing services, behavioral health
4 services, health screening services, other health-related services,
5 supervisory care services, personal care services or directed care
6 services and includes home health agencies as defined in section 36-151,
7 outdoor behavioral health care programs and hospice service agencies.

8 ~~23.~~ 27. "Health-related services" means services, other than
9 medical, that pertain to general supervision, protective, preventive and
10 personal care services, supervisory care services or directed care
11 services.

12 ~~24.~~ 28. "Health screening services" means the acquisition,
13 analysis and delivery of health-related data of individuals to aid in
14 determining the need for medical services.

15 ~~25.~~ 29. "Hospice" means a hospice service agency or the provision
16 of hospice services in an inpatient facility.

17 ~~26.~~ 30. "Hospice service" means a program of palliative and
18 supportive care for terminally ill persons and their families or
19 caregivers.

20 ~~27.~~ 31. "Hospice service agency" means an agency or organization,
21 or a subdivision of that agency or organization, that provides hospice
22 services at the place of residence of its clients.

23 ~~28.~~ 32. "Inpatient beds" or "resident beds" means accommodations
24 with supporting services, such as food, laundry and housekeeping, for
25 patients or residents who generally stay in excess of twenty-four hours.

26 ~~29.~~ 33. "Intermediate care facility for individuals with
27 intellectual disabilities" has the same meaning prescribed in section
28 36-551.

29 ~~30.~~ 34. "Licensed capacity" means the total number of persons for
30 whom the health care institution is authorized by the department to
31 provide services as required pursuant to this chapter if the person is
32 expected to stay in the health care institution for more than twenty-four
33 hours. For a hospital, licensed capacity means only those beds specified
34 on the hospital license.

35 ~~31.~~ 35. "Medical services" means the services that pertain to
36 medical care and that are performed at the direction of a physician on
37 behalf of patients by physicians, dentists, nurses and other professional
38 and technical personnel.

39 ~~32.~~ 36. "Modification" means the substantial improvement,
40 enlargement, reduction or alteration of or other change in a health care
41 institution.

42 ~~33.~~ 37. "Nonproprietary institution" means any health care
43 institution that is organized and operated exclusively for charitable
44 purposes, no part of the net earnings of which inures to the benefit of

1 any private shareholder or individual, or that is operated by the state or
2 any political subdivision of the state.

3 ~~34.~~ 38. "Nursing care institution" means a health care institution
4 that provides inpatient beds or resident beds and nursing services to
5 persons who need continuous nursing services but who do not require
6 hospital care or direct daily care from a physician.

7 ~~35.~~ 39. "Nursing services" means those services that pertain to
8 the curative, restorative and preventive aspects of nursing care and that
9 are performed at the direction of a physician by or under the supervision
10 of a registered nurse licensed in this state.

11 ~~36.~~ 40. "Nursing-supported group home" means a health care
12 institution that is a community residential setting as defined in section
13 36-551 for not more than six persons with developmental disabilities, that
14 is operated by a service provider under contract with the department of
15 economic security and that provides room and board, daily habilitation and
16 continuous nursing support and intervention.

17 ~~37.~~ 41. "Organized medical staff" means a formal organization of
18 physicians, and dentists if appropriate, with the delegated authority and
19 responsibility to maintain proper standards of medical care and to plan
20 for continued betterment of that care.

21 ~~38.~~ 42. "Outdoor behavioral health care program" means an agency
22 that provides behavioral health services in an outdoor environment as an
23 alternative to behavioral health services that are provided in a health
24 care institution with facilities. Outdoor behavioral health care programs
25 do not include:

26 (a) Programs, facilities or activities that are operated by a
27 government entity or that are licensed by the department as a child care
28 program pursuant to chapter 7.1 of this title.

29 (b) Outdoor activities for youth that are designated to be
30 primarily recreational and that are organized by church groups, scouting
31 organizations or similar groups.

32 (c) Outdoor youth programs that are licensed by the department of
33 economic security.

34 ~~39.~~ 43. "Personal care services" means assistance with activities
35 of daily living that can be performed by persons without professional
36 skills or professional training and includes the coordination or provision
37 of intermittent nursing services and the administration of medications and
38 treatments by a nurse who is licensed pursuant to title 32, chapter 15 or
39 as otherwise provided by law.

40 ~~40.~~ 44. "Physician" means any person who is licensed pursuant to
41 title 32, chapter 13 or 17.

42 ~~41.~~ 45. "Recidivism reduction services" means services that are
43 delivered by an adult residential care institution to its residents to
44 encourage lawful behavior and to discourage or prevent residents who are
45 suspected of, charged with or convicted of one or more criminal offenses,

1 or whose mental health and substance use can be reasonably expected to
2 place them at risk for the future threat of prosecution, diversion or
3 incarceration, from engaging in future unlawful behavior.

4 ~~42.~~ 46. "Recidivism reduction staff" means a person who provides
5 recidivism reduction services.

6 ~~43.~~ 47. "Residential care institution" means a health care
7 institution other than a hospital or a nursing care institution that
8 provides resident beds or residential units, supervisory care services,
9 personal care services, behavioral health services, directed care services
10 or health-related services for persons who do not need continuous nursing
11 services.

12 ~~44.~~ 48. "Residential unit" means a private apartment, unless
13 otherwise requested by a resident, that includes a living and sleeping
14 space, kitchen area, private bathroom and storage area.

15 ~~45.~~ 49. "Respite care services" means services that are provided
16 by a licensed health care institution to persons who are otherwise cared
17 for in foster homes and in private homes to provide an interval of rest or
18 relief of not more than thirty days to operators of foster homes or to
19 family members.

20 ~~46.~~ 50. "Substantial compliance" means that the nature or number
21 of violations revealed by any type of inspection or investigation of a
22 health care institution does not pose a direct risk to the life, health or
23 safety of patients or residents.

24 ~~47.~~ 51. "Supervision" means directly overseeing and inspecting the
25 act of accomplishing a function or activity.

26 ~~48.~~ 52. "Supervisory care services" means general supervision,
27 including daily awareness of resident functioning and continuing needs,
28 the ability to intervene in a crisis and assistance in self-administering
29 prescribed medications.

30 ~~49.~~ 53. "Temporary license" means a license that is issued by the
31 department to operate a class or subclass of a health care institution at
32 a specific location and that is valid until an initial licensing
33 inspection.

34 ~~50.~~ 54. "Unscheduled medical services" means medically necessary
35 periodic health care services that are unanticipated or cannot reasonably
36 be anticipated and that require medical evaluation or treatment before the
37 next business day.

38 B. If there are fewer than four Arizona long-term care system
39 participants receiving adult foster care in an adult foster care home,
40 nonparticipating adults may receive other types of services that are
41 authorized by law to be provided in the adult foster care home as long as
42 the number of adults served, including the Arizona long-term care system
43 participants, does not exceed four.

44 C. Nursing care services may be provided by the adult foster care
45 licensee if the licensee is a nurse who is licensed pursuant to title 32,

1 chapter 15 and the services are limited to those allowed pursuant to law.
2 The licensee shall keep a record of nursing services rendered.

3 Sec. 2. Section 36-421, Arizona Revised Statutes, is amended to
4 read:

5 36-421. Construction or modification of a health care
6 institution

7 A. A license application for a health care institution shall
8 include, on a form provided by the department, a notarized attestation
9 from an architect registered pursuant to title 32, chapter 1 that verifies
10 the architectural plans and specifications meet or exceed standards
11 adopted by the department. These plans and specifications shall meet the
12 minimum standards for licensure within the class or subclass of health
13 care institution for which it is intended. The application shall include
14 the name and address of each owner and lessee of any agricultural land
15 that is regulated pursuant to section 3-365.

16 B. Construction or modification of a licensed health care
17 institution shall meet the minimum standards for licensure within the
18 class or subclass of health care institution for which it is intended.

19 C. An applicant shall comply with all state statutes and rules and
20 local codes and ordinances required for the health care institution's
21 construction.

22 D. A health care institution or its facility shall not be licensed
23 if it is located on property that is less than four hundred feet from
24 agricultural land that is regulated pursuant to section 3-365, except that
25 the owner of the agricultural land may agree to comply with the buffer
26 zone requirements of section 3-365. If the owner agrees in writing to
27 comply with the buffer zone requirements and records the agreement in the
28 office of the county recorder as a restrictive covenant running with the
29 title to the land, the health care institution or facility may be licensed
30 and located within the affected buffer zone. The agreement may include
31 any stipulations regarding the health care institution or facility,
32 including conditions for future expansion of the health care institution
33 or facility and changes in the operational status of the health care
34 institution or facility that will result in a breach of the agreement.
35 This subsection does not apply to the issuance of a license for a health
36 care institution located in the same location for which a health care
37 institution license was previously issued.

38 E. Notwithstanding any law to the contrary, a health care
39 institution that was licensed as a level 1 psychiatric acute behavioral
40 health facility-inpatient facility as of January 1, 2012 and that is not
41 certified under title XIX of the social security act shall be licensed as
42 a hospital and is not required to comply with the physical plant standards
43 for a general hospital, rural general hospital or special hospital
44 prescribed by the department.

1 F. An adult behavioral health therapeutic home is not required to
2 comply with the building codes or zoning standards for a health care
3 institution prescribed by the department.

4 G. The Arizona pioneers' home is not required to comply with
5 subsection A of this section and the physical plant standards for a health
6 care institution prescribed by the department.

7 H. A nursing-supported group home, ~~is~~ A GROUP HOME AND A
8 BEHAVIORAL-SUPPORTED GROUP HOME ARE not required to comply with the zoning
9 standards for a health care institution prescribed by the department.

10 I. For the purposes of this section, health care institution does
11 not include a home health agency or a hospice service agency.

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

14 36-424. Inspections; suspension or revocation of license;
15 report to board of examiners of nursing care
16 institution administrators and assisted living
17 facility managers

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

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

40 1. An intermediate care facility for individuals with intellectual
41 disabilities.

42 2. A BEHAVIORAL-SUPPORTED GROUP HOME, A GROUP HOME OR A
43 NURSING-SUPPORTED GROUP HOME.

44 ~~2.~~ 3. A health care institution if the health care institution has
45 been subject to an enforcement action pursuant to section 36-427 or

1 36-431.01 within the year preceding the annual licensing fee anniversary
2 date.

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

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

27 Sec. 4. Title 36, chapter 4, article 2, Arizona Revised Statutes,
28 is amended by adding section 36-425.09, to read:

29 36-425.09. Behavioral-supported group homes; group homes;
30 licensure; rules; definitions

31 A. BEGINNING JULY 1, 2024, BEHAVIORAL-SUPPORTED GROUP HOMES AND
32 GROUP HOMES THAT ARE OPERATED IN THIS STATE BY A SERVICE PROVIDER AND THAT
33 ARE UNDER CONTRACT WITH THE DEPARTMENT OF ECONOMIC SECURITY SHALL BE
34 LICENSED PURSUANT TO THIS CHAPTER.

35 B. THE DIRECTOR SHALL ADOPT ANY RULES NECESSARY REGARDING
36 BEHAVIORAL-SUPPORTED GROUP HOMES THAT INCLUDE AT LEAST THE FOLLOWING:

37 1. ENSURING THAT EACH CLIENT'S BEHAVIORAL TREATMENT PLAN IS
38 DEVELOPED, INTEGRATED, COORDINATED AND MONITORED BY A CLINICAL
39 PROFESSIONAL WHO, AT A MINIMUM:

40 (a) HAS AT LEAST TWO YEARS OF EXPERIENCE WORKING DIRECTLY WITH
41 PERSONS WITH DUAL DISORDERS, INCLUDING PSYCHIATRIC DISORDERS AND
42 DEVELOPMENTAL DISABILITIES, WHO ENGAGE IN BEHAVIORS THAT ARE DISRUPTIVE,
43 SOCIALLY INAPPROPRIATE OR HARMFUL OR DANGEROUS TO SELF OR OTHERS, THAT
44 INTERFERE WITH FUNCTIONING AND QUALITY OF LIFE OR THAT MAY CAUSE
45 DESTRUCTION OF PROPERTY.

1 (b) HAS SPECIALIZED TRAINING IN APPLYING BEHAVIORAL INTERVENTIONS,
2 INCLUDING APPLIED BEHAVIOR ANALYSIS AND POSITIVE BEHAVIORAL SUPPORTS.

3 (c) HOLDS AT LEAST A MASTER'S DEGREE IN ANY OF THE FOLLOWING
4 PROFESSIONAL CATEGORIES:

5 (i) OCCUPATIONAL THERAPY.

6 (ii) PHYSICAL THERAPY.

7 (iii) PSYCHOLOGY.

8 (iv) SOCIAL WORK.

9 (v) SPEECH AND LANGUAGE PATHOLOGY.

10 (vi) BEHAVIOR ANALYSIS.

11 (vii) A SIMILAR HUMAN SERVICE DEGREE SUCH AS SOCIOLOGY, SPECIAL
12 EDUCATION OR REHABILITATION COUNSELING.

13 2. REQUIRING THAT THE DIRECT CARE STAFF IN A BEHAVIORAL-SUPPORTED
14 GROUP HOME, AT A MINIMUM, HAVE BOTH:

15 (a) AT LEAST ONE YEAR OF EXPERIENCE WORKING DIRECTLY WITH PERSONS
16 WITH DUAL DISORDERS, INCLUDING PSYCHIATRIC DISORDERS AND DEVELOPMENTAL
17 DISABILITIES, WHO ENGAGE IN BEHAVIORS THAT ARE DISRUPTIVE, SOCIALLY
18 INAPPROPRIATE OR HARMFUL OR DANGEROUS TO SELF OR OTHERS, THAT INTERFERE
19 WITH FUNCTIONING AND QUALITY OF LIFE OR THAT MAY CAUSE DESTRUCTION OF
20 PROPERTY.

21 (b) SPECIALIZED TRAINING IN APPLIED BEHAVIOR ANALYSIS AND POSITIVE
22 BEHAVIORAL SUPPORTS.

23 3. ENSURING THAT EACH CLIENT HAS AN INTEGRATED TREATMENT PLAN.
24 EACH CLIENT SHALL HAVE A FUNCTIONAL BEHAVIORAL ASSESSMENT COMPLETED BY A
25 QUALIFIED CLINICAL PROFESSIONAL WHO MEETS THE QUALIFICATIONS PRESCRIBED IN
26 PARAGRAPH 1 OF THIS SUBSECTION, IN CONSULTATION WITH A MULTIDISCIPLINARY
27 TEAM THAT IS COMPOSED OF ALL INDIVIDUALS WORKING WITH THE CLIENT TO
28 INCLUDE, IF APPROPRIATE, PSYCHIATRIC, MEDICAL, NURSING AND NUTRITION
29 PROVIDERS, PHYSICAL, OCCUPATIONAL AND SPEECH THERAPISTS, EDUCATIONAL
30 PERSONNEL, BEHAVIORAL HEALTH PROVIDERS, GROUP HOME DIRECT CARE STAFF, HOME
31 HEALTH PERSONNEL, DAY PROGRAM STAFF, THE CLIENT AND THE CLIENT'S FAMILY OR
32 GUARDIAN AND REPRESENTATIVES FROM THE DEPARTMENT OF ECONOMIC SECURITY,
33 DIVISION OF DEVELOPMENTAL DISABILITIES. THE INTEGRATED TREATMENT PLAN
34 SHALL BE REVIEWED BY THE ENTIRE MULTIDISCIPLINARY TEAM EVERY NINETY DAYS
35 TO DETERMINE IF THE INTERVENTIONS IN THE PLAN ARE EFFECTIVE.

36 C. FOR THE PURPOSES OF THIS SECTION:

37 1. "BEHAVIORAL TREATMENT PLAN" MEANS A DOCUMENT THAT STIPULATES
38 GOALS TO TREAT, MANAGE, CONTROL OR EXTINGUISH PREDICTABLE AND CONTINUING
39 BEHAVIORS OF THE CLIENT AND THAT IS ONE COMPONENT OF THE CLIENT'S
40 INTEGRATED TREATMENT PLAN.

41 2. "CLIENT" HAS THE SAME MEANING PRESCRIBED IN SECTION 36-551.

42 3. "INTEGRATED TREATMENT PLAN" MEANS A DOCUMENT THAT COORDINATES
43 ALL TREATMENT INTERVENTIONS THAT ADDRESS THE CLIENT'S PHYSICAL HEALTH AND
44 BEHAVIORAL HEALTH NEEDS FOR THE PURPOSE OF ENSURING SEAMLESS, COORDINATED
45 AND COMPREHENSIVE TREATMENT.

1 Sec. 5. Section 36-551, Arizona Revised Statutes, is amended to
2 read:

3 36-551. Definitions

4 In this chapter, unless the context otherwise requires:

5 1. "Adaptive behavior" means the effectiveness or degree to which a
6 person meets the standards of personal independence and social
7 responsibility expected of the person's age and cultural group.

8 2. "Adult developmental home" means a residential setting in a
9 family home in which the care, physical custody and supervision of the
10 adult client are the responsibility, under a twenty-four-hour care model,
11 of the licensee who, in that capacity, is not an employee of the division
12 or of a service provider and the home provides the following services for
13 a group of siblings or up to three adults with developmental disabilities:

14 (a) Room and board.

15 (b) Habilitation.

16 (c) Appropriate personal care.

17 (d) Appropriate supervision.

18 3. "Adult household member":

19 (a) Means a person who is at least eighteen years of age and who
20 resides in an adult developmental home, child developmental home or other
21 home and community based service setting for at least thirty days or who
22 resides in the household throughout the year for more than a cumulative
23 total of thirty days.

24 (b) Does not include a person who is receiving developmental
25 disabilities services from the department.

26 4. "Advisory council" means the developmental disabilities advisory
27 council.

28 5. "Arizona training program facility" means a state-operated
29 institution for clients of the department with developmental disabilities.

30 6. "Attributable to cognitive disability, epilepsy, cerebral palsy
31 or autism" means that there is a causal relationship between the presence
32 of an impairing condition and the developmental disability.

33 7. "Autism" means a condition characterized by severe disorders in
34 communication and behavior resulting in limited ability to communicate,
35 understand, learn and participate in social relationships.

36 8. "BEHAVIORAL-SUPPORTED GROUP HOME" HAS THE SAME MEANING
37 PRESCRIBED IN SECTION 36-401.

38 ~~8.~~ 9. "Case management" means coordinating the assistance needed
39 by persons with developmental disabilities and their families in order to
40 ensure that persons with developmental disabilities attain their maximum
41 potential for independence, productivity and integration into the
42 community.

43 ~~9.~~ 10. "Case manager" means a person who coordinates the
44 implementation of the individual program plan of goals, objectives and
45 appropriate services for persons with developmental disabilities.

1 ~~10.~~ 11. "Cerebral palsy" means a permanently disabling condition
2 resulting from damage to the developing brain that may occur before, after
3 or during birth and that results in loss or impairment of control over
4 voluntary muscles.

5 ~~11.~~ 12. "Child developmental certified home" means a regular
6 foster home as defined in section 8-501 that is licensed pursuant to
7 section 8-509 and that is certified by the department pursuant to section
8 36-593.01.

9 ~~12.~~ 13. "Child developmental home" means a residential setting in
10 a family home in which the care and supervision of the child are the
11 responsibility, under a twenty-four-hour care model, of the licensee who
12 serves as the developmental home provider of the child in the home setting
13 and who, in that capacity, is not an employee of the division or of a
14 service provider and the home provides the following services for a group
15 of siblings or up to three children with developmental disabilities:

- 16 (a) Room and board.
- 17 (b) Habilitation.
- 18 (c) Appropriate personal care.
- 19 (d) Appropriate supervision.

20 ~~13.~~ 14. "Client" means a person receiving developmental
21 disabilities services from the department.

22 ~~14.~~ 15. "Cognitive disability" means a condition that involves
23 subaverage general intellectual functioning, that exists concurrently with
24 deficits in adaptive behavior manifested before the age of eighteen and
25 that is sometimes referred to as intellectual disability.

26 ~~15.~~ 16. "Community residential setting":

27 (a) Means a residential setting in which persons with developmental
28 disabilities live and are provided with appropriate supervision by the
29 service provider responsible for operating the residential setting.

30 (b) Includes a child developmental home or an adult developmental
31 home operated or contracted by the department or the department's
32 contracted vendor, a group home operated or contracted by the department
33 or a BEHAVIORAL-SUPPORTED GROUP HOME OR nursing-supported group home
34 contracted by the department.

35 ~~16.~~ 17. "Consent" means voluntary informed consent. Consent is
36 voluntary if not given as the result of coercion or undue influence.
37 Consent is informed if the person giving the consent has been informed of
38 and comprehends the nature, purpose, consequences, risks and benefits of
39 the alternatives to the procedure, and has been informed and comprehends
40 that withholding or withdrawing consent will not prejudice the future
41 provision of care and services to the client. In cases of unusual or
42 hazardous treatment procedures performed pursuant to section 36-561,
43 subsection A, experimental research, organ transplantation and
44 nontherapeutic surgery, consent is informed if, in addition to the

1 foregoing, the person giving the consent has been informed of and
2 comprehends the method to be used in the proposed procedure.

3 ~~17.~~ 18. "Daily habilitation" means habilitation as defined in this
4 section, except that the method of payment is for one unit per residential
5 day.

6 ~~18.~~ 19. "Department" means the department of economic security.

7 ~~19.~~ 20. "Developmental disability" means either a strongly
8 demonstrated potential that a child who is under six years of age has a
9 developmental disability or will develop a developmental disability, as
10 determined by a test performed pursuant to section 36-694 or by other
11 appropriate tests, or a severe, chronic disability that:

12 (a) Is attributable to a cognitive disability, cerebral palsy,
13 epilepsy, Down syndrome or autism.

14 (b) Is manifested before the age of eighteen.

15 (c) Is likely to continue indefinitely.

16 (d) Results in substantial functional limitations in three or more
17 of the following areas of major life activity:

18 (i) Self-care.

19 (ii) Receptive and expressive language.

20 (iii) Learning.

21 (iv) Mobility.

22 (v) Self-direction.

23 (vi) Capacity for independent living.

24 (vii) Economic self-sufficiency.

25 (e) Reflects the need for a combination and sequence of
26 individually planned or coordinated special, interdisciplinary or generic
27 care, treatment or other services that are of lifelong or extended
28 duration.

29 ~~20.~~ 21. "Director" means the director of the department of
30 economic security.

31 ~~21.~~ 22. "Division" means the division of developmental
32 disabilities in the department of economic security.

33 ~~22.~~ 23. "Down syndrome" means a genetic disorder caused when
34 abnormal cell division results in extra genetic material from chromosome
35 21, affecting a person's cognitive and physical abilities and causing
36 developmental issues.

37 ~~23.~~ 24. "Epilepsy" means a neurological condition characterized by
38 abnormal electrical-chemical discharge in the brain. This discharge is
39 manifested in various forms of physical activities called seizures.

40 ~~24.~~ 25. "Group home":

41 (a) Means **A HEALTH CARE INSTITUTION THAT IS** a community residential
42 setting for not more than six persons with developmental disabilities that
43 is operated by a service provider under contract with the department and
44 that provides room and board and daily habilitation and other assessed

1 medically necessary services and supports to meet the needs of each
2 person.

3 (b) Does not include an adult developmental home, a child
4 developmental home, **A BEHAVIORAL-SUPPORTED GROUP HOME**, a nursing-supported
5 group home or an intermediate care facility for individuals with
6 intellectual disabilities.

7 ~~25.~~ 26. "Guardian" means the person who, under court order, is
8 appointed to fulfill the powers and duties prescribed in section 14-5312.
9 Guardian does not include a guardian pursuant to section 14-5312.01.

10 ~~26.~~ 27. "Habilitation" means the process by which a person is
11 assisted to acquire and maintain those life skills that enable the person
12 to cope more effectively with personal and environmental demands and to
13 raise the level of the person's physical, mental and social efficiency.

14 ~~27.~~ 28. "Indigent" means a person with a developmental disability
15 whose estate or parent is unable to bear the full cost of maintaining or
16 providing services for that person in a developmental disabilities
17 program.

18 ~~28.~~ 29. "Individual program plan" means a written statement of
19 services to be provided to a person with developmental disabilities,
20 including habilitation goals and objectives, that is developed following
21 initial placement evaluation and revised after periodic evaluations.

22 ~~29.~~ 30. "Intermediate care facility for individuals with
23 intellectual disabilities" means a facility that primarily provides health
24 and rehabilitative services to persons with developmental disabilities
25 that are above the service level of room and board or supervisory care
26 services or personal care services as defined in section 36-401.

27 ~~30.~~ 31. "Large group setting" means a setting that in addition to
28 residential care provides support services such as therapy, recreation and
29 transportation to seven or more persons with developmental disabilities
30 who require intensive supervision.

31 ~~31.~~ 32. "Least restrictive alternative" means an available program
32 or facility that fosters independent living, that is the least confining
33 for the client's condition and that provides service and treatment in the
34 least intrusive manner reasonably and humanely appropriate to the
35 individual's needs.

36 ~~32.~~ 33. "Likely to continue indefinitely" means that the
37 developmental disability has a reasonable likelihood of continuing for a
38 protracted period of time or for life.

39 ~~33.~~ 34. "Manifested before the age of eighteen" means that the
40 disability must be apparent and have a substantially limiting effect on a
41 person's functioning before the age of eighteen.

42 ~~34.~~ 35. "Nursing-supported group home" has the same meaning
43 prescribed in section 36-401.

44 ~~35.~~ 36. "Physician" means a person who is licensed to practice
45 pursuant to title 32, chapter 13 or 17.

1 the department, but may be used for consultation to the department in the
2 interest of local programs.

3 B. A local public or private nonprofit or profit agency providing
4 or intending to provide community developmental disability services and
5 desiring to contract with the department to furnish these services shall
6 submit a program plan and budget to the department on the forms and in the
7 manner required by the department. If the program meets departmental
8 standards and is consistent with the state plan of the department and the
9 individualized service program plan of the client, the department,
10 notwithstanding the provisions of title 41, chapter 23, relating to
11 procurement and including services pursuant to section 36-2943, may
12 contract with that agency for required services on terms the department
13 requires. The contracts shall provide that the provider of services is
14 subject to a continuing program evaluation by the department through
15 progress reports, expenditure reports, program audits or other appropriate
16 evaluation techniques to ensure that the provider of service is in
17 continued compliance with the terms of the contract and the department's
18 community developmental disability service standards and requirements.

19 C. Contracts between the department and a school district or
20 districts are subject to approval by the department of education.

21 D. This article does not make the department or the state
22 responsible for funding programs beyond the limits of legislative
23 appropriation for the programs. This article does not require a service
24 provider to provide unreimbursed services to the department or its
25 clients.

26 E. Contracts to provide community developmental disability services
27 shall require that:

28 1. The contractor is obligated to operate a program or service in
29 strict accordance with the standards adopted for that program or service
30 by the department.

31 2. If state funding is provided for a particular program the
32 contractor, to the extent of positions available that are being purchased
33 by the department, shall provide services to a client with a developmental
34 disability who has been evaluated and placed by the department.

35 3. All contractors must carry liability insurance in amounts
36 approved by the risk management division of the department of
37 administration and file proof of insurance with the risk management
38 division. The director may waive that requirement on a case-by-case basis
39 on a finding that insurance for the program or service is not practicably
40 available at affordable rates and that it is necessary that the program or
41 service be provided by the contractor.

42 4. All clients enrolled in programs have all the same specified
43 rights as they would have if enrolled in a program operated directly by
44 the state.

1 5. Except for emergency placement pursuant to section 36-560,
2 subsection N, payment shall not be made based on program services provided
3 to a client if a placement evaluation has not been made, and no individual
4 program has been prepared and when, based on that placement evaluation, no
5 recommendation has been made to enroll the client in the particular
6 program service.

7 F. This article does not require a contracted agency to provide
8 unreimbursed services to the department or a client of the department.

9 G. Contracts to purchase residential care services other than those
10 community residential settings licensed pursuant to this chapter, in
11 addition to other general requirements applicable to purchase of care
12 contractors, shall:

13 1. Provide for mandatory inspection by the department every two
14 years for facilities other than group homes.

15 2. Provide for mandatory monitoring by the department for health,
16 safety, contractual and programmatic standards at least every six months,
17 unless the department has granted deemed status to the service provider or
18 the service provider received a score of at least ninety-five percent on
19 the most recent monitoring visit. If the department has granted deemed
20 status or awarded the service provider with a score of at least
21 ninety-five percent on the most recent monitoring visit, the department
22 shall monitor that service provider once each year. On a determination by
23 the department that there is reasonable cause to believe a service
24 provider is not adhering to the department's programmatic or contractual
25 requirements, the department and any duly designated employee or agent of
26 the department may enter on and into the premises at any reasonable time
27 for the purpose of determining the service provider's state of compliance
28 with the department's programmatic or contractual requirements.

29 3. Provide for mandatory investigation by the department in
30 response to complaints within ten working days, except that in those
31 instances that pose a danger to the client, the department shall conduct
32 the investigation immediately. Health and safety complaints related to
33 group homes shall be referred to the department of health services on
34 receipt. The department of health services shall share all incident
35 reports related to health and safety with the division of developmental
36 disabilities.

37 4. Except for group homes licensed by the department of health
38 services, specify the health and safety and sanitation codes and other
39 codes or standards applicable to the facility or to the operation of the
40 facility by the contractor other than group homes.

41 5. Provide for mandatory periodic reports to be filed by the
42 provider contractor with the department with respect to the operation of
43 the facility.

1 6. Provide that the facility and the books and records of the
2 facility and of the provider are subject to inspection at any time by
3 employees of the department or designees of the department.

4 7. Provide that parents and guardians of persons with developmental
5 disabilities residing at the facility, members of the developmental
6 disabilities advisory council, and members of other recognized and ongoing
7 advocacy groups for persons with developmental disabilities may inspect
8 the facility at reasonable times.

9 H. Contracts for the purchase of residential care services shall
10 require a community residential setting to be licensed pursuant to this
11 chapter other than group homes, **BEHAVIORAL-SUPPORTED GROUP HOMES** and
12 nursing-supported group homes that are licensed by the department of
13 health services.

14 I. Contracts for the purchase of day program or employment
15 services, in addition to the other general requirements applicable to the
16 purchase of client services, must provide for mandatory monitoring by the
17 department for health, safety, contractual, programmatic and quality
18 assurance standards at least once every six months, unless the department
19 has granted deemed status to the service provider. If the department has
20 granted deemed status to the service provider, the department shall
21 monitor that service provider once each year. The department and any duly
22 designated employee or agent of the department may enter on or into the
23 service provider's premises at any reasonable time for the purpose of
24 determining the service provider's state of compliance with the
25 department's programmatic, contractual and quality assurance requirements.

26 J. The division shall ensure that all contracted developmental
27 disabilities service providers rendering services pursuant to this chapter
28 are reimbursed in accordance with title XIX of the social security act.

29 K. Contracts for client services issued by the department shall
30 include language outlining the provisions for a grievance and appeal
31 procedure. The director shall provide notice to service providers not
32 less than thirty days before the issuance of an amendment to a qualified
33 vendor agreement. The decision of the director regarding qualified vendor
34 agreement amendments may be appealed pursuant to title 41, chapter 6,
35 article 10. The grievance process applicable to these contracts shall
36 comply with title XIX requirements.

37 L. As a condition of contracts with any developmental disabilities
38 service provider, the director shall require terms that conform with state
39 and federal laws, title XIX statutes and regulations and quality
40 standards. The director shall further require contract terms that ensure
41 performance by the provider of the provisions of each contract executed
42 pursuant to this article.

43 M. The division shall establish a rate structure that ensures an
44 equitable funding basis for private nonprofit or for-profit agencies for
45 services pursuant to subsection B of this section and section 36-2943. In

1 each fiscal year, the division shall review and adjust the rate structure
2 based on section 36-2959. A rate book shall be published and updated by
3 the division to announce the rate structure that shall be incorporated by
4 reference in contracts for client services.

5 N. The division shall disclose to a service provider in the
6 individual program plan, and in all meetings resulting from a response to
7 a vendor call, any historical and behavioral information necessary for the
8 service provider to be able to anticipate the client's future behaviors
9 and needs, including summary information from the program review
10 committee, unusual incident reports reviewed by the independent oversight
11 committee and behavioral treatment plans. The division shall redact the
12 client's identification from this information.

13 O. Service providers are authorized to engage in the following
14 activities in accordance with a client's individual program plan:

15 1. Administer medications, including assisting with the client's
16 self-administration of medications.

17 2. Log, store, remove and dispose of medications.

18 3. Maintain medications and protocols for direct care.

19 4. Serve as the client's representative payee if requested by the
20 client or the client's guardian and approved by the payer.

21 P. The department may adopt rules establishing procedures for
22 engaging in the activities listed in subsection O of this section.

23 Q. To protect the health and safety of a client, a service provider
24 must notify the division within twenty-four hours if an emergency
25 situation exists in which the service provider is unable to meet the
26 health or safety needs of the client.

27 R. On notification of an emergency situation, the department shall
28 hold an individual program plan meeting within fifteen days after
29 notification to recommend any changes, including whether there is a need
30 for temporary additional staffing to provide appropriate care for a
31 client, and develop a plan within thirty days after notification to
32 resolve the situation.

33 S. Service providers shall develop and implement policies and
34 procedures regarding the communication to responsible persons of a serious
35 incident affecting a client who is living in a community residential
36 setting within twenty-four hours after the serious incident occurs.

37 Sec. 7. Rulemaking exemption; department of health services;
38 department of economic security

39 For the purposes of this act, the department of health services and
40 the department of economic security are exempt from the rulemaking
41 requirements of title 41, chapters 6 and 6.1, Arizona Revised Statutes,
42 for eighteen months after the effective date of this act.

