

REFERENCE TITLE: reimbursement; direct care workers

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

HB 2603

Introduced by
Representative Dunn

AN ACT

AMENDING SECTION 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 36-557, Arizona Revised Statutes, is amended to
3 read:

4 36-557. Community developmental disability services; service
5 providers

6 A. The department may use state and federal monies that are
7 appropriated or otherwise available to it for this purpose to assist in
8 establishing and maintaining local developmental disability services by
9 public or private nonprofit or profit agencies. The monies may be
10 expended as professional fees for service, in contracts for advancement or
11 reimbursement or in another appropriate manner and may be used for any
12 purpose necessary to provide local developmental disability services. The
13 monies may not be used for departmental salaries, care of persons with
14 developmental disabilities by the department or any other purpose within
15 the department, but may be used for consultation to the department in the
16 interest of local programs.

17 B. A local public or private nonprofit or profit agency providing
18 or intending to provide community developmental disability services and
19 desiring to contract with the department to furnish these services shall
20 submit a program plan and budget to the department on the forms and in the
21 manner required by the department. If the program meets departmental
22 standards and is consistent with the state plan of the department and the
23 individualized service program plan of the client, the department,
24 notwithstanding the provisions of title 41, chapter 23, relating to
25 procurement and including services pursuant to section 36-2943, may
26 contract with that agency for required services on terms the department
27 requires. The contracts shall provide that the provider of services is
28 subject to a continuing program evaluation by the department through
29 progress reports, expenditure reports, program audits or other appropriate
30 evaluation techniques to ensure that the provider of service is in
31 continued compliance with the terms of the contract and the department's
32 community developmental disability service standards and requirements.

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

35 D. This article does not make the department or the state
36 responsible for funding programs beyond the limits of legislative
37 appropriation for the programs. This article does not require a service
38 provider to provide unreimbursed services to the department or its
39 clients.

40 E. Contracts to provide community developmental disability services
41 shall require that:

42 1. The contractor is obligated to operate a program or service in
43 strict accordance with the standards adopted for that program or service
44 by the department.

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

5 3. All contractors must carry liability insurance in amounts
6 approved by the risk management division of the department of
7 administration and file proof of insurance with the risk management
8 division. The director may waive that requirement on a case-by-case basis
9 on a finding that insurance for the program or service is not practicably
10 available at affordable rates and that it is necessary that the program or
11 service be provided by the contractor.

12 4. All clients enrolled in programs have all the same specified
13 rights as they would have if enrolled in a program operated directly by
14 the state.

15 5. Except for emergency placement pursuant to section 36-560,
16 subsection N, payment shall not be made based on program services provided
17 to a client if a placement evaluation has not been made, and no individual
18 program has been prepared and when, based on that placement evaluation, no
19 recommendation has been made to enroll the client in the particular
20 program service.

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

23 G. Contracts to purchase residential care services other than those
24 community residential settings licensed pursuant to this chapter, in
25 addition to other general requirements applicable to purchase of care
26 contractors, shall:

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

29 2. Provide for mandatory monitoring by the department for health,
30 safety, contractual and programmatic standards at least every six months,
31 unless the department has granted deemed status to the service provider or
32 the service provider received a score of at least ninety-five percent on
33 the most recent monitoring visit. If the department has granted deemed
34 status or awarded the service provider with a score of at least
35 ninety-five percent on the most recent monitoring visit, the department
36 shall monitor that service provider once each year. On a determination by
37 the department that there is reasonable cause to believe a service
38 provider is not adhering to the department's programmatic or contractual
39 requirements, the department and any duly designated employee or agent of
40 the department may enter on and into the premises at any reasonable time
41 for the purpose of determining the service provider's state of compliance
42 with the department's programmatic or contractual requirements.

43 3. Provide for mandatory investigation by the department in
44 response to complaints within ten working days, except that in those
45 instances that pose a danger to the client, the department shall conduct

1 the investigation immediately. Health and safety complaints related to
2 group homes shall be referred to the department of health services on
3 receipt. The department of health services shall share all incident
4 reports related to health and safety with the division of developmental
5 disabilities.

6 4. Except for group homes licensed by the department of health
7 services, specify the health and safety and sanitation codes and other
8 codes or standards applicable to the facility or to the operation of the
9 facility by the contractor other than group homes.

10 5. Provide for mandatory periodic reports to be filed by the
11 provider contractor with the department with respect to the operation of
12 the facility.

13 6. Provide that the facility and the books and records of the
14 facility and of the provider are subject to inspection at any time by
15 employees of the department or designees of the department.

16 7. Provide that parents and guardians of persons with developmental
17 disabilities residing at the facility, members of the developmental
18 disabilities advisory council, and members of other recognized and ongoing
19 advocacy groups for persons with developmental disabilities may inspect
20 the facility at reasonable times.

21 H. Contracts for the purchase of residential care services shall
22 require a community residential setting to be licensed pursuant to this
23 chapter other than group homes and nursing-supported group homes that are
24 licensed by the department of health services.

25 I. Contracts for the purchase of day program or employment
26 services, in addition to the other general requirements applicable to the
27 purchase of client services, must provide for mandatory monitoring by the
28 department for health, safety, contractual, programmatic and quality
29 assurance standards at least once every six months, unless the department
30 has granted deemed status to the service provider. If the department has
31 granted deemed status to the service provider, the department shall
32 monitor that service provider once each year. The department and any duly
33 designated employee or agent of the department may enter on or into the
34 service provider's premises at any reasonable time for the purpose of
35 determining the service provider's state of compliance with the
36 department's programmatic, contractual and quality assurance requirements.

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

40 K. Contracts for client services issued by the department shall
41 include language outlining the provisions for a grievance and appeal
42 procedure. The director shall provide notice to service providers not
43 less than thirty days before the issuance of an amendment to a qualified
44 vendor agreement. The decision of the director regarding qualified vendor
45 agreement amendments may be appealed pursuant to title 41, chapter 6,

1 article 10. The grievance process applicable to these contracts shall
2 comply with title XIX requirements.

3 L. As a condition of contracts with any developmental disabilities
4 service provider, the director shall require terms that conform with state
5 and federal laws, title XIX statutes and regulations and quality
6 standards. The director shall further require contract terms that ensure
7 performance by the provider of the provisions of each contract executed
8 pursuant to this article.

9 M. The division shall establish a rate structure that ensures an
10 equitable funding basis for private nonprofit or for-profit agencies for
11 services pursuant to subsection B of this section and section 36-2943. In
12 each fiscal year, the division shall review and adjust the rate structure
13 based on section 36-2959. A rate book shall be published and updated by
14 the division to announce the rate structure that shall be incorporated by
15 reference in contracts for client services.

16 N. ALL SERVICE PROVIDER CONTRACTS SHALL REQUIRE THAT AT LEAST
17 EIGHTY PERCENT OF REIMBURSEMENT RATES FOR HOME AND COMMUNITY-BASED
18 SERVICES TO INDIVIDUALS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES
19 BE USED FOR WAGES FOR DIRECT CARE WORKERS AND SUPERVISORY STAFF DIRECTLY
20 OVERSEEING DIRECT CARE WORKERS.

21 ~~N.~~ O. The division shall disclose to a service provider in the
22 individual program plan, and in all meetings resulting from a response to
23 a vendor call, any historical and behavioral information necessary for the
24 service provider to be able to anticipate the client's future behaviors
25 and needs, including summary information from the program review
26 committee, unusual incident reports reviewed by the independent oversight
27 committee and behavioral treatment plans. The division shall redact the
28 client's identification from this information.

29 ~~O.~~ P. Service providers are authorized to engage in the following
30 activities in accordance with a client's individual program plan:

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

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

34 3. Maintain medications and protocols for direct care.

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

37 ~~P.~~ Q. The department may adopt rules establishing procedures for
38 engaging in the activities listed in subsection ~~O.~~ P of this section.

39 ~~Q.~~ R. To protect the health and safety of a client, a service
40 provider must notify the division within twenty-four hours if an emergency
41 situation exists in which the service provider is unable to meet the
42 health or safety needs of the client.

1 ~~R.~~ S. On notification of an emergency situation, the department
2 shall hold an individual program plan meeting within fifteen days after
3 notification to recommend any changes, including whether there is a need
4 for temporary additional staffing to provide appropriate care for a
5 client, and develop a plan within thirty days after notification to
6 resolve the situation.

7 ~~S.~~ T. Service providers shall develop and implement policies and
8 procedures regarding the communication to responsible persons of a serious
9 incident affecting a client who is living in a community residential
10 setting within twenty-four hours after the serious incident occurs.