

**Arizona Revised Statutes**  
**Title 36 – Public Health and Safety**  
**Article 2 – License Provisions**

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

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

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

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

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

E. Notwithstanding any law to the contrary, a health care institution that was licensed as a level 1 psychiatric acute behavioral health facility-inpatient facility as of January 1, 2012 and that is not certified under title XIX of the social security act shall be licensed as a

hospital and is not required to comply with the physical plant standards for a general hospital, rural general hospital or special hospital prescribed by the department.

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

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

H. A nursing-supported group home is not required to comply with the zoning standards for a health care institution prescribed by the department.

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

### **36-422. Application for license; notification of proposed change in status; joint licenses; definitions**

A. A person who wishes to apply for a license to operate a health care institution pursuant to this chapter shall submit to the department all of the following:

1. An application on a written or electronic form that is prescribed, prepared and furnished by the department and that contains all of the following:

(a) The name and location of the health care institution.

(b) Whether the health care institution is to be operated as a proprietary or nonproprietary institution.

(c) The name of the governing authority. The applicant shall be the governing authority having the operative ownership of, or the governmental agency charged with the administration of, the health care institution sought to be licensed. If the applicant is a partnership that is not a limited partnership, the partners shall apply jointly, and the partners are jointly the governing authority for purposes of this article.

(d) The name and business or residential address of each controlling person and an affirmation that none of the controlling persons has been denied a license or certificate by a health profession regulatory board pursuant to title 32 or by a state agency pursuant to chapter 6, article 7 or chapter 17 of this title or a license to operate a health care institution in this state or another state or has had 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 or a license to operate a health care institution revoked. If a controlling person has been denied a license or certificate by a health profession regulatory board pursuant to title 32 or by a state agency pursuant to chapter 6, article 7 or chapter 17 of this title or a license to operate a health care institution in this state or another state or has had a health care professional license or a license to operate a health care institution revoked, the controlling person shall include in the application a comprehensive description of the circumstances for the denial or the revocation.

(e) The class or subclass of health care institution to be established or operated.

(f) The types and extent of the health care services to be provided, including emergency services, community health services and services to indigent patients.

(g) The name and qualifications of the chief administrative officer implementing direction in that specific health care institution.

(h) Other pertinent information required by the department for the proper administration of this chapter and department rules.

2. The attestation required by section 36-421, subsection A.

3. The applicable application fee.

B. An application submitted pursuant to this section shall contain the written or electronic signature of:

1. If the applicant is an individual, the owner of the health care institution.

2. If the applicant is a partnership, limited liability company or corporation, two of the officers of the corporation or managing members of the partnership or limited liability company or the sole member of the limited liability company if it has only one member.

3. If the applicant is a governmental unit, the head of the governmental unit.

C. An application for licensure shall be submitted at least sixty but not more than one hundred twenty days before the anticipated date of operation. An application for a substantial compliance survey submitted pursuant to section 36-425, subsection G shall be submitted at least thirty days before the date on which the substantial compliance survey is requested.

D. If a current licensee intends to terminate the operation of a licensed health care institution or if a change of ownership is planned, the current licensee shall notify the director in writing at least thirty days before the termination of operation or change in ownership is to take place. The current licensee is responsible for preventing any interruption of services required to sustain the life, health and safety of the patients or residents. A new owner shall not begin operating the health care institution until the director issues a license to the new owner.

E. A licensed health care institution for which operations have not been terminated for more than thirty days may be relicensed pursuant to the codes and standards for architectural plans and specifications that were applicable under its most recent license.

F. If a person operates a hospital in a county with a population of more than five hundred thousand persons in a setting that includes satellite facilities of the hospital that are located separately from the main hospital building, the department at the request of the applicant or licensee shall issue a single group license to the hospital and its designated satellite facilities located within one-half mile of the main hospital building if all of the facilities meet or exceed department licensure requirements for the designated facilities. At the request of the applicant or licensee, the department shall also issue a single group license that includes the hospital and its designated satellite facilities that are located farther than one-half mile from the main hospital building if all of these facilities meet or exceed applicable department licensure requirements. Each facility included under a single group license is subject to the department's licensure requirements that are applicable to that category of facility. Subject to compliance with applicable licensure or accreditation requirements, the department shall reissue individual licenses for the facility of a hospital located in separate buildings from the main hospital building when requested by the hospital. This subsection does not apply to nursing care institutions and residential care institutions. The department is not limited in conducting inspections of an accredited health care institution to ensure that the institution meets department licensure requirements. If a person operates a hospital in a county with a population of five hundred thousand persons or less in a setting that includes satellite facilities of the hospital that are located separately from the main hospital building, the department at the request of the applicant or licensee shall issue a single group license to the hospital and its designated satellite facilities located within thirty-five miles of the main hospital building if all of the facilities meet or exceed department licensure requirements for the designated facilities. At the request of the applicant or licensee, the department shall also issue a single group license that includes the hospital and its designated satellite facilities that are located farther than thirty-five miles from the main hospital building if all of these facilities meet or exceed applicable department licensure requirements.

G. If a county with a population of more than one million persons or a special health care district in a county with a population of more than one million persons operates an accredited hospital that includes the hospital's accredited facilities that are located separately from the main hospital building and the accrediting body's standards as applied to all facilities meet or exceed the department's licensure requirements, the department shall issue a single license to the hospital and its facilities if requested to do so by the hospital. If a hospital complies with applicable licensure or accreditation requirements, the department shall reissue individual licenses for each hospital facility that is located in a separate building from the main hospital building if requested to do so by the hospital. This subsection does not limit the department's duty to inspect a health care institution to determine its compliance with department licensure standards. This subsection does not apply to nursing care institutions and residential care institutions.

H. An applicant or licensee must notify the department within thirty days after any change regarding a controlling person and provide the information and affirmation required pursuant to subsection A, paragraph 1, subdivision (d) of this section.

I. A behavioral health residential facility that provides services to children must notify the department within thirty days after the facility begins contracting exclusively with the federal government, receives only federal monies and does not contract with this state.

J. This section does not limit the application of federal laws and regulations to an applicant or licensee that is certified as a medicare or an Arizona health care cost containment system provider under federal law.

K. Except for an outpatient treatment center that provides dialysis services or abortion procedures or that is exempt from licensure pursuant to section 36-402, subsection A, paragraph 12, a person wishing to begin operating an outpatient treatment center before a licensing inspection is completed shall submit all of the following:

1. The license application required pursuant to this section.
2. All applicable application and license fees.
3. A written request for a temporary license that includes:
  - (a) The anticipated date of operation.

(b) An attestation signed by the applicant that the applicant and the facility comply with and will continue to comply with the applicable licensing statutes and rules.

L. Within seven days after the department's receipt of the items required in subsection K of this section, but not before the anticipated operation date submitted pursuant to subsection C of this section, the department shall issue a temporary license that includes:

1. The name of the facility.
2. The name of the licensee.
3. The facility's class or subclass.
4. The temporary license's effective date.
5. The location of the licensed premises.

M. A facility may begin operating on the effective date of the temporary license.

N. The director may cease the issuance of temporary licenses at any time if the director believes that public health and safety is endangered.

O. An outpatient treatment center that is exempt from licensure pursuant to section 36-402, subsection A, paragraph 12 is subject to reasonable inspection by the department if the director has reasonable cause to believe that patient harm is or may be occurring at that outpatient treatment center. A substantiated complaint that harm is occurring at an exempt outpatient treatment center is a violation of this chapter against the license of the hospital listed in the notice required by section 36-402, subsection A, paragraph 12.

P. Each hospital that is licensed pursuant to this chapter shall provide to and maintain with the department a current list of exempt outpatient treatment centers that have the same direct owner or indirect owner as the hospital.

Q. For the purposes of this section:

1. "Accredited" means accredited by a nationally recognized accreditation organization.
2. "Satellite facility" means an outpatient facility at which the hospital provides outpatient medical services.

#### **36-422.01. Health care institutions; termination of operation; medical records; civil penalties; definition**

A. In addition to the requirements prescribed in section 36-422, subsection D, if a current licensee intends to terminate the operation of a licensed health care institution, the current licensee shall do one of the following before the health care institution ceases operation:

1. Provide each patient of the health care institution with the patient's medical records.
2. Transfer the health care institution's medical records to a third-party entity to ensure patient access to the medical records.

B. If a patient or a patient's health care decision maker requests access to or copies of the patient's medical records, the health care institution or third-party entity in possession of the medical records shall provide access to or copies of the medical records to the patient or the patient's health care decision maker in accordance with title 12, chapter 13, article 7.1.

C. A licensee that fails to comply with subsection A of this section is subject to a civil penalty of not more than \$10,000. The director may use a licensee's failure to comply with subsection A of this section as grounds to deny a subsequent license pursuant to section 36-425, subsection K.

D. For the purposes of this section, "medical record" has the same meaning prescribed in section 36-2201.

#### **36-423. Hemodialysis technicians; minimum requirements; definition**

A. Except as provided in subsection B, beginning on April 1, 2003, a facility that provides hemodialysis treatment shall only use a hemodialysis technician who is certified by a national organization that certifies hemodialysis technicians.

B. Beginning on April 1, 2003, an employee who provides hemodialysis treatment and who is not certified pursuant to subsection A is a hemodialysis technician trainee. A hemodialysis technician trainee may provide hemodialysis treatment in any facility unless the

trainee fails to pass the national certification examination within two years after employment. The department of health services shall establish by rule appropriate clinical practice restrictions for hemodialysis technician trainees. An employee who is employed to provide hemodialysis treatment before April 1, 2003 must meet the requirements of this section on or before April 1, 2006.

C. A facility that provides hemodialysis treatment must maintain the verification of certification in the hemodialysis technician's personnel file.

D. For the purposes of this section, "hemodialysis technician" means a person who, under the direct supervision of a physician licensed pursuant to title 32, chapter 13 or 17, or a registered nurse licensed pursuant to title 32, chapter 15, provides assistance in the treatment of patients who receive dialysis treatment for end stage renal disease.

**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.

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.

**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 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.

### **36-425.01. Home health agencies; licensure; definition**

- A. The department by rule shall license home health agencies. The department shall prescribe a licensure period that does not exceed two years.
- B. In lieu of a state licensure survey, the department shall issue a license to a home health agency that submits an application prescribed by the department and that meets the following requirements:
  1. Is certified as a home health agency by medicare.
  2. Is licensed by the department for at least one year.
  3. Meets all department licensure requirements.
- C. The department shall retain full authority over licensed home health agencies to ensure that licensure requirements are maintained.
- D. For the purposes of this section, "home health agency" has the same meaning as prescribed in section 36-151.

### **36-425.02. Nursing care institutions; quality rating; issuance of license**

- A. The department shall issue to each licensed nursing care institution a quality rating based on the results of a licensure survey.
- B. The director may determine the period of time for which a license issued to a nursing care institution is valid according to the quality rating category to which the institution is assigned, except that no license shall be valid for more than three years from the date of issuance.

### **36-425.03. Children's behavioral health programs; personnel; fingerprinting requirements; exemptions; definitions**

- A. Except as provided in subsections B, C and D of this section, children's behavioral health program personnel, including volunteers, shall submit the form prescribed in subsection E of this section to the employer and shall have a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1 or, within seven working days after employment or beginning volunteer work, shall apply for a fingerprint clearance card.
- B. The following persons are exempt from the fingerprinting requirements of this section:
  1. When under the direct visual supervision and in the presence of children's behavioral health program personnel who have a valid fingerprint clearance card:
    - (a) Except as provided in subsection C of this section, parents, foster parents, kinship foster care parents and guardians who participate in group activities that include their children who are receiving behavioral health services from a children's behavioral health program if they are not employees of the children's behavioral health program.
    - (b) A volunteer who provides services to children receiving behavioral health services.
    - (c) An employee or contractor who is eligible pursuant to section 41-1758.07, subsection C to petition the board of fingerprinting for a good cause exception and who provides documentation of having applied for a good cause exception pursuant to section 41-619.55 but who has not yet received a decision.
    - (d) A person who is not providing medical services, nursing services, behavioral health services, health-related services, home health services or supportive services and who is either not an employee or contractor or not on the premises on a regular basis.
  2. Hospital medical staff members, employees, contractors and volunteers who are not present in an area of the hospital authorized by the department for providing children's behavioral health services.
- C. A parent, foster parent, kinship foster care parent or guardian of a child who is receiving behavioral health services from a children's behavioral health program is not required to be fingerprinted or supervised for purposes of this section if the person is in the presence of or participating with only the person's own child.
- D. Applicants and employees who are fingerprinted pursuant to section 15-512 or 15-534 are exempt from the fingerprinting requirements of subsection A of this section.

E. Children's behavioral health program personnel shall certify on forms that are provided by the department and notarized that they are not awaiting trial on or have never been convicted of or admitted in open court or pursuant to a plea agreement to committing any of the offenses listed in section 41-1758.03, subsection B or C in this state or similar offenses in another state or jurisdiction.

F. Forms submitted pursuant to subsection E of this section are confidential.

G. Employers of children's behavioral health program personnel shall make documented, good faith efforts to contact previous employers of children's behavioral health program personnel to obtain information or recommendations that may be relevant to an individual's fitness for employment in a children's behavioral health program.

H. A person who is awaiting trial on or who has been convicted of or who has admitted in open court or pursuant to a plea agreement to committing a criminal offense listed in section 41-1758.03, subsection B is prohibited from working in any capacity in a children's behavioral health program that requires or allows contact with children.

I. A person who is awaiting trial on or who has been convicted of or who has admitted in open court or pursuant to a plea agreement to committing a criminal offense listed in section 41-1758.03, subsection C shall not work in a children's behavioral health program in any capacity that requires or allows the employee to provide direct services to children unless the person has applied for and received the required fingerprint clearance card pursuant to title 41, chapter 12, article 3.1.

J. The department of health services shall accept a certification submitted by a United States military base or a federally recognized Indian tribe that either:

1. Personnel who are employed or who will be employed and who provide services directly to children have not been convicted of, have not admitted committing or are not awaiting trial on any offense prescribed in subsection H of this section.

2. Personnel who are employed or who will be employed to provide services directly to children have been convicted of, have admitted committing or are awaiting trial on any offense prescribed in subsection I of this section if the personnel provide these services while under direct visual supervision.

K. The employer shall notify the department of public safety if the employer receives credible evidence that a person who possesses a valid fingerprint clearance card either:

1. Is arrested for or charged with an offense listed in section 41-1758.03, subsection B.

2. Falsified information on the form required by subsection E of this section.

L. For the purposes of this section:

1. "Children's behavioral health program" means a program provided in a health care institution that is licensed by the department to provide children's behavioral health services.

2. "Children's behavioral health program personnel" means an owner, employee or volunteer who works at a children's behavioral health program.

3. "Direct visual supervision" means continuous visual oversight of the supervised person that does not require the supervisor to be in a superior organizational role to the person being supervised.

#### **36-425.04. Hospice service agencies; policies and procedures; controlled substances**

A hospice service agency that is licensed pursuant to this chapter shall adopt policies and procedures to inform and educate client families on the proper disposal of schedule II controlled substances.

#### **36-425.05. Intermediate care facilities for individuals with intellectual disabilities; licensure**

On or before January 1, 2020, an intermediate care facility for individuals with intellectual disabilities that is operated by the department of economic security or a private entity shall be licensed pursuant to this chapter and certified pursuant to 42 Code of Federal Regulations part 483, subpart I.

#### **36-425.06. Secure behavioral health residential facilities; license; annual report; definition**

A. The department shall license secure behavioral health residential facilities to provide secure twenty-four-hour on-site supportive treatment and supervision by staff with behavioral health training for persons who have been determined to be seriously mentally ill,

who are chronically resistant to treatment for a mental disorder and who are placed in the facility pursuant to a court order issued pursuant to section 36-550.09 or who have been committed pursuant to a court order issued pursuant to section 13-4521. A secure behavioral health residential facility may provide services only to persons placed in or committed to the facility pursuant to a court order issued pursuant to section 36-550.09 or 13-4521 and may not provide services to any other persons on that facility's premises. A secure behavioral health residential facility may not have more than sixteen beds.

B. On or before September 1 of each year, the director of the Arizona health care cost containment system administration shall submit a report to the governor, the legislature and the supreme court that includes all of the following information:

1. An accounting of where the monies appropriated to the Arizona health care cost containment system administration for secure behavioral health residential facilities were used during the previous year.
2. The number of available beds in each secure behavioral health residential facility.

C. For the purposes of this section, "secure" means premises that limit a patient's egress in the least restrictive manner consistent with the patient's court-ordered treatment plan.

#### **36-425.07. Nursing-supported group homes; licensure**

On or before July 1, 2022, a nursing-supported group home that is operated in this state by a service provider under contract with the department of economic security shall be licensed pursuant to this chapter.

#### **36-425.08. Behavioral health residential facilities; outpatient clinics; children; respite; exemptions; requirements**

A. A behavioral health residential facility may provide respite care to a child for increments of fewer than five consecutive days and not more than twelve days in a ninety-day period or an outpatient clinic may provide respite care to a child for up to ten continuous hours per day between the hours of 6:00 a.m. and 10:00 p.m. without a medical history and physical examination. For those children receiving only respite services, the behavioral health residential facility or the outpatient clinic is exempt from all of the following licensure requirements in relation to the child's respite stay:

1. Providing counseling services.
2. Providing a discharge order and summary, except that a parent, guardian or custodian must be provided documentation of any incidence of illness, physical injury, use of emergency safety response or unacceptable behavior that occurs during the child's respite stay.
3. Providing medication information to a child for whom medication assistance is required.
4. Requirements for a review of the child's medication regime by a medical practitioner.
5. Preparing and posting a food menu more than twenty-four hours in advance of food service.
6. Tuberculosis screening of the child.

B. The respite care provider shall be given a list of the child's medications and allergies and emergency contact information on the child's arrival.

#### **36-425.09. Hospital price transparency; verification; annual report; exception**

A. Each hospital must comply with the requirements of 45 Code of Federal Regulations part 180. The department shall annually verify each hospital's compliance with this section with the centers for medicare and medicaid services.

B. On or before January 1, 2025 and each January 1 thereafter, the department shall post a report on its public website containing the name of any hospital that has been found to be noncompliant with the requirements of 45 Code of Federal Regulations part 180 and that has been assessed a civil monetary penalty by the centers for medicare and medicaid services.

C. This section does not apply to the Arizona state hospital.

#### **36-426. Hospital providers of extended care services**

Notwithstanding section 36-407, a hospital licensed pursuant to this article which has been certified pursuant to title XVIII of the social security act as a rural extended care hospital may provide nursing care services, for a period of not to exceed an average of forty-five

days, which are within the scope of services authorized by the medicare extended care program to any patient who is a member of the Arizona long-term care system and for which the services are appropriate. A hospital shall not admit a patient to an extended care program pursuant to this section if the patient needs a clinical service which is not available in the extended care program or requires services below the skilled nursing level of care as defined by the director.

### **36-427. Suspension or revocation; intermediate sanctions**

A. The director, pursuant to title 41, chapter 6, article 10, may suspend or revoke, in whole or in part, the license of any health care institution if its owners, officers, agents or employees:

1. Violate this chapter or the rules of the department adopted pursuant to this chapter.
2. Knowingly aid, permit or abet the commission of any crime involving medical and health-related services.
3. Have been, are or may continue to be in substantial violation of the requirements for licensure of the institution, as a result of which the health or safety of one or more patients or the general public is in immediate danger.
4. Fail to comply with section 36-2901.08.
5. Violate section 36-2302.

B. If the licensee, the chief administrative officer or any other person in charge of the institution refuses to permit the department or its employees or agents the right to inspect the institution's premises as provided in section 36-424, such action shall be deemed reasonable cause to believe that a substantial violation under subsection A, paragraph 3 of this section exists.

C. If the director reasonably believes that a violation of subsection A, paragraph 3 of this section has occurred and that life or safety of patients will be immediately affected, the director, on written notice to the licensee, may order the immediate restriction of admissions or readmissions, selected transfer of patients out of the facility, reduction of capacity and termination of specific services, procedures, practices or facilities.

D. The director may rescind, in whole or in part, sanctions imposed pursuant to this section on correction of the violation or violations for which the sanctions were imposed.

### **36-428. Hearings by the director**

A. No license shall be suspended or revoked without affording the licensee notice and an opportunity for a hearing as provided for in title 41, chapter 6, article 10. On a licensee's request, the director may hold hearings concerning a health care institution's license in the city in which the institution is located.

B. Any person whose application for a license has been denied by the director or who has been ordered by the director to restrict admissions, transfer selected patients out of the facility, reduce capacity and terminate specific services, procedures, practices or facilities may, at any time within thirty days after notice of the denial or order, request in writing a hearing before the director, to be held within thirty days following the written request, for the purpose of reviewing the action of the director.

C. All hearings shall be in accordance with title 41, chapter 6, article 10.

### **36-429. Removal of licensee; temporary management continued operation**

A. If the director reasonably believes that a violation of this chapter by a licensee endangers the health, safety or welfare of one or more of the licensee's patients, in addition to other remedies provided by this chapter, the director may enter into an agreement with the licensee or bring an action requesting the superior court to:

1. Remove the administrative officers, agents or employees of such licensee by injunction, enjoin the licensee from continued operation and revoke the license.
2. Appoint temporary personnel to continue operation of the health care institution under conditions and requirements set by the court pending correction of the violation and restoration of the licensee, revocation of the license or correction of the violation and change of ownership.

B. The action shall be brought in the name of the people of the state through the attorney general in the superior court in the county in which the health care institution is located.

### **36-430. Unlicensed operation prohibited; injunction**

The operation or maintenance of a health care institution which does not hold a current and valid license or which exceeds the range of the services authorized by the class or subclass for which it is licensed is a violation of this chapter and is declared a nuisance inimical to the public health and safety. The director, in the name of the people of the state, through the attorney general, may bring an action for an injunction to restrain such violation or to enjoin the future operation or maintenance of any such health care institution until substantial compliance with the provisions of this chapter and the rules and regulations and standards adopted pursuant thereto is obtained.

### **36-431. Violation; classification**

A. A person is guilty of a class 3 misdemeanor who:

1. Establishes, operates or maintains any class or subclass of health care institution, as defined in this chapter, unless the person holds a current and valid license for such class or subclass from the department.
2. Knowingly violates any provision of this chapter unless another classification is specifically prescribed in this chapter.

B. Each day that a violation continues shall constitute a separate violation.

### **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 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 establish a model in rule that considers 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.
12. Whether the health care institution and staff are in compliance with the reporting requirements pursuant to section 46-454.

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 deposit civil penalties assessed under subsection A of this section in the state general fund.

#### **36-431.02. Nursing care institution resident protection revolving fund; use; nonreversion**

A. The nursing care institution resident protection revolving fund is established. The fund consists of monies received from civil penalties collected by the director pursuant to section 36-431.01, subsection D.

B. The director shall use monies in the fund for the purposes prescribed in section 36-431.01, subsection F, subject to legislative appropriation.

C. Monies in the fund are exempt from the provisions of section 35-190 relating to the lapsing of appropriations.

#### **36-432. Urgent care centers; posting requirements**

If a physician licensed pursuant to title 32, chapter 13 or 17 is not on site during working hours at a freestanding urgent care center, as a condition of licensure, the center must post a conspicuous sign stating this fact. The center must post this sign in the center's patient waiting room in full view of the patients.

#### **36-433. Receipt of report and complaint; investigation**

On receipt of a notice pursuant to section 12-570 and a copy of a complaint as provided in section 12-570, the department may initiate an investigation into the matter to determine if the licensee is in violation of the statutes or rules governing licensure.

#### **36-434. Outdoor behavioral health care programs; licensing requirements; inspections**

A. An outdoor behavioral health care program shall:

1. Comply with the requirements for a level 2 behavioral health residential agency, as established by the department by rule except as provided in subsection C of this section.
2. Obtain and maintain national accreditation as an outdoor behavioral health care program.
3. Ensure that the outdoor behavioral health program's personnel comply with the requirements of section 36-425.03.

B. In addition to the standards adopted pursuant to section 36-405, subsection A, the department may adopt rules to establish facility, equipment and sanitation standards for outdoor behavioral health care programs.

C. An outdoor behavioral health care program that does not use facilities is exempt from any facility standards applicable to a behavioral health service agency.

D. If the director determines that there is reasonable cause to believe an outdoor behavioral health care program 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, may enter on and into any area used by the outdoor behavioral health care program at any reasonable time to determine, consistent with standard medical practices or behavioral health practices, compliance with this chapter, rules adopted pursuant to this chapter and local fire ordinances or rules.

E. An application for licensure under this chapter constitutes permission for and complete acquiescence in any entry or inspection of any area used by the outdoor behavioral health care program during the pendency of the application and, if licensed, during the term of the license.

F. If an inspection reveals that the outdoor behavioral health care program is not adhering to the licensing requirements prescribed pursuant to this chapter, the director may take action authorized by this chapter.

G. An outdoor behavioral health care program whose license has been suspended or revoked pursuant to this section is subject to inspection on application for relicensure or reinstatement of license.

**36-434.01. Outpatient surgical centers; hospitals; surgical smoke evacuation systems; definitions**

A. Beginning July 1, 2024, each outpatient surgical center or hospital shall adopt and implement policies to prevent exposure to surgical smoke by using a smoke evacuation system for each procedure that generates surgical smoke.

B. The department shall ensure compliance with this section during any on-site inspection and in response to any complaint received relating to a violation of this section.

C. For the purposes of this section:

1. "Smoke evacuation system" means smoke evacuation equipment and technologies designed to capture, filter and remove surgical smoke at the site of origin and to prevent surgical smoke from making ocular contact or contact with an individual's respiratory tract.

2. "Surgical smoke":

(a) Means the surgical plume that is generated from the use of an energy-generating surgical device.

(b) Includes smoke plume, bio-aerosols, laser-generated airborne contaminants and lung-damaging dust.