

## **Selected Arizona Assisted Living Statutes**

### **§ 36-407. Prohibited acts**

- A. A person shall not establish, conduct or maintain in this state a health care institution or any class or subclass of health care institution unless that person holds a current and valid license issued by the department specifying the class or subclass of health care institution the person is establishing, conducting or maintaining. The license is valid only for the establishment, operation and maintenance of the class or subclass of health care institution, the type of services and, except for emergency admissions as prescribed by the director by rule, the licensed capacity specified by the license.
- B. The licensee shall not imply by advertising, directory listing or otherwise that the licensee is authorized to perform services more specialized or of a higher degree of care than is authorized by this chapter and the underlying rules for the particular class or subclass of health care institution within which the licensee is licensed.
- C. The licensee may not transfer or assign the license. A license is valid only for the premises occupied by the institution at the time of its issuance.
- D. The licensee shall not personally or through an agent offer or imply an offer of rebate or fee splitting to any person regulated by title 32 or chapter 17 of this title.
- E. The licensee shall submit an itemized statement of charges to each patient.

### **§ 36-411. Residential care institutions; home health agencies; fingerprinting; definitions**

- A. Subject to legislative appropriations, as a condition of licensure or continued licensure of a residential care institution, a nursing care institution or a home health agency and as a condition of employment in a residential care institution, a nursing care institution or a home health agency, employees and owners of residential care institutions, nursing care institutions or home health agencies or contracted persons who provide direct care, home health services or supportive services and who have not been subject to the fingerprinting requirements of a health professional's regulatory board pursuant to title 32 shall have valid fingerprint clearance cards that are issued pursuant to title 41, chapter 12, article 3.1 or shall apply for a fingerprint clearance card within twenty working days of employment or beginning volunteer work except as provided in subsections F, G and H of this section.
- B. A health professional who has complied with the fingerprinting requirements of the health professional's regulatory board as a condition of licensure or certification pursuant to title 32 is not required to submit an additional set of fingerprints to the department of public safety pursuant to this section.
- C. Owners shall make documented, good faith efforts to:
  - 1. Contact previous employers to obtain information or recommendations that may be relevant to a person's fitness to work in a residential care institution, nursing care institution or home health agency.
  - 2. Verify the current status of a person's fingerprint clearance card.
- D. An employee, an owner or a contracted person or a facility on behalf of the employee, the owner or the contracted person shall submit a completed application that is provided by the department of public safety within twenty days after the date the person begins work.
- E. A residential care institution, nursing care institution or home health agency shall not allow a person or contracted person to continue to provide direct care, home health services or supportive services if the person has been denied a fingerprint clearance card pursuant to title 41, chapter 12, article 3.1, has been denied approval pursuant to this section before May 7, 2001 or has not received an interim approval from the board of fingerprinting pursuant to section 41-619.55, subsection I.
- F. Volunteers who provide services to residents under the direct visual supervision of a previously screened owner or employee are exempt from the fingerprint clearance card requirements of this section.
- G. Notwithstanding the requirements of section 41-1758.02, subsection B, a person who provides direct care, home health services or supportive services for a residential care institution, home health

agency or nursing care institution after meeting the fingerprinting and criminal records check requirements of this section is not required to meet the fingerprint and criminal records check requirements of this section again if that person remains employed by the same employer or changes employment within two years after satisfying the requirements of this section. For the purposes of this subsection, If the employer changes through sale, lease or operation of law, a person is deemed to be employed by the same employer if that person remains employed by the new employer.

H. Notwithstanding the requirements of section 41-1758.02, subsection B, a person who has received approval pursuant to this section before May 7, 2001 and who remains employed by the same employer is not required to apply for a fingerprint clearance card.

I. If a person's employment record contains a six-month or longer time frame where the person was not employed by any employer, a completed application with a new set of fingerprints shall be submitted to the department of public safety.

J. For the purposes of this section:

1. "Home health services" has the same meaning prescribed in section § 36-151.
2. "Supportive services" has the same meaning prescribed in section § 36-151.

### **§ 36-425. Inspections; issuance of license; posting of deficiencies; provisional license; denial of license**

A. On receipt of a properly completed application for initial licensure or relicensure, 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, the director shall either deny the license or issue a regular or provisional license. A license issued by the department shall be conspicuously posted in the reception area of that institution. If the health care institution is an accredited hospital at the time of licensure, the licensure term is three years from the expiration date of the hospital's current license, or in the case of an initial license based on a change of ownership, the licensure term is three years beginning on the effective date of the hospital's current accreditation.

B. The director shall issue a regular 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 license is valid for up to two years from the date it is issued if the facility, on expiration of the initial one-year license, has no deficiencies at the time the department conducts the subsequent licensing inspections. 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 prior to 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 hospital licensed as a rural general hospital may provide intensive care services.

D. 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 initial licensure reveals that the 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 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 regular 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 regular license only if the director determines that the 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.

E. 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 conspicuously post a notice that identifies the location at that institution where the inspection reports are available for review.

F. 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 7.

G. When the department issues an original regular 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.

H. 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.

I. In addition to the requirements of this chapter, the director may prescribe by rule other licensure requirements and may prescribe procedures for conducting investigations into an applicant's character and qualifications.

#### **§ 36-446.01. Licensure or certification requirements**

A. A nursing care institution shall not operate in this state except under the supervision of an administrator licensed pursuant to this article.

B. An assisted living facility shall not operate in this state except under the supervision of a manager certified pursuant to this article.

C. It is unlawful for any person who does not have a license or certificate, or whose license or certificate has lapsed or has been suspended or revoked, to practice or offer to practice skilled nursing facility administration or assisted living facility management or use any title, sign, card or device indicating that such person is an administrator or manager.

#### **§ 36-405. Powers and duties of the director**

B. The director may, by rule:

5. Prescribe standards for training programs for assisted living facilities.

C. The director may:

1. Grant, deny, suspend and revoke approval of training programs for assisted living facilities.

2. Impose a civil penalty pursuant to section § 36-431.01 against a training program that violates this chapter or rules adopted pursuant to this chapter.

#### **§ 36-406. Powers and duties of the department**

In addition to its other powers and duties:

1. The department shall:

- (b) Review, and may approve, plans and specifications for construction or modification or additions to health care institutions regulated by this chapter.
- (c) Have access to books, records, accounts and any other information of any health care institution reasonably necessary for the purposes of this chapter.
- (d) Require as a condition of licensure that nursing care institutions and assisted living facilities make vaccinations for influenza and pneumonia available to residents on site on a yearly basis. The department shall prescribe the manner by which the institutions and facilities shall document compliance with this subdivision, including documenting residents who refuse to be immunized. The department shall not impose a violation on a licensee for not making a vaccination available if there is a shortage of that vaccination in this state as determined by the director.

### **§ 36-401. Definitions; adult foster care**

- A. In this chapter, unless the context otherwise requires:
  - 6. "Adult foster care" means a residential setting that provides room and board and adult foster care services for at least one and no more than four adults who are participants in the Arizona long-term care system pursuant to chapter 29, article 2 of this title and in which the sponsor or the manager resides with the residents and integrates the residents who are receiving adult foster care into that person's family.
  - 9. "Assisted living center" means an assisted living facility that provides resident rooms or residential units to eleven or more residents.
  - 10. "Assisted living facility" means a residential care institution, including adult foster care, that provides or contracts to provide supervisory care services, personal care services or directed care services on a continuing basis.
  - 11. "Assisted living home" means an assisted living facility that provides resident rooms to ten or fewer residents.

### **§ 36-450.01. Reporting procedures**

- A. Each health care institution licensed pursuant to this chapter shall adopt a procedure for reviewing reports made in good faith by a health professional concerning an activity, policy or practice that the health professional reasonably believes both:
  - 1. Violates professional standards of practice or is against the law.
  - 2. Poses a substantial risk to the health, safety or welfare of a patient.
- B. The procedure shall include reasonable measures to maintain the confidentiality of the identity of a health professional providing information to a health care institution pursuant to this section.

### **§ 36-450.02. Nonretaliatory policy**

- A. Each health care institution licensed pursuant to this chapter shall adopt a policy that prohibits retaliatory action against a health professional who in good faith:
  - 1. Makes a report to the health care institution pursuant to the requirements of section § 36-450.01.
  - 2. Having provided the health care institution a reasonable opportunity to address the report, provides information to a private health care accreditation organization or governmental entity concerning the activity, policy or practice that was the subject of the report.
- B. This section does not prohibit a health care institution licensed pursuant to this chapter from taking action against a health professional for a purpose not related to a report filed pursuant to section § 36-450.01.
- C. Except as provided in section 23-1501, paragraph 3, subdivisions (a), (c) and (d), this section shall only be enforced through the provisions of this chapter.
- D. There shall be a rebuttable presumption that any termination or other adverse action that occurs more than one hundred eighty days after the date of a report made pursuant to either subsection A, paragraph 1 or 2 of this section is not a retaliatory action.