

House Engrossed

FILED

**KEN BENNETT
SECRETARY OF STATE**

State of Arizona
House of Representatives
Forty-ninth Legislature
First Regular Session
2009

CHAPTER 133

HOUSE BILL 2078

AN ACT

AMENDING SECTION 36-401, ARIZONA REVISED STATUTES; AMENDING TITLE 36, CHAPTER 4, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 36-434; RELATING TO HEALTH CARE INSTITUTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 36-401, 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 accredited
10 by a nationally recognized organization on hospital accreditation.

11 3. "Adult day health care facility" means a facility that provides
12 adult day health services during a portion of a continuous twenty-four hour
13 period for compensation on a regular basis for five or more adults not
14 related to the proprietor.

15 4. "Adult day health services" means a program that provides planned
16 care supervision and activities, personal care, personal living skills
17 training, meals and health monitoring in a group setting during a portion of
18 a continuous twenty-four hour period. Adult day health services may also
19 include preventive, therapeutic and restorative health-related services that
20 do not include behavioral health services.

21 5. "Adult foster care home" means a residential setting that provides
22 room and board and adult foster care services for at least one and no more
23 than four adults who are participants in the Arizona long-term care system
24 pursuant to chapter 29, article 2 of this title and in which the sponsor or
25 the manager resides with the residents and integrates the residents who are
26 receiving adult foster care into that person's family.

27 6. "Adult foster care services" means supervision, assistance with
28 eating, bathing, toileting, dressing, self-medication and other routines of
29 daily living or services authorized by section 36-2939, subsection C and
30 rules adopted pursuant to that section.

31 7. "Assisted living center" means an assisted living facility that
32 provides resident rooms or residential units to eleven or more residents.

33 8. "Assisted living facility" means a residential care institution,
34 including an adult foster care home, that provides or contracts to provide
35 supervisory care services, personal care services or directed care services
36 on a continuous basis.

37 9. "Assisted living home" means an assisted living facility that
38 provides resident rooms to ten or fewer residents.

39 10. "Construction" means the building, erection, fabrication or
40 installation of a health care institution.

41 11. "Continuous" means available at all times without cessation, break
42 or interruption.

43 12. "Controlling person" means a person who:

44 (a) Through ownership, has the power to vote at least ten per cent of
45 the outstanding voting securities.

1 (b) If the applicant or licensee is a partnership, is the general
2 partner or a limited partner who holds at least ten per cent of the voting
3 rights of the partnership.

4 (c) If the applicant or licensee is a corporation, an association or a
5 limited liability company, is the president, the chief executive officer, the
6 incorporator or any person who owns or controls at least ten per cent of the
7 voting securities. For the purposes of this subdivision, corporation does
8 not include nonprofit corporations.

9 (d) Holds a beneficial interest in ten per cent or more of the
10 liabilities of the applicant or the licensee.

11 13. "Department" means the department of health services.

12 14. "Directed care services" means programs and services, including
13 supervisory and personal care services, that are provided to persons who are
14 incapable of recognizing danger, summoning assistance, expressing need or
15 making basic care decisions.

16 15. "Direction" means authoritative policy or procedural guidance for
17 the accomplishment of a function or activity.

18 16. "Director" means the director of the department of health services.

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

22 18. "Freestanding urgent care center":

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

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

27 (ii) Claims to provide unscheduled medical services not otherwise
28 routinely available in primary care physician offices.

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

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

34 (b) Does not include the following:

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

37 (ii) A qualifying community health center pursuant to section
38 36-2907.06.

39 (iii) Any other health care institution licensed pursuant to this
40 chapter.

41 (iv) A physician's office that offers extended hours or same day
42 appointments to existing and new patients and that does not meet the
43 requirements of subdivision (a), item (i), (iii) or (iv). For the purposes
44 of this item, "physician" means a person licensed pursuant to title 32,
45 chapter 13 or 17.

1 19. "Governing authority" means the individual, agency, group or
2 corporation, appointed, elected or otherwise designated, in which the
3 ultimate responsibility and authority for the conduct of the health care
4 institution are vested.

5 20. "Health care institution" means every place, institution, building
6 or agency, whether organized for profit or not, that provides facilities with
7 medical services, nursing services, health screening services, other
8 health-related services, supervisory care services, personal care services or
9 directed care services and ~~that~~ includes home health agencies as defined in
10 section 36-151, OUTDOOR BEHAVIORAL HEALTH CARE PROGRAMS and hospice service
11 agencies.

12 21. "Health-related services" means services, other than medical, that
13 pertain to general supervision, protective, preventive and personal care
14 services, supervisory care services or directed care services.

15 22. "Health screening services" means the acquisition, analysis and
16 delivery of health-related data of individuals to aid in the determination of
17 the need for medical services.

18 23. "Hospice" means a hospice service agency or the provision of
19 hospice services in an inpatient facility.

20 24. "Hospice service" means a program of palliative and supportive care
21 for terminally ill persons and their families or caregivers.

22 25. "Hospice service agency" means an agency or organization, or a
23 subdivision of that agency or organization, that is engaged in providing
24 hospice services at the place of residence of its clients.

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

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

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

37 29. "Modification" means the substantial improvement, enlargement,
38 reduction or alteration of or other change in a health care institution.

39 30. "Nonproprietary institution" means any health care institution that
40 is organized and operated exclusively for charitable purposes, no part of the
41 net earnings of which inures to the benefit of any private shareholder or
42 individual, or that is operated by the state or any political subdivision of
43 the state.

44 31. "Nursing care institution" means a health care institution that
45 provides inpatient beds or resident beds and nursing services to persons who

1 need continuous nursing services but who do not require hospital care or
2 direct daily care from a physician.

3 32. "Nursing services" means those services that pertain to the
4 curative, restorative and preventive aspects of nursing care and that are
5 performed at the direction of a physician by or under the supervision of a
6 registered nurse licensed in this state.

7 33. "Organized medical staff" means a formal organization of
8 physicians, and dentists where appropriate, with the delegated authority and
9 responsibility to maintain proper standards of medical care and to plan for
10 continued betterment of that care.

11 34. "OUTDOOR BEHAVIORAL HEALTH CARE PROGRAM" MEANS AN AGENCY THAT
12 PROVIDES BEHAVIORAL HEALTH SERVICES IN AN OUTDOOR ENVIRONMENT AS AN
13 ALTERNATIVE TO BEHAVIORAL HEALTH SERVICES THAT ARE PROVIDED IN A HEALTH CARE
14 INSTITUTION WITH FACILITIES. OUTDOOR BEHAVIORAL HEALTH CARE PROGRAMS DO NOT
15 INCLUDE:

16 (a) PROGRAMS, FACILITIES OR ACTIVITIES THAT ARE OPERATED BY A
17 GOVERNMENT ENTITY OR THAT ARE LICENSED BY THE DEPARTMENT AS A CHILD CARE
18 PROGRAM PURSUANT TO CHAPTER 7.1 OF THIS TITLE.

19 (b) OUTDOOR ACTIVITIES FOR YOUTH THAT ARE DESIGNATED TO BE PRIMARILY
20 RECREATIONAL AND THAT ARE ORGANIZED BY CHURCH GROUPS, SCOUTING ORGANIZATIONS
21 OR SIMILAR GROUPS.

22 (c) OUTDOOR YOUTH PROGRAMS LICENSED BY THE DEPARTMENT OF ECONOMIC
23 SECURITY.

24 ~~34.~~ 35. "Personal care services" means assistance with activities of
25 daily living that can be performed by persons without professional skills or
26 professional training and includes the coordination or provision of
27 intermittent nursing services and the administration of medications and
28 treatments by a nurse who is licensed pursuant to title 32, chapter 15 or as
29 otherwise provided by law.

30 ~~35.~~ 36. "Physician" means any person who is licensed pursuant to title
31 32, chapter 13 or 17.

32 ~~36.~~ 37. "Residential care institution" means a health care institution
33 other than a hospital or a nursing care institution that provides resident
34 beds or residential units, supervisory care services, personal care services,
35 directed care services or health-related services for persons who do not need
36 continuous nursing services.

37 ~~37.~~ 38. "Residential unit" means a private apartment, unless otherwise
38 requested by a resident, that includes a living and sleeping space, kitchen
39 area, private bathroom and storage area.

40 ~~38.~~ 39. "Respite care services" means services that are provided by a
41 licensed health care institution to persons otherwise cared for in foster
42 homes and in private homes to provide an interval of rest or relief of not
43 more than thirty days to operators of foster homes or to family members.

44 ~~39.~~ 40. "Substantial compliance" means that the nature or number of
45 violations revealed by any type of inspection or investigation of a health

1 care institution does not pose a direct risk to the life, health or safety of
2 patients or residents.

3 ~~40-~~ 41. "Supervision" means direct overseeing and inspection of the
4 act of accomplishing a function or activity.

5 ~~41-~~ 42. "Supervisory care services" means general supervision,
6 including daily awareness of resident functioning and continuing needs, the
7 ability to intervene in a crisis and assistance in the self-administration of
8 prescribed medications.

9 ~~42-~~ 43. "Unscheduled medical services" means medically necessary
10 periodic health care services that are unanticipated or cannot reasonably be
11 anticipated and that require medical evaluation or treatment before the next
12 business day.

13 B. If there are fewer than four Arizona long-term care system
14 participants receiving adult foster care in an adult foster care home,
15 nonparticipating adults may receive other types of services that are
16 authorized by law to be provided in the adult foster care home as long as the
17 number of adults served, including the Arizona long-term care system
18 participants, does not exceed four.

19 C. Nursing care services may be provided by the adult foster care
20 licensee if the licensee is a nurse who is licensed pursuant to title 32,
21 chapter 15 and the services are limited to those allowed pursuant to law.
22 The licensee shall keep a record of nursing services rendered.

23 Sec. 2. Title 36, chapter 4, article 2, Arizona Revised Statutes, is
24 amended by adding section 36-434, to read:

25 36-434. Outdoor behavioral health care programs; inspections;
26 definition

27 A. AN OUTDOOR BEHAVIORAL HEALTH CARE PROGRAM SHALL:

28 1. COMPLY WITH THE REQUIREMENTS FOR A LEVEL 2 BEHAVIORAL HEALTH
29 RESIDENTIAL AGENCY, AS ESTABLISHED BY THE DEPARTMENT BY RULE EXCEPT AS
30 PROVIDED IN SUBSECTION C OF THIS SECTION.

31 2. OBTAIN AND MAINTAIN NATIONAL ACCREDITATION AS AN OUTDOOR BEHAVIORAL
32 HEALTH CARE PROGRAM.

33 3. ENSURE THAT THE OUTDOOR BEHAVIORAL HEALTH PROGRAM'S PERSONNEL
34 COMPLY WITH THE REQUIREMENTS OF SECTION 36-425.03.

35 B. IN ADDITION TO THE STANDARDS ADOPTED PURSUANT TO SECTION 36-405,
36 SUBSECTION A, THE DEPARTMENT MAY ADOPT RULES TO ESTABLISH FACILITY, EQUIPMENT
37 AND SANITATION STANDARDS FOR OUTDOOR BEHAVIORAL HEALTH CARE PROGRAMS.

38 C. AN OUTDOOR BEHAVIORAL HEALTH CARE PROGRAM THAT DOES NOT USE
39 FACILITIES IS EXEMPT FROM ANY FACILITY STANDARDS APPLICABLE TO A BEHAVIORAL
40 HEALTH SERVICE AGENCY.

41 D. IF THE DIRECTOR DETERMINES THAT THERE IS REASONABLE CAUSE TO
42 BELIEVE AN OUTDOOR BEHAVIORAL HEALTH CARE PROGRAM IS NOT ADHERING TO THE
43 LICENSING REQUIREMENTS OF THIS CHAPTER, THE DIRECTOR AND ANY DULY DESIGNATED
44 EMPLOYEE OR AGENT OF THE DIRECTOR, INCLUDING COUNTY HEALTH REPRESENTATIVES
45 AND COUNTY OR MUNICIPAL FIRE INSPECTORS, MAY ENTER ON AND INTO ANY AREA USED

1 BY THE OUTDOOR BEHAVIORAL HEALTH CARE PROGRAM AT ANY REASONABLE TIME TO
2 DETERMINE, CONSISTENT WITH STANDARD MEDICAL PRACTICES OR BEHAVIORAL HEALTH
3 PRACTICES, COMPLIANCE WITH THIS CHAPTER, RULES ADOPTED PURSUANT TO THIS
4 CHAPTER AND LOCAL FIRE ORDINANCES OR RULES.

5 E. AN APPLICATION FOR LICENSURE UNDER THIS CHAPTER CONSTITUTES
6 PERMISSION FOR AND COMPLETE ACQUIESCENCE IN ANY ENTRY OR INSPECTION OF ANY
7 AREA USED BY THE OUTDOOR BEHAVIORAL HEALTH CARE PROGRAM DURING THE PENDENCY
8 OF THE APPLICATION AND, IF LICENSED, DURING THE TERM OF THE LICENSE.

9 F. IF AN INSPECTION REVEALS THAT THE OUTDOOR BEHAVIORAL HEALTH CARE
10 PROGRAM IS NOT ADHERING TO THE LICENSING REQUIREMENTS PRESCRIBED PURSUANT TO
11 THIS CHAPTER, THE DIRECTOR MAY TAKE ACTION AUTHORIZED BY THIS CHAPTER.

12 G. AN OUTDOOR BEHAVIORAL HEALTH CARE PROGRAM WHOSE LICENSE HAS BEEN
13 SUSPENDED OR REVOKED PURSUANT TO THIS SECTION IS SUBJECT TO INSPECTION ON
14 APPLICATION FOR RELICENSURE OR REINSTATEMENT OF LICENSE.

15 Sec. 3. Emergency

16 This act is an emergency measure that is necessary to preserve the
17 public peace, health or safety and is operative immediately as provided by
18 law.

APPROVED BY THE GOVERNOR JULY 13, 2009.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JULY 13, 2009.

Passed the House June 16, 2009

by the following vote: 41 Ayes,

10 Nays, 9 Not Voting

with emergency
Stan B. Jankowski
Speaker of the House
Pro Tempore

Norman L. Joyce
Chief Clerk of the House

On reconsideration
Passed the Senate June 30, 2009

by the following vote: 24 Ayes,

2 Nays, 4 Not Voting

with emergency
Robert S. Bennett
President of the Senate

Charmine Bellington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

1st day of July, 2009

at 8:25 o'clock A. M.

Susan K. Myers
Secretary to the Governor

Approved this 13th day of

July 2009

at 9:12 o'clock A. M.

Janice K. Brewer
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 13 day of July, 2009

at 3:20 o'clock P. M.

Ken Blumett
Secretary of State

H.B. 2078