

ARIZONA REVISED STATUTES
Title 36: PUBLIC HEALTH AND SAFETY
Chapter 4: HEALTH CARE INSTITUTIONS

Article 1: General Provisions

Arizona Revised Statutes (“A.R.S.”) § 36-401. Definitions; adult foster care

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

1. "Accredited health care institution" means a health care institution, other than a hospital, that is currently accredited by a nationally recognized accreditation organization.
2. "Accredited hospital" means a hospital that is currently accredited by a nationally recognized organization on hospital accreditation.
3. "Adult day health care facility" means a facility that provides adult day health services during a portion of a continuous twenty-four hour period for compensation on a regular basis for five or more adults not related to the proprietor.
4. "Adult day health services" means a program that provides planned care supervision and activities, personal care, personal living skills training, meals and health monitoring in a group setting during a portion of a continuous twenty-four hour period. Adult day health services may also include preventive, therapeutic and restorative health-related services that do not include behavioral health services.
5. "Adult foster care home" 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.
6. "Adult foster care services" means supervision, assistance with eating, bathing, toileting, dressing, self-medication and other routines of daily living or services authorized by section 36-2939, subsection C and rules adopted pursuant to that section.
7. "Assisted living center" means an assisted living facility that provides resident rooms or residential units to eleven or more residents.
8. "Assisted living facility" means a residential care institution, including an adult foster care home, that provides or contracts to provide supervisory care services, personal care services or directed care services on a continuous basis.
9. "Assisted living home" means an assisted living facility that provides resident rooms to ten or fewer residents.
10. "Construction" means the building, erection, fabrication or installation of a health care institution.
11. "Continuous" means available at all times without cessation, break or interruption.
12. "Controlling person" means a person who:
 - (a) Through ownership, has the power to vote at least ten per cent of the outstanding voting securities.
 - (b) If the applicant or licensee is a partnership, is the general partner or a limited partner who holds at least ten per cent of the voting rights of the partnership.
 - (c) If the applicant or licensee is a corporation, an association or a limited liability company, is the president, the chief executive officer, the incorporator or any person who owns or controls at least ten per cent of the voting securities. For the purposes of this subdivision, corporation does not include nonprofit corporations.
 - (d) Holds a beneficial interest in ten per cent or more of the liabilities of the applicant or the licensee.
13. "Department" means the department of health services.
14. "Directed care services" means programs and services, including supervisory and personal care services, that are provided to persons who are incapable of recognizing danger, summoning assistance, expressing need or making basic care decisions.
15. "Direction" means authoritative policy or procedural guidance for the accomplishment of a function or activity.
16. "Director" means the director of the department of health services.
17. "Facilities" means buildings that are used by a health care institution for providing any of the types of services as defined in this chapter.
18. "Freestanding urgent care center":
 - (a) Means an outpatient treatment center that, regardless of its posted or advertised name, meets any of the following requirements:
 - (i) Is open twenty-four hours a day, excluding at its option weekends or certain holidays, but is not licensed as a hospital.
 - (ii) Claims to provide unscheduled medical services not otherwise routinely available in primary care physician offices.
 - (iii) By its posted or advertised name, gives the impression to the public that it provides medical care for urgent, immediate or emergency conditions.

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

(b) Does not include the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

31. "Nursing care institution" means a health care institution that provides inpatient beds or resident beds and nursing services to persons who need continuous nursing services but who do not require hospital care or direct daily care from a physician.

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

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

34. "Outdoor behavioral health care program" means an agency that provides behavioral health services in an outdoor environment as an alternative to behavioral health services that are provided in a health care institution with facilities. Outdoor behavioral health care programs do not include:

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

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

(c) Outdoor youth programs licensed by the department of economic security.

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

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

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

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

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

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

41. "Supervision" means direct overseeing and inspection of the act of accomplishing a function or activity.

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

43. "Temporary license" means a license issued by the department to operate a class or subclass of a health care institution at a specific location that is valid until an initial licensing inspection.

44. "Unscheduled medical services" means medically necessary periodic health care services that are unanticipated or cannot reasonably be anticipated and that require medical evaluation or treatment before the next business day.

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

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

A.R.S. § 36-402. Exemptions

A. This chapter and the rules adopted by the director pursuant to this chapter do not authorize the licensure, supervision, regulation or control of:

1. The remedial care or treatment of residents or patients in any home or institution conducted only for those who rely solely on treatment by prayer or spiritual means in accordance with the creed or tenets of any well recognized church or religious denomination.
2. Establishments, such as motels, hotels and boarding houses, that provide domiciliary and ancillary commercial services, but do not provide adaptive, medical, hospital, nursing, health related or supervisory care services.
3. Private offices and clinics of health care providers licensed under title 32 that are not freestanding urgent care centers, unless:
 - (a) Patients are kept overnight as bed patients or treated otherwise under general anesthesia except when treatment by general anesthesia is regulated by title 32, chapter 11.
 - (b) The office or clinic is an abortion clinic. For the purposes of this subdivision, "abortion clinic" has the same meaning prescribed in section 36-449.01.
4. Dispensaries and first aid stations located within business or industrial establishments maintained solely for the use of employees if the facility does not contain inpatient beds and is under the supervision of a physician.
5. The collection, processing or distribution of whole human blood, blood components, plasma, blood fractions or derivatives procured, processed or distributed by federally licensed and regulated blood banks.
6. Places where four or fewer adults not related to the administrator or owner receive adult day health services for compensation on a regular basis.
7. Places at which persons receive health related services only from relatives or from legal guardians or places that do not purport to be establishments that regularly provide health related services and at which one or two persons receive health related services on a twenty-four hour basis.
8. The Arizona pioneers' home. However, the department of health services shall evaluate the health and sanitation conditions at the Arizona pioneers' home annually using the standards applicable to licensed nursing care institutions.
9. The personal residence of a terminally ill person, or the personal residence of that person's relative or guardian, where that person receives hospice services from a hospice service agency.
10. All medical and health related facilities and services that are provided to inmates who are confined in a state prison. The state department of corrections shall annually evaluate the medical and health related facilities and services that are provided to inmates to determine that the facilities and services meet the applicable standards that are adopted by the director of the department of health services. The state department of corrections shall report the results of its annual evaluation and the actual findings, including a plan of correction for any deficiencies, to the director of the department of health services. The department

of health services shall conduct validation surveys on a percentage of the medical and health related facilities, the number of which shall be determined by the state department of corrections and the department of health services. The director of the state department of corrections shall maintain the annual evaluation reports. This paragraph does not apply to licensed behavioral or mental health inpatient treatment facilities that the state department of corrections operates.

11. A facility that provides medical and health services to inmates who are confined in a county jail. The sheriff shall annually evaluate the facility to determine if it meets the applicable standards that are adopted by either a national corrections commission on health care or an American correctional association or the sheriff shall annually submit the facility to a similar separate inspection by an outside agency with medical standards. The sheriff must submit the certificate of accreditation or proof of successful inspection to the department annually and keep a copy of the certificate or proof of inspection.

B. A medical and health related facility that provides medical and health services exclusively to persons who are incarcerated, detained or confined under court order or court jurisdiction is exempt from the patient-per-room capacity requirements provided in rule if the facility:

1. Does not exceed its intended medical and custodial purposes.
2. Adopts policies and procedures to comply with the national commission on correctional health care standards, or equivalent standards.
3. As soon as practicable, becomes accredited by the national commission on correctional health care, or by an equivalent organization.
4. Once accreditation is obtained, submits a certificate of accreditation to the department of health services annually.
5. Maintains a copy of the certificate of accreditation.
6. Maintains patient and custodial records, including on-site current photographs and fingerprints, if permitted by applicable law.
7. Makes patient lists with inmate identifiers available to the state department of corrections on reasonable request.
8. Provides timely notice of any major incident involving public safety to the appropriate law enforcement agency and allows that agency access to the facility for the purposes of law enforcement and investigation.

C. Subsection B of this section does not apply to health care institutions that exclusively provide behavioral health services.

A.R.S. § 36-403. Licensure by counties and municipalities

Nothing in this chapter shall prevent counties or municipalities from adopting and enforcing building and zoning regulations for health care institutions which are equal to or more restrictive than regulations of the department.

A.R.S. § 36-404. Limitation of disclosure of information

A. Information received and records kept by the department for the purpose of administering this chapter are available to the public except:

1. Information obtained for purposes of articles 4 and 5 of this chapter.
2. Personally identifiable medical information or any information from which a patient or the patient's family might be identified.
3. Sources of information that cause the department to believe that an inspection of an institution is needed to determine the extent of compliance with this chapter and rules adopted pursuant to this chapter.

B. The department may release information listed under subsection A to an officer of the court pursuant to a court order, a department or agency of this state or the federal government, a law enforcement agency or a county medical examiner if the release of this information is necessary and pertinent to an investigation or proceeding unless the release of this information is prohibited by federal or state law. The recipient shall maintain patient and source name confidentiality.

A.R.S. § 36-405. Powers and duties of the director

A. The director shall adopt rules to establish minimum standards and requirements for the construction, modification and licensure of health care institutions necessary to assure the public health, safety and welfare. The standards and requirements shall relate to the construction, equipment, sanitation, staffing for medical, nursing and personal care services, and record keeping pertaining to the administration of medical, nursing and personal care services, in accordance with generally accepted practices of health care. The director shall use the current standards adopted by the joint commission on accreditation of hospitals and the commission on accreditation of the American osteopathic association or those adopted by any recognized accreditation organization approved by the department as guidelines in prescribing minimum standards and requirements under this section.

B. The director, by rule, may:

1. Classify and subclassify health care institutions according to character, size, range of services provided, medical or dental specialty offered, duration of care and standard of patient care required for the purposes of licensure. Classes of health care institutions may include hospitals, infirmaries, outpatient treatment centers, health screening services centers and residential care facilities. Whenever the director reasonably deems distinctions in rules and standards to be appropriate among different classes or subclasses of health care institutions the director may make such distinctions.

2. Prescribe standards for determining a health care institution's substantial compliance with licensure requirements.
 3. Prescribe the criteria for the licensure inspection process.
 4. Prescribe standards for the selection of health care related demonstration projects.
 5. Prescribe standards for training programs for assisted living facilities.
 6. Establish and collect nonrefundable fees for health care institutions for license applications, initial licenses, renewal licenses and architectural drawing reviews.
- C. Beginning January 1, 2010, ninety per cent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the health services licensing fund established by section 36-414 and ten per cent of the fees collected pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.
- D. Subsection B, paragraph 6 of this section does not apply to a health care institution operated by a state agency pursuant to state or federal law or to adult foster care residential settings.

A.R.S. § 36-405.01 Health screening services; violation; classification

A. Health screening services shall be conducted in the following manner:

1. Health screening services shall be conducted under the direction of or, when required by good medical practice, under the supervision of a physician.
 2. Any diagnosis of collected health-related data shall be performed by a physician.
 3. Any examination of secretions, body fluids or excretions of the human body shall be performed pursuant to title 36, chapter 4.1.
 4. Individuals may obtain health screening services on their own initiative.
 5. Data given health-screened individuals shall be properly informative and not misleading.
 6. Activities engaged in or materials used to educate, promote or otherwise solicit individuals to use health screening services shall not:
 - (a) Be misleading.
 - (b) Include the name of any physician, physician's office or clinic.
 - (c) Use or contain any language that directly or indirectly lauds the professional competence, skill or reputation of any physician.
 7. A patient who is in need of medical care shall be informed that he should see a physician without referral to any particular physician.
- B. The director may adopt such other regulations necessary or appropriate to carry out the purposes of this section.
- C. Physicians affiliated with health screening services shall continue to be bound by the laws and ethics governing their practice. However, affiliation with health screening services conducted in conformity with this chapter shall not constitute a violation of such laws or ethics.
- D. Health-screened individuals, with respect to their disclosures to and records with health screening services, shall have the same protections regarding privileged communication and the same rights to the possession and confidentiality of their records as are accorded by law to patients of physicians.
- E. Health screening services shall be exempt from the provisions of articles 2 through 5 of this chapter.
- F. Any person who conducts health screening services in violation of this section or in violation of any rule or regulation adopted by the director is guilty of a class 2 misdemeanor. In addition, the director may exercise the same powers with respect to health screening services as are provided in section 36-427, subsection B with respect to licensed health care institutions.

A.R.S. § 36-406. Powers and duties of the department

In addition to its other powers and duties:

1. The department shall:
 - (a) Administer and enforce this chapter and the rules, regulations and standards adopted pursuant thereto.
 - (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.

2. The department may:

(a) Make or cause to be made inspections consistent with standard medical practice of every part of the premises of health care institutions which are subject to the provisions of this chapter as well as those which apply for or hold a license required by this chapter.

(b) Make studies and investigations of conditions and problems in health care institutions, or any class or subclass thereof, as they relate to compliance with this chapter and rules, regulations and standards adopted pursuant thereto.

(c) Develop manuals and guides relating to any of the several aspects of physical facilities and operations of health care institutions or any class or subclass thereof for distribution to the governing authorities of health care institutions and to the general public.

A.R.S. § 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.

A.R.S. § 36-408. Required reports from health care institution

The department of health services shall not require any reports from health care institutions to be filed more frequently than annually unless such filings are otherwise required by state or federal law or result from necessary processing of applications or requests filed by such institutions.

A.R.S. § 36-410. County standards and guidelines; delegation

A. The director shall provide counties with nonbinding guidelines for their use in establishing contract standards for adult foster care providers that do not provide services pursuant to chapter 29, article 2 of this title. These nonbinding guidelines shall include standards for the self-administration of drugs that the foster care provider shall follow in conjunction with home health services and outpatient services.

B. The director shall adopt rules that the counties or the Arizona health care cost containment system administration shall use in prescribing minimum standards for adult foster care providers that provide services pursuant to chapter 29, article 2 of this title. The director shall conform these rules with federally approved applicable standards for adult foster care homes. The director shall delegate the authority to enforce these rules to each county that accepts this delegation or to the Arizona health care cost containment system administration. The department shall monitor an adult foster care program to ensure compliance with department rules. If a county or the Arizona health care cost containment system administration does not accept the delegation, the department shall certify and monitor an adult foster care home pursuant to section 36-409 if that home seeks to participate in the Arizona long-term care system pursuant to chapter 29, article 2 of this title.

A.R.S. § 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.

A.R.S. § 36-414. Health services licensing fund; exemption

A. The health services licensing fund is established consisting of monies deposited pursuant to sections 36-405, 36-882 and 36-897.01. The department of health services shall administer the fund.

B. Monies in the fund are subject to legislative appropriation.

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

Article 2: License Provisions

A.R.S. § 36-421. Application for construction or modification

A. An initial license application for a health care institution shall include architectural plans and specifications. 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 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 shall not apply to the issuance or renewal of a license for a health care institution located in the same location for which a health care institution license was previously issued.

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

A.R.S. § 36-422. Application for license; notification of proposed change in status; joint licenses; definitions

A. A person who wishes to apply for an initial license or to renew a license to operate a health care institution pursuant to this chapter shall file with the department an application on a written or electronic form prescribed, prepared and furnished by the department.

The application shall contain the following:

1. The name and location of the health care institution.
2. Whether it is to be operated as a proprietary or nonproprietary institution.
3. 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.
4. 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.
5. The class or subclass of health care institution to be established or operated.
6. The types and extent of the health care services to be provided, including emergency services, community health services and services to indigent patients.
7. The name and qualifications of the chief administrative officer implementing direction in that specific health care institution.
8. Other pertinent information required by the department for the proper administration of this chapter and department rules.

B. An application filed 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 or corporation, two of the partnership's or corporation's officers.
3. If the applicant is a governmental unit, the head of the governmental unit.

C. An application for licensure or relicensure shall be filed at least sixty but not more than one hundred twenty days before the anticipated operation or the expiration date of the current license. An application for a substantial compliance survey submitted pursuant to section 36-425, subsection G shall be filed 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 either during or at the expiration of the term of the license, 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.

E. A licensed health care institution for which operations have not been terminated for more than thirty days may be relicensed pursuant to the standards 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 not more than ten of 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 not more than ten of 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 4 of this section.

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

J. Except for an outpatient treatment center providing dialysis services or abortion procedures, a person wishing to begin operating an outpatient treatment center before an initial licensing inspection is completed shall submit all of the following:

1. The initial 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.

K. Within seven days of the department's receipt of the items required in subsection J, but not before the anticipated operation date submitted in subsection C, 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.

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

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

N. 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.

A.R.S. § 36-424. Inspections; suspension or revocation of license; report to board of examiners of nursing care institution administrators

A. Every applicant for initial licensure or relicensure as a health care institution shall submit to the director a properly completed application for a license accompanied by the necessary fee.

B. Subject to the limitation prescribed by subsection C 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.

C. The director shall 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 institution's accreditation report for the licensure period. 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.

D. 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.

E. The director shall immediately report to the board of examiners of nursing care institution administrators information identifying that a nursing care institution administrator's conduct may be grounds for disciplinary action pursuant to section 36-446.07.

A.R.S. § 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, the director shall conduct an inspection of the health care institution as prescribed by this chapter. If an application for an initial 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. Unless the health care institution is an accredited hospital at the time of licensure, an initial license is valid for one year after the date the initial license is issued. 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 an initial 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 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. On receipt of an application for a renewal of a health care institution's license that complies with the requirements of this chapter and rules adopted pursuant to this chapter, the department shall issue a renewal license to the health care institution. An accredited hospital's renewal license is valid for three years after the expiration date of the accredited hospital's current license. All other health care institution renewal licenses are valid for one year after the expiration date of the health care institution's current license.

D. Except as provided in section 36-424, subsection C 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 during each license period.

E. After the initial license period ends and after the department determines a facility to be deficiency free on a compliance survey, the department shall not conduct a compliance survey of that facility for twenty-four months from 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 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 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 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 conspicuously post a notice that identifies the location at that 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 7.

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.

A.R.S. § 32-3201. Definitions

In this chapter, unless the context otherwise requires:

1. "Health profession regulatory board" means any board that regulates one or more health professionals in this state.
2. "Health professional" means a person who is certified or licensed pursuant to chapter 7, 8, 11, 13, 14, 15, 15.1, 16, 17, 18, 19, 19.1, 21, 25, 28, 29, 33, 34, 35, 39, 41 or 42 of this title, title 36, chapter 4, article 6, title 36, chapter 6, article 7 or title 36, chapter 17.
3. "Medical record" has the same meaning prescribed in section 12-2291 but does not include prescription orders.

L. 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.

A.R.S. § 36-427. Suspension or revocation; intermediate sanctions

A. The director may, pursuant to title 41, chapter 6, article 10, 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.

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 its 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 upon 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 upon correction of the violation or violations for which the sanctions were imposed.

A.R.S. § 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.

A.R.S. § 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.

A.R.S. § 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.

A.R.S. § 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.

A.R.S. § 36-431.01. Violations; civil penalties

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 to exceed five hundred dollars for each 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 civil penalty pursuant to subsection A of this section, the department shall consider the following:

1. Repeated violations of statutes or rules.
2. Patterns of noncompliance.
3. Types of violations.
4. Severity of violations.
5. Potential for and occurrences of actual harm.
6. Threats to health and safety.
7. Number of persons affected by the violations.
8. Number of violations.
9. Size of the facility.
10. Length of time that the violations have been occurring.

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 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 transmit penalties assessed under subsection A of this section to the state general fund.

Article 6: Licensing of Nursing Care Institution Administrators and Certification of Assisted Living Facilities Managers

A.R.S. § 36-446. Definitions

In this article, unless the context otherwise requires:

1. "Administrator" or "nursing care institution administrator" means a person who is charged with the general administration of a nursing care institution, whether or not that person has an ownership interest in the institution and whether or not the person's functions and duties are shared with others.
2. "Assisted living facility" has the same meaning prescribed in section 36-401.
3. "Assisted living facility manager" means a person who has responsibility for the administration or management of an assisted living facility, whether or not that person has an ownership interest in the institution and whether or not the person's functions and duties are shared with others.
4. "Assisted living facility training program" includes:
 - (a) Training required for assisted living facility manager certification.
 - (b) Training required by the department for assisted living facility caregivers.
5. "Board" means the board of examiners of nursing care institution administrators and assisted living facility managers.
6. "Department" means the department of health services.
7. "Directed care services" has the same meaning prescribed in section 36-401.
8. "Director" means the director of the department of health services.
9. "Nursing care institution" means an institution or other place, however named, whether for profit or not, including facilities operated by the state or a subdivision of the state, which is advertised, offered, maintained or operated for the express or implied purpose of providing care to persons who need nursing services on a continuing basis but who do not require hospital care or care under the daily direction of a physician. Nursing care institution does not include an institution for the care and treatment of the sick that is operated only for those who rely solely on treatment by prayer or spiritual means in accordance with the tenets of a recognized religious denomination. Nursing care institution also does not include nursing care services that are an integral part of a hospital licensed pursuant to this chapter.
10. "Unprofessional conduct" includes:
 - (a) Dishonesty, fraud, incompetency or gross negligence in the performance of administrative duties.
 - (b) Gross immorality or proselytizing religious views on patients without their consent.
 - (c) Other abuses of official responsibilities, which may include intimidation or neglect of patients.

A.R.S. § 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.

A.R.S. § 36-446.02. Board of examiners; terms; meetings; quorum; effect of vacancies; compensation

- A. The board of examiners of nursing care institution administrators and assisted living facility managers is established consisting of eleven members appointed by the governor.
- B. The board shall include one administrator of a nonprofit faith based skilled nursing facility, one administrator of a proprietary skilled nursing facility, two managers of an assisted living center as defined in section 36-401, who are not currently affiliated with a nursing care institution, two managers of an assisted living home as defined in section 36-401, who are not currently affiliated with a nursing care institution, one manager at large not currently affiliated with a nursing care institution, two members representative of the professions concerned with the care and treatment of the chronically ill or infirm elderly patients and two public members not currently affiliated with a nursing care institution or an assisted living facility.
- C. The noninstitutional administrative members of the board shall have no direct financial interest in nursing care institutions or assisted living facilities.
- D. A board member shall not serve on any other board relating to long-term care during the member's term with the board.
- E. The term of a board member automatically ends when that member no longer meets the qualifications for appointment to the board. The board shall notify the governor of the board vacancy.
- F. Members shall be appointed for two year terms. No member shall serve for more than two consecutive two year terms.

- G. The board shall meet at least twice a year.
- H. A majority of the board members constitutes a quorum.
- I. Members of the board are eligible to receive compensation as determined pursuant to section 38-611 for each day actually spent performing their duties under this chapter.
- J. A board member who is absent from three consecutive regular meetings or who fails to attend more than fifty per cent of board meetings over the course of one calendar year vacates the board member's position. The board shall notify the governor of the vacancy.

A.R.S. § 36-446.03. Powers and duties of the board; fees

- A. The board may adopt, amend or repeal reasonable and necessary rules and standards for the administration of this article in compliance with title XIX of the social security act, as amended.
- B. The board by rule may adopt nonrefundable fees for the following:
 - 1. Initial application for certification as an assisted living facility manager.
 - 2. Examination for certification as an assisted living facility manager.
 - 3. Issuance of a certificate as an assisted living facility manager, prorated monthly.
 - 4. Biennial renewal of a certificate as an assisted living facility manager.
 - 5. Issuance of a temporary certificate as an assisted living facility manager.
 - 6. Readministering an examination for certification as an assisted living facility manager.
 - 7. Issuance of a duplicate certificate as an assisted living facility manager.
 - 8. Reviewing the sponsorship of continuing education programs, for each credit hour.
 - 9. Late renewal of an assisted living facility manager certificate.
 - 10. Reviewing an individual's request for continuing education credit hours, for each credit hour.
 - 11. Reviewing initial applications for assisted living facility training programs.
 - 12. Annual renewal of approved assisted living facility training programs.
- C. The board may elect officers it deems necessary.
- D. The board shall apply appropriate techniques, including examinations and investigations, to determine if a person meets the qualifications prescribed in section 36-446.04.
- E. On its own motion or in response to any complaint against or report of a violation by an administrator of a nursing care institution, or a manager of an assisted living facility, the board may conduct investigations, hearings and other proceedings concerning any violation of this article or of rules adopted by the board or by the department.
- F. In connection with an investigation or administrative hearing, the board may administer oaths and affirmations, subpoena witnesses, take evidence and require by subpoena the production of documents, records or other information in any form concerning matters the board deems relevant to the investigation or hearing. If any subpoena issued by the board is disobeyed, the board may invoke the aid of any court in this state in requiring the attendance and testimony of witnesses and the production of evidence.
- G. The board may employ persons to provide investigative, professional and clerical assistance as required to perform its powers and duties under this article. Compensation for board employees shall be as determined pursuant to section 38-611. The board may contract with other state or federal agencies as required to carry out this article.
- H. The board may appoint review committees to make recommendations concerning enforcement matters and the administration of this article.
- I. The board by rule may establish a program to monitor licensees and certificate holders who are chemically dependent and who enroll in rehabilitation programs that meet board requirements. The board may take disciplinary action if a licensee or a certificate holder refuses to enter into an agreement to enroll in and complete a board approved rehabilitation program or fails to abide by that agreement.
- J. The board shall adopt and use an official seal.
- K. The board shall adopt rules for the examination and licensure of nursing care institution administrators and the examination and certification of assisted living facility managers.
- L. The board shall adopt rules governing payment to a person for the direct or indirect solicitation or procurement of assisted living facility patronage.
- M. The board must provide the senate and the house of representatives health committee chairmen with copies of all board minutes and executive decisions.
- N. The board by rule shall limit by percentage the amount it may increase a fee above the amount of a fee previously prescribed by the board pursuant to this section.
- O. The board by rule shall prescribe standards for assisted living facility training programs.
- P. The board may:

1. Grant, deny, suspend or revoke approval of, or place on probation, an assisted living facility training program.
2. Impose a civil penalty on an assisted living facility training program that violates this chapter or rules adopted pursuant to this chapter.

A.R.S. § 36-446.04. Qualifications; period of validity; exemption

A. The board shall issue a license as a nursing care institution administrator pursuant to its rules to any person who meets the following qualifications:

1. Is of good character.
2. Has satisfactorily completed a course of instruction and training approved by the board that:
 - (a) Is designed and sufficiently administered to give the applicant knowledge of the proper needs to be served by nursing care institutions.
 - (b) Includes a thorough background in the laws and rules governing the operation of nursing care institutions and the protection of the interests of the patients in nursing care institutions.
 - (c) Includes thorough training in elements of good health care facilities administration.
3. Has passed an examination administered by the board designed to test for competency in the subject matter referred to in this subsection.
4. Has met one of the following fingerprinting requirements:
 - (a) Has a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1.
 - (b) Has provided proof of the submission of an application for a fingerprint clearance card. An applicant who has been denied a fingerprint clearance card must also provide proof that the applicant qualifies for a good cause exception hearing pursuant to section 41-619.55.

B. A person who is licensed pursuant to this section must maintain a valid fingerprint clearance card during the valid period of the person's license.

C. The board shall issue a certificate as an assisted living facility manager pursuant to its rules to a person who meets the following qualifications:

1. Is of good character.
2. Has satisfactorily completed a course of instruction and training approved by the department.
3. Has passed an examination administered by the board.
4. Provides documentation satisfactory to the board that the applicant has completed two thousand eighty hours of paid work experience in a health related field within the preceding five years as prescribed by board rule.
5. Has met one of the following fingerprinting requirements:
 - (a) Has a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1.
 - (b) Has provided proof of the submission of an application for a fingerprint clearance card. An applicant who has been denied a fingerprint clearance card must also provide proof that the applicant qualifies for a good cause exception hearing pursuant to section 41-619.55.

D. A person who is certified pursuant to this section must maintain a valid fingerprint clearance card during the valid period of the person's certificate.

E. In lieu of the requirements contained in subsection A, paragraph 2 or subsection C, paragraph 2, an applicant may present satisfactory evidence to the board of sufficient education and training in the areas listed in that paragraph.

F. A license is nontransferable and remains in effect until the following June 30 of an even numbered year, at which time the license may be renewed if the licensee otherwise complies with this article and unless the license has been surrendered, suspended or revoked.

G. A certificate is nontransferable and remains in effect until the following June 30 of an odd numbered year, at which time the certificate may be renewed if the certificate holder otherwise complies with this article and the certificate has not been surrendered, suspended or revoked.

H. This section does not apply to managers of adult foster care homes as defined in section 36-401.

A.R.S. § 36-446.05. Reciprocity; present administrators

The board may issue a nursing care institution administrator's license, without examination or with partial examination, to any person who holds a current license from another state or territory of the United States provided the standards for licensure in such other state or territory of the United States are at least substantially equivalent to those prevailing in this state, and provided that the applicant is otherwise qualified.

A.R.S. § 36-446.06. Temporary licenses and certificates

- A. The board may issue a temporary nursing care institution administrator's license or assisted living facility manager's certificate to individuals determined to meet standards established by the board and revoke or suspend temporary licenses or certificates previously issued by the board in any case where the individual holding a license or certificate is determined to have substantially failed to conform to the requirements of such standards during the term of the temporary license or certificate.
- B. A temporary license or certificate is automatically revoked if the licensee or certificate holder fails either the state or national examination during the term of the license.
- C. Temporary licenses or certificates may be issued without examination, for a single nonrenewable period of one hundred fifty days, to a qualified individual for the purpose of enabling the individual to fill a nursing care administrator or assisted living facility manager position. Qualifications for a temporary license or certificate shall include good character and the ability to meet such other standards as are established by the board.
- D. An applicant for a temporary license or certificate shall not have failed a state or national examination either before or after applying for the temporary license or certificate.

A.R.S. § 36-446.07. Disciplinary actions; grounds for disciplinary action; renewal; continuing education; inactive status; hearings; settlement; judicial review; admission by default; military members

- A. The board may suspend or revoke the license of any nursing care institution administrator, censure or place on probation any licensed nursing care institution administrator or deny a license as a nursing care institution administrator to any person for any of the following reasons:
1. Conviction of a felony or conviction of any misdemeanor involving moral turpitude.
 2. Obtaining or renewing a license by fraud or deceit.
 3. Unprofessional conduct.
 4. Practicing without biennial licensure.
 5. Addiction to or dependency on drugs or alcohol.
 6. Wrongful transfer of a license or falsely impersonating another licensee.
 7. Unauthorized disclosure of information relating to a patient or a patient's records.
 8. Payment to any person for solicitation or procurement, either directly or indirectly, of nursing home patronage.
 9. Violation of this article or a rule adopted pursuant to this article.
- B. The board may suspend or revoke the certificate of an assisted living facility manager, censure or place on probation an assisted living facility manager or deny a certificate as an assisted living facility manager to a person for any of the following reasons:
1. Conviction of a felony or conviction of a misdemeanor involving moral turpitude.
 2. Obtaining or renewing a certificate by fraud or deceit.
 3. Unprofessional conduct.
 4. Practicing without biennial certification.
 5. Addiction to or dependency on drugs or alcohol.
 6. Wrongful transfer of a certificate or falsely impersonating another certificate holder.
 7. Unauthorized disclosure of information relating to a resident or a resident's records.
 8. Violation of this article or a rule adopted pursuant to this article.
- C. The board may impose a civil penalty in an amount of not to exceed five hundred dollars on any nursing care institution administrator or assisted living facility manager who violates this article or any rule adopted pursuant to this article. Actions to enforce the collection of these penalties shall be brought in the name of this state by the attorney general or the county attorney in the justice court or the superior court in the county in which the violation occurred. Penalties imposed under this section are in addition to and not in limitation of other penalties imposed pursuant to this article.
- D. The board may file a letter of concern if, in the opinion of the board, while there is insufficient evidence to support direct action against the license of the administrator or the certificate of the manager, there is sufficient evidence for the board to notify the administrator or manager of its concern.
- E. Every holder of a nursing care institution administrator's license shall renew it biennially by making application to the board. The renewals shall be granted as a matter of course if the holder has successfully completed at least fifty hours of continuing education every two years as established by the board in its rules, unless the applicant has acted or failed to act in such a manner or under such circumstances as would constitute grounds for taking any of the disciplinary actions permitted by this section. The board shall maintain a log of each complaint substantiated by the board or deficiency report concerning an administrator and shall retain in the administrator's file a copy of each such complaint or report and the action taken on it, if any. The board shall review and consider the administrator's file in determining whether to renew the administrator's license.
- F. Except as provided in subsection R of this section, every holder of an assisted living facility manager's certificate shall renew it biennially by making application to the board. The renewals shall be granted as a matter of course if the holder has successfully

completed continuing education every two years as established by the board in its rules, unless the applicant has acted or failed to act in a manner or under circumstances that constitute grounds for taking disciplinary action permitted by this section. The board shall maintain a log of each complaint substantiated by the board or deficiency report concerning a manager and shall retain in the manager's file a copy of each complaint or report and the action taken on it, if any. The board shall review and consider the manager's file in determining whether to renew the manager's certificate.

G. Except as provided in subsection R of this section, failure on the part of any licensed nursing care institution administrator or certified assisted living facility manager to furnish evidence of having attended the required continuing education hours during the preceding two years shall preclude renewal of the license or certificate unless the continuing education requirement is fulfilled within one hundred twenty days.

H. On written request to the board, a nursing care institution administrator in good standing may cause the administrator's name and license to be transferred to an inactive list. Any nursing care institution administrator on inactive license status shall pay a license renewal fee. On written request to the board, and subsequent approval by the board, a nursing care institution administrator on inactive license status may resume active license status on meeting twenty-five hours of continuing education requirements within six months and payment of the current fee.

I. On written request to the board, the board shall transfer an assisted living facility manager in good standing to an inactive list. An assisted living facility manager on inactive certificate status shall pay a certificate renewal fee prescribed by the board of not more than one hundred dollars every two years. On written request to the board, and subsequent approval by the board, an assisted living facility manager on inactive certificate status may resume active certificate status on meeting requirements for six hours of continuing education within six months and payment of the current fee.

J. Suspension, revocation or denial of renewal of a license or certificate or censure or probation of a licensee or certificate holder by the board becomes effective only on the board's first giving the licensee or certificate holder prior written notice and affording the licensee or certificate holder the right to request a hearing within thirty-five days of the receipt of notice. A hearing is not required before the denial of an original application for a license or a certificate. All hearings shall be conducted pursuant to title 41, chapter 6, article 10.

K. Any person wishing to make a complaint against a licensee or certificate holder under this article shall file a written complaint with the board within one year from the date of the action causing the complaint. If the board determines that the charges made in the complaint are sufficient, if true, to warrant suspension or revocation of a license or certificate issued under this article or censure or probation of a licensee or certificate holder under this article, it shall issue an order fixing the time and place for a hearing and requiring the licensee or certificate holder complained against to appear and answer the complaint. The order shall have affixed to it a copy of the complaint, and both shall be served on the licensee or certificate holder either personally or by certified mail sent to the licensee's or the certificate holder's last known address at least thirty-five days before the date set for the hearing. All hearings shall be conducted pursuant to title 41, chapter 6, article 10.

L. The board and an administrator or manager may enter into a settlement of any matter under investigation either before or after a notice of the hearing has been issued if the board determines that the proposed settlement adequately protects the public safety, health and welfare. The board shall record the terms of each settlement entered into and shall make the record available for public inspection.

M. Except as provided in section 41-1092.08, subsection H, final decisions of the board are subject to judicial review pursuant to title 12, chapter 7, article 6.

N. If the board has initiated an investigation pursuant to this section, the board may continue the investigation and discipline the person under investigation even if that person resigns from practice after the board has initiated the investigation.

O. A licensee or certificate holder shall respond in writing to the board within thirty-five days after the board serves the complaint and notice of a formal hearing by certified mail. Service is complete on the date the board places the notice in the mail. The board shall consider a licensee's or certificate holder's failure to respond to the notice within thirty-five days as an admission by default to the allegations stated in the complaint. The board may then take disciplinary action against the licensee or certificate holder without conducting a formal hearing.

P. The board may set aside an admission by default if a licensee or certificate holder shows good cause. A licensee or certificate holder who applies to the board to set aside an admission by default shall demonstrate the following to the satisfaction of the board:

1. The failure to respond to the notice of the board was due to excusable neglect.
2. The licensee or certificate holder has a meritorious defense.
3. The licensee or certificate holder made prompt application to the board for relief.

Q. The board shall not consider an application to set aside an admission by default filed later than one hundred eighty days after the board's entry of the admission by default.

R. A license or certificate issued pursuant to this chapter to any member of the Arizona national guard or the United States armed forces reserves shall not expire while the member is serving on federal active duty and shall be extended one hundred eighty days after the member returns from federal active duty, provided that the member, or the legal representative of the member, notifies the board of the federal active duty status of the member. A license or certificate issued pursuant to this chapter to any member serving in

the regular component of the United States armed forces shall be extended one hundred eighty days from the date of expiration, provided that the member, or the legal representative of the member, notifies the board of the federal active duty status of the member. If the license or certificate is renewed during the applicable extended time period, the member is responsible only for normal fees and activities relating to renewal of the license and shall not be charged any additional costs such as late fees or delinquency fees. The member, or the legal representative of the member, shall present to the board a copy of the member's official military orders, a redacted military identification card or a written verification from the member's commanding officer before the end of the applicable extended time period in order to qualify for the extension.

S. A license or certificate issued pursuant to this chapter to any member of the Arizona national guard, the United States armed forces reserves or the regular component of the United States armed forces shall not expire and shall be extended one hundred eighty days from the date the military member is able to perform activities necessary under the license or certificate if the member both:

1. Is released from active duty service.
2. Suffers an injury as a result of active duty service that temporarily prevents the member from being able to perform activities necessary under the license, certificate or registration.

A.R.S. § 36-446.08. Nursing care institution administrators' licensing and assisted living facility managers' certification fund; investment of fund monies

- A. The nursing care institution administrators' licensing and assisted living facility managers' certification fund is established.
- B. Pursuant to sections 35-146 and 35-147, the board shall deposit ten per cent of all monies collected pursuant to this article in the state general fund and deposit the remaining ninety per cent in the nursing care institution administrators' licensing and assisted living facility managers' certification fund. All monies derived from civil penalties collected pursuant to section 36-446.07, subsection C shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.
- C. Monies deposited in the nursing care institution administrators' licensing and assisted living facility managers' certification fund are subject to the provisions of section 35-143.01.
- D. On notice from the board, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.

A.R.S. § 36-446.09. Violations; classification

- A. Any person who manages, directs and controls the operation of a nursing care institution or an assisted living facility without a current and valid license or certificate as required by this article or who otherwise violates any provisions of this article is guilty of a class 2 misdemeanor. Each day of violation shall constitute a separate offense.
- B. Action taken under subsection A shall not be a bar to enforcement of this article and the standards and rules issued and adopted pursuant to this article, by injunction or other appropriate remedy, and the board may institute and maintain in the name of this state any such enforcement proceeding.

A.R.S. § 36-446.10. Confidentiality of records; release of complainant's name and nature of complaint

- A. Except as provided in subsection B, all records concerning a pending investigation, examination materials, records of examination grading and applicants' performance and transcripts of educational institutions concerning applicants are confidential and are not public records. "Records of applicants' performance" does not include records of whether an applicant passed or failed an examination.
- B. During a pending investigation, the board shall inform the administrator or manager who is the subject of the complaint of the name of the complainant and the nature of the complaint if so requested.

A.R.S. § 36-446.11. Relief from civil liability

Members, employees and agents of the board and members of review committees shall not be held civilly liable for acts done or actions taken by any of these persons if such persons act in good faith following the requirements of this article. A person who in good faith reports or provides information to the board shall not be held civilly liable as a result of doing so.

A.R.S. § 36-446.12. Fees

- A. The board by rule shall establish nonrefundable fees and penalties for the following for nursing care institution administrators:
1. Initial application.
 2. Examination for licensure as a nursing care institution administrator.
 3. A license as a nursing care institution administrator.
 4. Renewing an active biennial license.
 5. Renewing an inactive biennial license.
 6. A temporary license as a nursing care institution administrator.

7. Readministering the state examination.
 8. Readministering the national examination.
 9. A duplicate license.
 10. Late renewal of a license.
 11. Certifying licensure status.
 12. Reviewing the sponsorship of continuing education programs, for each credit hour.
 13. Reviewing an individual's request for continuing education credit hours, for each credit hour.
- B. The board shall prorate on a monthly basis fees paid for an initial license as a nursing care institution administrator.
- C. The board by rule shall limit by percentage the amount it may increase a fee above the amount of a fee previously prescribed by the board pursuant to this section.

A.R.S. § 36-446.13. Unlawful act; unlicensed operation; injunction

- A. On application by the board, the superior court may issue an injunction to enjoin the activities of a person who purports to be licensed pursuant to this article or who is engaging in the activities of a nursing care institution administrator without a license.
- B. In a petition for injunction filed pursuant to this section, it is sufficient to charge that the respondent on a certain day in a named county engaged in the activities of a nursing care institution administrator without a license and without being exempt from the licensing requirements of this article.
- C. For the purposes of this section, damage or injury is presumed.
- D. A petition for an injunction to enjoin unlicensed activities shall be filed in the name of this state in the superior court in the county where the respondent resides or may be found or in Maricopa county. On request of the board, the attorney general shall file the injunction.
- E. Issuance of an injunction does not relieve the respondent from being subject to other proceedings as provided in this article.

Article 11: Patient Safety Reporting and Nonretaliatory Policies

A.R.S. § 36-450. Definitions

In this article, unless the context otherwise requires:

1. "Health professional" has the same meaning prescribed in section 32-3201.
2. "Professional standards of practice" means practicing within the scope of licensure.
3. "Retaliatory action" means termination of or other adverse action against a health professional's employment taken by a health care institution because the professional has made a report pursuant to this article.

A.R.S. § 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.

A.R.S. § 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.