

Arizona Revised Statutes

Article 6

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

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. **"Board"** means the board of examiners of nursing care institution administrators and assisted living facility managers.
5. **"Department"** means the department of health services.
6. **"Directed care services"** has the same meaning prescribed in section 36-401.
7. **"Director"** means the director of the department of health services.
8. **"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.
9. **"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.

36-446.01. Licensure or certification requirements

- A. A nursing care institution shall not operate in this state except under the supervision of an administrator licensed pursuant to this article.
- B. An assisted living facility shall not operate in this state except under the supervision of a manager certified pursuant to this article.
- C. It is unlawful for any person who does not have a license or certificate, or whose license or certificate has lapsed or has been suspended or revoked, to practice or offer to practice skilled nursing facility administration or assisted living facility management or use any title, sign, card or device indicating that such person is an administrator or manager.

36-446.02. 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.

36-446.03. Powers and duties of the board

- 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.
- 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.

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 as defined in section 36-401.

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.

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.

36-446.07. Disciplinary actions; grounds for disciplinary action; renewal; continuing education; inactive status; hearings; settlement; judicial review

- 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. 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. 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 twenty 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 twenty 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.

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.

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.

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.

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.

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

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.