### Title 36; Public Health and Safety
### Chapter 4: Health Care Institutions
### Article 1: General Provisions

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#### 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 who are 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 or contracts for services with the United States department of veterans affairs 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 rules adopted pursuant to section 36-405 and section 36-2939, subsection C.

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. "Behavioral health services" means services that pertain to mental health and substance use disorders and that are either:
   (a) Performed by or under the supervision of a professional who is licensed pursuant to title 32 and whose scope of practice allows for the provision of these services.
   (b) Performed on behalf of patients by behavioral health staff as prescribed by rule.
11. "Construction" means the building, erection, fabrication or installation of a health care institution.
12. "Continuous" means available at all times without cessation, break or interruption.
13. "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.
14. "Department" means the department of health services.
15. "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.
16. "Direction" means authoritative policy or procedural guidance for the accomplishment of a function or activity.
17. "Director" means the director of the department of health services.
18. "Facilities" means buildings that are used by a health care institution for providing any of the types of services as defined in this chapter.
19. "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) of this paragraph.
20. "Governing authority" means the individual, agency, partners, 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.
21. "Health care institution" means every place, institution, building or agency, whether organized for profit or not, that provides facilities with medical services, nursing services, behavioral health 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.
22. "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.
23. "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.
24. "Hospice" means a hospice service agency or the provision of hospice services in an inpatient facility.
25. "Hospice service" means a program of palliative and supportive care for terminally ill persons and their families or caregivers.
26. "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.
27. "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.
28. "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.
29. "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.
30. "Modification" means the substantial improvement, enlargement, reduction or alteration of or other change in a health care institution.
31. "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.
32. "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.
33. "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.
34. "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.
35. "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.
36. "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.
37. "Physician" means any person who is licensed pursuant to title 32, chapter 13 or 17.
38. "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 care.
39. "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.
40. "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.
41. "Substantial compliance" means that the nature or number of violations revealed by any type of inspection or investigation of a licensed health care institution does not pose a direct risk to the life, health or safety of patients or residents.
42. "Supervision" means direct overseeing and inspection of the act of accomplishing a function or activity.
43. "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.

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

45. "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.

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.

12. Community education, advocacy or recovery support groups that are not owned or operated by or
contracted to provide services with a health care institution.

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.

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.

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.
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 may, by rule:
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. Establish and collect nonrefundable fees for health care institutions for license applications, initial licenses, renewal licenses and architectural drawing reviews.
C. The director, by rule, may adopt licensing provisions that facilitate the colocation and integration of outpatient treatment centers that provide medical, nursing and health-related services with behavioral health services, including provisions for avoiding duplicative requirements for construction, record keeping, ancillary services, equipment and operation for a facility at a single location that operates with more than one license.
D. 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.
E. Subsection B, paragraph 5 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.

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.

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.

36-407. Prohibited acts

A. A person shall not establish, conduct or maintain in this state a health care institution or any class or subclass of health care institution unless that person holds a current and valid license issued by the department specifying the class or subclass of health care institution the person is establishing, conducting or maintaining. The license is valid only for the establishment, operation and maintenance of the class or subclass of health care institution, the type of services and, except for emergency admissions as prescribed by the director by rule, the licensed capacity specified by the license.

B. The licensee shall not imply by advertising, directory listing or otherwise that the licensee is authorized to perform services more specialized or of a higher degree of care than is authorized by this chapter and the underlying rules for the particular class or subclass of health care institution within which the licensee is licensed.

C. The licensee may not transfer or assign the license. A license is valid only for the premises occupied by the institution at the time of its issuance.

D. The licensee shall not personally or through an agent offer or imply an offer of rebate or fee splitting to any person regulated by title 32 or chapter 17 of this title.

E. The licensee shall submit an itemized statement of charges to each patient.
36-408. **Required reports from health care institutions**
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.

36-409. **Certification, licensure and monitoring of long-term care facilities, facilities and services**
A. The department shall perform all necessary functions, including licensing, certification or monitoring, to implement federally approved standards for institutions, facilities, agencies or persons providing services pursuant to chapter 29, article 2 of this title. These functions shall only be performed pursuant to an interagency agreement which the director of the Arizona health care cost containment system administration shall enter into with the department. A skilled nursing facility, hospice or home health agency shall not be certified pursuant to this section unless it is also certified under title XVIII of the social security act.
B. Nursing care institutions and hospices shall make financial records available to the Arizona health care cost containment system administration for purposes of certified financial audits conducted pursuant to chapter 29, article 2 of this title.

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.

36-411. **Residential care institutions; home health agencies; fingerprinting; definitions**
A. Subject to legislative appropriations, as a condition of licensure or continued licensure of a residential care institution, a nursing care institution or a home health agency and as a condition of employment in a residential care institution, a nursing care institution or a home health agency, employees and owners of residential care institutions, nursing care institutions or home health agencies or contracted persons who provide direct care, home health services or supportive services and who have not been subject to the fingerprinting requirements of a health professional's regulatory board pursuant to title 32 shall have valid fingerprint clearance cards that are issued pursuant to title 41, chapter 12, article 3.1 or shall apply for a fingerprint clearance card within twenty working days of employment or beginning volunteer work except as provided in subsections F, G and H of this section.
B. A health professional who has complied with the fingerprinting requirements of the health professional's regulatory board as a condition of licensure or certification pursuant to title 32 is not required to submit an additional set of fingerprints to the department of public safety pursuant to this section.
C. Owners shall make documented, good faith efforts to:
   1. Contact previous employers to obtain information or recommendations that may be relevant to a person's fitness to work in a residential care institution, nursing care institution or home health agency.
   2. Verify the current status of a person's fingerprint clearance card.
D. An employee, an owner or a contracted person or a facility on behalf of the employee, the owner or the contracted person shall submit a completed application that is provided by the department of public safety within twenty days after the date the person begins work.
E. A residential care institution, nursing care institution or home health agency shall not allow a person or
contracted person to continue to provide direct care, home health services or supportive services if the
person has been denied a fingerprint clearance card pursuant to title 41, chapter 12, article 3.1, has been
denied approval pursuant to this section before May 7, 2001 or has not received an interim approval from
the board of fingerprinting pursuant to section 41-619.55, subsection I.
F. Volunteers who provide services to residents under the direct visual supervision of a previously
screened owner or employee are exempt from the fingerprint clearance card requirements of this section.
G. Notwithstanding the requirements of section 41-1758.02, subsection B, a person who provides direct
care, home health services or supportive services for a residential care institution, home health agency or
nursing care institution after meeting the fingerprinting and criminal records check requirements of this
section is not required to meet the fingerprint and criminal records check requirements of this section
again if that person remains employed by the same employer or changes employment within two years
after satisfying the requirements of this section. For the purposes of this subsection, If the employer
changes through sale, lease or operation of law, a person is deemed to be employed by the same employer
if that person remains employed by the new employer.
H. Notwithstanding the requirements of section 41-1758.02, subsection B, a person who has received
approval pursuant to this section before May 7, 2001 and who remains employed by the same employer is
not required to apply for a fingerprint clearance card.
I. If a person's employment record contains a six-month or longer time frame where the person was not
employed by any employer, a completed application with a new set of fingerprints shall be submitted to
the department of public safety.
J. For the purposes of this section:
1. "Home health services" has the same meaning prescribed in section 36-151.
2. "Supportive services" has the same meaning prescribed in section 36-151.

36-412. Nursing care institutions; employment
The department shall not adopt any rule that prohibits an administrator of a nursing care institution from
employing a person who is sixteen years of age or older, who provides direct care to residents and who
otherwise meets the requirements of section 32-1645.

36-413. Nutrition and feeding assistants; training programs; regulation; civil penalty; definition
A. The department may adopt rules to prescribe minimum standards for training programs for nutrition
and feeding assistants in licensed skilled nursing facilities, including instructor qualifications, and may
grant, deny, suspend and revoke approval of any training program that violates these standards. These
standards must include:
1. Screening requirements.
2. Initial qualifications.
3. Continuing education requirements.
4. Testing requirements to assure competency.
5. Supervision requirements.
6. Requirements for additional training based on patient needs.
7. Maintenance of records.
8. Special feeding requirements based on level of care.
B. Pursuant to section 36-431.01, the department may impose a civil penalty on a training program that
violates standards adopted by the department.
C. If the department adopts standards for training programs pursuant to subsection A of this section, the
department, as part of its routine inspection of a health care facility that provides a training program, shall
determine the facility's compliance with these standards.
D. For the purposes of this section, "nutrition and feeding assistant" has the same meaning as paid feeding
assistant as defined in 42 Code of Federal Regulations part 483 and section 488.301.
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, 36-897.01 and 36-1903. 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.

36-415. **Breast density mammography results; notification**
A. Beginning October 1, 2014, if a patient is categorized by a health care institution or health care facility that performs mammography examinations as having heterogeneously dense breasts or extremely dense breasts based on the breast imaging reporting and data system established by the American college of radiology, the institution or facility must include in the summary of the mammography report that is sent to the patient the following notice:

> Your mammogram indicates that you have dense breast tissue. Dense breast tissue is common and is found in fifty per cent of women. However, dense breast tissue can make it more difficult to detect cancers in the breast by mammography and may also be associated with an increased risk of breast cancer. This information is being provided to raise your awareness and to encourage you to discuss with your health care providers your dense breast tissue and other breast cancer risk factors. Together, you and your physician can decide if additional screening options are right for you. A report of your results was sent to your physician.

B. This section does not:
1. Create or impose liability on a health care institution or health care facility for failing to comply with the requirements of this section before October 1, 2014.
2. Create a duty of care or other legal obligation beyond the duty to provide notice as set forth in subsection A of this section.
3. Require a notice that is inconsistent with the federal mammography quality standards act or any regulations promulgated pursuant to that act.
Title 36; Public Health and Safety
Chapter 4: Health Care Institutions
Article 2: License Provisions

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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. Notwithstanding any law to the contrary, a health care institution that was licensed as a level 1 psychiatric acute behavioral health facility-inpatient facility, as of January 1, 2012 and that is not certified under title XIX of the social security act shall be licensed as a hospital and is not required to comply with the physical plant standards for a general hospital, rural general hospital or a special hospital prescribed by the department.
F. 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.

36-422. Application for license; notification of proposed change in status; joint licenses; definitions
A. A person who wishes to be licensed under this chapter to operate a health care institution shall file with the department an application on a 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. If the applicant is a partnership that is not a limited partnership, the partners shall make the application jointly, and the partners are jointly the governing authority for purposes of this article.
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 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 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 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 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, limited liability company or corporation, two of the officers of the corporation or managing members of the partnership or limited liability company or the sole member of the limited liability company if it has only one member.
3. If the applicant is a governmental unit, the head of the governmental unit.
C. An application for licensure 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 D 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 setting that includes 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 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 five 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.

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 the facility of a hospital located in separate buildings 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 of this section, but not before the anticipated operation date submitted in subsection C of this section, the department shall issue a temporary license that includes:
   1. The name of the facility.
   2. The name of the licensee.
   3. The facility's class or subclass.
   4. The temporary license's effective date.
   5. The location of the licensed premises.

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.

36-423. Hemodialysis technicians; minimum requirements; definition

A. Except as provided in subsection B, beginning on April 1, 2003, a facility that provides hemodialysis treatment shall only use a hemodialysis technician who is certified by a national organization that certifies hemodialysis technicians.
B. Beginning on April 1, 2003, an employee who provides hemodialysis treatment and who is not certified pursuant to subsection A is a hemodialysis technician trainee. A hemodialysis technician trainee may provide hemodialysis treatment in any facility unless the trainee fails to pass the national certification examination within two years after employment. The department of health services shall establish by rule appropriate clinical practice restrictions for hemodialysis technician trainees. An employee who is employed to provide hemodialysis treatment before April 1, 2003 must meet the requirements of this section on or before April 1, 2006.
C. A facility that provides hemodialysis treatment must maintain the verification of certification in the hemodialysis technician's personnel file.
D. For the purposes of this section, "hemodialysis technician" means a person who, under the direct supervision of a physician licensed pursuant to title 32, chapter 13 or 17, or a registered nurse licensed pursuant to title 32, chapter 15, provides assistance in the treatment of patients who receive dialysis treatment for end stage renal disease.

36-424. Inspections; suspension or revocation of license; report to board of examiners of nursing care institution administrators
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 licensing inspections required by this chapter if the director receives a copy of the institution's accreditation report.
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 established pursuant to this chapter, the director and any duly designated employee or agent thereof, including county health representatives and county or municipal fire inspectors, shall, consistent with standard medical practices, have the right to enter upon and into the premises of any health care institution which 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 the provisions of this chapter, the rules of the department adopted pursuant thereto, and local fire ordinances or rules. Any application for licensure under this chapter shall constitute permission for and complete acquiescence in any such 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 upon 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 as defined pursuant to section 36-446.07.

36-425. Inspections; issuance of license; posting of deficiencies; provisional license; denial of license
A. On receipt of a properly completed application for initial licensure or relicensure, the director shall conduct an inspection of the health care institution as prescribed by this chapter. If an application for a license is submitted due to a planned change of ownership, the director shall determine the need for an inspection of the health care institution. Based on the results of the inspection, the director shall either deny the license or issue a regular or provisional license. A license issued by the department shall be conspicuously posted in the reception area of that institution. If the health care institution is an accredited hospital at the time of licensure, the licensure term is three years from the expiration date of the hospital's current license, or in the case of an initial license based on a change of ownership, the licensure term is three years beginning on the effective date of the hospital's current accreditation.
B. The director shall issue a regular license if the director determines that an applicant and the health care institution for which the license is sought substantially comply with the requirements of this chapter and rules adopted pursuant to this chapter and the applicant agrees to carry out a plan acceptable to the director to eliminate any deficiencies. The license is valid for up to two years from the date it is issued if the facility, on expiration of the initial one-year license, has no deficiencies at the time the department conducts the subsequent licensing inspections. The director shall not require a health care institution that was designated as a critical access hospital to make any modifications required by this chapter or rules adopted pursuant to this chapter in order to obtain an amended license with the same licensed capacity the health care institution had before it was designated as a critical access hospital if all of the following are true:

1. The health care institution has subsequently terminated its critical access hospital designation.
2. The licensed capacity of the health care institution does not exceed its licensed capacity prior to its designation as a critical access hospital.
3. The health care institution remains in compliance with the applicable codes and standards that were in effect at the time the facility was originally licensed with the higher licensed capacity.

C. 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
insititution denied, revoked or suspended or a license or certificate issued by a health profession regulatory board pursuant to title 32 or issued by a state agency pursuant to chapter 6, article 7 or chapter 17 of this title denied, revoked or suspended or has a licensing history of recent serious violations occurring in this state or in another state that posed a direct risk to the life, health or safety of patients or residents.
L. In addition to the requirements of this chapter, the director may prescribe by rule other licensure requirements and may prescribe procedures for conducting investigations into an applicant's character and qualifications.

36-425.01. Home health agencies; licensure; definition
A. The department by rule shall license home health agencies. The department shall prescribe a licensure period that does not exceed two years.
B. In lieu of a state licensure survey, the department shall issue a license to a home health agency that submits an application prescribed by the department and that meets the following requirements:
1. Is certified as a home health agency by medicare.
2. Is licensed by the department for at least one year.
3. Meets all department licensure requirements.
C. The department shall retain full authority over licensed home health agencies to ensure that licensure requirements are maintained.
D. For the purposes of this section, "home health agency" has the same meaning as prescribed in section 36-151.

36-425.02. Nursing care institutions; quality rating; issuance of license
A. The department shall issue to each licensed nursing care institution a quality rating based on the results of a licensure survey.
B. The director may determine the period of time for which a license issued to a nursing care institution is valid according to the quality rating category to which the institution is assigned, except that no license shall be valid for more than three years from the date of issuance.

36-425.03. Children's behavioral health programs; personnel; fingerprinting; definitions
A. Except as provided in subsections B and C of this section, children's behavioral health program personnel, including volunteers, shall submit the form prescribed in subsection D of this section to the employer and shall have a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1 or, within seven working days after employment or beginning volunteer work, shall apply for a fingerprint clearance card.
B. Parents, foster parents and guardians who participate in activities with their children under the supervision of and in the presence of children's behavioral health program personnel are exempt from the fingerprinting requirements of subsection A of this section if the parents are not employees of the children's behavioral health program.
C. Applicants and employees who are fingerprinted pursuant to section 15-512 or 15-534 are exempt from the fingerprinting requirements of subsection A of this section.
D. Children's behavioral health program personnel shall certify on forms that are provided by the department and notarized that they are not awaiting trial on or have never been convicted of or admitted in open court or pursuant to a plea agreement to committing any of the offenses listed in section 41-1758.03, subsection B or C in this state or similar offenses in another state or jurisdiction.
E. Forms submitted pursuant to subsection D of this section are confidential.
F. Employers of children's behavioral health program personnel shall make documented, good faith efforts to contact previous employers of children's behavioral health program personnel to obtain information or recommendations that may be relevant to an individual's fitness for employment in a children's behavioral health program.
G. A person who is awaiting trial on or who has been convicted of or who has admitted in open court or pursuant to a plea agreement to committing a criminal offense listed in section 41-1758.03, subsection B is prohibited from working in any capacity in a children's behavioral health program that requires or allows contact with children.
H. A person who is awaiting trial on or who has been convicted of or who has admitted in open court or pursuant to a plea agreement to committing a criminal offense listed in section 41-1758.03, subsection C shall not work in a children's behavioral health program in any capacity that requires or allows the
employee to provide direct services to children unless the person has applied for and received the required fingerprint clearance card pursuant to title 41, chapter 12, article 3.1.

I. The department of health services shall accept a certification submitted by a United States military base or a federally recognized Indian tribe that either:
   1. Personnel who are employed or who will be employed and who provide services directly to children have not been convicted of, have not admitted committing or are not awaiting trial on any offense prescribed in subsection G of this section.
   2. Personnel who are employed or who will be employed to provide services directly to children have been convicted of, have admitted committing or are awaiting trial on any offense prescribed in subsection H of this section if the personnel provide these services while under direct visual supervision.

J. The employer shall notify the department of public safety if the employer receives credible evidence that a person who possesses a valid fingerprint clearance card either:
   1. Is arrested for or charged with an offense listed in section 41-1758.03, subsection B.
   2. Falsified information on the form required by subsection D of this section.

K. For the purposes of this section:
   1. "Children's behavioral health program" means a program that provides children's behavioral health services and that is licensed by the department as a behavioral health service agency or that contracts with the department to provide children's behavioral health services.
   2. "Children's behavioral health program personnel" means an owner, employee or volunteer who works at a children's behavioral health program.

36-426. Hospital providers of extended care services
Notwithstanding section 36-407, a hospital licensed pursuant to this article which has been certified pursuant to title XVIII of the social security act as a rural extended care hospital may provide nursing care services, for a period of not to exceed an average of forty-five days, which are within the scope of services authorized by the medicare extended care program to any patient who is a member of the Arizona long-term care system and for which the services are appropriate. A hospital shall not admit a patient to an extended care program pursuant to this section if the patient needs a clinical service which is not available in the extended care program or requires services below the skilled nursing level of care as defined by the director.

36-427. Suspension or revocation; intermediate sanctions
A. The director 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.
   4. Fail to comply with section 36-2901.08.
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.
36-428. Hearings by the director
A. No license shall be suspended or revoked without affording the licensee notice and an opportunity for a hearing as provided for in title 41, chapter 6, article 10. On a licensee's request, the director may hold hearings concerning a health care institution's license in the city in which the institution is located.
B. Any person whose application for a license has been denied by the director or who has been ordered by the director to restrict admissions, transfer selected patients out of the facility, reduce capacity and terminate specific services, procedures, practices or facilities may, at any time within thirty days after notice of the denial or order, request in writing a hearing before the director, to be held within thirty days following the written request, for the purpose of reviewing the action of the director.
C. All hearings shall be in accordance with title 41, chapter 6, article 10.

36-429. Removal of licensee; temporary management continued operation
A. If the director reasonably believes that a violation of this chapter by a licensee endangers the health, safety or welfare of one or more of the licensee's patients, in addition to other remedies provided by this chapter, the director may enter into an agreement with the licensee or bring an action requesting the superior court to:
   1. Remove the administrative officers, agents or employees of such licensee by injunction, enjoin the licensee from continued operation and revoke the license.
   2. Appoint temporary personnel to continue operation of the health care institution under conditions and requirements set by the court pending correction of the violation and restoration of the licensee, revocation of the license or correction of the violation and change of ownership.
B. The action shall be brought in the name of the people of the state through the attorney general in the superior court in the county in which the health care institution is located.

36-430. Unlicensed operation prohibited; injunction
The operation or maintenance of a health care institution which does not hold a current and valid license or which exceeds the range of the services authorized by the class or subclass for which it is licensed is a violation of this chapter and is declared a nuisance inimical to the public health and safety. The director, in the name of the people of the state, through the attorney general, may bring an action for an injunction to restrain such violation or to enjoin the future operation or maintenance of any such health care institution until substantial compliance with the provisions of this chapter and the rules and regulations and standards adopted pursuant thereto is obtained.

36-431. Violation; classification
A. A person is guilty of a class 3 misdemeanor who:
   1. Establishes, operates or maintains any class or subclass of health care institution, as defined in this chapter, unless the person holds a current and valid license for such class or subclass from the department.
   2. Knowingly violates any provision of this chapter unless another classification is specifically prescribed in this chapter.
B. Each day that a violation continues shall constitute a separate violation.

36-431.01. Violations; civil penalties
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.

36-431.02. Nursing care institution resident protection revolving fund; use; nonreversion
A. The nursing care institution resident protection revolving fund is established. The fund consists of monies received from civil penalties collected by the director pursuant to section 36-431.01, subsection D.
B. The director shall use monies in the fund for the purposes prescribed in section 36-431.01, subsection F, subject to legislative appropriation.
C. Monies in the fund are exempt from the provisions of section 35-190 relating to the lapsing of appropriations.

36-432. Urgent care centers; posting requirements
If a physician licensed pursuant to title 32, chapter 13 or 17 is not on site during working hours at a freestanding urgent care center, as a condition of licensure, the center must post a conspicuous sign stating this fact. The center must post this sign in the center's patient waiting room in full view of the patients.

36-433. Receipt of report and complaint; investigation
On receipt of a notice pursuant to section 12-570 and a copy of a complaint as provided in section 12-570, the department may initiate an investigation into the matter to determine if the licensee is in violation of the statutes or rules governing licensure.

36-434. Outdoor behavioral health care programs; licensing requirements; inspections
A. An outdoor behavioral health care program shall:
1. Comply with the requirements for a level 2 behavioral health residential agency, as established by the department by rule except as provided in subsection C of this section.
2. Obtain and maintain national accreditation as an outdoor behavioral health care program.
3. Ensure that the outdoor behavioral health program's personnel comply with the requirements of section 36-425.03.
B. In addition to the standards adopted pursuant to section 36-405, subsection A, the department may adopt rules to establish facility, equipment and sanitation standards for outdoor behavioral health care programs.
C. An outdoor behavioral health care program that does not use facilities is exempt from any facility standards applicable to a behavioral health service agency.
D. If the director determines that there is reasonable cause to believe an outdoor behavioral health care program is not adhering to the licensing requirements of this chapter, the director and any duly designated employee or agent of the director, including county health representatives and county or municipal fire inspectors, may enter on and into any area used by the outdoor behavioral health care program at any reasonable time to determine, consistent with standard medical practices or behavioral health practices, compliance with this chapter, rules adopted pursuant to this chapter and local fire ordinances or rules.

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

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

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