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## **SB 1655: behavioral health entities; regulation**

**Sponsor: Senator Hatathlie, LD 6**

**Committee on Health & Human Services**

### **Overview**

Establishes requirements related to the licensing, oversight and regulation of behavioral health entities and sober living homes. Raises the cap on civil penalties for violation of health care institution statutes and rules.

### **History**

#### ***Health Care Institution Licensure***

A *health care institution* is 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, outdoor behavioral health care programs and hospice service agencies.

Current law establishes processes and procedures that applicants must follow to obtain a health care institution license. Applicants must submit to Arizona Department of Health Services (DHS): 1) an application on a written or electronic form that contains certain information about the health care institution; 2) a notarized attestation form that verifies the architectural plans and specifications of the health care institution; and 3) the applicable application fee. An application for a health care institution license must be submitted at least 60 days, but not more than 120 days before the anticipated date of operation. An application for a substantial compliance survey must be submitted at least 30 days before the date on which the survey was requested (A.R.S. §§ [36-401](#), and [36-406](#)).

Additionally, DHS may: 1) inspect every part of a health care institution to ensure compliance with standard medical practice; 2) conduct investigations of health care institution conditions and problems with noncompliance; and 3) develop facility manuals and guides to health care institutions and the general public. Health care institutions must be in substantial compliance with state laws governing health care institutions to be licensed and avoid enforcement action by DHS (A.R.S. §§ [36-422](#) and [36-425](#)).

The DHS Director may assess a civil penalty of up to \$500 for each violation of health care institution statutes, for every day the violation occurs. The DHS Director may then issue a notice of assessment that includes the amount of the assessment to the violator. Monies collected from civil penalties for violations of health care institutions are transmitted to the state General Fund ([A.R.S. § 36-431.01](#)).

### ***Sober Living Home Licensure***

A *sober living home* is any premises, place or building that provides alcohol-free or drug-free housing that: 1) promotes independent living and life skills development; 2) may provide activities that are directed primarily toward recovery from substance use disorders; 3) provides a supervised setting to a group of unrelated individuals who are recovering from substance use disorders; and 4) does not provide any medical or clinical services or medication administration on-site, except for verification of abstinence (A.R.S. § [36-2061](#)).

DHS is instructed to adopt rules to establish minimum standards and requirements for the licensure of sober living homes to ensure the public health, safety and welfare. Statute outlines those standards and allows the DHS Director to use current standards adopted by any recognized national organization approved by DHS as guidelines when establishing standards and requirements for sober living homes. The licensure of a sober living home is valid for one year and a person operating a sober living home that has failed to attain or maintain licensure of the sober living home must pay a civil penalty of up to \$1,000 for each violation. To receive and maintain licensure, a sober living home must comply with all federal, state and local laws, including the Americans with Disabilities Act of 1990.

Sober living home licensees are prohibited from: 1) implying 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 and the underlying rules for sober living homes; and 2) transfer or assign the license. A license is valid only for the premises occupied by the sober living home at the time of its issuance ([A.R.S. § 36-2062](#)).

### **Provisions**

#### ***Arizona Corporation Commission***

1. Establishes the following incorporation requirements for sober living homes:
  - a) file 10 days prior to conducting business operations; and
  - b) display the number of sober living home licenses on all documents. (Sec. 1)
2. Requires the Arizona Corporation Commission (Commission) to check identification documents of a sober living home that files incorporating documents for a behavioral health entity or a sober living home. (Sec. 1)
3. Requires the identification check to occur at the Commission. (Sec. 1)
4. Requires, within 10 days after receiving the specified information, the Attorney General, AHCCCS and DHS to notify the Commission of:
  - a) a license denial, expiration, suspension termination or revocation;
  - b) the issuance of a central authorization file notice;
  - c) a bankruptcy filing;
  - d) litigation; or
  - e) criminal charges or conviction. (Sec. 1)
5. Directs the Commission to provide a special designation to a behavioral health entity or sober living home that files for incorporation. (Sec. 2)
6. Specifies that for behavioral health entities, any change in ownership, name or license status must be coordinated and approved by the Commission in writing in cooperation with DHS. (Sec. 2)
7. Specifies that expedited filing does not apply to documents and services related to a behavioral health entity or a sober living home. (Sec. 2)

8. Prohibits the Commission from issuing a certificate of good standing to a domestic or foreign corporation if the corporation is a behavioral health entity or sober living home and the corporation does not comply with public, health and safety statutory requirements. (Sec. 2)
9. Requires the signature of a certificate of disclosure declaration for a corporation that is a behavioral health entity or sober living home to be notarized. (Sec. 2)

#### ***Business Regulations***

10. Requires the name of a sober living home business to include the words “sober living home”. (Sec. 3, 5)
11. Requires a behavioral health entity or sober living home corporation to maintain the address of the place of business and statutory agent, as outlined. (Sec. 4, 6)
12. Specifies that the statutory agent must be an independent third party that is at least 18 years old and resides in Arizona. (Sec. 4)
13. Prohibits the statutory agent from being a direct or indirect owner or a relative or spouse thereof, or a controlling person or party with a conflict of interest. (Sec. 4)

#### ***DHS***

14. Clarifies in statute that the Director of DHS must implement a 30-day grace period to pay late fees and comply with administrative deadlines. (Sec. 8)
15. Requires, rather than allows the DHS Director to adopt rules relating to classifications, standards and processes of health care institutions. (Sec. 8)
16. Requires the Director of DHS, by rule, to establish a monitoring program for behavioral health entities and sober living homes that identify the circumstances when DHS assigns staff on a temporary basis to monitor and provide professional assistance to a licensee that is not in substantial compliance with applicable licensure requirements. (Sec. 8, 16)
17. Requires DHS rules to establish staffing levels based on the monitoring needs and corresponding fees based on a cost assessment calculating the duration of the monitoring schedule, a pre-disclosed hourly rate and actual costs. (Sec. 8)
18. Establishes a minimum fee of \$5,000 for any licensee that terminates its license and fails to transmit patient medical records either to the patient or a designated third-party. (Sec. 9)
19. Bars the DHS Director from accepting an accreditation report in lieu of a compliance inspection of a:
  - a) health care institution that has been subject to a criminal penalty in the preceding five years; or
  - b) behavioral health entity. (Sec. 10)
20. Clarifies that DHS must establish a corrective action plan with non-compliant health care entities and the non-compliant applicant or licensee must agree to carry out the corrective action plan. (Sec. 11)
21. Prohibits the DHS Director from issuing more than two nonconsecutive provisional licenses to a single health care institution. (Sec. 11)

22. Adds that a health care institution license does not expire and remains valid unless the license is considered void because the licensee did not pay any civil penalties or the provider agreement fees. (Sec. 11)
23. Clarifies that behavioral health entities are not allowed to be granted a DHS compliance survey exemption even if the entity is deficiency free for 24 months. (Sec. 11)
24. Establishes a class 6 felony for a person who establishes, maintains or operates a sober living home in the state of Arizona without a license. (Sec. 11, 17)
25. Requires the DHS Director to assess a civil penalty of at least \$5,000 and not more than \$10,000 per violation, which may be assessed for each resident or patient that DHS determines was impacted by the violation. (Sec.11)
26. Asserts that each day the unlicensed behavioral health entity, residential health care institution or sober living home operates constitutes a separate violation. (Sec. 11)
27. Instructs the DHS Director, through the Attorney General, to bring an action for an injunction to restrain such violation or to enjoin the future operation or maintenance of any such behavioral health entity. (Sec. 11)

#### ***Behavioral Health Entities***

28. Requires DHS, in addition to all other licensing standards and requirements, to establish a designated license, by rule, for behavioral health entities that use funds received directly or indirectly from any federal health care program. (Sec. 12)
29. Requires behavioral health entities to have a license within an expiration date of greater than 12-months from the initial date of issuance. (Sec. 12)
30. Prohibits DHS from:
  - a) issuing a temporary license to a behavioral health applicant or licensee;
  - b) assessing a civil penalty to a behavioral health entity, in an amount less than \$5,000 or more than \$10,000 for each violation;
  - c) rescinding in whole or in part, sanctions imposed on a behavioral health entity;
  - d) authorizing or approve the removal of a behavioral health entity licensee and appoint another person to continue operation of the behavioral health entity pending further action, absent good cause and risk of life, health or safety of a patient; and
  - e) authorizing or approve an application for licensure of a currently licensed behavioral health entity while any enforcement or court action is pending against the current owner or licensee. (Sec. 12)
31. Requires a behavioral health entity to obtain a medication list, allergy list and emergency contact upon initial arrival and, subject to federal law and resident approval notify a resident's family, next of kin or responsible person, within 72 hours of the initial evaluation and document the notification in the resident's medical record. (Sec. 12)
32. Prohibits behavioral health entities and sober living homes from coordinating, facilitating, arranging or soliciting transportation of a person if the person is obviously intoxicated or under the influence of a substance, unless the person is referred by an approved provider of a tribal health care program or regional behavioral health authority or is court ordered. (Sec. 12, 19)
33. Allows for written waiver, if the resident signs a form and asks that no family be notified of the resident's admission. (Sec. 12, 19)

34. Requires a behavioral health entity and sober living home to inquire both verbally and in writing, for residents 18 years old, whether the resident wants to be transported to their place of residence after discharge. (Sec. 12, 19)
35. Requires a resident's wishes regarding transportation to be documented on a form prescribed by DHS, signed by the resident and retained in the resident's medical records. (Sec. 12, 19)
36. States that for residents 18 years old, the behavioral health entity must use good faith in attempting to arrange for safe and reliable transportation, if reasonably available as determined by DHS, if the resident wishes to be transported to their place of residence or an alternative safe living space if reasonable available as requested by the resident on discharge. (Sec. 12)
37. Requires the behavioral health entity to contact the statewide social service provider and area shelters to meet compliance. (Sec. 12)
38. Requires behavioral health entities to coordinate with the resident's parent or legal guardian and clinical social workers handling the resident's case regarding transportation to the resident's place of residence or an alternative living space after discharge. (Sec. 12)
39. Asserts that a patient, resident, prospective patient or resident of a behavioral health entity is a vulnerable adult and requires the DHS Director to adopt rules that prescribes procedures consistent with behavioral health entity licensure regulations. (Sec. 12)

#### ***Civil Penalties***

40. Requires DHS to assess a civil penalty against a person who violates any health institution statutes or rules in an amount of \$1,500 and not more than \$10,000 per violation which may be assessed for each resident or patient who DHS determines was impacted by the violation. (Sec. 13)
41. Requires the DHS Director to assess a civil penalty against a behavioral health entity with repeated violations in an amount of not less than \$5,000 and not more than \$10,000 per violation which will be assessed for each resident or patient who DHS determines was impacted by the violation. (Sec. 13)
42. Requires, rather than allows, the DHS Director to issue a notice of assessment and to include the amount of the assessment. (Sec. 13)
43. Expands the criteria that the DHS Director can consider when determining the amount of a civil penalty to include:
  - a) the number of injuries caused;
  - b) the severity of the injuries caused;
  - c) the number of deaths caused; and
  - d) the cause of deaths. (Sec. 13)

#### ***Sober Living Homes***

44. Requires the DHS Director to adopt minimum standards and requirements for sober living home licensure that includes a requirement that a business license be issued at least 10 business days before the sober living home opens to conduct business. (Sec. 15)
45. Requires a sober living home to comply with the Health Insurance Portability and Accountability Act. (Sec. 15)

46. Requires employees, owners, contracted persons, and volunteers of sober living homes, as a condition of licensure, continued licensure or employment to both:
  - a) submit a full set of fingerprints to DHS for the purpose of obtaining a state and federal criminal records check; and
  - b) have a valid fingerprint clearance card. (Sec. 16)
47. Allows DHS to exchange fingerprint data with the Federal Bureau of Investigation. (Sec. 16)
48. Directs DHS to establish by rule annual continuing education and training requirements for employees, volunteers and contractors who work in sober living homes, including peer recovery specialists. (Sec. 16)
49. Requires sober living homes to maintain a staff to resident ratio of two paid staff members, who provide monitoring or assistance to residents at the sober living home for every six residents. (Sec. 16)
50. Asserts that a sober living home must have employees responsible for the direct care and supervision of the residents, on-site 24 consecutive hours per day, seven days per week. (Sec. 16)
51. Requires a sober living home licensee to provide verification to DHS that naloxone is accessible at each sober living home and staff are knowledgeable and trained in its use. (Sec. 16)
52. Declares a resident of a sober living home as a vulnerable adult. (Sec. 16)
53. Requires, rather than allows DHS to enter on and into the premises of any licensed sober living home at any reasonable time to determine compliance and to take action if the sober living home is noncompliant. (Sec. 17)
54. Prohibits a sober living home licensee that has had their license revoked in this state or any other state from reapplying for a license for a period of five years. (Sec. 17)
55. Requires DHS to post on the parent page of its public website the following:
  - a) the name, telephone number, DHS-issued license number and national provider identification number; and
  - b) if applicable, local jurisdiction business license number and licensure status of each certified and licensed sober living home that directly or indirectly received federal resources, federal monies or payment on behalf of beneficiaries with federal health care program benefits. (Sec. 18)
56. Exempts sober living homes from confidentiality requirements and requires DHS to disclose the address. (Sec. 18)
57. Asserts that a sober living home address is a public record and subject to public record laws. (Sec. 18)
58. Prohibits sober living home managers and staff from having a personal or intimate relationship with a resident. (Sec. 19)
59. Directs sober living home managers and staff to contact law enforcement if the manager or staff is informed that a resident of the sober living home may be involved in a sex-related crime. (Sec. 19)

60. Requires a sober living home licensee to ensure that any resident of the licensee's sober living home who is required to register, registers within the statutorily required time frame after admission to the sober living home. (Sec. 19)
61. Requires sober living home managers and staff to notify DHS, in a DHS-provided format, immediately and not more than six hours after any of the following occurs:
- a) the death of a resident, including whether the death may have been drug related;
  - b) a resident needed immediate intervention by an emergency medical provider or other health care provider for a possible overdose or other drug or alcohol-related illness;
  - c) a sex-related crime may have been committed at the sober living home; and
  - d) any other incident specified in rule by DHS. (Sec. 19)

***Miscellaneous***

62. Exempts DHS from rulemaking requirements through June 30, 2025, for the purposes of complying with regulations relating to behavioral health entities and sober living homes. (Sec. 23)
63. Defines the following terms:
- a) *behavioral health entity*;
  - b) *obviously intoxicated*;
  - c) *person*;
  - d) *publicly funded sober living home*; and
  - e) *vulnerable adult*. (Sec. 7, 14, 16)
64. Makes technical and conforming changes. (Sec. 3, 4, 7-9, 11, 13, 15, 17-18, 20-22)

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