

C-1

**BOARD OF EXAMINERS FOR NURSING CARE INSTITUTION ADMINISTRATORS AND
ASSISTED LIVING FACILITY MANAGERS**

Title 4, Chapter 33

Amend: R4-33-101, R4-33-201, R4-33-202, R4-33-204, R4-33-206, R4-33-401, R4-33-403,
R4-33-405, R4-33-602



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: February 7, 2023

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: January 19, 2023

SUBJECT: Board of Examiners for Nursing Care Institution Administrators and Assisted Living Facility Managers
Title 4, Chapter 33

Amend: R4-33-101, R4-33-201, R4-33-202, R4-33-204, R4-33-401,
R4-33-403, R4-33-405, R4-33-602

Summary:

This regular rulemaking from the Board of Examiners for Nursing Care Institution Administrators and Assisted Living Facility Managers relates to rules in Title 4, Chapter 33 regarding licensing, manager certifications, and manager training programs. Specifically, the Board seeks to amend their rules in order to comply with recent statutory changes; Laws 2022, Chapter 15.

The Board is requesting an immediate effective date pursuant to A.R.S. § 41-1032(A)(1), "[t]o preserve the public peace, health or safety" and to comply with a deadline in the Board's governing statutes. The legislature enacted SB1242, which became Laws 2022, Chapter 15, to protect the health and safety of the vulnerable residents of assisted living facilities and nursing care institutions from individuals with a conviction for a felony involving violence or financial fraud. The fingerprint requirement went into effect on January 1, 2023. Council staff believes the Board has provided sufficient information that demonstrates a need for an immediate effective date to preserve the public peace, health, or safety.

The Board received approval from the rulemaking moratorium to initiate this rulemaking on October 3, 2022, and final approval to submit to the Council on December 9, 2022.

1. **Are the rules legal, consistent with legislative intent, and within the agency's statutory authority?**

The Board cites both general and specific statutory authority for these rules.

2. **Do the rules establish a new fee or contain a fee increase?**

No, the rules do not establish a new fee or contain a fee increase.

3. **Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?**

The Board did not review or rely on any study for this rulemaking.

4. **Summary of the agency's economic impact analysis:**

The Board believes the rule amendments have minimal economic impact because they simply make the rules consistent with the statutory changes made by the legislature. Any economic impact results from statutory changes.

5. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Board believes that the current rulemaking is neither intrusive nor costly. It simply reflects statutory requirements. The Board is not authorized to consider alternative methods.

6. **What are the economic impacts on stakeholders?**

According to the Board, licensees and certificate holders, applicants for licensure or certification, and the Board will be directly affected by, bear the costs of, and directly benefit from the rulemaking.

The Board incurred the cost of doing this rulemaking and will incur the cost of implementing and enforcing the new rule provisions. The Board has the benefit of rules that are consistent with statute and its obligation to protect public health and safety.

The applicant will incur the cost of obtaining a fingerprint clearance card, being fingerprinted, paying the amount charged by the Department of Public Safety to process

the fingerprints for a criminal background check, and submitting an application for licensure or certification.

Certificate holders have the benefit of a simple renewal date and reduced chances and consequences of inadvertent expiration.

7. **Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?**

No changes were made between the proposed and final rulemaking.

8. **Does the agency adequately address the comments on the proposed rules and any supplemental proposals?**

Yes, the Board received one written comment regarding R4-33-204(C)(5). The Board adequately responded to the comment.

9. **Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

The rules do not require the issuance of a general permit.

10. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

Not applicable. There are no corresponding federal laws.

11. **Conclusion**

As mentioned above, the Board seeks to amend their rules in order to comply with recent statutory changes. The Board is requesting an immediate effective date pursuant to A.R.S. § 41-1032(A)(1), “[t]o preserve the public peace, health or safety” and to comply with a deadline in the Board’s governing statutes. Council staff finds that the Board demonstrates adequate justification for an immediate effective date.

Council staff recommends approval of this rulemaking.



**BOARD OF EXAMINERS OF NURSING CARE INSTITUTION ADMINISTRATORS AND
ASSISTED LIVING FACILITY MANAGERS**

Douglas A. Ducey
Governor

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John Confer
Executive Director

January 24, 2023

Ms. Nicole Sornsins, Chair
The Governor's Regulatory Review Council
100 North 15th Avenue, Ste. 305
Phoenix, AZ 85007

Re: A.A.C. Title 4. Professions and Occupations Chapter. 33. Board of Examiners for Nursing Care
Institution Administrators and Assisted Living Facility Managers

Dear Ms. Sornsins:

The attached final rule package is submitted for review and approval by the Council. The following information is provided for Council's use in reviewing the rule package:

- A. Close of record date: The rulemaking record was closed on December 8, 2022, following a period for public comment and an oral proceeding. This rule package is being submitted within the 120 days provided by A.R.S. § 41-1024(B).

The approval required under A.R.S. § 41-1039(A) was provided by Brian Norman of the Governor's Office in an e-mail dated October 6, 2022. Mr. Norman provided approval to submit the rulemaking to the Council in an e-mail dated December 9, 2022.

- B. Relation of the rulemaking to a five-year-review report: The rulemaking does not relate to a five-year-review report.
- C. New fee: The rulemaking does not establish a new fee.
- D. Fee increase: The rulemaking does not increase an existing fee.
- E. Immediate effective date: An immediate effective date is respectfully requested under A.R.S. § 41-1032(A)(1) and (3) to preserve public health and safety and to comply with a deadline in the Board's governing statutes.
- F. Certification regarding studies: I certify that the preamble accurately discloses the Board did not review or rely on a study in its evaluation of or justification for any rule in this rulemaking.
- G. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that none of the rules in this rulemaking will require a state agency to employ a new full-time employee. No notification was provided to JLBC.

H. List of documents enclosed:

1. Cover letter signed by the Executive Director;
2. Notice of Final Rulemaking including the preamble, table of contents, and rule text;
3. Economic, Small Business, and Consumer Impact Statement; and
4. Public comment

Thank you & Respectfully,

A handwritten signature in black ink, appearing to read 'Jack Confer', with a long horizontal stroke extending to the right.

Jack Confer
Executive Director

NOTICE OF FINAL RULEMAKING
TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 33. BOARD OF EXAMINERS FOR NURSING CARE INSTITUTION
ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS

PREAMBLE

1. Articles, Parts, and Sections Affected

Rulemaking Action

R4-33-101	Amend
R4-33-201	Amend
R4-33-202	Amend
R4-33-204	Amend
R4-33-206	Amend
R4-33-401	Amend
R4-33-403	Amend
R4-33-405	Amend
R4-33-602	Amend

2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. § 36-446.03(A)

Implementing statute: A.R.S. §§ 36-446, 36-446.03, 36-446.04, and 36-446.07(E) and (F)

3. The effective date for the rules:

Under A.R.S. § 41-1032(A)(1) and (3), the Board respectfully requests an immediate effective date.

a. If the agency selected a date earlier than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

The Board requests an immediate effective date to preserve public health and safety and to comply with a deadline in the Board's governing statutes. The legislature enacted SB1242, which became Laws 2022, Chapter 15, to protect the health and safety of the vulnerable residents of assisted living facilities and nursing care institutions from individuals with a conviction for a felony involving violence or financial fraud. The legislature required all license and certificate applicants to provide a copy of a fingerprint clearance card and a full set of fingerprints for criminal history processing. Under A.R.S. § 36-446.03(E), the fingerprint requirement goes into effect on January 1, 2023.

The need for an immediate effective date was not caused by the Board’s delay or inaction. Laws 2022, Chapter 15, was approved by the governor and filed with the Office of the Secretary of State on March 18, 2022. The new statute went into effect on November 24, 2022. An exemption EO2022-01 was obtained on October 6, 2022. The Board filed a Notice of Proposed Rulemaking addressing the statutory changes on October 11, 2022.

b. If the agency selected a date later than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):

Not applicable

4. Citation to all related notices published in the Register to include the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:

Notice of Rulemaking Docket Opening: 28 A.A.R. 3490, October 28, 2022

Notice of Proposed Rulemaking: 28 A.A.R. 3415, November 4, 2022

5. The agency's contact person who can answer questions about the rulemaking:

Name: John Confer, Executive Director

Address: Board of Examiners for Nursing Care Administrators and Assisted Living Facility
Managers

1740 West Adams Street, Suite 2490

Phoenix, AZ 85007

Telephone: (602) 364-2374

E-mail: john.confer@aznciaboard.us

Website: nciaboard.az.gov

6. An agency's justification and reason why a rule should be made, amended, repealed , or renumbered, to include an explanation about the rulemaking:

The legislature amended the Board’s statutes when it enacted Laws 2022, Chapter 15, and made the following changes:

- Added a definition of “felony involving violence or financial fraud (See A.R.S. § 36-446);”
- Added a requirement that license and certificate applicants submit a full set of fingerprints for a state and federal criminal history records check (See A.R.S. § 36-446.03(E));
- Added a requirement that license and certificate applicants have not been convicted of any felony involving violence or financial fraud (See A.R.S. §36-446.04(A)(3)(a) and (C)(4)(a)); and
- Made the biennial license and certificate renewal coincide with the licensee’s or certificate holder’s birthday (See A.R.S. § 36-446.04(G) and (H)).

This rulemaking amends the Board's rules to be consistent with the statutory changes. The approval required under A.R.S. § 41-1039(A) was provided by Brian Norman of the Governor's Office in an e-mail dated October 6, 2022. Mr. Norman provided approval to submit the rulemaking to the Council in an e-mail dated December 9, 2022.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The Board did not review or rely on a study in its evaluation of or justification for any rule in this rulemaking.

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. A summary of the economic, small business, and consumer impact:

The Board believes the rule amendments have minimal economic impact because they simply make the rules consistent with the statutory changes made by the legislature.

10. A description of any changes between the proposed rulemaking, including supplemental notices, and the final rulemaking:

No changes were made between the proposed and final rulemakings.

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to comments:

Two individuals attended the oral proceeding on December 8, 2022, but neither made comments. The Board received a written comment regarding R4-33-204(C)(5) and (6) from Jennifer Wassermann of Pinkowski Law and Policy Group.

1. In R4-33-204(C)(5), Ms. Wassermann suggested the phrase "confirmation that applicant" be added in all subsections before the phrase "...has not been convicted of a felony involving violence or financial fraud." As written, the language in the rulemaking tracks the language in statute (See A.R.S. § 36-446.04(C)(4)). Requiring an applicant to provide "confirmation" the applicant has not been convicted of a specified felony is outside the scope of the Board's statutory authority.

2. In R4-33-204(C)(6), Ms. Wassermann suggested the requirement to provide a full set of fingerprints be an alternative for applicants who are unable to provide a fingerprint clearance card. This suggestion is also inconsistent with statute. A.R.S. § 36-446.03(E) specifically provides that in

addition to the fingerprint clearance card requirement in A.R.S. § 36-446.04, all applicants for initial licensure or certification after January 1, 2023, are required to submit a full set of fingerprints for a state and federal criminal history records check. The Board notes the result of the state and federal criminal history records check will provide the “confirmation” Ms. Wassermann wants.

12. All agencies shall list any other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

None

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

The Board does not issue general permits. Rather, the Board issues individual licenses as required by the Board’s statutes to each person that is qualified by statute (See A.R.S. §§ 36-446.01 and 36-446.04) and rule.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

No federal law applies to the rules. Federal law makes receipt of federal funding contingent on a state licensing and regulating nursing care institution administrators. The specifics of the licensure and regulation are matters of state law.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No analysis was submitted.

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:

None

14. Whether the rule was previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

No rule in the rulemaking was previously made, amended, or repealed as an emergency rule.

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

**CHAPTER 33. BOARD OF EXAMINERS FOR NURSING CARE ADMINISTRATORS AND
ASSISTED LIVING FACILITY MANAGERS**

ARTICLE 1. GENERAL

Section

R4-33-101. Definitions

ARTICLE 2. NURSING CARE INSTITUTION ADMINISTRATOR LICENSING

Section

R4-33-201. Requirements for Initial License by Examination

R4-33-202. Requirements for Initial License by Reciprocity

R4-33-204. Initial Application

R4-33-206. Renewal Application

ARTICLE 4. ASSISTED LIVING FACILITY MANAGER CERTIFICATION

Section

R4-33-401. Requirements for Initial Certification by Examination

R4-33-403. Initial Application

R4-33-405. Renewal Application

ARTICLE 6. ASSISTED LIVING FACILITY MANAGER TRAINING PROGRAMS

Section

R4-33-602. Minimum Standards for Assisted Living Facility Manager Training Program

ARTICLE 1. GENERAL

R4-33-101. Definitions

The definitions in A.R.S. § 36-446 apply to this Chapter. Additionally, in this Chapter, unless otherwise specified:

“Accredited” means approved by the North Central Association of Colleges and Secondary Schools, New England Association of Schools and Colleges, Middle States Association of Colleges and Secondary Schools, Northwest Association of Schools and Colleges, Southern Association of Colleges and Schools, or Western Association of Schools and Colleges.

“ACHCA” means the American College of Health Care Administrators.

“Administrator” has the meaning prescribed at A.R.S. § 36-446 and means an individual licensed under this Chapter.

“Administrator in training” or “AIT” means an individual who is taking an AIT program to be licensed as an administrator for a nursing care institution.

“AIT program” means a training that the Board approves after determining that the training meets the standards at R4-33-302.

“Applicant” means an individual who applies to the Board to be licensed as an administrator of a nursing care institution, to be certified as a manager of an assisted living facility, or for approval of a continuing education.

“Application package” means the forms, documents, and fees that the Board requires an applicant to submit or have submitted on the applicant’s behalf.

“Arizona examination” means a measure of an applicant’s knowledge of Arizona statutes and rules regarding nursing care institution administration or assisted living facility management.

“Biennial period” means: ~~July 1 of an even-numbered year through June 30 of the next even-numbered year for an administrator and July 1 of an odd-numbered year through June 30 of the next odd-numbered year for a manager~~

For an administrator, the period until 30 days after the licensee’s birthday in an even-numbered year; and

For a manager, the period until 30 days after the certificate holder’s birthday in an odd-numbered year.

“Contact hour” means an hour during which an administrator or manager is physically present at a continuing education or a manager is physically present at a required initial training.

“Continuing education” means a planned educational course or program that the Board approves under R4-33-502.

“Good standing” means an individual licensed by the state is not subject to any disciplinary action or consent order, and not currently under investigation for alleged unprofessional conduct.

“Health care institution” means every place, institution, building or agency, whether organized for profit or not, ~~which~~ 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 A.R.S. § 36-151, outdoor behavioral health care programs and hospice services agencies. A.R.S. § 36-401.

“Manager” means an assisted living facility manager, as defined at A.R.S. § 36-446, who is certified under this Chapter.

“NAB” means the National Association of Long Term Care Administrator Boards.

“Party” has the same meaning as prescribed in A.R.S. § 41-1001.

“Preceptor” means a practicing nursing care institution administrator who helps to develop a new professional in the field of long-term care administration by tutoring the new professional.

“Qualified instructor” means a person who meets one or more of the following criteria:

A registered nurse, licensed under A.R.S. Title 32, Chapter 15;

An instructor employed by an accredited college or university, or health care institution to teach a health-care related course; or

A person or entity that has sufficient education and training to be qualified to teach a health-care related course.

“Work experience in a health-related field” means employment in a health care institution or in the professional fields of medicine, nursing, social work, gerontology, or other closely related field.

ARTICLE 2. NURSING CARE INSTITUTION ADMINISTRATOR LICENSING

R4-33-201. Requirements for Initial License by Examination

To be eligible to receive an initial license by examination as a nursing care institution administrator, an individual shall:

1. Education and training.

- a. Hold a minimum of a baccalaureate degree from an accredited college or university and successfully complete an AIT program;
 - b. Hold a minimum of a master's degree in either a health-related field or business administration from an accredited college or university; or
 - c. Hold a minimum of an associate of arts degree in nursing from an accredited college or university and:
 - i. Be currently licensed as a registered nurse under A.R.S. § 32-1632,
 - ii. Have worked as a registered nurse for five of the last seven years, and
 - iii. Successfully complete an AIT program.
2. Examination.
- a. Obtain the scaled passing scores on both the NAB core of knowledge and line of service examinations or qualify with NAB as a Health Services Executive, and
 - b. Obtain a score of at least 80 percent on the Arizona examination; and
- ~~3. Fingerprint clearance card. Have a valid fingerprint clearance card issued under A.R.S. Title 41, Chapter 12, Article 3.1; and~~
- ~~4.3. Application. Submit all applicable information required under R4-33-204.~~

R4-33-202. Requirements for Initial License by Reciprocity

To be eligible for an initial license by reciprocity as a nursing care institution administrator, an individual shall:

1. Substantially equivalent educational requirement.
 - a. Hold a minimum of a baccalaureate degree from an accredited college or university, or
 - b. Hold ACHCA certification;
2. Substantially equivalent examination requirement.
 - a. Hold a valid and current license as a nursing care institution administrator:
 - i. Issued at least two years ago,
 - ii. Issued by a state or territory, and
 - iii. Obtained by passing the NAB examination; or
 - b. Have evidence of qualification by NAB as a Health Services Executive; and
 - c. Obtain a score of at least 80 percent on the Arizona examination;
3. Never have had a nursing care administrator license suspended, revoked, or otherwise restricted by any state or territory; and
- ~~4. Fingerprint clearance card. Have a valid fingerprint clearance card issued under A.R.S. Title 41, Chapter 12, Article 3.1; and~~

5.4. Application.

- a. Submit all applicable information required under R4-33-204,
- b. Have submitted directly to the Board a certified copy of the valid and current license issued by a state or territory, and
- c. Have submitted directly to the Board by NAB:
 - i. The examination score referenced under subsection (2)(a), or
 - ii. Evidence of qualification as a Health Services Executive.

R4-33-204. Initial Application

- A. An individual who desires to be licensed as a nursing care institution administrator shall submit the following information to the Board on an application form, which is available from the Board:
1. Full name of the applicant;
 2. Other names that the applicant has used;
 3. Mailing address of the applicant;
 4. E-mail address of the applicant;
 5. Home, work, and mobile telephone numbers of the applicant;
 6. Applicant's date and place of birth;
 7. Applicant's Social Security number;
 8. Address of every residence at which the applicant has lived in the last five years;
 9. Name and address of every accredited college or university attended, dates of attendance, date of graduation, and degree or certificate received;
 10. Information regarding professional licenses or certifications currently or previously held by the applicant, including:
 - a. Name of issuing agency;
 - b. License or certificate number;
 - c. Issuing jurisdiction;
 - d. Date on which the license or certificate was first issued;
 - e. Whether the license or certificate is current; and
 - f. Whether the license or certificate is in good standing and if not, an explanation;
 11. Information regarding the applicant's employment record for the last five years, including:
 - a. Name, address, and telephone number of each employer;
 - b. Title of position held by the applicant;
 - c. Name of applicant's supervisor;
 - d. Dates of employment; and

- e. Reason for employment termination;
12. Whether the applicant was ever denied a professional license or certificate and if so, the kind of license or certificate denied, licensing authority making the denial, and date;
 13. Whether the applicant ever voluntarily surrendered a professional license or certificate and if so, the kind of license or certificate surrendered, licensing authority, date, and reason for the surrender;
 14. Whether the applicant ever allowed a professional license or certificate to lapse and if so, the kind of license or certificate that lapsed, licensing authority, date, reason for lapse, and whether the license or certificate was reinstated;
 15. Whether the applicant ever had a limitation imposed on a professional license or certificate and if so, the kind of license or certificate limited, licensing authority, date, nature of limitation, reason for limitation, and whether the limitation was removed;
 16. Whether the applicant ever had a professional license or certificate suspended or revoked and if so, the kind of license or certificate suspended or revoked, licensing authority, date, and reason for the suspension or revocation;
 17. Whether the applicant ever was subject to disciplinary action with regard to a professional license or certificate and if so, the kind of license or certificate involved, licensing authority, date, and reason for and nature of the disciplinary action;
 18. Whether any unresolved complaint against the applicant is pending with a licensing authority, professional association, health care facility, or nursing care institution and if so, the nature of and where the complaint is pending;
 19. Whether the applicant ever was charged with or convicted of a felony or a misdemeanor, other than a minor traffic violation, in any court and if so, the nature of the offense, jurisdiction, and date of discharge; and
 20. Whether the applicant ever was pardoned from or had expunged the record of a felony conviction and if so, the nature of the offense, jurisdiction, and date of pardon or expunging.
- B.** In addition to the application form required under subsection (A), an applicant shall have the following submitted directly to the Board on the applicant's behalf:
1. Official transcript submitted by each accredited college or university attended by the applicant;
 2. Verification of license that is signed, authenticated by seal or notarization, and submitted by each agency that ever issued a professional license to the applicant;
 3. "Character Certification" form submitted by two individuals who have known the applicant for at least three years and are not related to, employed by, or employing the applicant; and
 4. If the applicant is certified by ACHCA, verification of certification submitted by ACHCA;

- C.** In addition to complying with subsections (A) and (B), an applicant shall submit:
1. If the applicant completed an AIT program, a photocopy of the certificate issued upon completion;
 2. For every felony or misdemeanor charge listed under subsection (A)(19), a copy of documents from the appropriate court showing the disposition of each charge;
 3. For every felony or misdemeanor conviction listed under subsection (A)(19), a copy of documents from the appropriate court showing whether the applicant met all judicially imposed sentencing terms;
 4. Full-face photograph of the applicant taken within the last six months;
 5. Fingerprint clearance card.
 - a. Photocopy of the front and back of the applicant's fingerprint clearance card and has not been convicted of a felony involving violence or financial fraud,
 - b. Proof of submission of an application for a fingerprint clearance card and has not been convicted of a felony involving violence or financial fraud, or
 - c. If denied a fingerprint clearance card, proof the applicant qualifies for a good-cause exception hearing under A.R.S. § 41-619.55 and has not been convicted of a felony involving violence or financial fraud;
 6. A full set of fingerprints taken by a law enforcement agency or other authority acceptable to the Board and in a format acceptable to the Arizona Department of Public Safety and the Federal Bureau of Investigation and the amount charged by the Arizona Department of Public Safety to process the fingerprints for a state and federal criminal history records check;
 - ~~6-7.~~ Documentation, as described in A.R.S. § 41-1080(A), of U.S. citizenship or alien status indicating presence in the U.S. is authorized under federal law;
 - ~~7-8.~~ Affirm the information provided in the application is true and complete and authorize others to release information regarding the applicant to the Board; and
 - ~~8-9.~~ Fees required under R4-33-104(A)(1) and (A)(2).
- D.** If required by the Board under A.R.S. § 36-446.03(D), an applicant shall appear before the Board.
- E.** When the information required under subsections (A) through (C) is received and following an appearance before the Board required under subsection (D), the Board shall provide notice regarding whether the applicant may take the licensing examinations required under R4-33-201 or R4-33-202.
- F.** Because of the time required for the Board to perform an administrative completeness review under R4-33-103, an applicant shall ensure the information required under subsections (A) through (C) is submitted at least 30 days before the applicant expects to take the Arizona examination.

R4-33-206. Renewal Application

- A. The Board shall provide a licensee with notice of the need for license renewal. Failure to receive notice of the need for license renewal does not excuse a licensee's failure to renew timely.
- B. An administrator license expires at midnight ~~on June 30~~ days after the administrator's birthday ~~of in~~ each even-numbered year.
- C. To renew an administrator license, the licensee shall submit the following information to the Board, ~~on or before June 30 before expiration of the biennial period~~, on a renewal application, which is available from the Board:
1. Current address;
 2. Current e-mail address;
 3. Current home and business telephone numbers;
 4. Whether within the last 24 months the licensee was convicted of or pled guilty or no contest to a criminal offense, other than a minor traffic violation, in any court and if so, attach a copy of the original arrest record and final court judgment;
 5. Whether within the last 24 months the licensee was denied a professional license or had a professional license revoked, suspended, placed on probation, limited, or restricted in any way by a state or federal regulatory authority and if so, the kind of license, license number, issuing authority, nature of the regulatory action, and date;
 6. An affirmation that the number of hours of continuing education required under R4-33-501 has been completed; and
 7. The licensee's dated signature affirming the information provided is true and complete.
- D. In addition to the renewal application required under subsection (C), a licensee shall submit:
1. A photocopy of the front and back of the licensee's fingerprint clearance card;
 2. Documentation described in A.R.S. § 41-1080(A) unless the documentation previously submitted under ~~R4-33-204(C)(6)~~ R4-33-204(C)(7) established U.S. citizenship or was a non-expiring work authorization issued by the federal government; and
 3. The license renewal fee required under R4-33-104.
- E. An individual whose license expires because of failure to renew timely may apply for renewal by complying with subsections (C) and (D) if:
1. ~~The individual complies with subsections (C) and (D) on or before July 31,~~
 - ~~2.1.~~ 2. The individual pays the late renewal fee prescribed under R4-33-104, ~~and~~
 - ~~3.2.~~ 3. The individual affirms the individual has not acted as a nursing care institution administrator since the license expired, and
 3. The individual's license has not been surrendered, suspended, or revoked.

- F. An individual whose license expires because of failure to renew timely and who does not comply with subsection (E) may become licensed as a nursing care institution administrator only by complying with R4-33-201 or R4-33-202.

ARTICLE 4. ASSISTED LIVING FACILITY MANAGER CERTIFICATION

R4-33-401. Requirements for Initial Certification by Examination

- A. Except as provided in subsection (B), an individual who wishes to receive an initial certificate by examination as an assisted living facility manager shall:
1. Education:
 - a. Earn a high school diploma or G.E.D. or hold a license in good standing issued under A.R.S. Title 32, Chapters 13, 15, or 17 or 4 A.A.C. 33, Article 2;
 - b. Complete an assisted living facility caregiver training program that is approved by the Board under Article 7; and
 - c. Complete an assisted living facility manager training program that is approved by the Board under or Article 6;
 2. Work experience. Complete at least 2,080 hours of paid work experience in a health-related field within the five years before application;
 3. Examination. Obtain a score of at least 75 percent on the Arizona examination;
 4. Training. Complete an adult cardiopulmonary resuscitation and basic first-aid training program;
and
 5. ~~Fingerprint clearance card. Have a valid fingerprint clearance card issued under A.R.S. Title 41, Chapter 12, Article 3.1; and~~
 - 6.5. Submit all applicable information required under R4-33-403.
- B. An individual who holds a license in good standing issued under A.R.S. Title 32, Chapter 13, 15, or 17 or 4 A.A.C. 33, Article 2 is exempt from the requirements specified in subsections (A)(1)(b) and (4).

R4-33-403. Initial Application

- A. An individual who desires to be certified as a manager of an assisted living facility shall submit the following information to the Board on an application form, which is available from the Board:
1. Full name of the applicant;
 2. Other names that the applicant has used;
 3. Mailing address of the applicant;

4. Home, work, and mobile telephone numbers of the applicant;
5. Applicant's date and place of birth;
6. Applicant's Social Security number;
7. Address of every residence at which the applicant has lived in the last five years;
8. Education information regarding the applicant, including:
 - a. Name and location of last high school attended;
 - b. Date of high school graduation or date on which a G.E.D. was earned; and
 - c. Name and address of every accredited college or university attended, dates of attendance, date of graduation, and degree or certificate earned;
9. Information regarding professional licenses or certifications currently or previously held by the applicant, including:
 - a. Name of issuing agency;
 - b. License or certificate number;
 - c. Issuing jurisdiction;
 - d. Date on which the license or certificate was first issued;
 - e. Whether the license or certificate is current; and
 - f. Whether the license or certificate is in good standing and if not, an explanation;
10. Information regarding the applicant's employment record for the last five years, including:
 - a. Name, address, and telephone number of each employer;
 - b. Title of position held by the applicant;
 - c. Name of applicant's supervisor;
 - d. Dates of employment;
 - e. Number of hours worked each week;
 - f. Whether the employment was full or part time; and
 - g. Reason for termination;
11. Whether the applicant was ever denied a professional license or certificate and if so, the kind of license or certificate denied; licensing authority making the denial, and date;
12. Whether the applicant ever voluntarily surrendered a professional license or certificate and if so, the kind of license or certificate surrendered, licensing authority, date, and reason for the surrender;
13. Whether the applicant ever allowed a professional license or certificate to lapse and if so, the kind of license or certificate that lapsed, licensing authority, date, reason for lapse, and whether the license or certificate was reinstated;

14. Whether the applicant ever had a limitation imposed on a professional license or certificate and if so, the kind of license or certificate limited, licensing authority, date, nature of limitation, reason for limitation, and whether the limitation was removed;
 15. Whether the applicant ever had a professional license or certificate suspended or revoked and if so, the kind of license or certificate suspended or revoked, licensing authority, date, and reason for suspension or revocation;
 16. Whether the applicant ever was subject to disciplinary action with regard to a professional license or certificate and if so, the kind of license or certificate involved, licensing authority, date, and reason for and nature of the disciplinary action;
 17. Whether any unresolved complaint against the applicant is pending with a licensing authority, professional association, health care facility, or assisted living facility and if so, the nature of and where the complaint is pending;
 18. Whether the applicant ever was charged with or convicted of a felony or a misdemeanor, other than a minor traffic violation, in any court and if so, the nature of the offense, jurisdiction, and date of discharge; and
 19. Whether the applicant ever was pardoned from or had the record expunged of a felony conviction and if so, the nature of the offense, jurisdiction, and date of pardon or expunging.
- B.** In addition to the application form required under subsection (A), an applicant shall submit or have submitted on the applicant's behalf:
1. Education:
 - a. Copy of the applicant's high school diploma or G.E.D. and certificates of completion issued from the training courses described under R4-33-401(A)(1)(b) and (c); or
 - b. Copy of the applicant's license issued under A.R.S. Title 32, Chapter 13, 15, or 17 or 4 A.A.C. 33, Article 2, and certificate of completion issued from the training course described under R4-33-401(A)(1)(c);
 2. Documentation of 2,080 hours of paid work experience in a health-related field;
 3. Copy of current certification in adult cardiopulmonary resuscitation and first aid;
 4. Verification of license that is signed, authenticated by seal or notarization, and submitted directly to the Board by each agency that ever issued a professional license to the applicant;
 5. "Character Certification" form submitted directly to the Board by two individuals who have known the applicant for at least three years and are not related to, employed by, or employing the applicant;
 6. For every felony or misdemeanor charge listed under subsection (A)(18), a copy of documents from the appropriate court showing the disposition of each charge;

7. For every felony or misdemeanor conviction listed under subsection (A)(18), a copy of documents from the appropriate court showing whether the applicant met all judicially imposed sentencing terms;
 8. Full-faced photograph of the applicant taken within the last six months;
 9. Fingerprint clearance card.
 - a. Photocopy of the front and back of the applicant's fingerprint clearance card and has not been convicted of a felony involving violence or financial fraud;
 - b. Proof of submission of an application for a fingerprint clearance card and has not been convicted of a felony involving violence or financial fraud; or
 - c. If denied a fingerprint clearance card, proof that the applicant qualifies for a good-cause exception hearing under A.R.S. § 41-619.55 and has not been convicted of a felony involving violence or financial fraud;
 10. A full set of fingerprints taken by a law enforcement agency or other authority acceptable to the Board and in a format acceptable to the Arizona Department of Public Safety and the Federal Bureau of Investigation and the amount charged by the Arizona Department of Public Safety to process the fingerprints for a state and federal criminal history records check;
 - ~~10-11.~~ Documentation, as described in A.R.S. § 41-1080(A), of U.S. citizenship or alien status indicating presence in the U.S. is authorized under federal law;
 - ~~11-12.~~ Affirm the information provided in the application is true and complete and authorize others to release information regarding the applicant to the Board; and
 - ~~12-13.~~ Fees required under R4-33-104(B)(1) and (B)(2).
- C. If required by the Board under A.R.S. § 36-446.03(D), an applicant shall appear before the Board.
- D. When the information required under subsections (A) and (B) is received and following an appearance before the Board required under subsection (C), the Board shall provide notice regarding whether the applicant may take the Arizona examination required under R4-33-401(3).
- E. Because of the time required for the Board to perform an administrative completeness review under R4-33-103, an applicant shall submit the information required under subsections (A) and (B) at least 30 days before the applicant expects to take the Arizona examination.

R4-33-405. Renewal Application

- A. The Board shall provide a certificate holder with notice of the need for certificate renewal. Failure to receive notice of the need for certificate renewal does not excuse a certificate holder's failure to renew timely.

- B.** A manager certificate expires at midnight ~~on June 30~~ days after the manager's birthday ~~of~~ in each odd-numbered year.
- C.** To renew a manager certificate, the certificate holder shall submit the following information to the Board, on or before ~~June 30~~ expiration of the biennial period, on a renewal application, which is available from the Board:
1. Current address;
 2. Current home and business telephone numbers;
 3. Whether within the last 24 months the certificate holder was convicted of or pled guilty or no contest to a criminal offense, other than a minor traffic violation, in any court and if so, attach a copy of the original arrest record and final court judgment;
 4. Whether within the last 24 months the certificate holder was denied a professional license or had a professional license revoked, suspended, placed on probation, limited, or restricted in any way by a state or federal regulatory authority and if so, the kind of license, license number, issuing authority, nature of the regulatory action, and date;
 5. An affirmation that the number of hours of continuing education required under R4-33-501 has been completed;
 6. An affirmation that the certificate holder complies with the disclosure requirements under R4-33-408; and
 7. The certificate holder's dated signature affirming the information provided is true and complete.
- D.** In addition to the renewal application required under subsection (C), a certificate holder shall submit:
1. A photocopy of the front and back of the certificate holder's fingerprint clearance card;
 2. Documentation described in A.R.S. § 41-1080(A) unless the documentation previously submitted under ~~R4-33-403(B)(10)~~ R4-33-403(B)(11) established U.S. citizenship or was a non-expiring work authorization issued by the federal government; and
 3. The renewal fee required under R4-33-104.
- E.** An individual whose certificate expires because of failure to renew timely may apply for renewal by complying with subsections (C) and (D) if:
- ~~1. The individual complies with subsections (C) and (D) on or before July 31,~~
 - ~~2.1.~~ 1. The individual pays the late renewal fee prescribed under R4-33-104, ~~and~~
 - ~~3.2.~~ 2. The individual affirms that the individual has not acted as an assisted living facility manager since the certificate expired, and
 3. The individual's certificate has not been surrendered, suspended, or revoked.

- F. An individual whose certificate expires because of failure to renew timely and who does not comply with subsection (E) may obtain a manager certificate only by complying with R4-33-401.

ARTICLE 6. ASSISTED LIVING FACILITY MANAGER TRAINING PROGRAMS

R4-33-602. Minimum Standards for Assisted Living Facility Manager Training Program

A. Organization and administration. The owner of an assisted living facility manager training program shall:

1. Provide the Board with a written description of the training program that includes:
 - a. Length of the training program in hours and days, and
 - b. Educational goals that demonstrate the training program is consistent with state requirements;
2. Execute a written agreement with each assisted living facility at which students enrolled in the training program receive training that includes the following information:
 - a. The rights and responsibilities of both the facility and the training program,
 - b. The role and authority of the governing bodies of both the facility and the training program, and
 - c. A termination clause that provides time for students enrolled in the training program to complete training at the facility upon termination of the agreement;
3. Develop and adhere to written policies and procedures regarding:
 - a. Attendance. Ensure that a student receives at least 40 hours of instruction;
 - b. Grading. Require a student to attain at least 75 percent on each theoretical examination or 75 percent on a comprehensive theoretical examination;
 - c. Reexamination. Inform students that a reexamination:
 - i. Addresses the same competencies examined in the original examination,
 - ii. Contains items different from those on the original examination, and
 - iii. Is documented in the student's record;
 - d. Student records. Include the following information:
 - i. Records maintained,
 - ii. Retention period for each record,
 - iii. Location of records,
 - iv. Documents required under subsections (E)(1) and (E)(2), and
 - v. Procedure for accessing records and who is authorized to access records;
 - e. Student fees and financial aid, if any;
 - f. Withdrawal and dismissal;

- g. Student grievances including a chain of command for disputing a grade;
 - h. Admission requirements including any criminal background or drug testing required;
 - i. Criteria for training program completion; and
 - j. Procedure for documenting that before a student is enrolled, the student has received notice of Board requirements for certification, including ~~the~~:
 - i. The fingerprint clearance card requirement, before the student is enrolled;
 - ii. The full set of fingerprints and state and federal criminal history records check requirement; and
 - iii. The disqualification of a conviction for a felony involving violence or financial fraud.
4. Date each policy and procedure developed under subsection (A)(3), review within one year from the date made and every year thereafter, update if necessary, and date the policy or procedure at the time of each review;
 5. Provide each student who completes the training program with evidence of completion, within 15 days of completion, which includes the following:
 - a. Name of the student;
 - b. Name and classroom location of the training program;
 - c. Number of classroom hours in the training program;
 - d. Date on which the training program was completed;
 - e. Board's approval number of the training program; and
 - f. Signature of the training program owner, administrator, or instructor;
 6. Provide the Board, within 15 days of completion, the following information regarding each student who completed the training program:
 - a. Student's name, date of birth, Social Security number, address, and telephone number;
 - b. Student's examination scores as provided by the examining entity;
 - c. Name and classroom location of the training program;
 - d. Number of classroom hours in the training program;
 - e. Date on which the training program was completed; and
 - f. Board's approval number of the training program; and
 7. Execute and maintain under subsections (E)(1) and (E)(2) the following documents for each student:
 - a. A skills checklist containing documentation the student achieved competency in the assisted living facility manager skills listed in R4-33-603(C), and
 - b. An evaluation form containing the student's responses to questions about the quality of the classroom experiences provided by the training program.

- B.** Program administrator responsibilities. The owner of an assisted living facility manager training program shall ensure that a program administrator performs the following responsibilities:
1. Supervises and evaluates the training program,
 2. Uses only instructors who are qualified under subsection (C), and
 3. Makes the written policies and procedures required under subsection (A)(3) available to each student on or before the first day of the training program;
- C.** The owner of an assisted living facility manager training program shall ensure that a program instructor:
1. Is a certified assisted living facility manager who:
 - a. Holds an assisted living facility manager certificate that is in good standing and issued under A.R.S. Title 36, Chapter 4;
 - b. Has held the assisted living facility manager certificate referenced in subsection (C)(1)(a) for at least five years;
 - c. Has not been subject to any disciplinary action against the assisted living facility manager certificate during the last five years; and
 - d. Has at least three years' experience within the last five years as an assisted living facility manager of record immediately before becoming a training program instructor;
 2. Performs the following responsibilities:
 - a. Plans each learning experience,
 - b. Accomplishes educational goals of the training program and lesson objectives,
 - c. Enforces a grading policy that meets the requirement specified in subsection (A)(3)(b),
 - d. Requires satisfactory performance of all critical elements of each assisted living facility manager skill specified under R4-33-603(C),
 - e. Prevents a student from performing an activity unless the student has received instruction and been found able to perform the activity competently,
 - f. Is present in the classroom during all instruction,
 - g. Supervises health-care professionals who assist in providing training program instruction, and
 - h. Ensures that a health-care professional who assists in providing training program instruction:
 - i. Is licensed or certified as a health-care professional,
 - ii. Has at least one year of experience in the field of licensure or certification, and
 - iii. Teaches only a learning activity that is within the scope of practice of the field of licensure or certification.

- D.** Instructional and educational resources. The owner of an assisted living facility manager training program shall provide or provide access to the following instructional and educational resources adequate to implement the training program for all students and staff:
1. Current reference materials related to the level of the curriculum;
 2. Equipment, including computers, in good working condition to simulate facility management;
 3. Audio-visual equipment and media; and
 4. Designated space that provides a clean, distraction-free, learning environment for accomplishing educational goals of the training program;
- E.** The owner of an assisted living facility manager training program shall:
1. Maintain the following training program records for three years:
 - a. Curriculum and course schedule for each student cohort;
 - b. Results of state-approved written and manual skills testing;
 - c. Evaluation forms completed by students, a summary of the evaluation forms for each student cohort, and measures taken, if any, to improve the training program based on student evaluations; and
 - d. Copy of all Board reports, applications, or correspondence related to the training program; and
 2. Maintain the following student records for three years:
 - a. Name, date of birth, and Social Security number;
 - b. Completed skills checklist;
 - c. Attendance record including a record of any make-up class sessions;
 - d. Score on each test, quiz, and examination and, if applicable, whether a test, quiz, or examination was retaken; and
 - e. Copy of the certificate of completion issued to the student as required under subsection (A)(5);
- F.** Examination and evaluation requirements. The owner of an assisted living facility manager training program shall ensure that each student in the training program:
1. Takes an examination that covers each of the subjects listed in R4-33-603(C) and passes each examination using the standard specified in subsection (A)(3)(b);
 2. Is evaluated and determined to possess the practical skills listed in R4-33-603(C);
 3. Passes, using the standard specified in subsection (A)(3)(b), a final examination approved by the Board and given by a Board-approved provider; and
 4. Does not take the final examination referenced in subsection (F)(3) more than two times. If a student fails the final examination referenced in subsection (F)(3) two times, the student is able to

obtain evidence of completion only by taking the assisted living facility manager training program again;

G. Periodic evaluation. The owner of an assisted living facility manager training program shall allow a representative of the Board or a state agency designated by the Board to conduct:

1. An onsite scheduled evaluation:
 - a. Before initial approval of the training program as specified under R4-33-604(D),
 - b. Before renewal of the training program approval as specified under R4-33-605, and
 - c. During a time of correction as specified under R4-33-606(B); and
2. An onsite unscheduled evaluation of the training program if the evaluation is in response to a complaint or reasonable cause, as determined by the Board; and

H. Notice of change. The owner of an assisted living facility manager training program shall provide the documentation and information specified regarding the following changes within 10 days after making the change:

1. New training program administrator. Name and license number;
2. New instructor. Name, license number, and evidence of being qualified under subsection (C)(1);
3. Decrease in number of training program hours. Description of and reason for the change, a revised curriculum outline, and revised course schedule;
4. Change in classroom location. Address of new location and description of the new classroom; and
5. For a training program that is based within an assisted living facility:
 - a. Change in name of the facility. Former and new name of the assisted living facility; and
 - b. Change in ownership of the facility. Names of the former and current owners of the assisted living facility.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT¹
TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 33. BOARD OF EXAMINERS FOR NURSING CARE INSTITUTION
ADMINISTRATORS AND ASSISTED LIVING FACILITY MANAGERS

1. Identification of the rulemaking:

The legislature amended the Board’s statutes when it enacted Laws 2022, Chapter 15, and made the following changes:

- Added a definition of “felony involving violence or financial fraud (See A.R.S. § 36-446);”
- Added a requirement that license and certificate applicants submit a full set of fingerprints for a state and federal criminal history records check (See A.R.S. § 36-446.03(E));
- Added a requirement that license and certificate applicants have not been convicted of any felony involving violence or financial fraud (See A.R.S. § 36-446.04(A)(3)(a) and (C)(4)(a)); and
- Made the biennial license and certificate renewal coincide with the licensee’s or certificate holder’s birthday (See A.R.S. § 36-446.04(G) and (H)).

This rulemaking amends the Board’s rules to be consistent with the statutory changes. An exemption from Executive Order 2022-01 was provided by Brian Norman of the Governor’s Office in an e-mail dated October 6, 2022.

a. The conduct and its frequency of occurrence that the rule is designed to change:

Until the rulemaking is complete, the Board’s rules will not be consistent with statute.

b. The harm resulting from the conduct the rule is designed to change and the likelihood it will continue to occur if the rule is not changed:

It is not good government for an agency to have rules that are inconsistent with statute.

c. The estimated change in frequency of the targeted conduct expected from the rule change:

When the rulemaking is complete, the Board’s rules will be consistent with statute.

2. A brief summary of the information included in the economic, small business, and consumer impact statement:

¹ If adequate data are not reasonably available, the agency shall explain the limitations of the data, the methods used in an attempt to obtain the data, and characterize the probable impacts in qualitative terms. (A.R.S. § 41-1055(C)).

The rule amendments will have minimal economic impact because they simply make the rules consistent with the statutory changes made by the legislature. The statutory changes will have some economic impact.

3. The person to contact to submit or request additional data on the information included in the economic, small business, and consumer impact statement:

Name: John Confer, Executive Director

Address: Board of Examiners for Nursing Care Administrators and Assisted Living
Facility Managers

1740 West Adams Street, Suite 2490

Phoenix, AZ 85007

Telephone: (602) 364-2374

E-mail: john.confer@aznciaboard.us

Website: nciaboard.az.gov

4. Persons who will be directly affected by, bear the costs of, or directly benefit from the rulemaking:

Licensees and certificate holders, applicants for licensure or certification, and the Board will be directly affected by, bear the costs of, and directly benefit from the rulemaking.

There are currently 305 licensees and 2,379 certificate holders in Arizona. As a result of the statutory change, the license or certificate biennial renewal date will now coincide with the licensee's or certificate holder's birthday. This may make it easier for the renewal date to be remembered and reduce the chance and consequences of inadvertent expiration. Spreading renewals throughout the year also makes the Board's work flow more even.

During the last year, 38 individuals applied for licensure and 264 individuals applied for certification. As a result of the statutory change, beginning January 1, 2023, each applicant is required to submit both a copy of a fingerprint clearance card and a full set of fingerprints, which the Board submits to the Department of Public Safety for a criminal history background check. Applicants are also required to provide information regarding conviction of a felony involving violence or financial fraud. A conviction of this nature is disqualifying for licensure or certification. The applicant will incur the cost of obtaining a fingerprint clearance card and DPS criminal history processing of fingerprints. The cost of a fingerprint clearance card is \$67 and the cost for processing fingerprints is \$22. There may also be a

charge for being fingerprinted. During the last year, two applicants would have been disqualified because of a conviction for a felony involving violence or financial fraud.

The Board incurred the cost of doing this rulemaking and will incur the cost of implementing and enforcing the new rule provisions. The Board has the benefit of rules that are consistent with statute and its obligation to protect public health and safety.

5. Cost-benefit analysis:

- a. Costs and benefits to state agencies directly affected by the rulemaking including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:

The Board is the only state agency directly affected by the rulemaking.

- b. Costs and benefits to political subdivisions directly affected by the rulemaking:

No political subdivision is directly affected by the rulemaking.

- c. Costs and benefits to businesses directly affected by the rulemaking:

Administrators and managers are businesses directly affected by the rulemaking.

Their costs and benefits are discussed in item 4. The nursing care institutions and assisted living facilities that employ administrators and managers are indirectly affected.

6. Impact on private and public employment:

The rulemaking will have no impact on private or public employment. As a result of statute, an individual who has a conviction for a felony involving violence or financial fraud or who is otherwise disqualified from obtaining a fingerprint clearance card will not be able to obtain licensure or certification.

7. Impact on small businesses²:

- a. Identification of the small business subject to the rulemaking:

Administrators and managers are businesses directly affected by the rulemaking.

- b. Administrative and other costs required for compliance with the rulemaking:

To comply with the statutory requirements reflected in the rules, an applicant will incur the cost of obtaining a fingerprint clearance card, being fingerprinted, paying the amount charged by the Department of Public Safety to process the fingerprints for a criminal background check, and submitting an application for licensure or certification.

- c. Description of methods that may be used to reduce the impact on small businesses:

Because all administrators and managers are small businesses and because the rules simply reflect statutory requirements, it is not possible to reduce the impact on small businesses and still fulfill the Board's statutory responsibilities.

8. Cost and benefit to private persons and consumers who are directly affected by the rulemaking:

No private persons or consumers are directly affected by the rulemaking. The statutory change and the rulemaking are designed to protect public health and safety.

9. Probable effects on state revenues:

There will be no effect on state revenues.

10. Less intrusive or less costly alternative methods considered:

The rulemaking is not intrusive or costly. It simply reflects statutory requirements. The Board is not authorized to consider alternative methods.

² Small business has the meaning specified in A.R.S. § 41-1001(23).

TITLE 9. HEALTH SERVICES
CHAPTER 6. DEPARTMENT OF HEALTH SERVICES - COMMUNICABLE DISEASES AND
INFESTATIONS

ARTICLE 3. CONTROL MEASURES FOR COMMUNICABLE DISEASES
AND INFESTATIONS

R9-6-301. Definitions

In this Article, unless otherwise specified:

1. "Aquatic venue" means an artificially constructed structure or modified natural structure that:
 - a. Is used:
 - i. For water contact recreation, as defined in A.A.C. R9-8-801; or
 - ii. To treat a diagnosed injury, illness, or medical condition under the supervision of a health professional, as defined in A.R.S. § 32-3201;
 - b. Is open to all individuals or to all residents of a community, members of a club or camp, individuals being treated by a specific health professional, or patrons of other such establishments; and
 - c. Includes a:
 - i. Natural bathing place as defined in A.A.C. R18-5-201,
 - ii. Public spa as defined in A.A.C. R18-5-201,
 - iii. Public swimming pool as defined in A.A.C. R18-5-201,
 - iv. Semi-artificial bathing place as defined in A.A.C. R18-5-201,
 - v. Semi-public spa as defined in A.A.C. R18-5-201,
 - vi. Semi-public swimming pool as defined in A.A.C. R18-5-201, and
 - vii. Water-play area, an artificially constructed depression in which water issues from showers or other nozzles and drains away to leave little or no standing water.
2. "Blood bank" means a facility where human whole blood or a blood component is collected, prepared, tested, processed, or stored, or from which human whole blood or a blood component is distributed.
3. "Blood center" means a mobile or stationary facility that procures human whole blood or a blood component that is transported to a blood bank.
4. "Contact precautions" means, in addition to use of standard precautions:
 - a. Placing an individual in a private room or a cohort room with a distance of three or more feet separating the individual's bed from the bed of another individual; and
 - b. Ensuring the use of a gown and gloves by other individuals when entering the room in which the individual is located.
5. "Contaminated" means to have come in contact with a disease-causing agent or toxin.
6. "Disinfection" means killing or inactivating communicable-disease-causing agents on inanimate objects by directly applied chemical or physical means.
7. "Disinfestation" means any physical, biological, or chemical process to reduce or eliminate undesired arthropod or rodent populations.
8. "Droplet precautions" means, in addition to use of standard precautions:
 - a. Placing an individual in a private room or a cohort room with a distance of three or more feet and a curtain separating the individual's bed from the bed of another individual;
 - b. Ensuring that the individual wears a mask covering the individual's mouth and nose, if medically appropriate, when not in the room described in subsection (8)(a); and
 - c. Ensuring the use of a mask covering the mouth and nose by other individuals when entering the room in which the individual is located.
9. "Follow-up" means the practice of investigating and monitoring cases, carriers, contacts, or suspect cases to detect, treat, or prevent disease.
10. "Incapacitated adult" means an individual older than 18 years of age for whom a guardian has been appointed by a court of competent jurisdiction.
11. "Isolation precautions" means methods to limit the transmission of an infectious agent, based on the infectious agent and the location of infection in or on the infected individual or animal, that includes isolation of the infected individual or animal and may include any one or combination of the following:
 - a. Standard precautions,
 - b. Contact precautions,
 - c. Droplet precautions, or
 - d. Airborne precautions.
12. "Midwife" has the same meaning as in A.R.S. § 36-751.
13. "Multi-drug-resistant organism" means a bacterial agent on a Department-provided list that is known to not be killed or whose growth is not slowed by specific classes of antibiotics.
14. "Pediculocide" means a shampoo or cream rinse manufactured and labeled for controlling head lice.

15. "Person in charge" means the individual present at a food establishment who is responsible for the food establishment's operation at the time in question.
16. "Plasma center" means a facility where the process of plasmapheresis or another form of apheresis is conducted.
17. "State health officer" means the Director of the Department or the Director's designee.
18. "Vector" means a living animal, usually a mosquito, tick, flea, or other arthropod, that may transmit an infectious agent to an individual.

R9-6-302. Local Health Agency Control Measures

A local health agency shall:

1. Review each report received under Article 2 for completeness and accuracy;
2. Confirm each diagnosis;
3. Conduct epidemiologic and other investigations required by this Chapter or in cooperation with the Department;
4. Facilitate notification of known contacts;
5. Conduct surveillance;
6. Determine trends;
7. Implement control measures, quarantines, isolations, and exclusions as required by the Arizona Revised Statutes and this Chapter;
8. Disseminate surveillance information to health care providers;
9. Provide health education to a disease case or contact to reduce the risk of transmission of the respective disease; and
10. Report to the Department, as specified in R9-6-206 and this Article.

R9-6-303. Isolation, Quarantine, Exclusion, and Other Control Measures

A. When a local health agency is required by this Article to isolate or quarantine an individual or group of individuals, the local health agency:

1. Shall issue a written order:
 - a. For isolation or quarantine and other control measures;
 - b. To each individual or group of individuals and, for each individual who is a minor or incapacitated adult, the individual's parent or guardian, except as provided in subsection (A)(2);
 - c. That specifies:
 - i. The isolation or quarantine and other control measure requirements being imposed, including, if applicable, requirements for physical examinations and medical testing to ascertain and monitor each individual's health status;
 - ii. The identity of each individual or group of individuals subject to the order;
 - iii. The premises at which each individual or group of individuals is to be isolated or quarantined;
 - iv. The date and time at which isolation or quarantine and other control measure requirements begin; and
 - v. The justification for isolation or quarantine and other control measure requirements, including, if known, the disease for which the individual or individuals are believed to be cases, suspect cases, or contacts; and
 - d. That may provide information about existing medical treatment, if available and necessary to render an individual less infectious, and the consequences of an individual's failure to obtain the medical treatment; and
2. May post the written order in a conspicuous place at the premises at which a group of individuals is to be isolated or quarantined if:
 - a. The written order applies to the group of individuals, and
 - b. It would be impractical to provide a copy to each individual in the group.

B. A local health agency may issue a written order for additional control measures:

1. Except as provided in subsection (A)(2), to each affected individual, group of individuals, or person and, for each individual who is a minor or incapacitated adult, the individual's parent or guardian;
2. That specifies:
 - a. The control measure requirements being imposed, including, if applicable, requirements for:
 - i. Being excluded from working as a food handler, caring for patients or residents in a health care institution, or caring for children in or attending a school or child care establishment;
 - ii. Avoiding other locations where the individual or an individual in the group of individuals may pose a health risk to other individuals;
 - iii. Observing airborne precautions, droplet precautions, or contact precautions and the methods by which the individual shall comply with the requirement;
 - iv. Prophylaxis or immunization, as applicable, as an alternative to or to reduce the length of exclusion;
 - v. Physical examinations and medical testing to ascertain and monitor the individual's health status; or
 - vi. Not creating a situation where additional individuals may be exposed to the communicable disease;
 - b. The identity of each individual, group of individuals, or person subject to the order;
 - c. The date and time at which the control measure requirements begin; and
 - d. The justification for the control measure requirements, including:

- i. If known, the disease for which the individual or individuals are believed to be cases, suspect cases, or contacts; and
 - ii. If applicable, the possible consequences of the individual, group of individuals, or person failing to follow the recommendations of the Department or the local health agency to control the spread of the communicable disease; and
 - 3. That may provide information about the disease, existing medical treatment, if applicable, and the consequences of an individual's failure to comply with the order.
- C. Within 10 calendar days after the issuing of a written order described in subsection (A) or (B), if a local health agency determines that isolation, quarantine, or other control measure requirements need to continue for more than 10 calendar days after the date of the order, the local health agency shall file a petition for a court order that:
 - 1. Authorizes the continuation of isolation, quarantine, or other control measure requirements pertaining to an individual, a group of individuals, or a person;
 - 2. Includes the following:
 - a. The isolation, quarantine, or other control measure requirements being imposed, including, if applicable, requirements for physical examinations and medical testing to ascertain and monitor an individual's health status;
 - b. The identity of each individual, group of individuals, or person subject to isolation, quarantine, or other control measure requirements;
 - c. If applicable, the premises at which each individual or group of individuals is isolated or quarantined;
 - d. The date and time at which isolation, quarantine, or other control measure requirements began; and
 - e. The justification for isolation, quarantine, or other control measure requirements, including, if applicable and known, the disease for which the individual or individuals are believed to be cases, suspect cases, or contacts; and
 - 3. Is accompanied by the sworn affidavit of a representative of the local health agency or the Department attesting to the facts asserted in the petition, together with any further information that may be relevant and material to the court's consideration.
- D. A local health agency that files a petition for a court order under subsection (C) shall provide notice to each individual, group of individuals, or person identified in the petition according to the Arizona Rules of Civil Procedure, except that notice shall be provided within 24 hours after the petition is filed.
- E. In the event of noncompliance with a written order issued under subsection (A) or (B), a local health agency may contact law enforcement to request assistance in enforcing the order.
- F. If the Department determines that isolation, quarantine, or other control measure requirements are necessary, the Department, under A.R.S. § 36-136(G), may take any of the actions specified in subsections (A) through (E).

R9-6-304. Food Establishment Control Measures

The person in charge of a food establishment shall ensure compliance with all food handler exclusion requirements in this Article or as ordered by a local health agency or the Department.

R9-6-305. Control Measures for Multi-drug-resistant Organisms

Case control measures:

- 1. A diagnosing health care provider or an administrator of a health care institution transferring a case with active infection of a bacterial disease, for which the agent is known to be a multi-drug-resistant organism, to another health care provider or health care institution or to a correctional facility shall, either personally or through a representative, ensure that the receiving health care provider, health care institution, or correctional facility is informed that the patient is infected with a multi-drug-resistant organism.
- 2. An administrator of the correctional facility transferring a case with active infection of a bacterial disease, for which the agent is known to be a multi-drug-resistant organism, to another correctional facility or to a health care institution shall, either personally or through a representative, ensure that the receiving correctional facility or health care institution is informed that the individual is infected with a multi-drug-resistant organism.

R9-6-306. Amebiasis

Case control measures: A local health agency shall:

- 1. Exclude an amebiasis case or suspect case with diarrhea from:
 - a. Working as a food handler, caring for children in or attending a child care establishment, or caring for patients or residents in a health care institution until:
 - i. Either:
 - (1) Treatment with an amebicide is initiated, and
 - (2) A stool specimen negative for amoebae is obtained from the amebiasis case or suspect case; or
 - ii. The local health agency has determined that the amebiasis case or suspect case is unlikely to infect other individuals; and
 - b. Using an aquatic venue for two weeks after diarrhea has resolved;

2. Conduct an epidemiologic investigation of each reported amebiasis case or suspect case; and
3. For each amebiasis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-307. Anaplasmosis

Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported anaplasmosis case or suspect case; and
2. For each anaplasmosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-308. Anthrax

A. Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of an anthrax case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported anthrax case or suspect case;
3. For each anthrax case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
4. Ensure that an isolate or a specimen, as available, from each anthrax case or suspect case is submitted to the Arizona State Laboratory.

B. Environmental control measures: A local health agency shall, in conjunction with the Department and applicable federal agencies, provide or arrange for disinfection of areas or objects contaminated by *Bacillus anthracis* through sterilization by dry heating, incineration of objects, or other appropriate means.

R9-6-309. Arboviral Infection

A. Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported arboviral infection case or suspect case;
2. For each arboviral infection case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
3. Ensure that each arboviral infection case is provided with health education that includes measures to:
 - a. Avoid mosquito bites, and
 - b. Reduce mosquito breeding sites.

B. Environmental control measures: In cooperation with the Department, a local health agency or another local agency responsible for vector control within a jurisdiction shall conduct an assessment of the environment surrounding each arboviral infection case or suspect case and implement vector control measures as necessary.

R9-6-310. Babesiosis

Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported babesiosis case or suspect case; and
2. For each babesiosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-311. Basidiobolomycosis

Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported basidiobolomycosis case or suspect case; and
2. For each basidiobolomycosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-312. Botulism

A. Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a botulism case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported botulism case or suspect case; and
3. For each botulism case or suspect case:
 - a. Submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and

- b. Ensure that one or more specimens from each botulism case or suspect case are submitted to the Arizona State Laboratory.
- B. Environmental control measures:** An individual in possession of:
- 1. Food known to be contaminated by *Clostridium botulinum* or *Clostridium botulinum* toxin shall boil the contaminated food for 10 minutes and then discard it, and
 - 2. Utensils known to be contaminated by *Clostridium botulinum* or *Clostridium botulinum* toxin shall boil the contaminated utensils for 10 minutes before reuse or disposal.

R9-6-313. Brucellosis

Case control measures: A local health agency shall:

- 1. Conduct an epidemiologic investigation of each reported brucellosis case or suspect case;
- 2. For each brucellosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
- 3. Ensure that an isolate or a specimen, as available, from each brucellosis case is submitted to the Arizona State Laboratory.

R9-6-314. Campylobacteriosis

Case control measures: A local health agency shall:

- 1. Exclude a campylobacteriosis case or suspect case with diarrhea from:
 - a. Working as a food handler, caring for children in or attending a child care establishment, or caring for patients or residents in a health care institution until:
 - i. Diarrhea has resolved,
 - ii. A stool specimen negative for *Campylobacter* spp. is obtained from the campylobacteriosis case or suspect case, or
 - iii. The local health agency has determined that the case or suspect case is unlikely to infect other individuals; and
 - b. Using an aquatic venue until diarrhea has resolved;
- 2. Conduct an epidemiologic investigation of each reported campylobacteriosis case or suspect case; and
- 3. For each campylobacteriosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-315. Carbapenem-resistant Enterobacteriaceae

A. Case control measures:

- 1. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall:
 - a. Institute isolation precautions as necessary for a carbapenem-resistant enterobacteriaceae case or carrier to prevent transmission; and
 - b. If a carbapenem-resistant enterobacteriaceae case or carrier is being transferred to another health care provider or health care institution or to a correctional facility, comply with R9-6-305.
- 2. An administrator of a correctional facility, either personally or through a representative, shall:
 - a. Institute isolation precautions as necessary for a carbapenem-resistant enterobacteriaceae case or carrier to prevent transmission; and
 - b. If a carbapenem-resistant enterobacteriaceae case or carrier is being transferred to another correctional facility or to a health care institution, comply with R9-6-305.
- 3. A local health agency, in consultation with the Department, shall:
 - a. Ensure that a case or carrier of carbapenem-resistant enterobacteriaceae is isolated as necessary to prevent transmission; and
 - b. Upon request, ensure that an isolate or a specimen, as available, from each case or carrier of carbapenem-resistant enterobacteriaceae is submitted to the Arizona State Laboratory.

B. Outbreak control measures: A local health agency shall:

- 1. Conduct an epidemiologic investigation for each outbreak or suspected outbreak of carbapenem-resistant enterobacteriaceae; and
- 2. For each outbreak or suspected outbreak of carbapenem-resistant enterobacteriaceae, submit to the Department the information required under R9-6-206(E).

R9-6-316. Chagas Infection and Related Disease (*American Trypanosomiasis*)

Case control measures: A local health agency shall:

- 1. Conduct an epidemiologic investigation of each reported Chagas infection or disease case or suspect case; and
- 2. For each Chagas infection or disease case:

- a. Submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
- b. Provide to the Chagas infection or disease case or ensure that another person provides to the Chagas infection or disease case health education that includes:
 - i. The treatment options for Chagas infection or disease,
 - ii. Where the Chagas infection or disease case may receive treatment for Chagas infection or disease, and
 - iii. For women of childbearing age, the risks of transmission of Chagas infection or disease to a fetus.

R9-6-317. Chancroid (*Haemophilus ducreyi*)

- A. Case control measures: A local health agency shall:
 - 1. Conduct an epidemiologic investigation of each reported chancroid case or suspect case;
 - 2. For each chancroid case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
 - 3. Comply with the requirements specified in R9-6-1103 concerning treatment and health education for a chancroid case.
- B. Contact control measures: When a chancroid case has named a contact, a local health agency shall comply with the requirements specified in R9-6-1103 concerning notification, testing, treatment, and health education for the contact.

R9-6-318. Chikungunya

- A. Case control measures: A local health agency shall:
 - 1. Upon receiving a report under R9-6-202 of a chikungunya case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
 - 2. Conduct an epidemiologic investigation of each reported chikungunya case or suspect case;
 - 3. For each chikungunya case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
 - 4. Ensure that each chikungunya case is provided with health education that includes measures to:
 - a. Avoid mosquito bites, and
 - b. Reduce mosquito breeding sites.
- B. Environmental control measures: In cooperation with the Department, a local health agency or another local agency responsible for vector control within a jurisdiction shall conduct an assessment of the environment surrounding each chikungunya case or suspect case and implement vector control measures as necessary.

R9-6-319. *Chlamydia trachomatis* Infection

- A. Case control measures:

A local health agency shall comply with the requirements specified in R9-6-1103 concerning treatment and health education for a *Chlamydia trachomatis* infection case that seeks treatment from the local health agency.
- B. Contact control measures: If an individual who may have been exposed to chlamydia through sexual contact with a *Chlamydia trachomatis* infection case seeks treatment for symptoms of chlamydia infection from a local health agency, the local health agency shall comply with the requirements specified in R9-6-1103 concerning treatment and health education for the individual.

R9-6-320. Cholera

- A. Case control measures: A local health agency shall:
 - 1. Upon receiving a report under R9-6-202 of a cholera case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
 - 2. Exclude a cholera case or suspect case from:
 - a. Working as a food handler, caring for patients or residents in a health care institution, or caring for children in or attending a child care establishment until a stool specimen negative for toxigenic *Vibrio cholerae* is obtained from the cholera case or suspect case; and
 - b. Using an aquatic venue until diarrhea has resolved;
 - 3. Conduct an epidemiologic investigation of each reported cholera case or suspect case; and
 - 4. For each cholera case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).
- B. Contact control measures: A local health agency shall provide follow-up for each cholera contact for five calendar days after exposure.

R9-6-321. *Clostridium difficile*

Case control measures:

1. A diagnosing health care provider or an administrator of a health care institution transferring a known *Clostridium difficile* case with active infection and diarrhea to another health care provider or health care institution or to a correctional facility shall, either personally or through a representative, ensure that the receiving health care provider, health care institution, or correctional facility is informed that the patient is a known *Clostridium difficile* case.
2. If a known *Clostridium difficile* case with active infection and diarrhea is being transferred from a correctional facility to another correctional facility or to a health care institution, an administrator of the correctional facility, either personally or through a representative, shall ensure that the receiving correctional facility or health care institution is informed that the individual is a known *Clostridium difficile* case.

R9-6-322. Coccidioidomycosis (Valley Fever)

Outbreak control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported outbreak of coccidioidomycosis; and
2. For each outbreak of coccidioidomycosis, submit to the Department the information required under R9-6-206(E).

R9-6-323. Colorado Tick Fever

Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported Colorado tick fever case or suspect case; and
2. For each Colorado tick fever case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-324. Conjunctivitis: Acute

A. Case control measures: An administrator of a school or child care establishment, either personally or through a representative, shall exclude an acute conjunctivitis case from attending the school or child care establishment until the symptoms of acute conjunctivitis subside or treatment for acute conjunctivitis is initiated and maintained for 24 hours.

B. Outbreak control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported conjunctivitis outbreak; and
2. For each conjunctivitis outbreak, submit to the Department the information required under R9-6-206(E).

R9-6-325. Creutzfeldt-Jakob Disease

Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported Creutzfeldt-Jakob disease case or suspect case; and
2. For each Creutzfeldt-Jakob disease case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-326. Cryptosporidiosis

A. Case control measures: A local health agency shall:

1. Exclude a cryptosporidiosis case or suspect case with diarrhea from:
 - a. Working as a food handler, caring for patients or residents in a health care institution, or caring for children in or attending a child care establishment until diarrhea has resolved; and
 - b. Using an aquatic venue for two weeks after diarrhea has resolved;
2. Conduct an epidemiologic investigation of each reported cryptosporidiosis case or suspect case; and
3. For each cryptosporidiosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

B. Environmental control measures: A local health agency shall conduct a sanitary inspection or ensure that a sanitary inspection is conducted of each facility or location regulated under 9 A.A.C. 8 that is associated with an outbreak of cryptosporidiosis.

R9-6-327. Cyclospora Infection

Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported *Cyclospora* infection case or suspect case; and
2. For each *Cyclospora* infection case submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-328. Cysticercosis

Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported cysticercosis case or suspect case; and
2. For each cysticercosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-329. Dengue

- A. Case control measures:** A local health agency shall:
1. Upon receiving a report under R9-6-202 of a dengue case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
 2. Conduct an epidemiologic investigation of each reported dengue case or suspect case;
 3. For each dengue case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
 4. Ensure that each dengue case is provided with health education that includes measures to:
 - a. Avoid mosquito bites, and
 - b. Reduce mosquito breeding sites.
- B. Environmental control measures:** In cooperation with the Department, a local health agency or another local agency responsible for vector control within a jurisdiction shall conduct an assessment of the environment surrounding each dengue case or suspect case and implement vector control measures as necessary.

R9-6-330. Diarrhea, Nausea, or Vomiting

- A. Outbreak control measures:** A local health agency shall:
1. Conduct an epidemiologic investigation of each reported outbreak of diarrhea, nausea, or vomiting;
 2. Submit to the Department the information required under R9-6-206(E); and
 3. Exclude each case that is part of an outbreak of diarrhea, nausea, or vomiting from:
 - a. Working as a food handler, caring for patients or residents in a health care institution, or caring for children in or attending a child care establishment until:
 - i. Diarrhea and vomiting have resolved, or
 - ii. The local health agency has determined that the case is unlikely to infect other individuals; and
 - b. Using an aquatic venue for two weeks after diarrhea has resolved.
- B. Environmental control measures:** A local health agency shall conduct a sanitary inspection or ensure that a sanitary inspection is conducted of each facility or location regulated under 9 A.A.C. 8 that is associated with an outbreak of diarrhea, nausea, or vomiting.

R9-6-331. Diphtheria

- A. Case control measures:**
1. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall:
 - a. Isolate and institute droplet precautions for a pharyngeal diphtheria case or suspect case until two successive sets of cultures negative for *Corynebacterium diphtheriae* are obtained from nose and throat specimens collected from the case or suspect case at least 24 hours apart and at least 24 hours after cessation of treatment; and
 - b. Isolate and institute contact precautions for a cutaneous diphtheria case or suspect case until two successive sets of cultures negative for *Corynebacterium diphtheriae* are obtained from skin specimens collected from the case or suspect case at least 24 hours apart and at least 24 hours after cessation of treatment
 2. A local health agency shall:
 - a. Upon receiving a report under R9-6-202 of a diphtheria case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
 - b. Conduct an epidemiologic investigation of each reported diphtheria case or suspect case; and
 - c. For each diphtheria case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).
- B. Contact control measures:** A local health agency shall:
1. Exclude each diphtheria contact from working as a food handler, caring for patients or residents in a health care institution, or caring for children in or attending a school or child care establishment until a set of cultures negative for *Corynebacterium diphtheriae* is obtained from the contact's nose and throat specimens;
 2. In consultation with the Department, quarantine a contact of a diphtheria case, if indicated, until two successive sets of cultures negative for *Corynebacterium diphtheriae* are obtained from nose and throat specimens collected from the contact at least 24 hours apart;
 3. Offer each previously immunized diphtheria contact prophylaxis and a vaccine containing diphtheria toxoid; and
 4. Offer each unimmunized diphtheria contact prophylaxis and the primary vaccine series.

R9-6-332. Ehrlichiosis

Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported ehrlichiosis case or suspect case; and
2. For each ehrlichiosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-333. Emerging or Exotic Disease

A. Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of an emerging or exotic disease case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
2. In consultation with the Department, isolate an emerging or exotic disease case or suspect case as necessary to prevent transmission;
3. Conduct an epidemiologic investigation of each reported emerging or exotic disease case or suspect case; and
4. For each emerging or exotic disease case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

B. Contact control measures: A local health agency, in consultation with the Department, shall quarantine or exclude an emerging or exotic disease contact as necessary, according to R9-6-303, to prevent transmission.

R9-6-334. Encephalitis, Viral or Parasitic

Case control measures: A local health agency shall:

1. Upon receiving a report of encephalitis under R9-6-202, notify the Department:
 - a. For a case or suspect case of parasitic encephalitis, within 24 hours after receiving the report and provide to the Department the information contained in the report; and
 - b. For a case or suspect case of viral encephalitis, within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported viral or parasitic encephalitis case or suspect case; and
3. For each encephalitis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-335. Escherichia coli, Shiga Toxin-producing

A. Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 or R9-6-203 of a Shiga toxin-producing *Escherichia coli* case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Exclude a Shiga toxin-producing *Escherichia coli* case or suspect case with diarrhea from:
 - a. Working as a food handler, caring for patients or residents in a health care institution, or caring for children in or attending a child care establishment until:
 - i. Two successive stool specimens, collected from the Shiga toxin-producing *Escherichia coli* case or suspect case at least 24 hours apart, are negative for Shiga toxin-producing *Escherichia coli*;
 - ii. Diarrhea has resolved; or
 - iii. The local health agency has determined that the case or suspect case is unlikely to infect other individuals; and
 - b. Using an aquatic venue for two weeks after diarrhea has resolved;
3. Conduct an epidemiologic investigation of each reported Shiga toxin-producing *Escherichia coli* case or suspect case; and
4. For each Shiga toxin-producing *Escherichia coli* case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

B. Environmental control measures: A local health agency shall:

1. If an animal located in a private residence is suspected to be the source of infection for a Shiga toxin-producing *Escherichia coli* case or outbreak, provide health education for the animal's owner about Shiga toxin-producing *Escherichia coli* and the risks of becoming infected with Shiga toxin-producing *Escherichia coli*; and
2. If an animal located in a setting other than a private residence is suspected to be the source of infection for a Shiga toxin-producing *Escherichia coli* case or outbreak:
 - a. Provide health education for the animal's owner about Shiga toxin-producing *Escherichia coli* and the risks of becoming infected with Shiga toxin-producing *Escherichia coli*, and
 - b. Require the animal's owner to provide information to individuals with whom the animal may come into contact about Shiga toxin-producing *Escherichia coli* and methods to reduce the risk of transmission.

R9-6-336. Giardiasis

Case control measures: A local health agency shall:

1. Exclude a giardiasis case or suspect case with diarrhea from:
 - a. Working as a food handler, caring for patients or residents in a health care institution, or caring for children in or attending a child care establishment until:
 - i. Treatment for giardiasis is initiated and diarrhea has resolved, or
 - ii. The local health agency has determined that the case or suspect case is unlikely to infect other individuals; and
 - b. Using an aquatic venue for two weeks after diarrhea has resolved;
2. Conduct an epidemiologic investigation of each reported giardiasis case or suspect case; and
3. For each giardiasis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-337. Glanders

Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a glanders case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported glanders case or suspect case;
3. For each glanders case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
4. Ensure that an isolate or a specimen, as available, from each glanders case or suspect case is submitted to the Arizona State Laboratory.

R9-6-338. Gonorrhea

A. Case control measures:

1. For the prevention of gonorrheal ophthalmia, a physician, physician assistant, registered nurse practitioner, or midwife attending the birth of an infant in this state shall treat the eyes of the infant immediately after the birth with one of the following, unless treatment is refused by the parent or guardian:
 - a. Erythromycin ophthalmic ointment 0.5%, or
 - b. Tetracycline ophthalmic ointment 1%.
2. A local health agency shall comply with the requirements specified in R9-6-1103 concerning treatment and health education for a gonorrhea case that seeks treatment from the local health agency.

B. Contact control measures: If an individual who may have been exposed to gonorrhea through sexual contact with a gonorrhea case seeks treatment for symptoms of gonorrhea from a local health agency, the local health agency shall comply with the requirements specified in R9-6-1103 concerning treatment and health education for the individual.

R9-6-339. *Haemophilus influenzae*: Invasive Disease

A. Case control measures:

1. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and institute droplet precautions for a *Haemophilus influenzae* meningitis or epiglottitis case or suspect case for 24 hours after the initiation of treatment.
2. A local health agency shall:
 - a. Upon receiving a report under R9-6-202 or R9-6-203 of a *Haemophilus influenzae* invasive disease case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
 - b. Conduct an epidemiologic investigation of each reported *Haemophilus influenzae* invasive disease case or suspect case; and
 - c. For each *Haemophilus influenzae* invasive disease case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

B. Contact control measures: A local health agency shall evaluate the level of risk of transmission from each contact's exposure to a *Haemophilus influenzae* invasive disease case and, if indicated, shall provide or arrange for each contact to receive immunization or treatment.

R9-6-340. Hansen's Disease (Leprosy)

A. Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported Hansen's disease case or suspect case; and
2. For each Hansen's disease case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

- B. Contact control measures: In consultation with the Department, a local health agency shall examine contacts of a Hansen's disease case, if indicated, for signs and symptoms of leprosy at six-to-twelve month intervals for five years after the last exposure to an infectious case.

R9-6-341. Hantavirus Infection

- A. Case control measures: A local health agency shall:
 - 1. Upon receiving a report under R9-6-202 of a hantavirus infection case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
 - 2. Ensure that a hantavirus infection case or, if the case is a child or incapacitated adult, the parent or guardian of the case receives health education about reducing the risks of becoming reinfected with or of having others become infected with hantavirus;
 - 3. Conduct an epidemiologic investigation of each reported hantavirus infection case or suspect case; and
 - 4. For each hantavirus infection case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).
- B. Environmental control measures: A local health agency shall conduct an environmental assessment for each hantavirus infection case or suspect case.

R9-6-342. Hemolytic Uremic Syndrome

- A. Case control measures: A local health agency shall:
 - 1. Upon receiving a report under R9-6-202 of a hemolytic uremic syndrome case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
 - 2. Conduct an epidemiologic investigation of each reported hemolytic uremic syndrome case or suspect case; and
 - 3. For each hemolytic uremic syndrome case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).
- B. Contact control measures: A local health agency shall exclude a hemolytic uremic syndrome contact with diarrhea of unknown cause from working as a food handler until diarrhea has resolved.

R9-6-343. Hepatitis A

- A. Case control measures: A local health agency shall:
 - 1. Upon receiving a report under R9-6-202 or R9-6-203 of a hepatitis A case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
 - 2. Exclude a hepatitis A case or suspect case from working as a food handler, caring for patients or residents in a health care institution, or caring for children in or attending a child care establishment during the first 14 calendar days of illness or for seven calendar days after onset of jaundice;
 - 3. Conduct an epidemiologic investigation of each reported hepatitis A case or suspect case; and
 - 4. For each hepatitis A case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).
- B. Contact control measures: A local health agency shall:
 - 1. Exclude a hepatitis A contact with symptoms of hepatitis A from working as a food handler during the first 14 calendar days of illness or for seven calendar days after onset of jaundice;
 - 2. For 45 calendar days after exposure, monitor a food handler who was a contact of a hepatitis A case during the infectious period for symptoms of hepatitis A; and
 - 3. Evaluate the level of risk of transmission from each contact's exposure to a hepatitis A case and, if indicated, provide or arrange for each contact to receive prophylaxis and immunization.

R9-6-344. Hepatitis B and Hepatitis D

- A. Case control measures:
 - 1. A local health agency shall:
 - a. Evaluate a health care provider identified as the source of hepatitis B virus transmission in the work place and, if indicated, ensure reassignment of the health care provider to a position where the occupational risk of transmission is eliminated;
 - b. Conduct an epidemiologic investigation of each reported case or suspect case of hepatitis B or hepatitis B co-infected with hepatitis D; and
 - c. For each acute case of hepatitis B or hepatitis B co-infected with hepatitis D or case of perinatal hepatitis B, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).
 - 2. The operator of a blood bank, blood center, or plasma center shall notify a donor of a test result with significant evidence suggestive of hepatitis B, as required under A.R.S. § 32-1483 and 21 CFR 630.6.

- B.** Contact control measures: A local health agency shall:
1. Refer each non-immune hepatitis B contact to a health care provider for prophylaxis and initiation of the hepatitis B vaccine series, and
 2. Provide health education related to the progression of hepatitis B disease and the prevention of transmission of hepatitis B infection to each non-immune hepatitis B contact.

R9-6-345. Hepatitis C

Outbreak control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported hepatitis C outbreak;
2. For each hepatitis C outbreak, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(E);
3. Evaluate a health care provider identified as the source of hepatitis C virus transmission in the work place and, if indicated, ensure reassignment of the health care provider to a position where the occupational risk of transmission is eliminated; and
4. Ensure that health education related to the progression of hepatitis C disease and the prevention of transmission of hepatitis C infection is provided to each individual who may have been exposed to hepatitis C during the outbreak.

R9-6-346. Hepatitis E

Case control measures: A local health agency shall:

1. Exclude a hepatitis E case or suspect case from working as a food handler, caring for patients or residents in a health care institution, or caring for children in or attending a child care establishment during the first 14 calendar days of illness or for seven calendar days after onset of jaundice;
2. Conduct an epidemiologic investigation of each reported hepatitis E case or suspect case; and
3. For each hepatitis E case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-347. HIV Infection and Related Disease

A. Case control measures:

1. A local health agency shall:
 - a. Conduct an epidemiologic investigation, including a review of medical records, of each reported HIV-infected individual or suspect case; and
 - b. For each HIV-infected individual, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).
2. The operator of a blood bank, blood center, or plasma center shall notify a donor of a test result with significant evidence suggestive of HIV infection, as required under A.R.S. § 32-1483 and 21 CFR 630.6.
3. The Department and a local health agency shall offer anonymous HIV-testing to an individual as specified in R9-6-1005.

B. Contact control measures: The Department or the Department's designee shall confidentially notify an individual reported to be at risk for HIV infection under A.R.S. § 36-664(I) as specified in R9-6-1006(A).

C. Environmental control measures: An employer, as defined under A.R.S. § 23-401, or health care provider shall comply with the requirements specified in A.R.S. § 23-403 and A.A.C. R20-5-602.

R9-6-348. Influenza-Associated Mortality in a Child

Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a case or suspect case of an influenza-associated death of a child, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported case or suspect case of influenza-associated mortality in a child; and
3. For each case of influenza-associated mortality in a child, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-349. Legionellosis (Legionnaires' Disease)

A. Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a legionellosis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported legionellosis case or suspect case; and

3. For each legionellosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).
- B.** Environmental control measures: The owner of a water, cooling, or ventilation system or equipment that is determined by the Department or a local health agency to be associated with a case of *Legionella* infection shall comply with the environmental control measures recommended by the Department or local health agency to prevent the exposure of other individuals.

R9-6-350. Leptospirosis

Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a leptospirosis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported leptospirosis case or suspect case; and
3. For each leptospirosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-351. Listeriosis

Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a listeriosis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported listeriosis case or suspect case;
3. For each listeriosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
4. Ensure that an isolate or a specimen, as available, from each listeriosis case is submitted to the Arizona State Laboratory.

R9-6-352. Lyme Disease

Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported Lyme disease case or suspect case; and
2. For each Lyme disease case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-353. Lymphocytic Choriomeningitis

Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a lymphocytic choriomeningitis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported lymphocytic choriomeningitis case or suspect case; and
3. For each lymphocytic choriomeningitis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-354. Malaria

A. Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported malaria case or suspect case; and
2. For each malaria case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

B. Environmental control measures: In cooperation with the Department, a local health agency or another local agency responsible for vector control within a jurisdiction shall conduct an assessment of the environment surrounding each malaria case or suspect case and implement vector control measures as necessary.

R9-6-355. Measles (Rubeola)

A. Case control measures:

1. An administrator of a school or child care establishment, either personally or through a representative, shall:
 - a. Exclude a measles case from the school or child care establishment and from school- or child-care-establishment-sponsored events from the onset of illness through the fourth calendar day after the rash appears; and
 - b. Exclude a measles suspect case from the school or child care establishment and from school- or child-care-establishment-sponsored events until the local health agency has determined that the suspect case is unlikely to infect other individuals.

2. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and institute airborne precautions for a measles case from onset of illness through the fourth calendar day after the rash appears.
3. An administrator of a health care institution, either personally or through a representative, shall exclude a measles:
 - a. Case from working at the health care institution from the onset of illness through the fourth calendar day after the rash appears; and
 - b. Suspect case from working at the health care institution until the local health agency has determined that the suspect case may return to work.
4. A local health agency shall:
 - a. Upon receiving a report under R9-6-202 or R9-6-203 of a measles case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
 - b. Conduct an epidemiologic investigation of each reported measles case or suspect case;
 - c. For each measles case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
 - d. Ensure that one or more specimens from each measles case or suspect case, as required by the Department, are submitted to the Arizona State Laboratory.
5. An administrator of a correctional facility or shelter, either personally or through a representative, shall comply with the measles control measures recommended by a local health agency or the Department.

B. Contact control measures:

1. When a measles case has been at a school or child care establishment, the administrator of the school or child care establishment, either personally or through a representative, shall:
 - a. Consult with the local health agency to determine who shall be excluded and how long each individual shall be excluded from the school or child care establishment, and
 - b. Comply with the local health agency's recommendations for exclusion.
2. A local health agency shall:
 - a. Determine which measles contacts will be quarantined or excluded, according to R9-6-303, to prevent transmission; and
 - b. Provide or arrange for immunization of each non-immune measles contact within 72 hours after last exposure, if possible.
3. An administrator of a health care institution shall ensure that a paid or volunteer full-time or part-time worker at a health care institution does not participate in the direct care of a measles case or suspect case unless the worker is able to provide evidence of immunity to measles through one of the following:
 - a. A record of immunization against measles with two doses of live virus vaccine given on or after the first birthday and at least one month apart;
 - b. A statement signed by a physician, physician assistant, registered nurse practitioner, state health officer, or local health officer affirming serologic evidence of immunity to measles; or
 - c. Documentary evidence of birth before January 1, 1957.

R9-6-356. Melioidosis

Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a melioidosis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported melioidosis case or suspect case;
3. For each melioidosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
4. Ensure that an isolate or a specimen, as available, from each melioidosis case or suspect case is submitted to the Arizona State Laboratory.

R9-6-357. Meningococcal Invasive Disease

A. Case control measures:

1. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and institute droplet precautions for a meningococcal invasive disease case for 24 hours after the initiation of treatment.
2. A local health agency shall:
 - a. Upon receiving a report under R9-6-202 or R9-6-203 of a meningococcal invasive disease case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
 - b. Conduct an epidemiologic investigation of each reported meningococcal invasive disease case or suspect case;
 - c. For each meningococcal invasive disease case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and

- d. Ensure that an isolate or a specimen, as available, from each meningococcal invasive disease case is submitted to the Arizona State Laboratory.
- B. Contact control measures: A local health agency shall evaluate the level of risk of transmission from each contact's exposure to a meningococcal invasive disease case and, if indicated, provide or arrange for each contact to receive prophylaxis.

R9-6-358. Methicillin-resistant *Staphylococcus aureus* (MRSA)

- A. Case control measures:
 - 1. A diagnosing health care provider or an administrator of a health care institution transferring a known methicillin-resistant *Staphylococcus aureus* case with active infection to another health care provider or health care institution or to a correctional facility shall, either personally or through a representative, ensure that the receiving health care provider, health care institution, or correctional facility is informed that the patient is a known methicillin-resistant *Staphylococcus aureus* case.
 - 2. If a known methicillin-resistant *Staphylococcus aureus* case with active infection is being transferred from a correctional facility to another correctional facility or to a health care institution, an administrator of the correctional facility, either personally or through a representative, shall ensure that the receiving correctional facility or health care institution is informed that the individual is a known methicillin-resistant *Staphylococcus aureus* case.
- B. Outbreak control measures:
 - 1. A local health agency, in consultation with the Department, shall:
 - a. Conduct an epidemiologic investigation of each reported outbreak of methicillin-resistant *Staphylococcus aureus* in a health care institution or correctional facility; and
 - b. For each outbreak of methicillin-resistant *Staphylococcus aureus* in a health care institution or correctional facility, submit to the Department the information required under R9-6-206(E).
 - 2. When an outbreak of methicillin-resistant *Staphylococcus aureus* occurs in a health care institution or correctional facility, the administrator of the health care institution or correctional facility, either personally or through a representative, shall comply with the control measures recommended by a local health agency or the Department.

R9-6-359. Mumps

- A. Case control measures:
 - 1. An administrator of a school or child care establishment, either personally or through a representative, shall:
 - a. Exclude a mumps case from the school or child care establishment for five calendar days after the onset of glandular swelling; and
 - b. Exclude a mumps suspect case from the school or child care establishment and from school- or child-care-establishment-sponsored events until evaluated and determined to be noninfectious by a physician, physician assistant, registered nurse practitioner, or local health agency.
 - 2. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and institute droplet precautions with a mumps case for five calendar days after the onset of glandular swelling.
 - 3. An administrator of a health care institution, either personally or through a representative, shall exclude a mumps:
 - a. Case from working at the health care institution for five calendar days after the onset of glandular swelling; and
 - b. Suspect case from working at the health care institution until evaluated and determined to be noninfectious by a physician, physician assistant, registered nurse practitioner, or local health agency.
 - 4. A local health agency shall:
 - a. Upon receiving a report under R9-6-202 or R9-6-203 of a mumps case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
 - b. Conduct an epidemiologic investigation of each reported mumps case or suspect case;
 - c. For each mumps case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
 - d. Ensure that one or more specimens from each mumps case or suspect case, as required by the Department, are submitted to the Arizona State Laboratory.
 - 5. An administrator of a correctional facility or shelter, either personally or through a representative, shall comply with the mumps control measures recommended by a local health agency or the Department.
- B. Contact control measures:
 - 1. When a mumps case has been at a school or child care establishment, the administrator of the school or child care establishment, either personally or through a representative, shall:
 - a. Consult with the local health agency to determine who shall be excluded and how long each individual shall be excluded from the school or child care establishment, and
 - b. Comply with the local health agency's recommendations for exclusion.
 - 2. An administrator of a health care institution shall ensure that a paid or volunteer full-time or part-time worker at a health care institution does not participate in the direct care of a mumps case or suspect case unless the worker is able to provide evidence of immunity to mumps through one of the following:

- a. A record of immunization against mumps with two doses of live virus vaccine given on or after the first birthday and at least one month apart; or
 - b. A statement signed by a physician, physician assistant, registered nurse practitioner, state health officer, or local health officer affirming serologic evidence of immunity to mumps.
3. A local health agency shall determine which mumps contacts will be:
- a. Quarantined or excluded, according to R9-6-303, to prevent transmission; and
 - b. Advised to obtain an immunization against mumps.

R9-6-360. Norovirus

- A. Outbreak control measures:** A local health agency shall:
- 1. Conduct an epidemiologic investigation of each reported norovirus outbreak;
 - 2. Submit to the Department the information required under R9-6-206(E); and
 - 3. Exclude each case that is part of a norovirus outbreak from working as a food handler, caring for patients or residents in a health care institution, or caring for children in or attending a child care establishment until:
 - a. Diarrhea has resolved, or
 - b. The local health agency has determined that the case or suspect case is unlikely to infect other individuals.
- B. Environmental control measures:** A local health agency shall conduct a sanitary inspection or ensure that a sanitary inspection is conducted of each facility or location regulated under 9 A.A.C. 8 that is associated with a norovirus outbreak.

R9-6-361. Novel Coronavirus (e.g., SARS or MERS)

- A. Case control measures:**
- 1. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and institute both airborne precautions and contact precautions for a novel coronavirus case or suspect case, including a case or suspect case of severe acute respiratory syndrome or Middle East respiratory syndrome, until evaluated and determined to be noninfectious by a physician, physician assistant, or registered nurse practitioner.
 - 2. A local health agency shall:
 - a. Upon receiving a report under R9-6-202 of a novel coronavirus case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
 - b. In consultation with the Department, ensure that isolation and both airborne precautions and contact precautions have been instituted for a novel coronavirus case or suspect case to prevent transmission;
 - c. Conduct an epidemiologic investigation of each reported novel coronavirus case or suspect case; and
 - d. For each novel coronavirus case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).
- B. Contact control measures:** A local health agency, in consultation with the Department, shall determine which novel coronavirus contacts will be quarantined or excluded, according to R9-6-303, to prevent transmission.

R9-6-362. Pediculosis (Lice Infestation)

- A. Case control measures:**
- 1. An administrator of a school or child care establishment, either personally or through a representative, shall exclude a pediculosis case from the school or child care establishment until the case is treated with a pediculocide.
 - 2. An administrator of a shelter shall ensure that a pediculosis case is treated with a pediculocide and that the case's clothing and personal articles are disinfested.
- B. Contact control measures:** An administrator of a school or child care establishment that excludes a pediculosis case from the school or child care establishment, either personally or through a representative, shall ensure that a parent or guardian of a child who is a contact is notified that a pediculosis case was identified at the school or child care establishment.

R9-6-363. Pertussis (Whooping Cough)

- A. Case control measures:**
- 1. An administrator of a school or child care establishment, either personally or through a representative, shall:
 - a. Exclude a pertussis case from the school or child care establishment for 21 calendar days after the date of onset of cough or for five calendar days after the date of initiation of antibiotic treatment for pertussis; and
 - b. Exclude a pertussis suspect case from the school or child care establishment until evaluated and determined to be noninfectious by a physician, physician assistant, registered nurse practitioner, or local health agency.
 - 2. An administrator of a health care institution, either personally or through a representative, shall:
 - a. Exclude a pertussis case from working at the health care institution for 21 calendar days after the date of onset of cough or for five calendar days after the date of initiation of antibiotic treatment for pertussis; and

- b. Exclude a pertussis suspect case from working at the health care institution until evaluated and determined to be noninfectious by a physician, physician assistant, registered nurse practitioner, or local health agency.
 - 3. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and initiate droplet precautions for a pertussis case for five calendar days after the date of initiation of antibiotic treatment for pertussis.
 - 4. A local health agency shall:
 - a. Upon receiving a report under R9-6-202 or R9-6-203 of a pertussis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
 - b. Conduct an epidemiologic investigation of each reported pertussis case or suspect case; and
 - c. For each pertussis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).
 - 5. An administrator of a correctional facility or shelter, either personally or through a representative, shall comply with the pertussis control measures recommended by a local health agency or the Department.
- B. Contact control measures:**
- 1. When a pertussis case has been at a school or child care establishment, the administrator of the school or child care establishment, either personally or through a representative, shall:
 - a. Consult with the local health agency to determine who shall be excluded and how long each individual shall be excluded from the school or child care establishment, and
 - b. Comply with the local health agency's recommendations for exclusion.
 - 2. A local health agency shall identify contacts of a pertussis case and shall:
 - a. Determine which pertussis contacts will be quarantined or excluded, according to R9-6-303, to prevent transmission; and
 - b. If indicated, provide or arrange for a pertussis contact to receive antibiotic prophylaxis.

R9-6-364. Plague

- A. Case control measures:**
- 1. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and institute droplet precautions for a pneumonic plague case or suspect case until 72 hours of antibiotic therapy have been completed with favorable clinical response.
 - 2. An individual handling the body of a deceased plague case shall use droplet precautions.
 - 3. A local health agency shall:
 - a. Upon receiving a report under R9-6-202 of a plague case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
 - b. Conduct an epidemiologic investigation of each reported plague case or suspect case;
 - c. For each plague case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
 - d. Ensure that an isolate or a specimen, as available, from each plague case or suspect case is submitted to the Arizona State Laboratory.
- B. Contact control measures:** A local health agency shall provide follow-up to pneumonic plague contacts for seven calendar days after last exposure to a pneumonic plague case.

R9-6-365. Poliomyelitis (Paralytic or Non-paralytic)

Case control measures: A local health agency shall:

- 1. Upon receiving a report under R9-6-202 of a poliomyelitis case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
- 2. Conduct an epidemiologic investigation of each reported poliomyelitis case or suspect case;
- 3. For each poliomyelitis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
- 4. Ensure that one or more specimens from each poliomyelitis case or suspect case, as required by the Department, are submitted to the Arizona State Laboratory.

R9-6-366. Psittacosis (Ornithosis)

A. Case control measures: A local health agency shall:

- 1. Conduct an epidemiologic investigation of each reported psittacosis case or suspect case; and
- 2. For each psittacosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

B. Environmental control measures: A local health agency shall:

- 1. If a bird infected with *Chlamydia psittaci* or *Chlamydophila psittaci* is located in a private residence:

- a. Provide health education for the bird's owner about psittacosis and the risks of becoming infected with psittacosis, and
- b. Advise the bird's owner to obtain treatment for the bird; and
2. If a bird infected with *Chlamydia psittaci* or *Chlamydophila psittaci* is located in a setting other than a private residence:
 - a. Provide health education for the bird's owner about psittacosis and the risks of becoming infected with psittacosis,
 - b. Ensure that the bird is treated or destroyed and any contaminated structures are disinfected, and
 - c. Require the bird's owner to isolate the bird from contact with members of the public and from other birds until treatment of the bird is completed or the bird is destroyed.

R9-6-367. Q Fever

Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a Q fever case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported Q fever case or suspect case; and
3. For each Q fever case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-368. Rabies in a Human

A. Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a human rabies case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported human rabies case or suspect case;
3. For each human rabies case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
4. Ensure that a specimen from each human rabies case or suspect case, as required by the Department, is submitted to the Arizona State Laboratory.

B. Contact control measures: A local health agency shall evaluate the level of risk of transmission from each contact's exposure to a human rabies case and, if indicated, provide or arrange for each contact to receive prophylaxis.

R9-6-369. Relapsing Fever (Borreliosis)

Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a borreliosis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported borreliosis case or suspect case; and
3. For each borreliosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-370. Respiratory Disease in a Health Care Institution or Correctional Facility

Outbreak control measures:

1. A local health agency shall:
 - a. Conduct an epidemiologic investigation of each reported outbreak of respiratory disease in a health care institution or correctional facility; and
 - b. For each outbreak of respiratory disease in a health care institution or correctional facility, submit to the Department the information required under R9-6-206(E).
2. When an outbreak of respiratory disease occurs in a health care institution or correctional facility, the administrator of the health care institution or correctional facility, either personally or through a representative, shall comply with the control measures recommended by a local health agency.

R9-6-371. Rubella (German Measles)

A. Case control measures:

1. An administrator of a school or child care establishment, either personally or through a representative, shall:
 - a. Exclude a rubella case from the school or child care establishment and from school- or child-care-establishment-sponsored events from the onset of illness through the seventh calendar day after the rash appears; and
 - b. Exclude a rubella suspect case from the school or child care establishment and from school- or child-care-establishment-sponsored events until evaluated and determined to be noninfectious by a physician, physician assistant, registered nurse practitioner, or local health agency.

2. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative and in consultation with the local health agency, shall isolate and institute droplet precautions for a rubella case through the seventh calendar day after the rash appears.
3. An administrator of a health care institution, either personally or through a representative, shall exclude a rubella:
 - a. Case from working at the health care institution from the onset of illness through the seventh calendar day after the rash appears; and
 - b. Suspect case from working at the health care institution until evaluated and determined to be noninfectious by a physician, physician assistant, registered nurse practitioner, or local health agency.
4. A local health agency shall:
 - a. Upon receiving a report under R9-6-202 or R9-6-203 of a rubella case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
 - b. Conduct an epidemiologic investigation of each reported rubella case or suspect case;
 - c. For each rubella case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
 - d. Ensure that one or more specimens from each rubella case or suspect case, as required by the Department, are submitted to the Arizona State Laboratory.
5. An administrator of a correctional facility or shelter, either personally or through a representative, shall comply with the rubella control measures recommended by a local health agency or the Department.

B. Contact control measures:

1. An administrator of a health care institution shall ensure that a paid or volunteer full-time or part-time worker at a health care institution does not participate in the direct care of a rubella case or suspect case or of a patient who is or may be pregnant unless the worker first provides evidence of immunity to rubella consisting of:
 - a. A record of immunization against rubella given on or after the first birthday; or
 - b. A statement signed by a physician, physician assistant, registered nurse practitioner, state health officer, or local health officer affirming serologic evidence of immunity to rubella.
2. When a rubella case has been at a school or child care establishment, the administrator of the school or child care establishment, either personally or through a representative, shall:
 - a. Consult with the local health agency to determine who shall be excluded and how long each individual shall be excluded from the school or child care establishment, and
 - b. Comply with the local health agency's recommendations for exclusion.
3. A local health agency shall:
 - a. Determine which rubella contacts will be quarantined or excluded, according to R9-6-303, to prevent transmission; and
 - b. Provide or arrange for immunization of each non-immune rubella contact within 72 hours after last exposure, if possible.

R9-6-372. Rubella Syndrome, Congenital

A. Case control measures:

1. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and implement contact precautions for an infant congenital rubella syndrome case until:
 - a. The infant congenital rubella syndrome case reaches one year of age; or
 - b. Two successive negative virus cultures, from specimens collected at least one month apart, are obtained from the infant congenital rubella syndrome case after the infant congenital rubella syndrome case reaches three months of age.
2. A local health agency shall:
 - a. Upon receiving a report under R9-6-202 of a congenital rubella syndrome case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
 - b. Conduct an epidemiologic investigation of each reported congenital rubella syndrome case or suspect case;
 - c. For each congenital rubella syndrome case, as specified in Table 2.4, the information required under R9-6-206(D); and
 - d. Ensure that one or more specimens from each congenital rubella syndrome case or suspect case, as required by the Department, are submitted to the Arizona State Laboratory.

- B. Contact control measures:** An administrator of a health care institution shall ensure that a paid or volunteer full-time or part-time worker at a health care institution who is known to be pregnant does not participate in the direct care of a congenital rubella syndrome case or suspect case unless the worker first provides evidence of immunity to rubella that complies with R9-6-371(B)(1).

R9-6-373. Salmonellosis

- A. Case control measures:** A local health agency shall:

1. Upon receiving a report under R9-6-202 or R9-6-203 of a salmonellosis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
 2. Exclude a salmonellosis case or suspect case with diarrhea from:
 - a. Working as a food handler, caring for children in or attending a child care establishment, or caring for patients or residents in a health care institution until:
 - i. Diarrhea has resolved,
 - ii. A stool specimen negative for *Salmonella* spp. is obtained from the salmonellosis case or suspect case, or
 - iii. The local health agency has determined that the case or suspect case is unlikely to infect other individuals; and
 - b. Using an aquatic venue until diarrhea has resolved;
 3. Conduct an epidemiologic investigation of each reported salmonellosis case or suspect case; and
 4. For each salmonellosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).
- B. Environmental control measures:** A local health agency shall:
1. If an animal infected with *Salmonella* spp. is located in a private residence, provide health education for the animal's owner about salmonellosis and the risks of becoming infected with *Salmonella* spp.; and
 2. If an animal infected with *Salmonella* spp. is located in a setting other than a private residence:
 - a. Provide health education for the animal's owner about salmonellosis and the risks of becoming infected with *Salmonella* spp., and
 - b. Require the animal's owner to provide information to individuals with whom the animal may come into contact about salmonellosis and methods to reduce the risk of transmission.

R9-6-374. Scabies

- A. Case control measures:**
1. An administrator of a school or child care establishment, either personally or through a representative, shall exclude a scabies case from the school or child care establishment until treatment for scabies is completed.
 2. An administrator of a health care institution or shelter, either personally or through a representative, shall exclude a scabies case from participating in the direct care of a patient or resident until treatment for scabies is completed.
 3. An administrator of a shelter, either personally or through a representative, shall ensure that a scabies case receives treatment for scabies and that the case's clothing and personal articles are disinfested.
 4. An administrator of a correctional facility, either personally or through a representative, shall ensure that a scabies case receives treatment for scabies and that the case's clothing and personal articles are disinfested.
- B. Contact control measures:** An administrator of a school, child care establishment, health care institution, or shelter, either personally or through a representative, shall advise a scabies contact with symptoms of scabies to obtain examination and, if necessary, treatment.
- C. Outbreak control measures:** A local health agency shall:
1. Provide health education regarding prevention, control, and treatment of scabies to individuals affected by a scabies outbreak;
 2. When a scabies outbreak occurs in a health care institution, notify the licensing agency of the outbreak; and
 3. For each scabies outbreak, submit to the Department the information required under R9-6-202(D).

R9-6-375. Shigellosis

Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 or R9-6-203 of a shigellosis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Exclude a shigellosis case or suspect case with diarrhea from:
 - a. Working as a food handler, caring for children in or attending a child care establishment, or caring for patients or residents in a health care institution until:
 - i. Diarrhea has resolved,
 - ii. A stool specimen negative for *Shigella* spp. is obtained from the shigellosis case or suspect case, or
 - iii. The local health agency has determined that the case or suspect case is unlikely to infect other individuals; and
 - b. Using an aquatic venue for one week after diarrhea has resolved;
3. Conduct an epidemiologic investigation of each reported shigellosis case or suspect case; and
4. For each shigellosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-376. Smallpox

A. Case control measures:

1. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and institute both airborne precautions and contact precautions for a smallpox case or suspect

case, until evaluated and determined to be noninfectious by a physician, physician assistant, or registered nurse practitioner.

2. A local health agency shall:
 - a. Upon receiving a report under R9-6-202 of a smallpox case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
 - b. In consultation with the Department:
 - i. Ensure that isolation and both airborne precautions and contact precautions have been instituted for a smallpox case or suspect case to prevent transmission, and
 - ii. Conduct an epidemiologic investigation of each reported smallpox case or suspect case;
 - c. For each smallpox case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
 - d. Ensure that a specimen from each smallpox case or suspect case, as required by the Department, is submitted to the Arizona State Laboratory.
- B. Contact control measures: A local health agency, in consultation with the Department, shall:
 1. Quarantine or exclude a smallpox contact as necessary, according to R9-6-303, to prevent transmission; and
 2. Monitor the contact for smallpox symptoms, including fever, each day for 21 calendar days after last exposure.

R9-6-377. Spotted Fever Rickettsiosis (e.g., Rocky Mountain Spotted Fever)

- A. Case control measures: A local health agency shall:
 1. Upon receiving a report under R9-6-202 of a spotted fever rickettsiosis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
 2. Ensure that a spotted fever rickettsiosis case or, if the case is a child or incapacitated adult, the parent or guardian of the case receives health education about reducing the risks of becoming reinfected with or of having others become infected with spotted fever rickettsiosis;
 3. Conduct an epidemiologic investigation of each reported spotted fever rickettsiosis case or suspect case; and
 4. For each spotted fever rickettsiosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).
- B. Environmental control measures: In cooperation with the Department, a local health agency or another local agency responsible for vector control within a jurisdiction shall conduct an assessment of the environment surrounding each spotted fever rickettsiosis case or suspect case and implement vector control measures as necessary.

R9-6-378. Streptococcal Group A Infection

- A. Streptococcal group A infection, invasive or non-invasive:

Case control measures: An administrator of a school, child care establishment, or health care institution or a person in charge of a food establishment, either personally or through a representative, shall exclude a streptococcal group A infection case with streptococcal lesions or streptococcal sore throat from working as a food handler, attending or working in a school, caring for children in or attending a child care establishment, or caring for patients or residents in a health care institution for 24 hours after the initiation of treatment for streptococcal group A infection.
- B. Invasive streptococcal group A infection:

Outbreak control measures: A local health agency shall:

 1. Conduct an epidemiologic investigation of each reported outbreak of streptococcal group A invasive infection;
 2. For each streptococcal group A invasive infection case involved in an outbreak, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
 3. For each outbreak of streptococcal group A invasive infection, submit to the Department the information required under R9-6-206(E).

R9-6-379. Streptococcal Group B Invasive Infection in an Infant Younger Than 90 Days of Age

- Case control measures: A local health agency shall:
1. Confirm the diagnosis of streptococcal group B invasive infection for each reported case or suspect case of streptococcal group B invasive infection in an infant younger than 90 days of age; and
 2. For each case of streptococcal group B infection in an infant younger than 90 days of age, submit to the Department the information required under R9-6-202(C).

R9-6-380. *Streptococcus pneumoniae* Invasive Infection

- Outbreak control measures: A local health agency shall:
1. Conduct an epidemiologic investigation of each reported outbreak of *Streptococcus pneumoniae* invasive infection; and

2. For each outbreak of *Streptococcus pneumoniae* invasive infection, submit to the Department the information required under R9-6-206(E).

R9-6-381. Syphilis

A. Case control measures:

1. A syphilis case shall obtain serologic testing for syphilis three months, six months, and one year after initiating treatment, unless more frequent or longer testing is recommended by a local health agency.
2. A health care provider for a pregnant syphilis case shall order serologic testing for syphilis at 28 to 32 weeks gestation and at delivery.
3. A local health agency shall:
 - a. Conduct an epidemiologic investigation, including a review of medical records, of each reported syphilis case or suspect case, confirming the stage of the disease;
 - b. For each syphilis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D);
 - c. If the syphilis case is pregnant, ensure that the syphilis case obtains the serologic testing for syphilis required in subsection (A)(1) and (A)(2); and
 - d. Comply with the requirements specified in R9-6-1103 concerning treatment and health education for a syphilis case.
4. The operator of a blood bank, blood center, or plasma center shall notify a donor of a test result with significant evidence suggestive of syphilis, as required under A.R.S. § 32-1483 and 21 CFR 630.6.

B. Contact control measures: When a syphilis case has named a contact, a local health agency shall comply with the requirements specified in R9-6-1103 concerning notification, testing, treatment, and health education for the contact.

C. Outbreak control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported syphilis outbreak; and
2. For each syphilis outbreak, submit to the Department the information required under R9-6-206(E).

R9-6-382. Taeniasis

Case control measures: A local health agency shall:

1. Exclude a taeniasis case with *Taenia* spp. from working as a food handler, caring for children in or attending a child care establishment, or caring for patients or residents in a health care institution until free of infestation;
2. Conduct an epidemiologic investigation of each reported taeniasis case; and
3. For each taeniasis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-383. Tetanus

Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported tetanus case or suspect case; and
2. For each tetanus case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-384. Toxic Shock Syndrome

Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported toxic shock syndrome case or suspect case; and
2. For each toxic shock syndrome case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-385. Trichinosis

Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a trichinosis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported trichinosis case or suspect case; and
3. For each trichinosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-386. Tuberculosis

A. Case control measures:

1. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and institute airborne precautions for:

- a. An individual with infectious active tuberculosis until:
 - i. At least three successive sputum smears collected at least eight hours apart, at least one of which is taken first thing in the morning as soon as possible after the individual awakens from sleep, are negative for acid-fast bacilli;
 - ii. Anti-tuberculosis treatment is initiated with multiple antibiotics; and
 - iii. Clinical signs and symptoms of active tuberculosis are improved;
 - b. A suspect case of infectious active tuberculosis until:
 - i. At least two successive tests for tuberculosis, using a product and methodology approved by the U.S. Food and Drug Administration for use when making decisions whether to discontinue isolation and airborne precautions, for the suspect case are negative; or
 - ii. At least three successive sputum smears collected from the suspect case as specified in subsection (A)(1)(a)(i) are negative for acid-fast bacilli, anti-tuberculosis treatment of the suspect case is initiated with multiple antibiotics, and clinical signs and symptoms of active tuberculosis are improved; and
 - c. A case or suspect case of multi-drug resistant active tuberculosis until a tuberculosis control officer has approved the release of the case or suspect case.
2. An administrator of a health care institution, either personally or through a representative, shall notify a local health agency at least one working day before discharging a tuberculosis case or suspect case.
 3. A local health agency shall:
 - a. Upon receiving a report under R9-6-202 of a tuberculosis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
 - b. Exclude an individual with infectious active tuberculosis or a suspect case from working, unless the individual's work setting has been approved by a tuberculosis control officer, until the individual with infectious active tuberculosis or suspect case is released from airborne precautions according to the applicable criteria in subsection (A)(1);
 - c. Conduct an epidemiologic investigation of each reported tuberculosis case, suspect case, or latent infection in a child five years of age or younger;
 - d. For each tuberculosis case or suspect case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D);
 - e. Ensure that an isolate or a specimen, as available, from each tuberculosis case is submitted to the Arizona State Laboratory; and
 - f. Comply with the requirements specified in R9-6-1202.
- B. Contact control measures:**
1. A contact of an individual with infectious active tuberculosis shall allow a local health agency to evaluate the contact's tuberculosis status.
 2. A local health agency shall comply with the tuberculosis contact control measures specified in R9-6-1202.
- C. An individual is not a tuberculosis case if the individual has a positive result from an approved test for tuberculosis but does not have clinical signs or symptoms of disease.**

R9-6-387. Tularemia

Case control measures:

1. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate a pneumonic tularemia case until 72 hours of antibiotic therapy have been completed with favorable clinical response.
2. A local health agency shall:
 - a. Upon receiving a report under R9-6-202 of a tularemia case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
 - b. Conduct an epidemiologic investigation of each reported tularemia case or suspect case;
 - c. For each tularemia case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
 - d. Ensure that an isolate or a specimen, as available, from each tularemia case or suspect case is submitted to the Arizona State Laboratory.

R9-6-388. Typhoid Fever

A. Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a typhoid fever case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported typhoid fever case or suspect case;
3. For each typhoid fever case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D);

4. Exclude a typhoid fever case or suspect case from working as a food handler, caring for children in or attending a child care establishment, or caring for patients or residents in a health care institution until:
 - a. At least one month after the date of onset of illness; and
 - b. After two successive stool specimens, collected from the typhoid fever case at least 24 hours apart and at least 48 hours after cessation of antibiotic therapy, are negative for *Salmonella typhi*;
 5. If a stool specimen from a typhoid fever case who has received antibiotic therapy is positive for *Salmonella typhi*, enforce the exclusions specified in subsection (A)(4) until two successive stool specimens, collected from the typhoid fever case at least one month apart and 12 or fewer months after the date of onset of illness, are negative for *Salmonella typhi*;
 6. If a positive stool specimen, collected at least 12 months after onset of illness, is obtained from a typhoid fever case who has received antibiotic therapy, redesignate the case as a carrier; and
 7. Exclude a typhoid fever carrier from working as a food handler, caring for children in or attending a child care establishment, or caring for patients or residents in a health care institution until three successive stool specimens, collected from the typhoid fever carrier at least one month apart, are negative for *Salmonella typhi*.
- B.** Contact control measures: A local health agency shall exclude a typhoid fever contact from working as a food handler, caring for children in or attending a child care establishment, or caring for patients or residents in a health care institution until two successive stool specimens, collected from the typhoid fever contact at least 24 hours apart, are negative for *Salmonella typhi*.

R9-6-389. Typhus Fever

Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a typhus fever case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported typhus fever case or suspect case; and
3. For each typhus fever case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-390. Vaccinia-related Adverse Event

Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a case or suspect case of a vaccinia-related adverse event, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported case or suspect case of a vaccinia-related adverse event; and
3. For each case of a vaccinia-related adverse event, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-391. Vancomycin-Resistant or Vancomycin-Intermediate *Staphylococcus aureus*

Case control measures:

1. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and implement contact precautions for a case or suspect case of vancomycin-resistant or vancomycin-intermediate *Staphylococcus aureus*.
2. A diagnosing health care provider or an administrator of a health care institution transferring a known case with active infection or a known carrier of vancomycin-resistant or vancomycin-intermediate *Staphylococcus aureus* to another health care provider or health care institution shall, either personally or through a representative, comply with R9-6-305.
3. A local health agency, in consultation with the Department, shall:
 - a. Upon receiving a report under R9-6-202 of a case or suspect case of vancomycin-resistant or vancomycin-intermediate *Staphylococcus aureus*, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
 - b. Ensure that a case or suspect case of vancomycin-resistant or vancomycin-intermediate *Staphylococcus aureus* is isolated as necessary to prevent transmission;
 - c. Conduct an epidemiologic investigation of each reported case or suspect case of vancomycin-resistant or vancomycin-intermediate *Staphylococcus aureus*;
 - d. For each case of vancomycin-resistant or vancomycin-intermediate *Staphylococcus aureus*, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
 - e. Ensure that an isolate or a specimen, as available, from each case of vancomycin-resistant or vancomycin-intermediate *Staphylococcus aureus* is submitted to the Arizona State Laboratory.

R9-6-392. Varicella (Chickenpox)

A. Case control measures:

1. An administrator of a school or child care establishment, either personally or through a representative, shall exclude a varicella case from the school or child care establishment and from school- or child-care-establishment-sponsored events until lesions are dry and crusted.
2. An administrator of a health care institution, either personally or through a representative, shall isolate and implement airborne precautions for a varicella case until the case is no longer infectious.
3. A local health agency shall:
 - a. Conduct an epidemiologic investigation of each reported case of death due to primary varicella infection; and
 - b. For each reported case of death due to varicella infection, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

B. Contact control measures:

1. When a varicella case has been at a school or child care establishment, the administrator of the school or child care establishment, either personally or through a representative, shall:
 - a. Consult with the local health agency to determine who shall be excluded and how long each individual shall be excluded from the school or child care establishment, and
 - b. Comply with the local health agency's recommendations for exclusion.
2. A local health agency shall determine which contacts of a varicella case will be:
 - a. Excluded from a school or child care establishment, and
 - b. Advised to obtain an immunization against varicella.

R9-6-393. *Vibrio* Infection

Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a *Vibrio* infection case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Exclude a *Vibrio* infection case or suspect case with diarrhea from:
 - a. Working as a food handler, caring for patients or residents in a health care institution, or caring for children in or attending a child care establishment until:
 - i. Diarrhea has resolved, or
 - ii. The local health agency has determined that the case or suspect case is unlikely to infect other individuals; and
 - b. Using an aquatic venue until diarrhea has resolved;
3. Conduct an epidemiologic investigation of each reported *Vibrio* infection case or suspect case; and
4. For each *Vibrio* infection case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-394. *Viral Hemorrhagic Fever*

A. Case control measures:

1. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and implement both droplet precautions and contact precautions for a viral hemorrhagic fever case or suspect case for the duration of the illness.
2. A local health agency shall:
 - a. Upon receiving a report under R9-6-202 of a viral hemorrhagic fever case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
 - b. Conduct an epidemiologic investigation of each reported viral hemorrhagic fever case or suspect case;
 - c. For each viral hemorrhagic fever case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
 - d. Ensure that one or more specimens from each viral hemorrhagic fever case or suspect case are submitted to the Arizona State Laboratory.

B. Contact control measures: A local health agency, in consultation with the Department, shall quarantine a viral hemorrhagic fever contact as necessary to prevent transmission.

R9-6-395. *West Nile Virus* Infection

A. Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported West Nile virus infection case or suspect case;
2. For each case of West Nile virus infection, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
3. Ensure that each West Nile virus infection case is provided with health education that includes measures to:
 - a. Avoid mosquito bites, and
 - b. Reduce mosquito breeding sites.

- B.** Environmental control measures: In cooperation with the Department, a local health agency or another local agency responsible for vector control within a jurisdiction shall conduct an assessment of the environment surrounding each West Nile virus infection case or suspect case and implement vector control measures as necessary.

R9-6-396. Yellow Fever

- A.** Case control measures: A local health agency shall:
1. Upon receiving a report under R9-6-202 of a yellow fever case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
 2. Conduct an epidemiologic investigation of each reported yellow fever case or suspect case;
 3. For each yellow fever case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D);
 4. Ensure that each yellow fever case is provided with health education that includes measures to:
 - a. Avoid mosquito bites, and
 - b. Reduce mosquito breeding sites; and
 5. Ensure that an isolate or a specimen, as available, from each yellow fever case or suspect case is submitted to the Arizona State Laboratory.
- B.** Environmental control measures: In cooperation with the Department, a local health agency or another local agency responsible for vector control within a jurisdiction shall conduct an assessment of the environment surrounding each yellow fever case or suspect case and implement vector control measures as necessary.

R9-6-397. Yersiniosis (Enteropathogenic *Yersinia*)

Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a yersiniosis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Exclude a yersiniosis case or suspect case with diarrhea from:
 - a. Working as a food handler, caring for patients or residents in a health care institution, or caring for children in or attending a child care establishment until:
 - i. Diarrhea has resolved,
 - ii. A stool specimen negative for enteropathogenic *Yersinia* is obtained from the case or suspect case, or
 - iii. The local health agency has determined that the case or suspect case is unlikely to infect other individuals; and
 - b. Using an aquatic venue for two weeks after diarrhea has resolved;
3. Conduct an epidemiologic investigation of each reported yersiniosis case or suspect case;
4. For each yersiniosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
5. Ensure that an isolate or a specimen, as available, from each yersiniosis case is submitted to the Arizona State Laboratory.

R9-6-398. Zika Virus Infection

- A.** Case control measures: A local health agency shall:
1. Upon receiving a report under R9-6-202 of a Zika virus infection case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
 2. Conduct an epidemiologic investigation of each reported Zika virus infection case or suspect case;
 3. For each Zika virus infection case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D);
 4. Ensure that one or more specimens from each Zika virus infection case or suspect case, as required by the Department, are submitted to the Arizona State Laboratory; and
 5. Provide to the Zika virus infection case or ensure that another person provides to the Zika virus infection case health education that includes measures to:
 - a. Avoid mosquito bites,
 - b. Reduce mosquito breeding sites, and
 - c. Reduce the risk of sexual or congenital transmission of Zika virus.
- B.** Environmental control measures: In cooperation with the Department, a local health agency or another local agency responsible for vector control within a jurisdiction shall conduct an assessment of the environment surrounding each Zika virus infection case or suspect case and implement vector control measures as necessary.

As of November 14, 2022

36-446. Definitions

In this article, unless the context otherwise requires:

1. "Administrator" or "nursing care institution administrator" means a person who is charged with the general administration of a nursing care institution, whether or not that person has an ownership interest in the institution and whether or not the person's functions and duties are shared with others.
2. "Assisted living facility" has the same meaning prescribed in section 36-401.
3. "Assisted living facility manager" means a person who has responsibility for administering or managing an assisted living facility, whether or not that person has an ownership interest in the institution and whether or not the person's functions and duties are shared with others.
4. "Assisted living facility training program" includes:
 - (a) Training that is required for assisted living facility manager certification.
 - (b) Training that is required for assisted living facility caregivers and that is either:
 - (i) Consistent with the training, competency and test methodology standards developed by the Arizona health care cost containment system administration for in-home direct care workers.
 - (ii) As prescribed in section 36-446.16.
5. "Board" means the board of examiners of nursing care institution administrators and assisted living facility managers.
6. "Department" means the department of health services.
7. "Directed care services" has the same meaning prescribed in section 36-401.
8. "Director" means the director of the department of health services.
9. "Felony involving violence or financial fraud" means any of the following offenses:
 - (a) Sexual abuse of a vulnerable adult.
 - (b) Homicide, including first or second degree murder, manslaughter or negligent homicide.
 - (c) Sexual assault.
 - (d) Sexual exploitation of a vulnerable adult.
 - (e) Commercial sexual exploitation of a vulnerable adult.

- (f) Child abuse.
- (g) Abuse of a vulnerable adult.
- (h) Molestation of a child.
- (i) Molestation of a vulnerable adult.
- (j) A dangerous crime against children as defined in section 13-705.
- (k) Neglect or abuse of a vulnerable adult.
- (l) Sexual abuse.
- (m) Causing one's spouse to become a prostitute.
- (n) Detention of persons in a house of prostitution for debt.
- (o) Pandering.
- (p) A felony offense involving domestic violence as defined in section 13-3601 except for a felony offense involving only criminal damage in an amount of more than \$250 but less than \$1,000 if the offense was committed before June 29, 2009.
- (q) Any felony offense in violation of title 13, chapter 12.
- (r) Felony indecent exposure.
- (s) Felony public sexual indecency.
- (t) Terrorism.
- (u) Any offense involving a violent crime as defined in section 13-901.03.
- (v) Aggravated criminal damage.
- (w) Theft.
- (x) Theft by extortion.
- (y) Forgery.
- (z) Criminal possession of a forgery device.
- (aa) Obtaining a signature by deception.
- (bb) Theft of a credit card or obtaining a credit card by fraudulent means.

- (cc) Receipt of anything of value obtained by fraudulent use of a credit card.
- (dd) Forgery of a credit card.
- (ee) Fraudulent use of a credit card.
- (ff) Possession of any machinery, plate or other contrivance or incomplete credit card.
- (gg) A false statement as to financial condition or identity to obtain a credit card.
- (hh) Fraud by persons authorized to provide goods or services.
- (ii) Credit card transaction record theft.
- (jj) Adding poison or another harmful substance to food, drink or medicine.
- (kk) A criminal offense involving criminal trespass under title 13, chapter 15.
- (ll) A criminal offense involving burglary under title 13, chapter 15.
- (mm) A criminal offense under title 13, chapter 23, except terrorism.
- (nn) A felony offense involving domestic violence as defined in section 13-3601 if the offense involved only criminal damage in an amount of more than \$250 but less than \$1,000 and the offense was committed before June 29, 2009.
- (oo) Taking the identity of another person or entity.
- (pp) Aggravated taking the identity of another person or entity.
- (qq) Trafficking in the identity of another person or entity.
- (rr) Welfare fraud.
- (ss) Kidnapping.
- (tt) Robbery, aggravated robbery or armed robbery.

10. "Nursing care institution":

(a) Means an institution or other place, however named, whether for profit or not, including facilities operated by this state or a subdivision of this state, that is advertised, offered, maintained or operated for the express or implied purpose of providing care to persons who need nursing services on a continuing basis but who do not require hospital care or care under the daily direction of a physician.

(b) Does not include:

(i) An institution for the care and treatment of the sick that is operated only for those who rely solely on treatment by prayer or spiritual means in accordance with the tenets of a recognized religious denomination.

(ii) Nursing care services that are an integral part of a hospital licensed pursuant to this chapter.

11. "Unprofessional conduct" includes:

(a) Dishonesty, fraud, incompetency or gross negligence in performing administrative duties.

(b) Gross immorality or proselytizing religious views on patients without their consent.

(c) Other abuses of official responsibilities, which may include intimidating or neglecting patients.

36-446.01. Licensure or certification requirements

A. A nursing care institution shall not operate in this state except under the supervision of an administrator licensed pursuant to this article.

B. An assisted living facility shall not operate in this state except under the supervision of a manager certified pursuant to this article.

C. It is unlawful for any person who does not have a license or certificate, or whose license or certificate has lapsed or has been suspended or revoked, to practice or offer to practice skilled nursing facility administration or assisted living facility management or use any title, sign, card or device indicating that such person is an administrator or manager.

36-446.02. Board of examiners; terms; meetings; quorum; effect of vacancies; compensation

A. The board of examiners of nursing care institution administrators and assisted living facility managers is established consisting of eleven members appointed by the governor.

B. The board shall include:

1. One administrator who holds an active license issued pursuant to this article.

2. One manager who holds an active license issued pursuant to this article.

3. One administrator of a nonprofit or faith-based skilled nursing facility.

4. One administrator of a proprietary skilled nursing facility.

5. Two managers of an assisted living center as defined in section 36-401.

6. One manager of an assisted living home as defined in section 36-401.

7. Two public members who are not affiliated with a nursing care institution or an assisted living facility.

8. One public member who represents an organization that advocates for the elderly.

9. One person who is a family member of a resident in either a skilled nursing facility or an assisted living facility at the time the person is appointed to the board.

C. Board members who are not affiliated with a nursing care institution or an assisted living facility shall not have a direct financial interest in nursing care institutions or assisted living facilities.

D. A board member shall not serve on any other board relating to long-term care during the member's term with the board.

E. The term of a board member automatically ends when that member no longer meets the qualifications for appointment to the board. The board shall notify the governor of the board vacancy.

F. Board members who are not affiliated with a nursing care institution or an assisted living facility shall be appointed for two-year terms. Board members who are the administrator of a nursing care institution or the manager of an assisted living facility shall be appointed for three-year terms.

G. A board member shall not serve for more than two consecutive terms.

H. The board shall meet at least twice a year.

I. A majority of the board members constitutes a quorum.

J. Board members are eligible to receive compensation as determined pursuant to section 38-611 for each day actually spent performing their duties under this chapter.

K. A board member who is absent from three consecutive regular meetings or who fails to attend more than fifty percent of board meetings over the course of one calendar year vacates the board member's position. The board shall notify the governor of the vacancy.

36-446.03. Powers and duties of the board; rules; fees; fingerprinting

A. The board may adopt, amend or repeal reasonable and necessary rules and standards for the administration of this article in compliance with title XIX of the social security act, as amended.

B. The board by rule may adopt nonrefundable fees for the following:

1. Initial application for certification as an assisted living facility manager.
2. Examination for certification as an assisted living facility manager.
3. Issuance of a certificate as an assisted living facility manager, prorated monthly.
4. Biennial renewal of a certificate as an assisted living facility manager.
5. Issuance of a temporary certificate as an assisted living facility manager.
6. Readministering an examination for certification as an assisted living facility manager.
7. Issuance of a duplicate certificate as an assisted living facility manager.

8. Reviewing the sponsorship of continuing education programs, for each credit hour.
 9. Late renewal of an assisted living facility manager certificate.
 10. Reviewing an individual's request for continuing education credit hours, for each credit hour.
 11. Reviewing initial applications for assisted living facility training programs.
 12. Annual renewal of approved assisted living facility training programs.
- C. The board may elect officers it deems necessary.
- D. The board shall apply appropriate techniques, including examinations and investigations, to determine whether a person meets the qualifications prescribed in section 36-446.04.
- E. Beginning January 1, 2023, in addition to the requirements prescribed in section 36-446.04, the board shall require each applicant for initial nursing care institution administrator or assisted living facility manager certification to submit a full set of fingerprints to the board for a state and federal criminal history records check pursuant to section 41-1750 and Public Law 92-544. The department of public safety may exchange this fingerprint data with the federal bureau of investigation.
- F. On its own motion or in response to any complaint against or report of a violation by an administrator of a nursing care institution or a manager of an assisted living facility, the board may conduct investigations, hearings and other proceedings concerning any violation of this article or of rules adopted by the board or by the department.
- G. In connection with an investigation or administrative hearing, the board may administer oaths and affirmations, subpoena witnesses, take evidence and require by subpoena the production of documents, records or other information in any form concerning matters the board deems relevant to the investigation or hearing. If any subpoena issued by the board is disobeyed, the board may invoke the aid of any court in this state in requiring the attendance and testimony of witnesses and the production of evidence.
- H. Subject to title 41, chapter 4, article 4, the board may employ persons to provide investigative, professional and clerical assistance as required to perform its powers and duties under this article. Compensation for board employees shall be as determined pursuant to section 38-611. The board may contract with other state or federal agencies as required to carry out this article.
- I. The board may appoint review committees to make recommendations concerning enforcement matters and the administration of this article.
- J. The board by rule may establish a program to monitor licensees and certificate holders who are chemically dependent and who enroll in rehabilitation programs that meet board requirements. The board may take disciplinary action if a licensee or a certificate holder refuses to enter into an agreement to enroll in and complete a board-approved rehabilitation program or fails to abide by that agreement.
- K. The board shall adopt and use an official seal.
- L. The board shall adopt rules for the examination and licensure of nursing care institution administrators and the examination and certification of assisted living facility managers.

M. The board shall adopt rules governing payment to a person for the direct or indirect solicitation or procurement of assisted living facility patronage.

N. The board must provide the senate and the house of representatives health committee chairmen with copies of all board minutes and executive decisions.

O. The board by rule shall limit by percentage the amount it may increase a fee above the amount of a fee previously prescribed by the board pursuant to this section.

P. The board by rule shall prescribe standards for assisted living facility training programs. The board shall prescribe rules for assisted living facility caregivers that are consistent with the training, competency and test methodology standards developed by the Arizona health care cost containment system administration for in-home direct care workers.

Q. The board may:

1. Grant, deny, suspend or revoke approval of, or place on probation, an assisted living facility training program.

2. Impose a civil penalty on an assisted living facility training program that violates this chapter or rules adopted pursuant to this chapter.

36-446.04. Qualifications; period of validity; exemption

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

1. Has satisfactorily completed a course of instruction and training approved by the board that:

(a) Is designed and sufficiently administered to give the applicant knowledge of the proper needs to be served by nursing care institutions.

(b) Includes a thorough background in the laws and rules governing the operation of nursing care institutions and the protection of the interests of the patients in nursing care institutions.

(c) Includes thorough training in elements of good health care facilities administration.

2. Has passed an examination administered by the board designed to test for competency in the subject matter referred to in this subsection.

3. Has met one of the following fingerprinting requirements:

(a) Has a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1 and has not been convicted of any felony involving violence or financial fraud.

(b) Has provided proof of the submission of an application for a fingerprint clearance card. An applicant who has been denied a fingerprint clearance card must also provide proof that the applicant qualifies for a good cause exception hearing pursuant to section 41-619.55 and has not been convicted of any felony involving violence or financial fraud.

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

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

1. Has satisfactorily completed a course of instruction and training approved by the board that:

(a) Is designed and sufficiently administered to give the applicant knowledge of the proper needs to be served by an assisted living facility.

(b) Includes a thorough background in the laws governing the operation of assisted living facilities and the protection of the interests of the patients in assisted living facilities.

(c) Includes thorough training in elements of assisted living facility administration.

2. Has passed an examination administered by the board that is designed to test for competency in the subject matter prescribed in this subsection.

3. Provides documentation satisfactory to the board that the applicant has completed two thousand eighty hours of paid work experience in a health related field within the preceding five years as prescribed by board rule.

4. Has met one of the following fingerprinting requirements:

(a) Has a valid fingerprint clearance card issued pursuant to title 41, chapter 12, article 3.1 and has not been convicted of any felony involving violence or financial fraud.

(b) Has provided proof of the submission of an application for a fingerprint clearance card. An applicant who has been denied a fingerprint clearance card must also provide proof that the applicant qualifies for a good cause exception hearing pursuant to section 41-619.55 and has not been convicted of any felony involving violence or financial fraud.

D. Notwithstanding any other provision of this article, beginning July 1, 2021, all new licenses and certifications issued by the board must be approved by both the board and the department of health services.

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

F. In lieu of the requirements contained in subsection A, paragraph 1 or subsection C, paragraph 1 of this section, an applicant may present satisfactory evidence to the board of sufficient education and training in the areas listed in the respective paragraph.

G. A license is nontransferable and remains in effect until thirty days after the licensee's birthday of an even-numbered year, at which time the license may be renewed if the licensee otherwise complies with this article and the license has not been surrendered, suspended or revoked.

H. A certificate is nontransferable and remains in effect until thirty days after the certificate holder's birthday of an odd-numbered year, at which time the certificate may be renewed if the certificate holder otherwise complies with this article and the certificate has not been surrendered, suspended or revoked.

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

36-446.05. Reciprocity; present administrators

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

36-446.06. Temporary licenses and certificates

A. The board may issue a temporary nursing care institution administrator's license or temporary assisted living facility manager's certificate to individuals who are determined to meet standards established by the board and may revoke or suspend temporary licenses or certificates previously issued by the board in any case in which the individual holding a license or certificate is determined to have substantially failed to conform to the requirements of such standards during the term of the temporary license or certificate.

B. A temporary license or certificate is automatically revoked if the licensee or certificate holder fails either the state or national examination during the term of the license or certificate.

C. Temporary licenses or certificates may be issued without examination, for a single nonrenewable period of one hundred fifty days, to a qualified individual for the purpose of enabling the individual to fill a nursing care institution administrator or assisted living facility manager position. Qualifications for a temporary license or certificate shall include the ability to meet such other standards as are established by the board.

D. An applicant for a temporary license or certificate shall not have failed a state or national examination either before or after applying for the temporary license or certificate.

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

A. The board may suspend or revoke the license of any nursing care institution administrator, censure or place on probation any licensed nursing care institution administrator or deny a license as a nursing care institution administrator to any person for any of the following reasons:

1. Conviction of a felony or conviction of any misdemeanor involving moral turpitude.
2. Obtaining or renewing a license by fraud or deceit.
3. Unprofessional conduct.
4. Practicing without biennial licensure.

5. Addiction to or dependency on drugs or alcohol.
6. Wrongful transfer of a license or falsely impersonating another licensee.
7. Unauthorized disclosure of information relating to a patient or a patient's records.
8. Payment to any person for solicitation or procurement, either directly or indirectly, of nursing home patronage.
9. Violation of this article or a rule adopted pursuant to this article.

B. The board may suspend or revoke the certificate of an assisted living facility manager, censure or place on probation an assisted living facility manager or deny a certificate as an assisted living facility manager to a person for any of the following reasons:

1. Conviction of a felony or conviction of a misdemeanor involving moral turpitude.
2. Obtaining or renewing a certificate by fraud or deceit.
3. Unprofessional conduct.
4. Practicing without biennial certification.
5. Addiction to or dependency on drugs or alcohol.
6. Wrongful transfer of a certificate or falsely impersonating another certificate holder.
7. Unauthorized disclosure of information relating to a resident or a resident's records.
8. Violation of this article or a rule adopted pursuant to this article.

C. The board may impose a civil penalty in an amount of not to exceed five hundred dollars on any nursing care institution administrator or assisted living facility manager who violates this article or any rule adopted pursuant to this article. Actions to enforce the collection of these penalties shall be brought in the name of this state by the attorney general or the county attorney in the justice court or the superior court in the county in which the violation occurred. Penalties imposed under this section are in addition to and not in limitation of other penalties imposed pursuant to this article.

D. The board may file a letter of concern if, in the opinion of the board, while there is insufficient evidence to support direct action against the license of the administrator or the certificate of the manager, there is sufficient evidence for the board to notify the administrator or manager of its concern.

E. Every holder of a nursing care institution administrator's license shall renew it biennially by making application to the board. The renewals shall be granted as a matter of course if the holder has successfully completed at least fifty hours of continuing education every two years as established by the board in its rules, unless the applicant has acted or failed to act in such a manner or under such circumstances as would constitute grounds for taking any of the disciplinary actions permitted by this section. The board shall maintain a log of each complaint substantiated by the board or deficiency report concerning an administrator and shall retain in the administrator's file a copy of each such complaint or report and the

action taken on it, if any. The board shall review and consider the administrator's file in determining whether to renew the administrator's license.

F. Except as provided in subsection R of this section, every holder of an assisted living facility manager's certificate shall renew it biennially by making application to the board. The renewals shall be granted as a matter of course if the holder has successfully completed continuing education every two years as established by the board in its rules, unless the applicant has acted or failed to act in a manner or under circumstances that constitute grounds for taking disciplinary action permitted by this section. The board shall maintain a log of each complaint substantiated by the board or deficiency report concerning a manager and shall retain in the manager's file a copy of each complaint or report and the action taken on it, if any. The board shall review and consider the manager's file in determining whether to renew the manager's certificate.

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

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

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

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

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

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

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

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

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

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

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

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

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

S. A license or certificate issued pursuant to this chapter to any member of the Arizona national guard, the United States armed forces reserves or the regular component of the United States armed forces shall not

expire and shall be extended one hundred eighty days from the date the military member is able to perform activities necessary under the license or certificate if the member both:

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

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

A. The nursing care institution administrators' licensing and assisted living facility managers' certification fund is established.

B. Pursuant to sections 35-146 and 35-147, the board shall deposit ten per cent of all monies collected pursuant to this article in the state general fund and deposit the remaining ninety per cent in the nursing care institution administrators' licensing and assisted living facility managers' certification fund. All monies derived from civil penalties collected pursuant to section 36-446.07, subsection C shall be deposited, pursuant to sections 35-146 and 35-147, in the state general fund.

C. Monies deposited in the nursing care institution administrators' licensing and assisted living facility managers' certification fund are subject to the provisions of section 35-143.01.

D. On notice from the board, the state treasurer shall invest and divest monies in the fund as provided by section 35-313, and monies earned from investment shall be credited to the fund.

36-446.09. Violations; classification

A. Any person who manages, directs and controls the operation of a nursing care institution or an assisted living facility without a current and valid license or certificate as required by this article or who otherwise violates any provisions of this article is guilty of a class 2 misdemeanor. Each day of violation shall constitute a separate offense.

B. Action taken under subsection A shall not be a bar to enforcement of this article and the standards and rules issued and adopted pursuant to this article, by injunction or other appropriate remedy, and the board may institute and maintain in the name of this state any such enforcement proceeding.

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

A. Except as provided in subsection B, all records concerning a pending investigation, examination materials, records of examination grading and applicants' performance and transcripts of educational institutions concerning applicants are confidential and are not public records. "Records of applicants' performance" does not include records of whether an applicant passed or failed an examination.

B. During a pending investigation, the board shall inform the administrator or manager who is the subject of the complaint of the name of the complainant and the nature of the complaint if so requested.

36-446.11. Relief from civil liability

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

36-446.12. Fees

A. The board by rule shall establish nonrefundable fees and penalties for the following for nursing care institution administrators:

1. Initial application.
2. Examination for licensure as a nursing care institution administrator.
3. A license as a nursing care institution administrator.
4. Renewing an active biennial license.
5. Renewing an inactive biennial license.
6. A temporary license as a nursing care institution administrator.
7. Readministering the state examination.
8. Readministering the national examination.
9. A duplicate license.
10. Late renewal of a license.
11. Certifying licensure status.
12. Reviewing the sponsorship of continuing education programs, for each credit hour.
13. Reviewing an individual's request for continuing education credit hours, for each credit hour.

B. The board shall prorate on a monthly basis fees paid for an initial license as a nursing care institution administrator.

C. The board by rule shall limit by percentage the amount it may increase a fee above the amount of a fee previously prescribed by the board pursuant to this section.

36-446.13. Unlawful act; unlicensed operation; injunction

A. On application by the board, the superior court may issue an injunction to enjoin the activities of a person who purports to be licensed pursuant to this article or who is engaging in the activities of a nursing care institution administrator without a license.

B. In a petition for injunction filed pursuant to this section, it is sufficient to charge that the respondent on a certain day in a named county engaged in the activities of a nursing care institution administrator without a license and without being exempt from the licensing requirements of this article.

C. For the purposes of this section, damage or injury is presumed.

D. A petition for an injunction to enjoin unlicensed activities shall be filed in the name of this state in the superior court in the county where the respondent resides or may be found or in Maricopa county. On request of the board, the attorney general shall file the injunction.

E. Issuance of an injunction does not relieve the respondent from being subject to other proceedings as provided in this article.

36-446.14. Referral agencies; assisted living facilities and assisted living homes; disclosure; acknowledgement; fee; notice; requirements; civil penalty; definitions

A. A referral agency shall disclose, in the form prescribed by subsection D of this section, to any prospective resident or representative of a prospective resident at the time or before any referral is made for care at an assisted living facility or assisted living home all of the following:

1. The existence of any current business relationship or any common ownership or control and any other financial, business, management or familial relationship that exists between the referral agency and the assisted living facility or assisted living home.

2. That the assisted living facility or assisted living home pays a fee to the referral agency in connection with the referral.

3. The amount of the fee, if determined, or a good faith estimate of the fee, if not determined, that the assisted living facility or assisted living home will pay to the referral agency. The referral agency may describe the fee as a dollar amount or as a percentage of the prospective resident's first month's rent and care charges at the facility or home.

B. After the first instance of the referral agency providing the disclosure required by subsection A of this section, the referral agency shall request from the prospective resident or representative of a prospective resident an acknowledgement of receiving the disclosure in the same manner and form in which the disclosure was delivered.

C. The prospective resident may terminate all services of the referral agency for the prospective resident at any time, including the use of the prospective resident's personal information, by providing a written or electronic termination notice to the referral agency. If the prospective resident delivers a termination notice, the referral agency is not entitled to any fee for the resident's move-in after the date of the termination notice unless either of the following applies:

1. The assisted living facility or assisted living home chosen by the resident within twelve months after the date of termination was specifically identified and referred to the resident after evaluating the prospective resident's profile and requests before the resident delivered the notice of termination.

2. The referral agency provides documentation to the assisted living facility or assisted living home that the resident communicated with the referral agency for referral services before the resident's admission to the assisted living facility or assisted living home.

D. The referral agency's written, electronic or oral disclosure shall be in the following format and, if written, shall be in fourteen-point font type:

Arizona law requires that we provide you with the following disclosure notice.

We are in the business of referring residents to assisted living facilities and assisted living homes. We will be paid by the facility or home if you move into one of the referred facilities or homes. The fee we receive from the facility or home into which you move typically ranges from (____) to (____) percent of your first month's rent and care charges or from (\$____) to (\$____). We (do/do not) have a current business relationship (but/and) we (do/do not) have a common ownership or control in, or any other financial, business, management or familial relationship with, (any) (one or more) of the homes and facilities to which we are referring you.

By providing us with a written or electronic notice, you have the right to terminate our services to you at any time, including our use of your personal information. If you terminate our services, we will not be entitled to any fee for any move-in you make after the date of the termination notice unless either:

1. The facility or home you choose within the next twelve months is one that we specifically identify and refer to you after we evaluate your profile and requests but before we receive your notice of termination.

2. You communicate with us before you move into the facility or home.

E. Within fourteen days after a resident is admitted to an assisted living facility or assisted living home, the facility or home shall notify the referral agency of the resident's admission if the facility or home is contracted with the referral agency. Not later than fourteen days after receiving notice of the resident's admission, the referral agency shall provide the assisted living facility or assisted living home with a written or electronic copy or recording of the disclosure made to the resident and the resident's acknowledgement of receiving the disclosure as prescribed in subsections B and D of this section, along with the date and time of the disclosure to the resident. The assisted living facility or assisted living home shall maintain a copy of the disclosure for as long as the resident is at the facility or home. The referral agency shall maintain a copy of the disclosure and acknowledgement for one year. The assisted living facility or assisted living home shall not pay any referral fee associated with a resident until the facility or home receives the written or electronic copy or recording of the disclosure made to the resident and the resident's acknowledgement of receiving the disclosure provided and maintained in the same manner and form.

F. A referral agency that violates this section is subject to a civil penalty of up to \$1,000 for each violation. The attorney general or a county attorney may institute a proceeding in superior court to recover the civil penalty under this subsection and to restrain and enjoin a violation of this section. Any civil penalty recovered pursuant to this subsection shall be deposited in the general fund of the jurisdiction that prosecuted the violation.

G. For the purposes of this section:

1. "Electronically" includes an audio recording that conforms with the Arizona rules of evidence, that is maintained by the referral agency and that is transmitted to the assisted living facility or assisted living home and the resident or the resident's representative in a format that can be downloaded.

2. "Referral agency":

(a) Means a person or entity that provides referrals for a fee that is collected from either the resident or the assisted living facility or assisted living home.

(b) Does not include either:

(i) An assisted living facility or assisted living home, or its employees.

(ii) A resident, a resident's family member or a patron of an assisted living facility or assisted living home who refers a prospective resident to an assisted living facility or assisted living home and receives a discount or other remuneration from the assisted living facility or assisted living home.

36-446.15. Assisted living facility caregivers; training and competency requirements; medication administration; testing

A. Notwithstanding any other law, a person who successfully completes the training and competency requirements developed by the Arizona health care cost containment system administration for in-home direct care workers satisfies the training requirements for assisted living facility caregivers, except for medication administration training required by the assisted living facility caregiver's scope of practice.

B. An individual who meets the requirements specified in subsection A of this section and who registers for a medication administration examination is required to take and successfully complete only the part of the assisted living facility caregiver examination that covers the subject of medication administration.

C. The testing of an individual for medication administration competency:

1. Shall be conducted in accordance with the testing standards adopted by the board.

2. May be conducted by a training school approved by the board or by the assisted living facility that provided the training for the individual.

36-446.16. Assisted living facility caregivers; training requirements; board standards; definition

A. Except as provided in section 36-446.15, an individual shall successfully complete either of the following requirements for certification as an assisted living facility caregiver:

1. Both of the following:

(a) Sixty-two hours of on-the-job training under the direct supervision of any of the following health professionals:

(i) A physician who is licensed pursuant to title 32, chapter 13 or 17.

(ii) A registered nurse practitioner, registered nurse or licensed practical nurse who is licensed pursuant to title 32, chapter 15.

(iii) A pharmacist who is licensed pursuant to title 32, chapter 18.

(iv) A physician assistant who is licensed pursuant to title 32, chapter 25.

(v) A certified assisted living facility manager with at least five years of experience. Only thirty-one of the sixty-two hours of on-the-job training may be under the direct supervision of a certified assisted living facility manager.

(b) Pass the board-required examination with a score of at least seventy-five percent.

2. The board's required curriculum and examination for assisted living facility caregiver certification.

B. The board shall prescribe standards by rule for the on-the-job training prescribed in subsection A, paragraph 1, subdivision (a) of this section.

C. For the purposes of this section, "direct supervision" means the on-site, in-view observation and guidance of a caregiver who is in training by the supervising health professional.

DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS
Title 20, Chapter 6

Amend: R20-6-708, Table A



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: February 7, 2023

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: January 17, 2023

SUBJECT: DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS
Title 20, Chapter 6

Amend: R20-6-708, Table A

Summary:

This regular rulemaking from the Department of Insurance and Financial Institutions (Department) seeks to amend two (2) rules in Title 20, Chapter 6, Article 7 related to Licensing Provisions and Procedures. Specifically, the Department is amending rule R20-6-708 and Table A, the Insurance Division Licensing Time-frames rule and accompanying table, that establish in rule an overall time-frame during which the agency will either grant or deny each type of license that it issues. *See* A.R.S. § 41-1073(A).

The Department indicates the rule and table have not been updated since 1999. In the interim, the Department of Insurance merged with the Department of Financial Institutions to become the Department of Insurance and Financial Institutions. The former Department of Insurance is now a division of the new agency – the Insurance Division. The Department indicates the rule needs to be updated to reflect this change and to eliminate an unnecessary notice, the notice of inadequate response, which the Department does not use and which is not part of the Arizona Licensing Time Frames Act. Also, the Department states Table A must be updated to reflect that the Department no longer issues certain licenses and has added new license types. Furthermore, the Department indicates this rulemaking fulfills a commitment

made by the Department of Insurance in its 2018 Five-Year Review Report to update this rule and table.

1. **Are the rules legal, consistent with legislative intent, and within the agency's statutory authority?**

The Department cites both general and specific statutory authority for these rules.

2. **Do the rules establish a new fee or contain a fee increase?**

This rulemaking does not establish a new fee or contain a fee increase.

3. **Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?**

The Department indicates it did not review or rely on any study in conducting this rulemaking.

4. **Summary of the agency's economic impact analysis:**

The rulemaking establishes licensing time-frames for the various licenses issued by the Department which is of statewide interest to persons seeking to apply for a license issued by the Department. The rulemaking is not designed to change any conduct of applicants seeking licensure with the Department. Instead, the rule updates the name of the Department and removes an unnecessary notice which the Department does not currently use. The current changes to the rule do not impose any additional administrative or other costs required for compliance with the proposed rulemaking. Instead, non-compliance with the Arizona Licensing Time Frames Act levies penalties upon the agency under A.R.S. 41-1077.

5. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Department believes that the current rulemaking offers the least intrusive and least costly alternative method to achieve the purpose of the Arizona Licensing Time Frames Act.

6. **What are the economic impacts on stakeholders?**

The requirement for an agency to establish licensing time frames is a function of the Arizona Licensing Time Frames Act. The Department's rule merely augments the Arizona Licensing Time Frames Act as required under A.R.S. 41-1073(A) and (B). The rule consists of a list of requirements and deadlines the Department must meet when processing a license application to respond to requests by the Department. Non-compliance with the Arizona Licensing time Frames Act levies penalties upon the agency under A.R.S. 41-1077, not upon the applicant.

7. **Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?**

The Department indicates there were no changes to the rules between the Notice of Proposed Rulemaking published in the Administrative Register on November 11, 2022 and the Notice of Final Rulemaking now before the Council.

8. **Does the agency adequately address the comments on the proposed rules and any supplemental proposals?**

The Department indicates it did not receive any public comments related to this rulemaking.

9. **Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The rule augments the Arizona Licensing Time Frames Act (A.R.S. §§ 41-1072 through 41-1079) and complies with the mandate to agencies to have rules establishing an overall time frame during which the agency will either grant or deny each type of license it issues. *See* A.R.S. §§ 41-1073(A) and (B).

10. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

The Department indicates there are no corresponding federal laws applicable to the subject of this rulemaking.

11. **Conclusion**

This regular rulemaking from the Department seeks to amend two (2) rules in Title 20, Chapter 6, Article 7 related to Licensing Provisions and Procedures. Specifically, the Department is amending rule R20-6-708 and Table A, the Insurance Division Licensing Time-frames rule and accompanying table, that establish in rule an overall time-frame during which the agency will either grant or deny each type of license that it issues.

The Department is requesting the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032(A). Council staff recommends approval of this rulemaking.



Director's Office
Arizona Department of Insurance and Financial Institutions
100 North 15th Avenue, Suite 261, Phoenix, AZ 85007-2624
Phone: (602) 364-3100 | Web: <https://difi.az.gov>

Douglas A. Ducey, Governor
Evan G. Daniels, Director

December 15, 2022

VIA EMAIL: grrc@azdoa.gov
Nicole Sornsins, Chairperson
Governor's Regulatory Review Council
100 North 15th Ave., Suite 305
Phoenix, AZ 85007

RE: Arizona Department of Insurance and Financial Institutions
Insurance Division
A.A.C. R20-6-708 and Table A – Licensing Time-frames

Dear Chairperson Sornsins:

Please find enclosed the Final Rulemaking for A.A.C. R20-6-708 and Table A, the Insurance Division Licensing Time-frames rule and accompanying table, being submitted by the Arizona Department of Insurance and Financial Institutions ("Department").

Pursuant to A.A.C. R1-6-201(A)(1), the Department responds as follows:

- a. The Department closed the record on this rulemaking on December 11, 2022.
- b. This rulemaking relates to the five-year review report submitted by the Arizona Department of Insurance to the Council in 2018.
- c. The rulemaking does not establish a new fee.
- d. The rulemaking does not contain a fee increase.
- e. The rulemaking does not request an immediate effective date under A.R.S. § 41-1032.
- f. The Department certifies that the preamble discloses a reference to any study relevant to the rule that it reviewed and either did or did not rely on in its evaluation of or justification for the rulemaking. The Department did not review or rely on any study relevant to the rulemaking.
- g. No new full-time employees are necessary to implement and enforce the rule.
- h. The following documents are also submitted to the Council with this cover letter:
 - i. The Notice of Final Rulemaking;
 - ii. An economic, small business, and consumer impact statement that contains the information required by A.R.S. § 41-1055;
 - iii. The general and specific statutes authorizing the rulemaking.

By this submission, the Department is requesting approval of this rulemaking from the Council.

For questions about this rulemaking, please contact Mary Kosinski at (602) 364-3476 or mary.kosinski@difi.az.gov.

Sincerely,

A handwritten signature in blue ink that reads "Evan G. Daniels". The signature is written in a cursive style with a large, stylized "S" at the end.

Evan G. Daniels
Director

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS AND INSURANCE

CHAPTER 6. DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS

– INSURANCE DIVISION

PREAMBLE

1. Articles, Parts, or Sections Affected (as applicable) Rulemaking Action

R20-6-708

Amend

Table A

Amend

2. Citations to the agency’s statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. § 20-143

Implementing statute: A.R.S. § 41-1073

3. The effective date of the rule:

a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

Not applicable. The Department is proposing the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032.

b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):

Not applicable. The Department is proposing the standard 60-day delayed effective date pursuant to A.R.S. § 41-1032.

4. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:

Notice of Rulemaking Docket Opening: 28 A.A.R. 3508, November 11, 2022

Notice of Proposed Rulemaking: 28 A.A.R. 3483, November 11, 2022

5. The agency’s contact person who can answer questions about the rulemaking:

Name: Mary E. Kosinski

Address: Department of Insurance and Financial Institutions

 100 N. 15th Ave., Suite 261

 Phoenix, Arizona 85007-2630

Telephone: (602)364-3476

E-mail: mary.kosinski@difi.az.gov
Web site: <https://difi.az.gov>

6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

The Arizona Department of Insurance promulgated Section R20-6-708 and Table A to comply with the mandate of the Arizona Licensing Time Frames Act (A.R.S. §§ 41-1072 through 41-1079) that agencies issuing licenses establish in rule an overall time-frame during which the agency will either grant or deny each type of license that it issues. A.R.S. § 41-1073(A). The rule and table have not been updated since 1999. In the interim, the Department of Insurance merged with the Department of Financial Institutions to become the Department of Insurance and Financial Institutions. The former Department of Insurance is now a division of the new agency – the Insurance Division (“Department”). The rule needs to be updated to reflect this change and to eliminate an unnecessary notice, the notice of inadequate response, which the Department does not use and which is not part of the Arizona Licensing Time Frames Act. Also, the Department needs to update Table A to reflect that the Department no longer issues certain licenses and has added new license types. Furthermore, this rulemaking fulfills a commitment made by the Department of Insurance in its 2018 5-Year Review Report to update this rule and table.

7. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The Department did not review and does not propose to rely on any study relevant to this rulemaking.

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

The rulemaking establishes licensing time-frames for the various licenses issued by the Department which is of statewide interest to persons seeking to apply for a license issued by the Department. The rulemaking does not diminish a previous grant of authority granted to the Department.

9. The summary of the economic, small business, and consumer impact:

Pursuant to A.R.S. § 41-1055(A)(1):

- The rulemaking is not designed to change any conduct of applicants seeking licensure with the Department. Instead, the rule updates the name of the Department and removes an unnecessary notice which the Department does not currently use. The rulemaking also updates Table A to reflect the licenses currently issued by the Department and their associated licensing time-frames.

Pursuant to A.R.S. § 41-1055(A)(2):

- The current changes to the rule and table do not impose any additional administrative or other costs required for compliance with the proposed rulemaking. Instead, non-compliance with the Arizona Licensing Time Frames Act levies penalties upon the agency under A.R.S. § 41-1077, not upon applicants seeking licensure with the Department.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

The Department has not made any changes between the proposed rulemaking and the final rulemaking.

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

The Department published the Notice of Proposed Rulemaking for Licensing Time-frames on November 11, 2022. (28 A.A.R. 3483, November 11, 2022) At that time it also opened a 30-day Comment Period. During the Comment Period, no one submitted a comment to the Department or requested an Oral Proceeding.

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

No other matters prescribed by statute are applicable to the Department or to any specific rule or class of rules.

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

Not applicable. The rule augments the Arizona Licensing Time Frames Act (A.R.S. §§ 41-1072 through 41-1079) and complies with the mandate to agencies to have rules establishing an overall time frame during which the agency will either grant or deny each type of license it issues. (A.R.S. §§ 41-1073(A) and (B))

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

No federal law is applicable to the subject of the rule.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No formal analysis has been submitted to the Department that compares the rule's impact of the competitiveness of business in this state to the impact of business in other states.

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

No materials are incorporated by reference.

14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

Not applicable. The rule was not previously made, amended or repealed as an emergency rule.

15. The full text of the rules follows:

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS AND INSURANCE
CHAPTER 6. DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS – INSURANCE DIVISION
ARTICLE 7. LICENSING PROVISIONS AND PROCEDURES

Section

ARTICLE 7. LICENSING PROVISIONS AND PROCEDURES

R20-6-708. Licensing Time-frames

- A. Definitions. The definitions ~~listed below apply in this Section. in A.R.S. § 41-1072 and the following definitions apply to this Article.~~
- ~~1. "Administrative completeness review time frame" means the number of days from the Department's receipt of an application for a license until the Department determines that the application contains all components required by statute or rule, including all information required to be submitted by other government agencies A.R.S. § 41-1072 (1). "Department" means the Insurance Division of the Department of Insurance and Financial Institutions.~~
 - ~~2. "License" has the meaning prescribed in A.R.S. § 41-1001(10). A.R.S. § 41-1001(13).~~
 - ~~3. "Overall time frame" means the number of days after the Department's receipt of an application for a license during which the Department determines whether to grant or deny a license. The overall time frame consists of both the administrative completeness review time frame and the substantive review time frame A.R.S. § 41-1072 (2).~~
 - ~~4. "Substantive review time frame" means the number of days after the completion of the administrative completeness review time frame during which the Department determines whether an application or applicant for a license meets all substantive criteria required by state or rule A.R.S. § 41-1072(3).~~
- B. The time-frames listed in Table A apply to licenses issued by the Department. The licensing time-frames consist of an administrative completeness review, a substantive review, and an overall review.
- C. Within the time-frame for the administrative completeness review set forth in Table A, the Department shall notify the applicant in writing of whether the application is complete or ~~incomplete. deficient. If the application is incomplete, the Department shall issue a notice of deficiency to the applicant specifying what information or component is required to make the application administratively complete.~~
- ~~1. If the Department determines that an application for a license is not administratively complete, the Department shall include a comprehensive list of the specific deficiencies in the written notice provided under subsection (C). If the application is deficient, the Department shall issue a notice of deficiency to the applicant which shall include a comprehensive list of the specific deficiencies. If the Department issues a written notice of deficiency within the administrative completeness review time-frame, the administrative completeness review time-frame and the overall review time-frame are suspended from the date the notice is issued until the date that the Department receives the missing information an adequate response from the applicant.~~
 - ~~2. If an applicant does not make some response to each specific deficiency in a notice of deficiency issued during an administrative completeness review, the Department may issue a notice to the applicant within 10 days after receipt of the applicant's response, stating that the response is inadequate. The notice of inadequate response shall identify each specified deficiency to which the applicant did not make some response.~~
 - ~~a. If the Department issues a notice of inadequate response under this subsection, the suspension of the administrative completeness review time frame and the overall time frame is not terminated.~~
 - ~~b. If the Department does not issue a notice of inadequate response under this subsection, the The Department is not precluded from issuing additional notices of deficiency during an administrative completeness review.~~
 - ~~3. If an applicant does not make some response adequately respond to each specified deficiency in a notice of deficiency issued under subsection (C)(2) (C)(1), within 60 days after the date of a notice of deficiency or within 60 days after a notice of inadequate response issued under subsection (C)(2), the application is deemed withdrawn, and the Department is not required to take further action with respect to the application.~~
- D. Within the time-frame for the substantive review set forth in Table A, the Department may issue one comprehensive written request for additional information to the applicant specifying each component or item of information required.
- ~~1. If the Department issues a comprehensive written request for additional information within the substantive review time-frame, the substantive review time-frame and the overall time-frame are suspended from the date the written request is issued until the date that the Department receives the additional information an adequate response from the applicant.~~

2. ~~If an applicant does not make some response to each component or item of information requested in a comprehensive written request for additional information, the Department may issue a notice to the applicant within 10 days after receipt of the applicant's response stating that the response is inadequate. The notice of inadequate response shall identify each component or item of information required, to which the applicant did make some response.~~
 - a. ~~If the Department issues a notice of inadequate response under this subsection, the suspension of the substantive review time-frame and overall time-frame is not terminated.~~
 - b. ~~If the Department does not issue a notice of inadequate response under this subsection, the~~ The Department is not precluded from ~~later~~ issuing supplemental requests by mutual agreement for additional information, during the substantive review.
 3. If an applicant does not ~~make some response~~ adequately respond to each component or item of information required in a comprehensive written request or a supplemental request for additional information, within 60 days after the date of a comprehensive written request, or within 60 days after the date of the supplemental request, for additional information, the application is deemed withdrawn, and the Department is not required to take further action with respect to the application.
- E. Within the overall time-frames set forth in Table A, unless extended by mutual agreement under A.R.S. § 41-1075, the Department shall notify the applicant in writing that the application is granted or denied. If the application is denied, the Department shall provide ~~written justification for the denial and a written explanation of the applicant's right to a hearing or the applicant's right to appeal.~~ to the applicant a written notice that complies with the provisions of A.R.S. § 41-1076.
- F. In computing the time periods prescribed in these time-frame rules, the last day of a notice period is included in the computation, unless it is a Saturday, Sunday, or legal holiday.
- ~~G. This rule applies to applications filed on or after January 1, 1999.~~

Table A. Licensing Time-frames Table

License	Relevant A.R.S.	Administrative Completeness	Substantive Review	Overall Time-frame
Certificate of Authority*	§ 20-216	210	90	300
Certificate of Exemption	§ 20-401.05	92	30	122
Reinsurance Intermediary	§ 20-486.01	120	60	180
Hospital, Medical, Dental, and Optometric Service Corporation	§ 20-825	210	90	300
Prepaid Dental Plan Organization	§ 20-1004	210	90	300
Life Care Provider Permit*	§ 20-1803	60	30	90
Health Care Services Organization	§ 20-1052	210	90	300
Mechanical Reimbursement Reinsurer	§ 20-1096.04	210	90	300
Prepaid Legal Insurer*	§ 20-1097.02	45	15	60
Service Representative	§ 20-285	120	60	180
Managing General Agent-Firm	§ 20-284	120	60	180
Managing General Agent-Individual	§ 20-288	120	60	180
Risk Management Consultant	§ 20-289	120	60	180
Agent, Broker and Solicitor	§ 20-291	120	60	180
Nonresident Agent and Broker	§ 20-303	120	60	180
Vending Machine	§ 20-306	120	60	180
Limited Travel Agent	§ 20-306.01	120	60	180
Adjuster	§ 20-312	120	60	180
Bail Bond Agent	§ 20-319	120	60	180
Surplus Lines Broker	§ 20-411	120	60	180
Title Insurance Agent	§ 20-1580	120	60	180
Credit Life and Disability Agents	§ 20-1612	120	60	180
Variable Contract Agent	§ 20-2662	120	60	180
Utilization Review Agent	§ 20-2505	30	90	120
Rating Organization*	§ 20-361	30	30	60
Rate Service Organization	§ 20-389	60	60	120
Qualifying Surplus Lines Insurer	§ 20-413	45	30	75
Third Party Administrator	§ 20-485.12	45	45	90
Service Companies	§ 20-1095.01	30	30	60

Risk Retention Group (Foreign)*	§ 20-2403	60	0	60
Risk Purchasing Groups	§ 20-2407	30	30	60

* Statutory time frames

<u>License</u>	<u>Relevant A.R.S.</u>	<u>Administrative Completeness</u>	<u>Substantive Review</u>	<u>Overall Time-frame</u>
<u>Insurance</u>				
<u>Captive Insurer</u>	§ <u>20-1098.01</u>	<u>150</u>	<u>30*</u>	<u>180</u>
<u>Certificate of Authority</u>	§ <u>20-216</u>	<u>210</u>	<u>90*</u>	<u>300</u>
<u>Certificate of Exemption</u>	§ <u>20-401.05</u>	<u>92</u>	<u>30</u>	<u>122</u>
<u>Health Care Services Organization</u>	§ <u>20-1052</u>	<u>210</u>	<u>90</u>	<u>300</u>
<u>Hospital, Medical, Dental, and Optometric Service Corporation</u>	§ <u>20-825</u>	<u>210</u>	<u>90</u>	<u>300</u>
<u>Life Care Provider Permit</u>	§ <u>20-1803</u>	<u>60*</u>	<u>30*</u>	<u>90</u>
<u>Life Settlement Provider</u>	§ <u>20-3202</u>	<u>60</u>	<u>60</u>	<u>120</u>
<u>Mechanical Reimbursement Reinsurer</u>	§ <u>20-1096.04</u>	<u>210</u>	<u>90</u>	<u>300</u>
<u>Prepaid Dental Plan Organization</u>	§ <u>20-1004</u>	<u>210</u>	<u>90</u>	<u>300</u>
<u>Prepaid Legal Insurer*</u>	§ <u>20-1097.02</u>	<u>45</u>	<u>15</u>	<u>60*</u>
<u>Qualifying Surplus Lines Insurer</u>	§ <u>20-413</u>	<u>45</u>	<u>30</u>	<u>75</u>
<u>Reinsurance Intermediary</u>	§ <u>20-486.01</u>	<u>120</u>	<u>60</u>	<u>180</u>
<u>Insurance Professional</u>				
<u>Adjuster</u>	§ <u>20-321.01</u>	<u>60</u>	<u>60</u>	<u>120</u>
<u>Bail Bond Agent</u>	§ <u>20-340.01</u>	<u>60</u>	<u>60</u>	<u>120</u>
<u>Certified Application Counselor</u>	§ <u>20-336.04</u>	<u>60</u>	<u>60</u>	<u>120</u>
<u>Life Settlement Broker</u>	§ <u>20-3202</u>	<u>60</u>	<u>60</u>	<u>120</u>
<u>Limited Travel Agent</u>	§ <u>20-3553</u>	<u>60</u>	<u>60</u>	<u>120</u>
<u>Navigator</u>	§ <u>20-336.03</u>	<u>60</u>	<u>60</u>	<u>120</u>
<u>Nonresident Insurance Producer (Agent/Broker)</u>	§ <u>20-287</u>	<u>60</u>	<u>60</u>	<u>120</u>
<u>Portable Electronics Insurance Adjuster</u>	§ <u>20-321.01</u>	<u>60</u>	<u>60</u>	<u>120</u>
<u>Portable Electronics Insurance Vendor</u>	§ <u>20-1693.01</u>	<u>60</u>	<u>60</u>	<u>120</u>
<u>Rental Car Agent</u>	§ <u>20-331</u>	<u>60</u>	<u>60</u>	<u>120</u>
<u>Resident Insurance Producer (Agent/Broker)</u>	§ <u>20-285</u>	<u>60</u>	<u>60</u>	<u>120</u>
<u>Risk Management Consultant</u>	§ <u>20-331.01</u>	<u>60</u>	<u>60</u>	<u>120</u>

<u>Self-service Storage Agents</u>	<u>§ 20-332</u>	<u>60</u>	<u>60</u>	<u>120</u>
<u>Surplus Lines Broker</u>	<u>§ 20-411</u>	<u>60</u>	<u>60</u>	<u>120</u>
<u>Temporary License</u>	<u>§ 20-294</u>	<u>60</u>	<u>60</u>	<u>120</u>
<u>Title Insurance Agent</u>	<u>§ 20-1580</u>	<u>60</u>	<u>60</u>	<u>120</u>
<u>Variable Contract Agent</u>	<u>§ 20-2662</u>	<u>60</u>	<u>60</u>	<u>120</u>
<u>Other</u>				
<u>Rating Organization*</u>	<u>§ 20-361</u>	<u>30</u>	<u>30</u>	<u>60*</u>
<u>Rate Service Organization</u>	<u>§ 20-389</u>	<u>60</u>	<u>60</u>	<u>120</u>
<u>Third Party Administrator</u>	<u>§ 20-485.12</u>	<u>45</u>	<u>45</u>	<u>90</u>
<u>Senior Residential Entrance Fee Contracts: Provider Registration</u>	<u>§ 44-6952</u>	<u>60</u>	<u>60</u>	<u>120</u>
<u>Service Company</u>	<u>§ 20-1095.01</u>	<u>30</u>	<u>30</u>	<u>60</u>
<u>Utilization Review Agent</u>	<u>§ 20-2505</u>	<u>30</u>	<u>90</u>	<u>120</u>
<u>Risk Retention Groups</u>				
<u>Risk Retention Group (Foreign)</u>	<u>§ 20-2403</u>	<u>60</u>	<u>0</u>	<u>60</u>
<u>Risk Purchasing Groups</u>	<u>§ 20-2407</u>	<u>30</u>	<u>30</u>	<u>60</u>

* Statutory time-frames

A.R.S. § 41-1055(B) Economic, Small Business, And Consumer Impact Statement

Title 20. Commerce, Financial Institutions and Insurance

Chapter 6. Department of Insurance and Financial Institutions

– Insurance Division

Article 7. Licensing Provisions and Procedures

A.R.S. § 41-1055(B)(1): An identification of the proposed rulemaking.

The Arizona Department of Insurance promulgated Section R20-6-708 and Table A to comply with the mandate of the Arizona Licensing Time Frames Act (A.R.S. §§ 41-1072 through 41-1079) that agencies issuing licenses establish in rule an overall time-frame during which the agency will either grant or deny each type of license that it issues.

A.R.S. § 41-1073(A). The rule and table have not been updated since 1999. In the interim, the Department of Insurance merged with the Department of Financial Institutions to become the Department of Insurance and Financial Institutions. The former Department of Insurance is now a division of the new agency – the Insurance Division (“Department”). The rule needs to be updated to reflect this change and to eliminate an unnecessary notice, the notice of inadequate response, which the Department does not use and which is not part of the Arizona Licensing Time Frames Act. Also, the Department needs to update Table A to reflect that the Department no longer issues certain licenses and has added new license types. Furthermore, this rulemaking fulfills a commitment made by the Department of Insurance in its 2018 5-Year Review Report to update this rule and table.

Questions about this Economic Impact Statement can be directed to: Mary E. Kosinski (mary.kosinski@difi.az.gov).

A.R.S. § 41-1055(B)(2): An identification of the persons who will be directly affected by, bear the costs of or directly benefit from the proposed rulemaking.

This regulation applies to any person seeking to file an application for a license with the Department.

A.R.S. § 41-1055(B)(3): A cost benefit analysis of the following:

(a) The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rulemaking. The probable costs to the implementing agency shall include the number of new full-time employees necessary to implement and enforce the proposed rule. The preparer of the economic, small business and consumer impact statement shall notify the joint legislative budget committee of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by the council.

The Department does not anticipate any costs or benefits in implementing and enforcing the proposed rulemaking. No new full-time employees will be necessary to implement and enforce the proposed rulemaking.

(b) The probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rulemaking.

No political subdivision of this state is directly affected by the implementation and enforcement of the proposed rulemaking.

(c) The probable costs and benefits to businesses directly affected by the proposed rulemaking, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rulemaking.

The Department anticipates minimal financial impact, including no anticipated effect on the revenues or payroll expenditures, to persons who file applications for licenses with the Department.

A.R.S. § 41-1055(B)(4): A general description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the proposed rulemaking.

The Department does not anticipate any impact on the private employment of persons applying for licenses with the Department. Likewise, the Department does not anticipate any impact on public employment in the Department.

A.R.S. § 41-1055(B)(5): A statement of the probable impact of the proposed rulemaking on small businesses. The statement shall include:

(a) An identification of the small businesses subject to the proposed rulemaking.

The Department presumes that only some of the businesses that apply for the licenses listed under “Insurance Professionals” in Table A may qualify as small businesses. The other categories apply to types of insurance companies that would not qualify as small businesses.

(b) The administrative and other costs required for compliance with the proposed rulemaking.

The current changes to the rule and table do not impose any additional administrative or other costs required for compliance with the proposed rulemaking.

(c) A description of the methods prescribed in section 41-1035 that the agency may use to reduce the impact on small businesses, with reasons for the agency's decision to use or not to use each method.

The requirement for an agency to establish licensing time frames is a function of the Arizona Licensing Time Frames Act (A.R.S. §§ 41-1072 through 41-1079) which makes no exemptions for small businesses. The Department’s rule and table merely augment the Arizona Licensing Time Frames Act as required under A.R.S. §§ 41-1073(A) and (B). The rule consists of a list of requirements and deadlines the Department must meet when processing a license application with the exception of the imposition of a 60-day deadline for an applicant to respond to requests by the Department. Non-compliance with the Arizona Licensing Time Frames Act levies penalties upon the agency under A.R.S. § 41-1077, not upon the applicant.

A.R.S. § 41-1035 lists the following methods to reduce the impact on small businesses:

1. Establish less stringent compliance or reporting requirements in the rule for small businesses.

The compliance or reporting requirements for each license type is established by various statutes in Title 20, A.R.S. The references to these statutes is listed in Table A. This rulemaking does not extend to these compliance or reporting requirements for individual applicants.

2. Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses.

The Department has established generally shorter time frames for “Insurance Professionals” who may qualify as small businesses. *See*, Table A. This will allow small businesses to achieve licensure in a shorter period of time.

3. Consolidate or simplify the rule’s compliance or reporting requirements for small businesses.

4. Establish performance standards for small businesses to replace design or operational standards in the rule.

5. Exempt small businesses from any or all requirements of the rule.

None of these methods was applied because the Arizona Licensing Time Frames Act makes no exemptions for small businesses.

(d) The probable cost and benefit to private persons and consumers who are directly affected by the proposed rulemaking.

Private persons and consumers are not directly affected by the proposed rulemaking.

A.R.S. § 41-1055(B)(6): A statement of the probable effect on state revenues.

No impact on state revenues is anticipated.

A.R.S. § 41-1055(B)(7): A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rulemaking, including the

monetizing of the costs and benefits for each option and providing the rationale for not using nonselected alternatives.

The Department believes that the current rulemaking offers the least intrusive and least costly alternative method to achieve the purpose of the Arizona Licensing Time Frames Act.

A.R.S. § 41-1055(B)(8): A description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data. An agency advocating that any data is acceptable data has the burden of proving that the data is acceptable. For the purposes of this paragraph, "acceptable data" means empirical, replicable and testable data as evidenced in supporting documentation, statistics, reports, studies or research.

The rule is not based on any data.

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 6. DEPARTMENT OF INSURANCE AND FINANCIAL INSTITUTIONS - INSURANCE DIVISION

- b. Extraordinary expenses;
 - c. High risk of claim fluctuation because of the low loss frequency of the catastrophic, or experimental nature of the coverage;
 - d. Product features such as long elimination periods, high deductibles and high maximum limits;
 - e. The industrial or debit method of distribution; and
 - f. Forms issued prior to the effective date of this rule. Companies are urged to review their experience periodically and to file rate revisions, as appropriate, in a timely manner to avoid the necessity of later filing of exceptionally large rate increases.
3. Notwithstanding the foregoing paragraphs to the contrary, hospital indemnity and cancer and other dread diseases policies shall develop the loss ratios pursuant to subsection (G).
- J.** Severability provision. If any provision of this rule or the application thereof to any person or circumstances is held invalid, the remainder of the rule and the application of such provision to other persons or circumstances shall not be affected thereby.
- K.** Effective date. This rule shall become effective upon filing with the Secretary of State and shall apply to all individual disability policy form and rate filings submitted on and after said date.

Historical Note

Adopted effective July 14, 1981 (Supp. 81-1). R20-6-607 recodified from R4-14-607 (Supp. 95-1). Amended by final rulemaking at 24 A.A.R. 103, effective February 17, 2018 (Supp. 17-4).

ARTICLE 7. LICENSING PROVISIONS AND PROCEDURES**R20-6-701. Repealed****Historical Note**

Former General Rule 56-1; Repealed effective January 1, 1981 (Supp. 80-6). R20-6-701 recodified from R4-14-701 (Supp. 95-1).

R20-6-702. Expired**Historical Note**

Former General Rule 56-2. R20-6-702 recodified from R4-14-702 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 2115, effective April 30, 2003 (Supp. 03-2).

R20-6-703. Expired**Historical Note**

Former General Rule 61-6. R20-6-703 recodified from R4-14-703 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 2115, effective April 30, 2003 (Supp. 03-2).

R20-6-704. Expired**Historical Note**

Former General Rule 6-19. R20-6-704 recodified from R4-14-704 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 2115, effective April 30, 2003 (Supp. 03-2).

R20-6-705. Expired**Historical Note**

Former General Rule 66-13. R20-6-705 recodified from R4-14-705 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 2115, effective April 30, 2003 (Supp. 03-2).

R20-6-706. Expired**Historical Note**

Former General Rule 69-15; Repealed effective February 22, 1977 (Supp. 77-1). New Section R4-14-706 adopted effective November 5, 1980 (Supp. 80-5). R20-6-706 recodified from R4-14-706 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 2115, effective April 30, 2003 (Supp. 03-2).

R20-6-707. Expired**Historical Note**

Former General Rule 69-18; Amended effective March 17, 1981 (Supp. 81-2). R20-6-707 recodified from R4-14-707 (Supp. 95-1). Section expired under A.R.S. § 41-1056(E) at 9 A.A.R. 2115, effective April 30, 2003 (Supp. 03-2).

R20-6-708. Licensing Time-frames

- A.** Definitions. The definitions listed below apply in this Section.
1. "Administrative completeness review time frame" means the number of days from the Department's receipt of an application for a license until the Department determines that the application contains all components required by statute or rule, including all information required to be submitted by other government agencies A.R.S. § 41-1072 (1).
 2. "License" has the meaning prescribed in A.R.S. § 41-1001(10).
 3. "Overall time frame" means the number of days after the Department's receipt of an application for a license during which the Department determines whether to grant or deny a license. The overall time frame consists of both the administrative completeness review time frame and the substantive review time frame A.R.S. § 41-1072 (2).
 4. "Substantive review time frame" means the number of days after the completion of the administrative completeness review time frame during which the Department determines whether an application or applicant for a license meets all substantive criteria required by state or rule A.R.S. § 41-1072(3).
- B.** The time-frames listed in Table A apply to licenses issued by the Department. The licensing time-frames consist of an administrative completeness review, a substantive review, and an overall review.
- C.** Within the time-frame for the administrative completeness review set forth in Table A, the Department shall notify the applicant in writing of whether the application is complete or incomplete. If the application is incomplete, the Department shall issue a notice of deficiency to the applicant specifying what information or component is required to make the application administratively complete.
1. If the Department determines that an application for a license is not administratively complete, the Department shall include a comprehensive list of the specific deficiencies in the written notice provided under subsection (C). If the Department issues a written notice of deficiency within the administrative completeness review time-frame, the administrative completeness review time-

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frame and the overall review time-frame are suspended from the date the notice is issued until the date that the Department receives the missing information from the applicant.

2. If an applicant does not make some response to each specific deficiency in a notice of deficiency issued during an administrative completeness review, the Department may issue a notice to the applicant within 10 days after receipt of the applicant's response, stating that the response is inadequate. The notice of inadequate response shall identify each specified deficiency to which the applicant did not make some response.
 - a. If the Department issues a notice of inadequate response under this subsection, the suspension of the administrative completeness review time-frame and the overall time-frame is not terminated.
 - b. If the Department does not issue a notice of inadequate response under this subsection, the Department is not precluded from issuing additional notices of deficiency during an administrative completeness review.
 3. If an applicant does not make some response to each specified deficiency in a notice of deficiency issued under subsection (C)(2) within 60 days after the date of a notice of deficiency or within 60 days after a notice of inadequate response issued under subsection (C)(2), the application is deemed withdrawn, and the Department is not required to take further action with respect to the application.
- D.** Within the time-frame for the substantive review set forth in Table A, the Department may issue one comprehensive written request for additional information to the applicant specifying each component or item of information required.
1. If the Department issues a comprehensive written request for additional information within the substantive review time-frame, the substantive review time-frame and the overall time-frame are suspended from the date the written request is issued until the date that the Department receives the additional information from the applicant.
 2. If an applicant does not make some response to each component or item of information requested in a comprehensive written request for additional information, the Department may issue a notice to the applicant within 10 days after receipt of the applicant's response stating that the response is inadequate. The notice of inadequate response shall identify each component or item of information required, to which the applicant did make some response.
 - a. If the Department issues a notice of inadequate response under this subsection, the suspension of the substantive review time-frame and overall time-frame is not terminated.
 - b. If the Department does not issue a notice of inadequate response under this subsection, the Department is not precluded from later issuing supplemental requests by mutual agreement for additional information, during the substantive review.
 3. If an applicant does not make some response to each component or item of information required in a comprehensive written request or a supplemental request for additional information, within 60 days after the date of a comprehensive written request or within 60 days after the date of the supplemental request, the application is deemed withdrawn, and the Department is not required to take further action with respect to the application.
- E.** Within the overall time-frames set forth in Table A, unless extended by mutual agreement under A.R.S. § 41-1075, the Department shall notify the applicant in writing that the application is granted or denied. If the application is denied, the Department shall provide written justification for the denial and a written explanation of the applicant's right to a hearing or the applicant's right to appeal.
- F.** In computing the time periods prescribed in these time-frame rules, the last day of a notice period is included in the computation, unless it is a Saturday, Sunday, or legal holiday.
- G.** This rule applies to applications filed on or after January 1, 1999.

Historical Note

Former General Rule 70-22; Correction, original publication did not include Exhibit C. (Supp. 76-1). Repealed effective January 8, 1980 (Supp. 80-1). R20-6-708 recodified from R4-14-708 (Supp. 95-1). Amended effective January 1, 1999; filed in the Office of the Secretary of State December 4, 1998 (Supp. 98-4).

R20-6-709. Repealed**Historical Note**

Former General Rule 71-23; Repealed effective January 1, 1981 (Supp. 80-6). R20-6-709 recodified from R4-14-709 (Supp. 95-1).

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Table A. Licensing Time-frames Table

License	Relevant A.R.S.	Administrative Completeness	Substantive Review	Overall Time-frame
Certificate of Authority*	§ 20-216	210	90	300
Certificate of Exemption	§ 20-401.05	92	30	122
Reinsurance Intermediary	§ 20-486.01	120	60	180
Hospital, Medical, Dental, and Optometric Service Corporation	§ 20-825	210	90	300
Prepaid Dental Plan Organization	§ 20-1004	210	90	300
Life Care Provider Permit*	§ 20-1803	60	30	90
Health Care Services Organization	§ 20-1052	210	90	300
Mechanical Reimbursement Reinsurer	§ 20-1096.04	210	90	300
Prepaid Legal Insurer*	§ 20-1097.02	45	15	60
Service Representative	§ 20-285	120	60	180
Managing General Agent-Firm	§ 20-284	120	60	180
Managing General Agent-Individual	§ 20-288	120	60	180
Risk Management Consultant	§ 20-289	120	60	180
Agent, Broker and Solicitor	§ 20-291	120	60	180
Nonresident Agent and Broker	§ 20-303	120	60	180
Vending Machine	§ 20-306	120	60	180
Limited Travel Agent	§ 20-306.01	120	60	180
Adjuster	§ 20-312	120	60	180
Bail Bond Agent	§ 20-319	120	60	180
Surplus Lines Broker	§ 20-411	120	60	180
Title Insurance Agent	§ 20-1580	120	60	180
Credit Life and Disability Agents	§ 20-1612	120	60	180
Variable Contract Agent	§ 20-2662	120	60	180
Utilization Review Agent	§ 20-2505	30	90	120
Rating Organization*	§ 20-361	30	30	60
Rate Service Organization	§ 20-389	60	60	120
Qualifying Surplus Lines Insurer	§ 20-413	45	30	75
Third Party Administrator	§ 20-485.12	45	45	90
Service Companies	§ 20-1095.01	30	30	60
Risk Retention Group (Foreign)*	§ 20-2403	60	0	60
Risk Purchasing Groups	§ 20-2407	30	30	60

* Statutory time-frames

Historical Note

Table A adopted effective January 1, 1999; filed in the Office of the Secretary of State December 4, 1998 (Supp. 98-4).

ARTICLE 8. PROHIBITED PRACTICES, PENALTIES

R20-6-801. Unfair Claims Settlement Practices

A. Applicability. This rule applies to all persons and to all insurance policies, insurance contracts and subscription contracts except policies of Worker’s Compensation and title insurance. This rule is not exclusive, and other acts not herein specified, may also be deemed to be a violation of A.R.S. § 20-461, The Unfair Claims Settlement Practices Act.

B. Definitions

1. “Agent” means any individual, corporation, association, partnership or other legal entity authorized to represent an insurer with respect to a claim.
2. “Claimant” means either a first party claimant, a third party claimant, or both and includes such claimant’s designated legal representative and includes a member of the claimant’s immediate family designated by the claimant.
3. “Director” means the Director of Insurance of the State of Arizona.
4. “First party claimant” means an individual, corporation, association, partnership or other legal entity asserting a right to payment under an insurance policy or insurance contract arising out of the occurrence of the contingency of loss covered by such policy or contract.

5. “Insurance policy or insurance contract” has the meaning of A.R.S. § 20-103.
6. “Insurer” has the meaning of A.R.S. § 20-106(C).
7. “Investigation” means all activities of an insurer directly or indirectly related to the determination of liabilities under coverages afforded by an insurance policy or insurance contract.
8. “Notification of claim” means any notification, whether in writing or other means, acceptable under the terms of any insurance policy or insurance contract, to an insurer or its agent, by a claimant, which reasonably apprises the insurer of the facts pertinent to a claim.
9. “Person” has the meaning of A.R.S. § 20-105.
10. “Third party claimant” means any individual, corporation, association, partnership or other legal entity asserting a claim against any individual, corporation, association, partnership or other legal entity insured under an insurance policy or insurance contract of an insurer.
11. “Worker’s compensation” includes, but is not limited to, Longshoremen’s and Harbor Worker’s Compensation.

C. File and record documentation. The insurer’s claim files shall be subject to examination by the Director or by his duly

Authorizing Statute: A.R.S. § 20-143

20-143. Rule-making power

A. The director may make reasonable rules necessary for effectuating any provision of this title.

B. The director shall make rules concerning proxies, consents or authorizations in respect of securities issued by domestic stock insurance companies having a class of equity securities held of record by one hundred or more persons to conform with the requirements of section 12(g)(2)(G)(ii) of the securities exchange act of 1934, as amended, and as may be amended. Such rule shall not apply to any such company having a class of equity securities which are registered or are required to be registered pursuant to section 12 of the securities exchange act of 1934, as amended, or as may be amended. Whenever such equity securities of any such company are registered or are required to be registered pursuant to section 12 of the securities exchange act of 1934, as amended, or as may be amended, then, no person shall solicit or permit the use of his name to solicit, in any manner whatsoever, any proxy, consent or authorization in respect of any equity security of such company without having first complied with the rules prescribed by the securities and exchange commission pursuant to section 14 of the securities exchange act of 1934, as amended, or as may be amended.

C. All rules made pursuant to this section shall be subject to title 41, chapter 6.

D. In addition to any other penalty provided, wilful violation of any rule made by the director is a violation of this title.

Implementing Statute: A.R.S. § 41-1073

41-1073. Time frames; exception

A. No later than December 31, 1998, an agency that issues licenses shall have in place final rules establishing an overall time frame during which the agency will either grant or deny each type of license that it issues. Agencies shall submit their overall time frame rules to the governor's regulatory review council pursuant to the schedule developed by the council. The council shall schedule each agency's rules so that final overall time frame rules are in place no later than December 31, 1998. The rule regarding the overall time frame for each type of license shall state separately the administrative completeness review time frame and the substantive review time frame.

B. If a statutory licensing time frame already exists for an agency but the statutory time frame does not specify separate time frames for the administrative completeness review and the substantive review, by rule the agency shall establish separate time frames for the administrative completeness review and the substantive review, which together shall not exceed the statutory overall time frame. An agency may establish different time frames for initial licenses, renewal licenses and revisions to existing licenses.

C. The submission by the department of environmental quality of a revised permit to the United States environmental protection agency in response to an objection by that agency shall be given the same effect as a notice granting or denying a permit application for licensing time frame purposes. For the purposes of this subsection, "permit" means a permit required by title 49, chapter 2, article 3.1 or section 49-426.

D. In establishing time frames, agencies shall consider all of the following:

1. The complexity of the licensing subject matter.
2. The resources of the agency granting or denying the license.
3. The economic impact of delay on the regulated community.
4. The impact of the licensing decision on public health and safety.
5. The possible use of volunteers with expertise in the subject matter area.
6. The possible increased use of general licenses for similar types of licensed businesses or facilities.
7. The possible increased cooperation between the agency and the regulated community.
8. Increased agency flexibility in structuring the licensing process and personnel.

E. This article does not apply to licenses issued either:

1. Pursuant to tribal state gaming compacts.
2. Within seven days after receipt of initial application.
3. By a lottery method.

INDUSTRIAL COMMISSION OF ARIZONA

Title 20, Chapter 5

Amend: R20-5-1202, R20-5-1210, R20-5-1213



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: February 7, 2023

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: January 17, 2023

SUBJECT: INDUSTRIAL COMMISSION OF ARIZONA
Title 20, Chapter 5

Amend: R20-5-1202, R20-5-1210, R20-5-1213

Summary:

This regular rulemaking from the Industrial Commission of Arizona (Commission) seeks to amend three (3) rules in Title 20, Chapter 5, Article 12 related to Arizona Minimum Wage and Earned Paid Sick Time Practice and Procedure. Specifically, the Commission indicates the proposed amendments clarify the rules by including a couple of new definitions, ease the regulatory burden of recordkeeping with respect to specific employees that are under contract and granted benefits that exceed those contained in A.R.S. § 23-376, ease the regulatory burden of recordkeeping by eliminating unnecessary employer records, and modernize the rules by allowing for service by electronic mail with a party's consent. This rulemaking implements the Commission's proposed course of action from its Five-Year Review Report for the rules in Title 20, Chapter 5, Article 12, which was approved by the Council on January 4, 2023.

1. **Are the rules legal, consistent with legislative intent, and within the agency's statutory authority?**

The Commission cites both general and specific statutory authority for these rules.

2. Do the rules establish a new fee or contain a fee increase?

This rulemaking does not establish a new fee or contain a fee increase.

3. Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?

The Commission indicates it did not review or rely on any study relevant to the proposed amended rules.

4. Summary of the agency's economic impact analysis:

The Commission anticipates that the proposed rulemaking will have no adverse economic, small business, or consumer impact. The proposed rulemaking is intended to reduce regulatory burden by clarifying definitions, eliminating burdensome and unnecessary record keeping requirements, and modernizing the service of Findings and Orders issued by the Department by allowing electronic service with consent.

5. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?

The Commission indicates the benefits of the rulemaking outweigh any costs and imposes the least burden and costs to those regulated. The Commission did not consider alternative methods.

6. What are the economic impacts on stakeholders?

The Commission does not anticipate an increase in costs from the new rulemaking. The Commission will not need to hire additional staff to enforce the new rules. The Commission anticipates that the proposed rulemaking will have no adverse economic, small business, or consumer impact. There is no anticipated impact on private and public employment in businesses, agencies and political subdivisions.

Arizona small businesses who are employers, as defined in A.R.S. §§ 23-362 and 23-371 will be directly affected by the proposed rulemaking. Because of the added clarity, salaried employees and employers of salaried employees benefit from the new definition in R20-5-1202. All employers benefit from the recordkeeping changes in R20-5-1210, additionally employers and employees of minor league baseball benefit from the changes in R20-5-1210. Lastly, employers and employees benefit from the changes in R20-5-1213. The Commission did not consider methods of reducing the impact on small businesses.

7. **Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?**

Between the Notice of Proposed Rulemaking published in the Administrative Register and the Notice of Final Rulemaking now before the Council, the Commission indicates, in R20-5-1202, labels were removed from subsections, consistent with formatting requirements outlined in Secretary of State rule R1-1-408(H). Council staff does not believe this change constitutes a substantially different rule pursuant to A.R.S. § 41-1025.

8. **Does the agency adequately address the comments on the proposed rules and any supplemental proposals?**

The Commission indicates it did not receive any public comments related to this rulemaking.

9. **Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The rules do not require a permit, license, or agency authorization.

10. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

The Commission indicates there are no corresponding federal laws applicable to the subject of this rulemaking. Specifically, federal law does not address earned paid sick time. The proposed rules amend Arizona's earned paid sick time provisions and do not implicate federal law.

11. **Conclusion**

This regular rulemaking from the Industrial Commission of Arizona (Commission) seeks to amend three (3) rules in Title 20, Chapter 5, Article 12 related to Arizona Minimum Wage and Earned Paid Sick Time Practice and Procedure. Specifically, the Commission indicates the proposed amendments clarify the rules by including a couple of new definitions, ease the regulatory burden of recordkeeping with respect to specific employees that are under contract and granted benefits that exceed those contained in A.R.S. § 23-376, ease the regulatory burden of recordkeeping by eliminating unnecessary employer records, and modernize the rules by allowing for service by electronic mail with a party's consent.

The Commission is requesting an immediate effective date under A.R.S. § 41-1032(A)(5), “[t]o adopt a rule that is less stringent than the rule that is currently in effect and that does not have an impact on the public health, safety, welfare or environment, or that does not affect the public involvement and public participation process.” The Commission indicates the proposed amendments provide less stringent recordkeeping requirements for Arizona employers.

Council staff believes the Commission has provided sufficient information that demonstrates a need for an immediate effective date.

Council staff recommends approval of this rulemaking.

THE INDUSTRIAL COMMISSION OF ARIZONA
OFFICE OF THE DIRECTOR



DALE L. SCHULTZ, CHAIRMAN
JOSEPH M. HENNELLY, JR., VICE CHAIR
SCOTT P. LEMARR, MEMBER
D. ALAN EVERETT, MEMBER

P.O. Box 19070
Phoenix, Arizona 85005-9070

JAMES ASHLEY, DIRECTOR
PHONE: (602) 542-4411
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December 20, 2022

Sent via e-mail to grrc@azdoa.gov

Nicole Sornsin, Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: Request for Approval of Rulemaking: A.A.C. Title 20, Chapter 5, Rule R20-5-1202 (Definitions); R20-5-1210 (General Recordkeeping Requirements); R20-5-1213 (Findings and Order Issued by Department).

Dear Ms. Sornsin:

The Industrial Commission of Arizona (the "Commission") requests that the Governor's Regulatory Review Council (the "Council") approve the above-referenced rulemaking. Pursuant to A.A.C. R1-6-201(A)(1), the Commission provides the following information:

a. The close of record date.

December 19, 2022.

b. Whether the rulemaking activity relates to a five-year review report and, if applicable, the date the report was approved by the Council.

The subject rulemaking relates to the currently pending five-year review report.

c. Whether the rule establishes a new fee and, if it does, citation of the statute expressly authorizing the new fee.

The subject rulemaking does not establish a new fee.

d. Whether the rule contains a fee increase.

The subject rulemaking does not contain a fee increase.

e. Whether an immediate effective date is requested for the rule under A.R.S. § 41-1032.

The Commission requests an immediate effective date under A.R.S. § 41-1032(A)(5) ("To adopt a rule that is less stringent than the rule that is currently in effect and that does not have an impact on the public health, safety, welfare or environment, or that does not affect the public involvement and public participation process."). The amendments to R20-5-1210 provide a less stringent recordkeeping requirement for Arizona employers.

- f. A certification that the preamble discloses a reference to any study relevant to the rule that the agency reviewed and either did or did not rely on in the agency's evaluation of or justification for the rule.**

The Commission did not rely on a study for justification of the subject rulemaking.

- g. If one or more full-time employees are necessary to implement and enforce the rule, a certification that the preparer of the economic, small business, and consumer impact statement has notified the Joint Legislative Budget Committee of the number of new full-time employees necessary to implement and enforce the rule.**

The Commission does not anticipate that it will be necessary to hire any new full-time employees to implement or enforce the subject rulemaking.

- h. A list of all documents enclosed.**

Governor's Office Approvals of Initial and Final Rulemaking
Notice of Final Rulemaking
Economic Impact Statement
General and Specific Statutes Authorizing Rulemaking
Defined Terms

Thank you for your consideration. Should you have any questions regarding the amendments, please contact Gaetano Testini, Chief Legal Counsel, at 602-542-5781.

Sincerely,



James Ashley
Director

Enclosures

NOTICE OF FINAL RULEMAKING

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

PREAMBLE

<u>1. Articles and Sections Affected</u>	<u>Rulemaking Action</u>
R20-5-1202	Amend
R20-5-1210	Amend
R20-5-1213	Amend

2. Citations to agency’s statutory rulemaking authority to include the authorizing statute and the implementing statute:

Authorizing statutes: A.R.S. §§ 23-364, 23-376

Implementing statutes: A.R.S. Title 23, Chapter 2, Articles 8 and 8.1

Note: An exemption from Executive Order 2022-01 was provided for this rulemaking by Mr. Brian Norman, Policy Advisor in the Office of the Arizona Governor, by e-mail dated October 26, 2022. A second exemption from Executive Order 2022-01 was provided for this rulemaking by Mr. Brian Norman, Policy Advisor in the Office of the Arizona Governor, by e-mail dated December 19, 2022.

3. The effective date of the rules:

The Industrial Commission of Arizona (the “Commission”) requests an immediate effective date.

a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

The Commission requests an immediate effective date under A.R.S. § 41-1032(A)(5) ("To adopt a rule that is less stringent than the rule that is currently in effect and that does not have an impact on the public health, safety, welfare or environment, or that does not affect the public involvement and public participation process.").

The amendments to R20-5-1210 provide a less stringent recordkeeping requirements for

Arizona employers.

b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):

4. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the proposed rule:

Notice of Rulemaking Docket Opening: 28 A.A.R. 3507, November 11, 2022

Notice of Proposed Rulemaking: 28 A.A.R. 3478, November 11, 2022

5. The agency's contact person who can answer questions about the rulemaking:

Name: Lisa Padgett
Address: Industrial Commission of Arizona
Labor Department
800 West Washington Street, Suite 403
Phoenix, AZ 85007
Telephone: (602) 542-4515
Fax: (602) 542-8097
E-mail: LaborAdmin@azica.gov

6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

Arizona voters approved Proposition 206, the Fair Wages and Healthy Families Act (the "Act"), in November 2016. The Act established a new state minimum wage effective January 1, 2017, and entitles employees to accrue earned paid sick time beginning July 1, 2017. The Act authorizes the Industrial Commission of Arizona (the "Commission") to "enforce and implement" both the minimum wage and earned paid sick time provisions and promulgate regulations consistent with the articles. *See* A.R.S. § 23-364(A); A.R.S. Title 23, Chapter 2, Articles 8 and 8.1. In the earned paid sick time context, the Act provides that "[t]he commission shall be authorized to coordinate implementation and enforcement of [Article 8.1, Earned Paid Sick Time] and shall promulgate appropriate guidelines or regulations for such purposes." A.R.S. § 23-376.

The proposed amendments clarify the rules by including a couple of new definitions, ease

the regulatory burden of recordkeeping with respect to specific employees that are under contract and granted benefits that exceed those contained in A.R.S. § 23-376, ease the regulatory burden of recordkeeping by eliminating unnecessary employer records, and modernize the rules by allowing for service by electronic mail with a party's consent.

7. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The Commission did not review or rely on any study relevant to the proposed amended rules.

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

9. A summary of the economic, small business and consumer impact.

The proposed amendments will reduce regulatory burden while achieving the Commission's regulatory objectives as prescribed by the Act.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

In R20-5-1202 labels were removed from subsections, consistent with R1-1-408(H).

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

There were no public comments regarding the proposed rules.

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

Not applicable.

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

The proposed amended rules do not require issuance of a regulatory permit or license.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

Federal law does not address earned paid sick time. The proposed rule amends Arizona's earned paid sick time provisions and do not implicate federal law.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No analysis was submitted.

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

None.

14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

Not applicable.

15. The full text of the proposed rules follows:

**TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE
CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA
ARTICLE 12. ARIZONA MINIMUM WAGE AND EARNED PAID SICK TIME
PRACTICE AND PROCEDURE**

Section

R20-5-1202. Definitions

R20-5-1210. General Recordkeeping Requirements

R20-5-1213. Findings and Order Issued by the Department

R20-5-1202. Definitions

In this Article, the definitions of A.R.S. §§ 23-362 (version two), 23-371, and 23-364 apply. In addition, unless the context otherwise requires, the following definitions shall apply to both the Act and this Article:

1. “Act” means A.R.S. Title 23, Chapter 2, Articles 8 and 8.1.
2. “Affected employee” means an employee or employees on whose behalf a complaint may be filed alleging a violation under the Act.
3. “Amount of earned paid sick time available to the employee” means the amount of earned paid sick time or equivalent paid time off that is available to the employee for use in the current year.
4. “Amount of earned paid sick time taken by the employee to date in the year” means the amount of earned paid sick time or equivalent paid time off taken by the employee to date in the current year. Where an employee has used available equivalent paid time off for either the purposes enumerated in A.R.S. § 23-373 or other purposes, the employer may count that usage towards the “amount of earned paid sick time taken by the employee to date in the year.”
5. “Amount of pay the employee has received as earned paid sick time” means the amount of pay the employee has received as earned paid sick time or equivalent paid time off to date in the current year. Where an employee has received pay for equivalent paid time off for the purposes enumerated in A.R.S. § 23-373 or other purposes, the employer may count that pay towards the “amount of pay the employee has received as earned paid sick time.”
6. “Authorized representative” means a person prescribed by law to act on behalf of a party who files with the Department a written instrument advising of the person’s authority to act on behalf of the party.
7. “Casual Basis,” when applied to babysitting services, means employment which is irregular or intermittent.
8. “Commission” means monetary compensation based on:
 - a. A percentage of total sales,
 - b. A percentage of sales in excess of a specified amount,
 - c. A fixed allowance per unit, or

- ~~Ⓓ~~. Some other formula the employer and employee agree to as a measure of accomplishment.
- ~~9~~. “Communicable disease” has the meaning prescribed by A.R.S. § 36-661.
- ~~10~~. “Complainant” means a person or organization filing an administrative complaint under the Act.
- ~~11~~. “Department” means the Labor Department of the Industrial Commission of Arizona or other authorized division of the Industrial Commission as designated by the Industrial Commission.
- ~~12~~. “Earned sick time” under A.R.S. § 23-364(G) means earned paid sick time.
- ~~13~~. “Employee’s regular paycheck” means a regular payroll record that is readily available to employees and contains the information required by A.R.S. § 23-375(C), including physical or electronic paychecks or paystubs.
- ~~14~~. “Equivalent paid time off” means paid time off provided under a paid leave policy, such as a paid time off policy, that makes available an amount of paid leave sufficient to meet the accrual requirements of the Act that may be used for the same purposes and under the same conditions as earned paid sick time.
- ~~15~~. “Filing” means receipt of a report, document, instrument, videotape, audiotape, or other written matter at an office of the Department.
- ~~16~~. The term “health care professional” in A.R.S. § 23-373(G) has the same meaning as “health care professional,” as defined in this Section.
- ~~17~~. “Health care professional” means any of the following:
 - ~~a~~. A “physician” as defined by A.R.S. § 36-2351;
 - ~~b~~. A “physician assistant” as defined by A.R.S. § 32-2501;
 - ~~c~~. A “registered nurse practitioner” as defined by A.R.S. § 32- 1601.
 - ~~d~~. A certified nurse midwife who is a registered nurse practitioner approved by the Arizona State Board of Nursing to provide primary care services during pregnancy, childbirth, and the postpartum period;
 - ~~e~~. A dentist licensed under A.R.S. Title 32, Chapter 11, Article 2; or
 - ~~f~~. A behavioral health provider practicing as:
 - ~~i~~. A psychologist licensed under A.R.S. Title 32, Chapter 19.1;
 - ~~ii~~. A clinical social worker licensed under A.R.S. § 32- 3293;

iii- A marriage and family therapist licensed under A.R.S. § 32-3311; or

iv- A professional counselor licensed under A.R.S. § 32- 3301.

18: “Health care provider” has the meaning prescribed by A.R.S. § 36-661.

19: “Hours worked” means all hours for which an employee covered under the Act is employed and required to give to the employer, including all time during which an employee is on duty or at a prescribed work place and all time the employee is suffered or permitted to work.

20: “Minimum wage” means the lowest rate of monetary compensation required under the Act.

21: “Monetary compensation” means cash or its equivalent due to an employee by reason of employment.

22: “On duty” means time spent working or waiting that the employer controls and that the employee is not permitted to use for the employee’s own purpose.

23: “Public benefits” has the same meaning as “state or local public benefit,” as prescribed by A.R.S. § 1-502(I).

24: “Public health emergency” means a state of emergency declared by the governor in which there is an occurrence or imminent threat of an illness or health condition caused by bioterrorism, an epidemic or pandemic disease or a highly fatal infectious agent or biological toxin and that poses a substantial risk of a significant number of human fatalities or incidents of permanent or long-term disability.

“Salaried” means receiving a fixed amount of pay regardless of how many hours are worked each week.

“Salary” means a fixed compensation paid regularly for employment.

25: “Same hourly rate” means the following:

a: For employees paid on the basis of a single hourly rate, “same hourly rate” shall be the hourly rate the employee would have earned for the period of time in which earned paid sick time or equivalent paid time off is used, but shall in no case be less than minimum wage.

b: For employees who are paid multiple hourly rates of pay, “same hourly rate” shall be determined in the following order of priority, but shall in no case be less than minimum wage:

- i. The hourly rate the employee would have earned, if known, for each hour of earned paid sick time or equivalent paid time off used.
- ii. The weighted average of all hourly rates of pay during the previous pay period.

e. For employees who are paid a salary, no additional pay is due when the employee's use of earned paid sick time or equivalent paid time off results in no reduction in the employee's regular salary during the pay period in which the earned paid sick time or equivalent paid time off is used. "Same hourly rate" for salaried employees shall be determined in the following order of priority, but shall in no case be less than minimum wage:

- i. The wages an employee earns during each pay period covered by the salary divided by the number of hours agreed to be worked during each pay period, if the number of hours to be worked during each pay period was previously established.

- ii. The wages an employee earns during each workweek covered by the salary in the current year divided by 40 hours.

f. For employees paid on a commission, piece-rate, or fee-for-service basis, "same hourly rate" shall be determined in the following order of priority, but shall in no case be less than minimum wage:

- i. The hourly rate of pay previously agreed upon by the employer and the employee as:

- (1) A minimum hourly rate for work performed; or

- (2) An hourly rate for payment of earned paid sick time or equivalent paid time off.

- ii. The wages that the employee would have been paid, if known, for the period of time in which earned paid sick time or equivalent paid time off is used, divided by the number of hours of earned paid sick time or equivalent paid time off used.

- iii. A reasonable estimation of the commission, piece-rate, or fee-for-service compensation that the employee would have been paid for the period of time in which the earned paid sick time or equivalent paid time off is

used
equivalent paid

divided by the number of hours of earned paid sick time or
time off used.

iv. The hourly average of all commission, piece rate, or fee-for-service compensation that the employee earned during the previous 90 days, if the employee worked regularly during the previous 90-day period, based on:
(1) hours that the employee actually worked; or
(2) a 40- hour workweek.

v. The hourly average of all commission, piece rate, or fee-for-service compensation that the employee earned during the previous 365 days,
based on:

(1) hours that the employee actually worked; or

~~(2)~~ a 40-hour workweek.

e. “Same hourly rate” includes shift differentials and premiums meant to compensate an employee for work performed under differing conditions (such as hazard pay or a shift differential for working at night) if the employee would have been entitled to the shift differential or premium for the period of time in which earned paid sick time or equivalent paid time off is used.

f. “Same hourly rate” does not include:

- i. Additions to an employee’s base rate for overtime or holiday pay;
- ii. Subject to subsection (e), bonuses or other types of incentive pay; and
- iii. Tips or gifts.

~~26.~~ “Smallest increment that the employer’s payroll system uses to account for absences or use of other time” means the smallest increment of time that an employer utilizes, by policy or practice, to account for absences or use of other paid time off.

~~27.~~ “Tip” means a sum that a customer presents as a gift in recognition of some service performed, and includes gratuities. The sum may be in the form of cash, amounts paid by bank check or other negotiable instrument payable at par, or amounts the employer transfers to the employee under directions from a credit customer who designates an amount to be added to a bill as a tip. Gifts in forms other than cash or its equivalent as described in this definition, such as event tickets, passes, or merchandise, are not tips.

~~28.~~ “Violation” means a transgression of any statute or rule, or any part of a statute or rule, including both acts and omissions.

~~29.~~ “Willfully” means acting with actual knowledge of the requirements of the Act or this Article, or acting with reckless disregard of the requirements of the Act or this Article.

~~30.~~ “Workday” means any fixed period of 24 consecutive hours.

~~31.~~ “Workweek” means any fixed and regularly recurring period of seven consecutive workdays.

R20-5-1210. General Recordkeeping Requirements

A. Payroll records required to be kept under the Act include:

1. All time and earning cards or sheets on which are entered the daily starting and stopping time of individual employees, or of separate work forces, or the amounts of work accomplished by individual employees on a daily, weekly, or pay period basis (for example, units produced) when those amounts determine in whole or in part: ~~(1) those employees' the pay period wages;~~ and ~~(2) those employees' earned paid sick time or equivalent paid time off;~~
 2. From their last effective date, all wage-rate tables or schedules of the employer that provide the piece rates or other rates used in computing wages; and
 3. Records of additions to or deductions from wages paid and records that support or corroborate the additions or deductions.
- B. Except as otherwise provided in this Section, every employer shall maintain and preserve payroll or other records containing the following information and data with respect to each employee to whom the Act applies:
1. Name in full, and on the same record, the employee's identifying symbol or number if it is used in place of the employee's name on any time, work, or payroll record;
 2. Home address, including zip code;
 3. Date of birth, if under 19;
 4. Occupation in which employed;
 5. Time of day and day of week on which the employee's workweek begins. If the employee is part of a workforce or employed in or by an establishment all of whose workers have a workweek beginning at the same time on the same day, then a single notation of the time of the day and beginning day of the workweek for the whole workforce or establishment is permitted;
 6. Regular hourly rate of pay for any workweek and an explanation of the basis of pay by indicating the monetary amount paid on a per hour, per day, per week, per piece, commission on sales, or other basis, including the amount and nature of each payment;
 7. Hours worked each workday and total hours worked each workweek;
 8. Total daily or weekly ~~straight-time~~ wages due for hours worked during the workday or workweek, ~~exclusive of premium overtime compensation;~~

~~9. Total premium pay for overtime hours and an explanation of how the premium pay was calculated exclusive of straight-time wages for overtime hours recorded under subsection (B)(8) of this Section;~~

~~10. Total additions to or deductions from wages paid each pay period including employee purchase orders or wage assignments, including, for individual employee records, the dates, amounts, and nature of the items that make up the total additions and deductions;~~

~~11. Total wages paid each pay period;~~

~~12. Date of payment and the pay period covered by payment;~~

~~13. The amount of earned paid sick time available to the employee;~~

~~14. The amount of earned paid sick time taken by the employee to date in the year;~~

~~15. The amount of pay the employee has received as earned paid sick time; and~~

~~16. The employee's earned paid sick time balance. "The employee's earned paid sick time balance" means the sum of earned paid sick time or equivalent paid time off that is: (1) carried over to the current year; (2) accrued to date in the current year; and (3) provided to date in the current year pursuant to A.R.S. § 23-372(D)(4) or A.A.C. R20-5-1206(F), (G), or (H).~~

C. For an employee who is compensated on a salary basis at a rate that exceeds the minimum wage required under the Act and who, under 29 CFR 541, is an exempt bona fide executive, administrative, or professional employee, including an employee employed in the capacity of academic administrative personnel or teachers in elementary or secondary schools, or in outside sales, an employer shall maintain and preserve:

1. Records containing the information and data required under subsections (B)(1) through (B)(5), and (B)(~~11~~) through (B)(~~14~~) of this Section; and
2. Records containing the basis on which wages are paid in sufficient detail to permit a determination or calculation of whether the salary received exceeds the minimum wage required under the Act, including a record of the hours upon which payment of the salary is based, whether full time or part time.

D. With respect to employees working on fixed schedules, an employer may maintain records showing instead of the hours worked each day and each workweek as required under this Section, the schedule of daily and weekly hours the employee normally works, provided:

1. In weeks in which an employee adheres to this schedule, the employer indicates by check mark, statement, or other method, that the employee actually worked the hours; and
2. In weeks in which more or fewer than the scheduled hours are worked, the employer records the number of hours actually worked each day and each week.

E. With respect to an employee that customarily and regularly receives tips, the employer shall ensure that the records required under this Article include the following information:

1. A symbol, letter, or other notation placed on the pay records identifying each employee whose wage is determined in part by tips;
2. Amount of tips the employee reports to the employer;
3. The hourly wage of each tipped employee after taking into consideration the employee's tips;
4. Hours worked each workday in any occupation in which the employee does not receive tips, and total daily or week straight-time payment made by the employer for the hours;
5. Hours worked each workday in occupations in which the employee receives tips and total daily or weekly straight-time wages for the hours; and
6. Copy of the notice required under R20-5-1207(C).

F. An employer who makes retroactive payment of wages, voluntarily or involuntarily, shall record on the pay records, the amount of the payment to each employee, the period covered by the payment, and the date of payment.

G. For an employee who is signed to a contract to play minor league baseball and is exempt pursuant to 29 U.S.C. §213(a)(19), an employer shall maintain and preserve records containing the information and data required under subsections (B)(1)through (B)(5), (B)(10) and (B)(11) of this Section.

R20-5-1213. Findings and Order Issued by the Department

A. Except as provided in R20-5-1219, after receipt of a complaint alleging a violation of the Act, the Department shall issue a Findings and Order of its determination. The Department shall ~~send~~ serve its Findings and Order to both the employer and the complainant, ~~at their last known addresses served personally or by regular first class~~

~~mail. If the complaint named affected employees, the Department may send a copy of its Findings and Order to the affected employees. Service may be made and is deemed complete by either depositing the document in regular or certified mail, addressed to the party served at the address shown in the records of the Department, by personal delivery upon the party, or with a party's consent, transmission by e-mail to the email address shown in the records of the Department.~~

- B. If the Department determines that an employer has violated the minimum wage, earned paid sick time, or equivalent paid time off requirements, the Department shall order the employer to pay the employee, and if applicable, affected employees, the balance of the wages, earned paid sick time, or equivalent paid time off owed, including interest at the legal rate and an additional amount equal to twice the underpaid wages, earned paid sick time, or equivalent paid time off owed.
- C. If the Department determines that a retaliation, discrimination, confidentiality, or nondisclosure violation has occurred, the Department shall direct the employer or other person to cease and desist from the violation and may take action necessary to remedy the violation, including:
 - 1. Rehiring or reinstatement,
 - 2. Reimbursement of lost wages and interest,
 - 3. Payment of penalty to employees or affected employees as provided for in the Act and this Article, and
 - 4. Posting of notices to employees.
- D. If the Department determines that no violation of the Act has occurred, or if the Department is unable to reach a conclusion based on the evidence submitted, the Department shall notify the parties and shall dismiss the complaint without prejudice. After notification of the Department's determination, the complainant may bring a civil action under A.R.S. § 23- 364(E).
- E. The Department may assess civil penalties for recordkeeping, posting, and other violations under the Act and this Article as part of a Findings and Order issued under subsection (A) or the civil penalties and other violations may be assessed as a separate Findings and Order. If issued as a separate Findings and Order, the Department shall serve, personally or by regular first class mail, the Findings and Order on the employer and, if a complaint has been filed, the complainant.
- F. The Director of the Department shall sign the written Findings and Order issued by the Department.
- G. If an employer does not comply with a Findings and Order issued by the Department within 10 days following finality of the Findings and Order, the Department may refer the matter to a law enforcement officer.

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

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ARTICLE 12. ARIZONA MINIMUM WAGE AND EARNED PAID SICK TIME PRACTICE AND PROCEDURE

1. Identification of the proposed rulemaking:

The proposed amendments (1) clarify the rules by including a new definitions, (2) ease the regulatory burden of recordkeeping with respect to specific employees that are under contract and granted benefits that exceed those contained in A.R.S. § 23-376, (3) ease the regulatory burden of recordkeeping by eliminating unnecessary employer records, and (4) modernize the rules by allowing for service by electronic mail with a party's consent.

0. Identification of the persons who will be directly affected by, bear the costs of, or directly benefit from the proposed rulemaking:

Employers, as defined in A.R.S. §§ 23-362 and 23-371 are covered by the rules within Article 12. Because of the added clarity, salaried employees and employers of salaried employees benefit from the new definition in R20-5-1202. All employers benefit from the record keeping changes in R20-5-1210, additionally employers and employees of minor league baseball benefit from the changes in R20-5-1210. Lastly, employers and employees benefit from the changes in R20-5-1213.

0. A cost benefit analysis of the following:

a. Costs and benefits to state agencies directly affected by the rulemaking, including the number of new full-time employees at the implementing agency required to implement and enforce the proposed rule:

The Commission does not anticipate an increase in costs from the new rulemaking. The Commission will not need to hire additional staff to enforce the new rules.

b. Costs and benefits to political subdivisions directly affected by the rulemaking:

Political subdivisions would enjoy the same benefits as outlined below to businesses affected by the proposed amendments.

c. Costs and benefits to businesses directly affected by the rulemaking:

The Industrial Commission anticipates that the proposed rulemaking will have no adverse economic, small business, or consumer impact. The proposed rulemaking is intended to reduce regulatory burden by clarify salaried employers and eliminating burdensome and unnecessary record keeping requirements, and modernizing the service of Findings and Orders issued by te Department by allowing electronic service with consent.

4. Impact on private and public employment in businesses, agencies and political subdivisions:

There is no anticipated impact on private and public employment in businesses, agencies and political subdivisions.

0. Impact on small businesses:

a. Identification of the small businesses subject to the rulemaking:

Arizona small businesses who are employers, as defined in A.R.S. §§ 23-362 and 23-371 will be directly affected by the proposed rulemaking.

b. Administrative and other costs required for compliance with the rulemaking:

The proposed rules do not place new obligations, costs, or time constraints on employers, adoption of the final rules is not expected to impose administrative or other costs required for compliance in Arizona.

c. Description of the methods that may be used to reduce the impact on small businesses:

The Commission did not consider methods of reducing the impact on small businesses.

d. Cost and benefit to private persons and consumers who are directly affected by proposed rulemaking:

Consumers are not directly affected by this rulemaking. Private persons who file an earned paid sick time or minimum wage claim benefit from the changes in R20-5-1213.

0. Probable effect on state revenues:

The Commission anticipates state revenues remaining neutral.

0. Less intrusive or less costly alternative methods considered:

The Commission did not consider alternative methods.

0. Data on which the rule is based:

The Commission did not perform any studies as a basis for the rulemaking.

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- F. R20-5-1130, R20-5-1131, and R20-5-1132 govern hearing rights and procedures for revocation hearings and review.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1134. Notice of Bankruptcy, Change in Ownership Status, or Change in Business Address

- A. A self-insurer shall notify the Commission in writing within 24 hours of any bankruptcy filing under federal law or insolvency proceeding under any state's laws.
- B. A self-insurer shall notify the Commission in writing within 24 hours of any change in the ownership status or business address of the employer.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1135. Plan of Action for Retaining Self-insurance Authority in the Event of Insolvency or Bankruptcy

- A. If a self-insurer becomes insolvent or files for protection under the United States Bankruptcy Code seeking to reorganize, and desires to remain self-insured, it shall file with the Division a written Letter of Intent regarding its intent to reorganize under the applicable provisions of the United States Bankruptcy Code.
1. If the self-insurer is incorporated, the chief executive officer shall sign the Letter of Intent and the board of directors shall approve the Letter if the corporation is still operating;
 2. If the self-insurer is not incorporated, an authorized representative of the self-insurer shall sign the Letter of Intent; or
 3. An attorney representing the entity in its bankruptcy reorganization case may sign the Letter of Intent instead of the chief executive officer or authorized representative.
- B. The self-insurer shall file the Letter of Intent with the Division within 10 days of the initial bankruptcy filing or insolvency proceeding.
- C. The self-insurer shall ensure that a provision addressing the self-insurer's obligations to workers' compensation claimants and the Commission is included in the Plan of Reorganization filed with the United States Bankruptcy Court. This Plan shall state the self-insurer's intentions and financial ability to continue self-insurance.
- D. During the period between the initial bankruptcy filing and the approval of a Plan of Reorganization or Plan of Liquidation, the self-insurer may continue its self-insurance status only upon the demonstration of adequate protection to cover its current workers' compensation claims, or those claims that may come due before the Bankruptcy Court approves the Reorganization or Insolvency Plan. As part of the adequate protection for the Commission, the self-insurer shall post or deposit additional security in an amount the Commission deems necessary to pay claims currently pending or anticipated before the approval of the Plan of Reorganization or liquidation.
- E. The self-insurer, or its legal representative, shall send a copy of the proposed Plan of Reorganization or Liquidation, including amendments to the Division.
- F. The Commission may file an Objection to the Plan of Reorganization in the appropriate bankruptcy court and take other actions as permitted under the United States Bankruptcy Code if it determines that the Plan of Reorganization or Liquidation

does not adequately provide for the processing and payment of the self-insurer's workers' compensation claims.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

R20-5-1136. Notice of Self-insurer's Termination of Self-insurance

- A. A self-insurer shall file with the Division a completed and signed Notice of Self-insurer's Termination of Self-insurance form, if the self-insurer decides to terminate its self-insurance. The Notice of Self-insurer's Termination shall be filed with the Division 30 days before the effective date of termination of self-insurance.
- B. Before the effective date of the termination of self-insurance, the self-insurer shall file a certificate with the Claims Division designating an insurance carrier, or other proof, satisfactory to the Commission, of compliance with the requirements of A.R.S. § 23-961, to cover claims of the self-insurer that:
1. Are pending at that time the self-insurer terminates self-insurance; and
 2. Occur after the effective date of the termination of self-insurance.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 1008, effective April 4, 2005 (Supp. 05-1).

ARTICLE 12. ARIZONA MINIMUM WAGE AND EARNED PAID SICK TIME PRACTICE AND PROCEDURE**R20-5-1201. Notice of Rules**

- A. This Article applies to all actions and proceedings before the Industrial Commission of Arizona arising under A.R.S. Title 23, Articles 8 and 8.1.
- B. The Industrial Commission of Arizona shall provide a copy of this Article upon request to any person free of charge.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4). Amended by final rulemaking at 23 A.A.R. 2907, effective October 3, 2017 (Supp. 17-4).

R20-5-1202. Definitions

In this Article, the definitions of A.R.S. §§ 23-362 (version two), 23-371, and 23-364 apply. In addition, unless the context otherwise requires, the following definitions shall apply to both the Act and this Article:

1. "Act" means A.R.S. Title 23, Chapter 2, Articles 8 and 8.1.
2. "Affected employee" means an employee or employees on whose behalf a complaint may be filed alleging a violation under the Act.
3. "Amount of earned paid sick time available to the employee" means the amount of earned paid sick time or equivalent paid time off that is available to the employee for use in the current year.
4. "Amount of earned paid sick time taken by the employee to date in the year" means the amount of earned paid sick time or equivalent paid time off taken by the employee to date in the current year. Where an employee has used

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- available equivalent paid time off for either the purposes enumerated in A.R.S. § 23-373 or other purposes, the employer may count that usage towards the “amount of earned paid sick time taken by the employee to date in the year.”
5. “Amount of pay the employee has received as earned paid sick time” means the amount of pay the employee has received as earned paid sick time or equivalent paid time off to date in the current year. Where an employee has received pay for equivalent paid time off for the purposes enumerated in A.R.S. § 23-373 or other purposes, the employer may count that pay towards the “amount of pay the employee has received as earned paid sick time.”
 6. “Authorized representative” means a person prescribed by law to act on behalf of a party who files with the Department a written instrument advising of the person’s authority to act on behalf of the party.
 7. “Casual Basis,” when applied to babysitting services, means employment which is irregular or intermittent.
 8. “Commission” means monetary compensation based on:
 - a. A percentage of total sales,
 - b. A percentage of sales in excess of a specified amount,
 - c. A fixed allowance per unit, or
 - d. Some other formula the employer and employee agree to as a measure of accomplishment.
 9. “Communicable disease” has the meaning prescribed by A.R.S. § 36-661.
 10. “Complainant” means a person or organization filing an administrative complaint under the Act.
 11. “Department” means the Labor Department of the Industrial Commission of Arizona or other authorized division of the Industrial Commission as designated by the Industrial Commission.
 12. “Earned sick time” under A.R.S. § 23-364(G) means earned paid sick time.
 13. “Employee’s regular paycheck” means a regular payroll record that is readily available to employees and contains the information required by A.R.S. § 23-375(C), including physical or electronic paychecks or paystubs.
 14. “Equivalent paid time off” means paid time off provided under a paid leave policy, such as a paid time off policy, that makes available an amount of paid leave sufficient to meet the accrual requirements of the Act that may be used for the same purposes and under the same conditions as earned paid sick time.
 15. “Filing” means receipt of a report, document, instrument, videotape, audiotape, or other written matter at an office of the Department.
 16. The term “health care professional” in A.R.S. § 23-373(G) has the same meaning as “health care professional,” as defined in this Section.
 17. “Health care professional” means any of the following:
 - a. A “physician” as defined by A.R.S. § 36-2351;
 - b. A “physician assistant” as defined by A.R.S. § 32-2501;
 - c. A “registered nurse practitioner” as defined by A.R.S. § 32-1601.
 - d. A certified nurse midwife who is a registered nurse practitioner approved by the Arizona State Board of Nursing to provide primary care services during pregnancy, childbirth, and the postpartum period;
 - e. A dentist licensed under A.R.S. Title 32, Chapter 11, Article 2; or
 - f. A behavioral health provider practicing as:
 - i. A psychologist licensed under A.R.S. Title 32, Chapter 19.1;
 - ii. A clinical social worker licensed under A.R.S. § 32-3293;
 - iii. A marriage and family therapist licensed under A.R.S. § 32-3311; or
 - iv. A professional counselor licensed under A.R.S. § 32-3301.
 18. “Health care provider” has the meaning prescribed by A.R.S. § 36-661.
 19. “Hours worked” means all hours for which an employee covered under the Act is employed and required to give to the employer, including all time during which an employee is on duty or at a prescribed work place and all time the employee is suffered or permitted to work.
 20. “Minimum wage” means the lowest rate of monetary compensation required under the Act.
 21. “Monetary compensation” means cash or its equivalent due to an employee by reason of employment.
 22. “On duty” means time spent working or waiting that the employer controls and that the employee is not permitted to use for the employee’s own purpose.
 23. “Public benefits” has the same meaning as “state or local public benefit,” as prescribed by A.R.S. § 1-502(I).
 24. “Public health emergency” means a state of emergency declared by the governor in which there is an occurrence or imminent threat of an illness or health condition caused by bioterrorism, an epidemic or pandemic disease or a highly fatal infectious agent or biological toxin and that poses a substantial risk of a significant number of human fatalities or incidents of permanent or long-term disability.
 25. “Same hourly rate” means the following:
 - a. For employees paid on the basis of a single hourly rate, “same hourly rate” shall be the hourly rate the employee would have earned for the period of time in which earned paid sick time or equivalent paid time off is used, but shall in no case be less than minimum wage.
 - b. For employees who are paid multiple hourly rates of pay, “same hourly rate” shall be determined in the following order of priority, but shall in no case be less than minimum wage:
 - i. The hourly rate the employee would have earned, if known, for each hour of earned paid sick time or equivalent paid time off used.
 - ii. The weighted average of all hourly rates of pay during the previous pay period.
 - c. For employees who are paid a salary, no additional pay is due when the employee’s use of earned paid sick time or equivalent paid time off results in no reduction in the employee’s regular salary during the pay period in which the earned paid sick time or equivalent paid time off is used. “Same hourly rate” for salaried employees shall be determined in the following order of priority, but shall in no case be less than minimum wage:
 - i. The wages an employee earns during each pay period covered by the salary divided by the number of hours agreed to be worked during each pay period, if the number of hours to be worked during each pay period was previously established.
 - ii. The wages an employee earns during each workweek covered by the salary in the current year divided by 40 hours.

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- d. For employees paid on a commission, piece-rate, or fee-for-service basis, “same hourly rate” shall be determined in the following order of priority, but shall in no case be less than minimum wage:
- i. The hourly rate of pay previously agreed upon by the employer and the employee as:
 - (1) A minimum hourly rate for work performed; or
 - (2) An hourly rate for payment of earned paid sick time or equivalent paid time off.
 - ii. The wages that the employee would have been paid, if known, for the period of time in which earned paid sick time or equivalent paid time off is used, divided by the number of hours of earned paid sick time or equivalent paid time off used.
 - iii. A reasonable estimation of the commission, piece-rate, or fee-for-service compensation that the employee would have been paid for the period of time in which the earned paid sick time or equivalent paid time off is used, divided by the number of hours of earned paid sick time or equivalent paid time off used.
 - iv. The hourly average of all commission, piece-rate, or fee-for-service compensation that the employee earned during the previous 90 days, if the employee worked regularly during the previous 90-day period, based on: (1) hours that the employee actually worked; or (2) a 40-hour workweek.
 - v. The hourly average of all commission, piece-rate, or fee-for-service compensation that the employee earned during the previous 365 days, based on: (1) hours that the employee actually worked; or (2) a 40-hour workweek.
- e. “Same hourly rate” includes shift differentials and premiums meant to compensate an employee for work performed under differing conditions (such as hazard pay or a shift differential for working at night) if the employee would have been entitled to the shift differential or premium for the period of time in which earned paid sick time or equivalent paid time off is used.
- f. “Same hourly rate” does not include:
- i. Additions to an employee’s base rate for over-time or holiday pay;
 - ii. Subject to subsection (e), bonuses or other types of incentive pay; and
 - iii. Tips or gifts.
26. “Smallest increment that the employer’s payroll system uses to account for absences or use of other time” means the smallest increment of time that an employer utilizes, by policy or practice, to account for absences or use of other paid time off.
27. “Tip” means a sum that a customer presents as a gift in recognition of some service performed, and includes gratuities. The sum may be in the form of cash, amounts paid by bank check or other negotiable instrument payable at par, or amounts the employer transfers to the employee under directions from a credit customer who designates an amount to be added to a bill as a tip. Gifts in forms other than cash or its equivalent as described in this definition, such as event tickets, passes, or merchandise, are not tips.
28. “Violation” means a transgression of any statute or rule, or any part of a statute or rule, including both acts and omissions.
29. “Willfully” means acting with actual knowledge of the requirements of the Act or this Article, or acting with reckless disregard of the requirements of the Act or this Article.
30. “Workday” means any fixed period of 24 consecutive hours.
31. “Workweek” means any fixed and regularly recurring period of seven consecutive workdays.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4). Amended by final rulemaking at 23 A.A.R. 2907, effective October 3, 2017 (Supp. 17-4).

R20-5-1203. Duty to Provide Current Address

- A. A complainant shall provide and keep the Labor Department advised of the complainant’s current mailing address and telephone number.
- B. An employer under investigation by the Department shall provide and keep the Labor Department advised of the employer’s current mailing address and telephone number.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1204. Forms Prescribed by the Department

Forms prescribed by the Department, including the poster required under R20-5-1208, shall not be changed, amended, or otherwise altered without the prior written approval of the Department.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1205. Determination of Employment Relationship

- A. Determination of an employment relationship under the Act, which includes whether an individual is an independent contractor, shall be based upon the economic realities of the relationship. Consideration of whether an individual is economically dependent on the employer for which the individual performs work shall be determined by factors showing dependence, which non-exclusive factors shall include those factors identified in A.R.S. §§ 23-902(D) and 23-1601(B).
- B. An individual who works for another person without any express or implied compensation agreement is not an employee under the Act. This may include an individual that volunteers to work for civic, charitable, or humanitarian reasons that are offered freely and without direct or implied pressure or coercion from an employer, provided that the volunteer is not otherwise employed by the employer to perform the

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same type of services as those which the individual proposes to volunteer.

- C. An individual who works for another individual as a babysitter on a casual basis and whose vocation is not babysitting, is not an employee under the Act even if the individual performs other household work not related to caring for the children, provided the household work does not exceed 20% of the total hours worked on the particular babysitting assignment.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4). Amended by final rulemaking at 23 A.A.R. 2907, effective October 3, 2017 (Supp. 17-4).

R20-5-1206. Payment of Minimum Wage; Commissions; Tips; Front Loading Earned Paid Sick Time; Limitation on Carry Over of Unused Earned Paid Sick Time

- A. Subject to the requirements of the Act and this Article, no less than the minimum wage shall be paid for all hours worked, regardless of the frequency of payment and regardless of whether the wage is paid on an hourly, salaried, commissioned, piece rate, or any other basis.
- B. If the combined wages of an employee are less than the applicable minimum wage for a work week, the employer shall pay monetary compensation already earned, and no less than the difference between the amounts earned and the minimum wage as required under the Act.
- C. The workweek is the basis for determining an employee's hourly wage. Upon hire, an employer shall advise the employee of the employee's designated workweek. Once established, an employer shall not change or manipulate an employee's workweek to evade the requirements of the Act.
- D. In computing the minimum wage, an employer shall consider only monetary compensation and shall count tips and commissions in the workweek in which the tip or commission is earned.
- E. An employer is allowed to:
1. Require or permit employees to pool, share, or split tips; and
 2. Require an employee to report tips to the employer in order to meet reporting requirements of this Article and federal law.
- F. An employer who hires an employee after the beginning of the employer's year is not required to provide additional earned paid sick time or equivalent paid time off during that year if the employer provides the employee for immediate use on the employee's ninetieth calendar day after commencing employment an amount of earned paid sick time or equivalent paid time off that meets or exceeds the employer's reasonable projection of the amount of earned paid sick time or equivalent paid time off that the employee would have accrued from the date of hire through the end of the employer's year at a rate of one hour for every 30 hours worked. If the amount of earned paid sick time or equivalent paid time off provided is less than the employee would have accrued based on hours actually worked during the employer's year, the employer shall immediately provide an amount of earned paid sick time or equivalent paid time off that reflects the difference between the employer's projection and the amount of earned paid sick time

or equivalent paid time off that the employee would have accrued for hours actually worked in the year.

- G. Subject to subsection (F), an employer with 15 or more employees that provides its employees for immediate use at the beginning of each year 40 or more hours of earned paid sick time or 40 or more hours of equivalent paid time off is not required to provide carryover or additional accrual.
- H. Subject to subsection (F), an employer with fewer than 15 employees that provides its employees for immediate use at the beginning of each year 24 or more hours of earned paid sick time or 24 or more hours of equivalent paid time off is not required to provide carryover or additional accrual.
- I. Unless an employer: (1) elects to pay an employee for unused earned paid sick time or equivalent paid time off at the end of a year pursuant to A.R.S. § 23-372(D)(4); or (2) meets the requirements of subsections (G) or (H), unused earned paid sick time and equivalent paid time off may be carried over to the next year, as follows:
1. Subject to an employer's entitlement to permit greater carry over, an employee of an employer with 15 or more employees may carry over to the following year up to 40 hours of unused earned paid sick time or equivalent paid time off.
 2. Subject to an employer's entitlement to permit greater carry over, an employee of an employer with fewer than 15 employees may carryover to the following year up to 24 hours of unused earned paid sick time or equivalent paid time off.
 3. Carry over shall not affect accrual, usage rights, or usage limits under the Act.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4). Amended by final rulemaking at 23 A.A.R. 2907, effective October 3, 2017 (Supp. 17-4).

R20-5-1207. Tip Credit Toward Minimum Wage

- A. In this Section, unless the context otherwise requires, "customarily and regularly" means receiving tips on a consistent and recurrent basis, the frequency of which may be greater than occasional, but less than constant, and includes the occupations of waiter, waitress, bellhop, busboy, car wash attendant, hairdresser, barber, valet, and service bartender.
- B. For purposes of calculating the permissible credit for tips under A.R.S. § 23-363(C), the following applies:
1. Tips are customarily and regularly received in the occupation in which the employee is engaged;
 2. Except as provided in R20-5-1206(E), the employee actually receives the tip free of employer control as to how the employee uses the tip and the tip becomes the employee's property;
 3. Employees who customarily and regularly receive tips may pool, share, or split tips between them, and the amount each employee actually retains is considered the tip of the employee who retains it;
 4. Employer-required sharing of tips with employees who do not customarily and regularly receive tips in the occupation in which the employee is engaged, including management or food preparers, are not credited toward that employee's minimum wage; and

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5. A compulsory charge for service imposed on a customer by an employer's establishment are not credited toward an employee's minimum wage unless the employer actually distributes the charge to the employee in the pay period in which the charge is earned.
- C. Upon hiring or assigning an individual to a position that customarily and regularly receives tips, an employer intending to exercise a tip credit shall provide written notice to the employee prior to exercising the tip credit. Thereafter, the employer shall notify the employee in writing each pay period of the amount per hour that the employer takes as a tip credit.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1208. Posting Requirements; Small Employer Exemption

- A. With the exception of small employers, every employer subject to the Act shall place the posters prescribed by the Department informing employees of their rights under the Act in a conspicuous place in every establishment where employees are employed and where notices to employees are customarily placed. The employer shall ensure that the notices are not removed, altered, defaced, or covered by other material.
- B. In this Section, unless context otherwise requires, "small employer" means a corporation, proprietorship, partnership, joint venture, limited liability company, trust, or association that has less than \$500,000 in gross annual revenue.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4). Amended by final rulemaking at 23 A.A.R. 2907, effective October 3, 2017 (Supp. 17-4).

R20-5-1209. Records Availability

- A. Each employer shall keep the records required under the Act and this Article safe and accessible at the place or places of employment, or at one or more established central recordkeeping offices where the records are customarily maintained. When the employer maintains the records at a central recordkeeping office other than in the place or places of employment, the employer shall make the records available to the Department within 72 hours following notice from the Department.
- B. Employers shall make available to the Department any equipment or technology that is necessary to facilitate inspection and copying of the records.
- C. Each employer required to maintain records under the Act shall make enlargement, recomputation, or transcription of the records and shall submit to the Department the records or reports in a readable format upon the Department's written request.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New

Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4). Amended by final rulemaking at 23 A.A.R. 2907, effective October 3, 2017 (Supp. 17-4).

R20-5-1210. General Recordkeeping Requirements

- A. Payroll records required to be kept under the Act include:
1. All time and earning cards or sheets on which are entered the daily starting and stopping time of individual employees, or of separate work forces, or the amounts of work accomplished by individual employees on a daily, weekly, or pay period basis (for example, units produced) when those amounts determine in whole or in part: (1) those employees' pay period wages; and (2) those employees' earned paid sick time or equivalent paid time off;
 2. From their last effective date, all wage-rate tables or schedules of the employer that provide the piece rates or other rates used in computing wages; and
 3. Records of additions to or deductions from wages paid and records that support or corroborate the additions or deductions.
- B. Subject to A.R.S. § 23-381 and except as otherwise provided in this Section, every employer shall maintain and preserve payroll or other records containing the following information and data with respect to each employee to whom the Act applies:
1. Name in full, and on the same record, the employee's identifying symbol or number if it is used in place of the employee's name on any time, work, or payroll record;
 2. Home address, including zip code;
 3. Date of birth, if under 19;
 4. Occupation in which employed;
 5. Time of day and day of week on which the employee's workweek begins. If the employee is part of a workforce or employed in or by an establishment all of whose workers have a workweek beginning at the same time on the same day, then a single notation of the time of the day and beginning day of the workweek for the whole workforce or establishment is permitted;
 6. Regular hourly rate of pay for any workweek and an explanation of the basis of pay by indicating the monetary amount paid on a per hour, per day, per week, per piece, commission on sales, or other basis, including the amount and nature of each payment;
 7. Hours worked each workday and total hours worked each workweek;
 8. Total daily or weekly straight-time wages due for hours worked during the workday or workweek, exclusive of premium overtime compensation;
 9. Total premium pay for overtime hours and an explanation of how the premium pay was calculated exclusive of straight-time wages for overtime hours recorded under subsection (B)(8) of this Section;
 10. Total additions to or deductions from wages paid each pay period including employee purchase orders or wage assignments, including, for individual employee records, the dates, amounts, and nature of the items that make up the total additions and deductions;
 11. Total wages paid each pay period;
 12. Date of payment and the pay period covered by payment;
 13. The amount of earned paid sick time available to the employee;
 14. The amount of earned paid sick time taken by the employee to date in the year;

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15. The amount of pay the employee has received as earned paid sick time; and
16. The employee's earned paid sick time balance. "The employee's earned paid sick time balance" means the sum of earned paid sick time or equivalent paid time off that is: (1) carried over to the current year; (2) accrued to date in the current year; and (3) provided to date in the current year pursuant to A.R.S. § 23-372(D)(4) or A.A.C. R20-5-1206(F), (G), or (H).
- C. For an employee who is compensated on a salary basis at a rate that exceeds the minimum wage required under the Act and who, under 29 CFR 541, is an exempt bona fide executive, administrative, or professional employee, including an employee employed in the capacity of academic administrative personnel or teachers in elementary or secondary schools, or in outside sales, an employer shall maintain and preserve:
1. Records containing the information and data required under subsections (B)(1) through (B)(5), and (B)(11) through (B)(16) of this Section; and
 2. Records containing the basis on which wages are paid in sufficient detail to permit a determination or calculation of whether the salary received exceeds the minimum wage required under the Act, including a record of the hours upon which payment of the salary is based, whether full time or part time.
- D. With respect to employees working on fixed schedules, an employer may maintain records showing instead of the hours worked each day and each workweek as required under this Section, the schedule of daily and weekly hours the employee normally works, provided:
1. In weeks in which an employee adheres to this schedule, the employer indicates by check mark, statement, or other method, that the employee actually worked the hours; and
 2. In weeks in which more or fewer than the scheduled hours are worked, the employer records the number of hours actually worked each day and each week.
- E. With respect to an employee who customarily and regularly receives tips, the employer shall ensure that the records required under this Article include the following information:
1. A symbol, letter, or other notation placed on the pay records identifying each employee whose wage is determined in part by tips;
 2. Amount of tips the employee reports to the employer;
 3. The hourly wage of each tipped employee after taking into consideration the employee's tips;
 4. Hours worked each workday in any occupation in which the employee does not receive tips, and total daily or week straight-time payment made by the employer for the hours;
 5. Hours worked each workday in occupations in which the employee receives tips and total daily or weekly straight-time wages for the hours; and
 6. Copy of the notice required under R20-5-1207(C).
- F. An employer who makes retroactive payment of wages, voluntarily or involuntarily, shall record on the pay records, the amount of the payment to each employee, the period covered by the payment, and the date of payment.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4). Amended by

final rulemaking at 23 A.A.R. 2907, effective October 3, 2017 (Supp. 17-4).

R20-5-1211. Administrative Complaints

- A. A person or organization alleging a minimum wage, earned paid sick time, or equivalent paid time off violation shall file a complaint with the Labor Department within one year from the date the wages, earned paid sick time, or equivalent paid time off were due.
- B. A person or organization alleging retaliation, discrimination, or a violation of A.R.S. § 23-377 shall file a complaint with the Labor Department within one year from the date the alleged violation occurred or when the employee knew or should have known of the alleged violation.
- C. The person or organization filing a complaint with the Labor Department shall sign the complaint.
- D. Any person or organization other than an affected employee who files a complaint shall include the names of affected employees.
- E. Upon its own complaint, the Department may investigate violations under the Act.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4). Amended by final rulemaking at 23 A.A.R. 2907, effective October 3, 2017 (Supp. 17-4).

R20-5-1212. Conduct that Hinders Investigation

An employer hinders an investigation under the Act if the employer engages in conduct, or causes another person to engage in conduct, that delays or otherwise interferes with the Department's investigation, including:

1. Obstructing or refusing to admit the Department to any place of employment authorized under the Act;
2. Obstructing or refusing to permit interviews authorized under the Act;
3. Failing to make, keep, or preserve records required under the Act or this Article;
4. Failing to permit the review and copying of records required under the Act and this Article; and
5. Falsifying any record required under the Act or this Article.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1213. Findings and Order Issued by the Department

- A. Except as provided in R20-5-1219, after receipt of a complaint alleging a violation of the Act, the Department shall issue a Findings and Order of its determination. The Department shall send its Findings and Order to both the employer and the complainant at their last known addresses served personally or by regular first class mail. If the complaint named affected employees, the Department may send a copy of its Findings and Order to the affected employees.
- B. If the Department determines that an employer has violated the minimum wage, earned paid sick time, or equivalent paid time

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off requirements, the Department shall order the employer to pay the employee, and if applicable, affected employees, the balance of the wages, earned paid sick time, or equivalent paid time off owed, including interest at the legal rate and an additional amount equal to twice the underpaid wages, earned paid sick time, or equivalent paid time off owed.

- C. If the Department determines that a retaliation, discrimination, confidentiality, or nondisclosure violation has occurred, the Department shall direct the employer or other person to cease and desist from the violation and may take action necessary to remedy the violation, including:
 1. Rehiring or reinstatement,
 2. Reimbursement of lost wages and interest,
 3. Payment of penalty to employees or affected employees as provided for in the Act and this Article, and
 4. Posting of notices to employees.
- D. If the Department determines that no violation of the Act has occurred the Department shall notify the parties and shall dismiss the complaint without prejudice. After notification of the Department's determination, the complainant may bring a civil action under A.R.S. § 23- 364(E).
- E. The Department may assess civil penalties for recordkeeping, posting, and other violations under the Act and this Article as part of a Findings and Order issued under subsection (A) or the civil penalties and other violations may be assessed as a separate Findings and Order. If issued as a separate Findings and Order, the Department shall serve, personally or by regular first class mail, the Findings and Order on the employer and, if a complaint has been filed, the complainant.
- F. The Director of the Department shall sign the written Findings and Order issued by the Department.
- G. If an employer does not comply with a Findings and Order issued by the Department within 10 days following finality of the Findings and Order, the Department may refer the matter to a law enforcement officer.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4). Amended by final rulemaking at 23 A.A.R. 2907, effective October 3, 2017 (Supp. 17-4).

R20-5-1214. Review of Department Findings and Order; Hearings; Issuance of Decision Upon Hearing

- A. Except as provided in R20-5-1213(D), a party aggrieved by a Findings and Order issued by the Department may request a hearing by filing a written request for hearing with the Department within 30 days after the Findings and Order is served upon the party. Failure to timely file a request for hearing means that the Findings and Order issued by the Department is final and res judicata to all parties.
- B. A request for hearing shall be in writing and contain:
 1. The name and address of the party requesting the hearing,
 2. The signature of the party or the party's authorized representative, and
 3. A statement that a hearing is requested.
- C. Upon receipt of a timely filed request for hearing, the Department shall refer the matter to the Administrative Law Judge Division of the Commission for hearing.
- D. Except as otherwise provided in this Section, the hearing shall be conducted under A.R.S. § 41-1061 et seq.

- E. A person submitting correspondence or other documents, including subpoena requests, to an administrative law judge concerning a matter pending before the administrative law judge, shall contemporaneously serve a copy of the correspondence or other document upon all other parties, or if represented, the parties' authorized representative.
- F. The administrative law judge may dismiss a request for hearing when it appears to the judge's satisfaction that the parties have resolved the disputed issue or issues.
- G. The administrative law judge shall issue a written decision upon hearing containing findings of fact and conclusions of law no later than 30 days after the matter is submitted for decision. The decision shall be sent to the parties at their last known addresses served personally or by regular first class mail.
- H. A decision issued under this Section is final when entered unless a party files a request for rehearing or review as provided in R20-5-1215 or commences an action in the Superior Court as provided in R20-5-1216 and A.R.S. § 12-901 et seq. The decision shall contain a statement explaining the review rights of a party.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1215. Request for Rehearing or Review of Decision Upon Hearing

- A. A party may request rehearing or review of a decision issued under R20-5-1214 by filing with the Administrative Law Judge a written request for rehearing or review no later than 15 days after the written decision is served personally or by regular first class mail upon the parties.
- B. A request for rehearing or review shall be based upon any of the following causes that materially affected the rights of an aggrieved party:
 1. Irregularities in the hearing proceeding or any order, or abuse of discretion that deprives a party seeking review of a fair hearing;
 2. Accident or surprise that could not have been prevented by ordinary prudence;
 3. Newly discovered material evidence that could not have been discovered with reasonable diligence and produced at the hearing;
 4. Error in the admission or rejection of evidence, or errors of law occurring at the hearing;
 5. Bias or prejudice of the Department or administrative law judge; and
 6. The findings of fact or conclusions of law contained in the decision are not justified by the evidence or are contrary to law.
- C. A request for rehearing or review shall state the specific facts and law in support of the request and shall specify the relief sought by the request.
- D. A party shall have 15 days from the date of the filing of a request for rehearing or review to file a written response. Failure to respond shall not be deemed an admission against interest.
- E. The administrative law judge shall issue a decision upon review no later than 30 days after receiving a request for review or response, if one is filed.

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- F. A decision upon review is final unless a party seeks judicial review as provided in R20-5-1216.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1216. Judicial Review of Decision Upon Hearing or Decision Upon Review

- A. A party aggrieved by a decision upon hearing issued under R20-5-1214 or a decision upon review issued under R20-5-1215 may seek review by commencing an action in the Superior Court as provided in A.R.S. § 12-901 et seq. within 35 days from the date a copy of the decision sought to be reviewed is served personally or by regular first class mail upon the party affected.
- B. A decision upon hearing issued under R20-5-1214 or a decision upon review issued under R20-5-1215 is final unless a party seeks judicial review as provided under A.R.S. § 12-901 et seq.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1217. Assessment of Civil Penalties Under A.R.S. § 23-364(F)

The Department may assess civil penalties for violations of the Act and this Article, including the assessment of civil penalties for engaging in conduct that hinders an investigation of the Department as specified in R20-5-1212.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1218. Collection of Wages, Earned Paid Sick Time, Equivalent Paid Time Off, or Penalty Payments Owed

- A. Upon determination that wages, earned paid sick time, equivalent paid time off, or penalty payments are due and unpaid to any employee, the employee may, or the Department may on behalf of an employee, obtain judgment and execution, garnishment, attachment, or other available remedies for collection of unpaid wages and penalty payments established by a final Findings and Order of the Department.
- B. If payment cannot be made to the employee, the Department shall receive monetary compensation or penalty payments on behalf of the employee and transmit monies it receives as payment in a special state fund as provided in A.R.S. § 23-356(C).
- C. The Department may amend a Findings and Order to conform to the legal name of the business or the person who is the defendant employer to a complaint under the Act, provided service of the Findings and Order was made on the defendant or the defendant's agent. If a judgment has been entered on the order, the Department may apply to the clerk of the superior

court to amend a judgment that has been issued under a final order, provided service was made on the defendant or the defendant's agent.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4). Amended by final rulemaking at 23 A.A.R. 2907, effective October 3, 2017 (Supp. 17-4).

R20-5-1219. Resolution of Disputes

Notwithstanding any other provision of law, the Department may mediate and conciliate a dispute between the parties.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

R20-5-1220. Small Employer Request for Exception to Recordkeeping Requirements

- A. In this Section, unless context otherwise requires, "small employer" means a corporation, proprietorship, partnership, joint venture, limited liability company, trust, or association that has less than \$500,000 in gross annual revenue.
- B. A small employer, or any category of small employer that is unreasonably burdened by the recordkeeping requirements of the Act and this Article may file a written petition for exception with the Department requesting relief from certain recordkeeping requirements under this Article. The petition shall:
1. State the reasons for the request for relief;
 2. State an alternate manner or method of making, keeping, and preserving records that will enable the Department to determine hours worked and wages paid; and
 3. Include the signature of the employer or an authorized representative of the employer.
- C. Subject to any conditions or limitations necessary to ensure fulfillment of the purpose and intent of Act, the Department may grant a petition for exception if it finds that:
1. The small employer, or category of small employer is unreasonably burdened by the recordkeeping requirements of the Act and this Article; and
 2. The relief requested and alternative proposed will not hinder the Department's enforcement of the Act and this Article.
- D. For good cause, the Department may rescind a prior order granting relief under this Section.
- E. Relief under this Section is effective upon the Department's written authorization.

Historical Note

New Section made by emergency rulemaking at 13 A.A.R. 473, effective January 25, 2007 for 180 days (Supp. 07-1). Emergency renewed at 13 A.A.R. 2785, effective July 17, 2007 for 180 days (Supp. 07-3). New Section made by final rulemaking at 13 A.A.R. 4315, effective January 13, 2008 (Supp. 07-4).

General and Specific Statutes

23-108.01. Powers and duties of director

A. The director of the commission, under the supervision of the commission, shall administer the policies, powers and duties of the commission as prescribed by this chapter, and chapters 2 and 6 of this title.

B. The director of the commission may deny the salary of a commissioner if the commissioner does not provide documentation that explains what commission duties were completed for the day in which the commissioner is seeking a salary or if the commission duties were not related to preparing for or attending a commission meeting.

23-364. Enforcement

A. The commission is authorized to enforce and implement this article and may promulgate regulations consistent with this article to do so. For purposes of this section: (1) "article shall mean both article 8 and article 8.1 of this chapter; (2) "earned paid sick time" is as defined in section 23-371, Arizona Revised Statutes; (3) "employer" shall refer to the definition of employer in section 23-362, Arizona Revised Statutes, for purposes of minimum wage enforcement and shall refer to the definition of employer in section 23-371, Arizona Revised Statutes, for purposes of earned paid sick time enforcement; and (4) "retaliation" shall mean denial of any right guaranteed under article 8 and article 8.1 of this chapter and any threat, discharge, suspension, demotion, reduction of hours, or any other adverse action against an employee for the exercise of any right guaranteed herein including any sanctions against an employee who is the recipient of public benefits for rights guaranteed herein. Retaliation shall also include interference with or punishment for in any manner participating in or assisting an investigation, proceeding or hearing under this article.

B. No employer or other person shall discriminate or subject any person to retaliation for asserting any claim or right under this article, for assisting any other person in doing so, or for informing any person about their rights. Taking adverse action against a person within ninety days of a person's engaging in the foregoing activities shall raise a presumption that such action was retaliation, which may be rebutted by clear and convincing evidence that such action was taken for other permissible reasons.

C. Any person or organization may file an administrative complaint with the commission charging that an employer has violated this article as to any employee or other person. When the commission receives a complaint, the commission may review records regarding all employees at the employer's worksite in order to protect the identity of any employee identified in the complaint and to determine whether a pattern of violations has occurred. The name of any employee identified in a complaint to the commission shall be kept confidential as long as possible. Where the commission determines that an employee's name must be disclosed in order to investigate a complaint further, it may so do only with the employee's consent.

D. Employers shall post notices in the workplace, in such format specified by the commission, notifying employees of their rights under this article. Employers shall provide their business

name, address, and telephone number in writing to employees upon hire. Employers shall maintain payroll records showing the hours worked for each day worked, and the wages and earned paid sick time paid to all employees for a period of four years. Failure to do so shall raise a rebuttable presumption that the employer did not pay the required minimum wage rate or earned paid sick time. The commission may by regulation reduce or waive the recordkeeping and posting requirements herein for any categories of small employers whom it finds would be unreasonably burdened by such requirements. Employers shall permit the commission or a law enforcement officer to inspect and copy payroll or other business records, shall permit them to interview employees away from the worksite, and shall not hinder any investigation. Such information provided shall keep confidential except as is required to prosecute violations of this article. Employers shall permit an employee or his or her designated representative to inspect and copy payroll records pertaining to that employee.

E. A civil action to enforce this article may be maintained in a court of competent jurisdiction by a law enforcement officer or by any private party injured by a violation of this article.

F. Any employer who violates recordkeeping, posting, or other requirements that the commission may establish under this article shall be subject to a civil penalty of at least \$250 dollars for a first violation, and at least \$1000 dollars for each subsequent or willful violation and may, if the commission or court determines appropriate, be subject to special monitoring and inspections.

G. Any employer who fails to pay the wages or earned paid sick time required under this article shall be required to pay the employee the balance of the wages or earned paid sick time owed, including interest thereon, and an additional amount equal to twice the underpaid wages or earned paid sick time. Any employer who retaliates against an employee or other person in violation of this article shall be required to pay the employee an amount set by the commission or a court sufficient to compensate the employee and deter future violations, but not less than one hundred fifty dollars for each day that the violation continued or until legal judgment is final. The commission and the courts shall have the authority to order payment of such unpaid wages, unpaid earned sick time, other amounts, and civil penalties and to order any other appropriate legal or equitable relief for violations of this article. Civil penalties shall be retained by the agency that recovered them and used to finance activities to enforce this article. A prevailing plaintiff shall be entitled to reasonable attorney's fees and costs of suit.

H. A civil action to enforce this article may be commenced no later than two years after a violation last occurs, or three years in the case of a willful violation, and may encompass all violations that occurred as part of a continuing course of employer conduct regardless of their date. The statute of limitations shall be tolled during any investigation of an employer by the commission or other law enforcement officer, but such investigation shall not bar a person from bringing a civil action under this article. No verbal or written agreement or employment contract may waive any rights under this article.

I. The legislature may by statute raise the minimum wage established under this article, extend coverage, or increase penalties. A county, city, or town may by ordinance regulate minimum wages and benefits within its geographic boundaries but may not provide for a minimum wage

lower than that prescribed in this article. State agencies, counties, cities, towns and other political subdivisions of the state may consider violations of this article in determining whether employers may receive or renew public contracts, financial assistance or licenses. This article shall be liberally construed in favor of its purposes and shall not limit the authority of the legislature or any other body to adopt any law or policy that requires payment of higher or supplemental wages or benefits, or that extends such protections to employers or employees not covered by this article.

23-376. Regulations

(Caution: 1998 Prop. 105 applies)

The commission shall be authorized to coordinate implementation and enforcement of this article and shall promulgate appropriate guidelines or regulations for such purposes.

Defined Terms

23-362. Definitions

(2006 Prop. 202, sec. 2. Caution: 1998 Prop. 105 applies.)

As used in this article, unless the context otherwise requires:

A. "Employee" means any person who is or was employed by an employer but does not include any person who is employed by a parent or a sibling, or who is employed performing babysitting services in the employer's home on a casual basis.

B. "Employer" includes any corporation, proprietorship, partnership, joint venture, limited liability company, trust, association, political subdivision of the state, individual or other entity acting directly or indirectly in the interest of an employer in relation to an employee, but does not include the state of Arizona, the United States, or a small business.

C. "Small business" means any corporation, proprietorship, partnership, joint venture, limited liability company, trust, or association that has less than five hundred thousand dollars in gross annual revenue and that is exempt from having to pay a minimum wage under section 206(a) of title 29 of the United States Code.

D. "Employ" includes to suffer or permit to work; whether a person is an independent contractor or an employee shall be determined according to the standards of the federal fair labor standards act, but the burden of proof shall be upon the party for whom the work is performed to show independent contractor status by clear and convincing evidence.

E. "Wage" means monetary compensation due to an employee by reason of employment, including an employee's commissions, but not tips or gratuities.

F. "Law enforcement officer" means the attorney general, a city attorney, a county attorney or a town attorney.

G. "Commission" means the industrial commission of Arizona, any successor agency, or such other agency as the governor shall designate to implement this article.

23-371. Definitions

(Caution: 1998 Prop. 105 applies)

For purposes of this article:

A. "Abuse" means an offense prescribed in section 13-3623, Arizona Revised Statutes.

B. "Commission" is as defined in section 23-362, Arizona Revised Statutes.

C. "Domestic violence" is as defined in section 13-3601, Arizona Revised Statutes.

D. "Earned paid sick time" means time that is compensated at the same hourly rate and with the same benefits, including health care benefits, as the employee normally earns during hours worked and is provided by an employer to an employee for the purposes described in section 23-373 of this article, but in no case shall this hourly amount be less than that provided under the Fair Labor Standards Act of 1938 (29 United States Code section 206(A)(1)) or section 23-363, Arizona Revised Statutes.

E. "Employ" is as defined in section 23-362, Arizona Revised Statutes.

F. "Employee" is as defined in section 23-362, Arizona Revised Statutes. Employee includes recipients of public benefits who are engaged in work activity as a condition of receiving public assistance.

G. "Employer" includes any corporation, proprietorship, partnership, joint venture, limited liability company, trust, association, political subdivision of the state, individual or other entity acting directly or indirectly in the interest of an employer in relation to an employee, but does not include the State of Arizona or the United States.

H. "Family member" means:

1. Regardless of age, a biological, adopted or foster child, stepchild or legal ward, a child of a domestic partner, a child to whom the employee stands in loco parentis, or an individual to whom the employee stood in loco parentis when the individual was a minor;

2. A biological, foster, stepparent or adoptive parent or legal guardian of an employee or an employee's spouse or domestic partner or a person who stood in loco parentis when the employee or employee's spouse or domestic partner was a minor child;

3. A person to whom the employee is legally married under the laws of any state, or a domestic partner of an employee as registered under the laws of any state or political subdivision;

4. A grandparent, grandchild or sibling (whether of a biological, foster, adoptive or step relationship) of the employee or the employee's spouse or domestic partner; or

5. Any other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship.

I. "Retaliation" is as defined in section 23-364, Arizona Revised Statutes.

J. "Sexual violence" means an offense prescribed in: (a) title 13, chapter 14, Arizona Revised Statutes, except for sections 13-1408 and 13-1422; or (b) sections 13-1304(A)(3), 13-1307, 13-3019, 13-3206, 13-3212, 13-3552, 13-3553, 13-3554, or 13-3560, Arizona Revised Statutes.

K. "Stalking" means an offense prescribed in section 13-2923, Arizona Revised Statutes.

L. "Year" means a regular and consecutive 12-month period as determined by the employer.

R20-5-1202. Definitions

In this Article, the definitions of A.R.S. §§ 23-362 (version two), 23-371, and 23-364 apply. In addition, unless the context otherwise requires, the following definitions shall apply to both the Act and this Article:

1. "Act" means A.R.S. Title 23, Chapter 2, Articles 8 and 8.1.

2. "Affected employee" means an employee or employees on whose behalf a complaint may be filed alleging a violation under the Act.

3. "Amount of earned paid sick time available to the employee" means the amount of earned paid sick time or equivalent paid time off that is available to the employee for use in the current year.

4. "Amount of earned paid sick time taken by the employee to date in the year" means the amount of earned paid sick time or equivalent paid time off taken by the employee to date in the current year. Where an employee has used available equivalent paid time off for either the purposes enumerated in A.R.S. § 23-373 or other purposes, the employer may count that usage towards the "amount of earned paid sick time taken by the employee to date in the year."

5. "Amount of pay the employee has received as earned paid sick time" means the amount of pay the employee has received as earned paid sick time or equivalent paid time off to date in the current year. Where an employee has received pay for equivalent paid time off for the purposes enumerated in A.R.S. § 23-373 or other purposes, the employer may count that pay towards the "amount of pay the employee has received as earned paid sick time."

6. "Authorized representative" means a person prescribed by law to act on behalf of a party who files with the Department a written instrument advising of the person's authority to act on behalf of the party.

7. "Casual Basis," when applied to babysitting services, means employment which is irregular or intermittent.

8. “Commission” means monetary compensation based on:
 - a. A percentage of total sales,
 - b. A percentage of sales in excess of a specified amount,
 - c. A fixed allowance per unit, or
 - d. Some other formula the employer and employee agree to as a measure of accomplishment.
9. “Communicable disease” has the meaning prescribed by A.R.S. § 36-661.
10. “Complainant” means a person or organization filing an administrative complaint under the Act.
11. “Department” means the Labor Department of the Industrial Commission of Arizona or other authorized division of the Industrial Commission as designated by the Industrial Commission.
12. “Earned sick time” under A.R.S. § 23-364(G) means earned paid sick time.
13. “Employee’s regular paycheck” means a regular payroll record that is readily available to employees and contains the information required by A.R.S. § 23-375(C), including physical or electronic paychecks or paystubs.
14. “Equivalent paid time off” means paid time off provided under a paid leave policy, such as a paid time off policy, that makes available an amount of paid leave sufficient to meet the accrual requirements of the Act that may be used for the same purposes and under the same conditions as earned paid sick time.
15. “Filing” means receipt of a report, document, instrument, videotape, audiotape, or other written matter at an office of the Department.
16. The term “health care professional” in A.R.S. § 23-373(G) has the same meaning as “health care professional,” as defined in this Section.
17. “Health care professional” means any of the following:
 - a. A “physician” as defined by A.R.S. § 36-2351;
 - b. A “physician assistant” as defined by A.R.S. § 32-2501;
 - c. A “registered nurse practitioner” as defined by A.R.S. § 32- 1601.
 - d. A certified nurse midwife who is a registered nurse practitioner approved by the Arizona State Board of Nursing to provide primary care services during pregnancy, childbirth, and the postpartum period;
 - e. A dentist licensed under A.R.S. Title 32, Chapter 11,Article 2; or
 - f. A behavioral health provider practicing as:
 - i. A psychologist licensed under A.R.S. Title 32, Chapter 19.1;

- ii. A clinical social worker licensed under A.R.S. § 32- 3293;
- iii. A marriage and family therapist licensed under A.R.S. § 32-3311; or
- iv. A professional counselor licensed under A.R.S. § 32- 3301.

18. “Health care provider” has the meaning prescribed by A.R.S. § 36-661.

19. “Hours worked” means all hours for which an employee covered under the Act is employed and required to give to the employer, including all time during which an employee is on duty or at a prescribed work place and all time the employee is suffered or permitted to work.

20. “Minimum wage” means the lowest rate of monetary compensation required under the Act.

21. “Monetary compensation” means cash or its equivalent due to an employee by reason of employment.

22. “On duty” means time spent working or waiting that the employer controls and that the employee is not permitted to use for the employee’s own purpose.

23. “Public benefits” has the same meaning as “state or local public benefit,” as prescribed by A.R.S. § 1-502(I).

24. “Public health emergency” means a state of emergency declared by the governor in which there is an occurrence or imminent threat of an illness or health condition caused by bioterrorism, an epidemic or pandemic disease or a highly fatal infectious agent or biological toxin and that poses a substantial risk of a significant number of human fatalities or incidents of permanent or long-term disability.

25. “Same hourly rate” means the following:

a. For employees paid on the basis of a single hourly rate, “same hourly rate” shall be the hourly rate the employee would have earned for the period of time in which earned paid sick time or equivalent paid time off is used, but shall in no case be less than minimum wage.

b. For employees who are paid multiple hourly rates of pay, “same hourly rate” shall be determined in the following order of priority, but shall in no case be less than minimum wage:

i. The hourly rate the employee would have earned, if known, for each hour of earned paid sick time or equivalent paid time off used.

ii. The weighted average of all hourly rates of pay during the previous pay period.

c. For employees who are paid a salary, no additional pay is due when the employee’s use of earned paid sick time or equivalent paid time off results in no reduction in the employee’s regular salary during the pay period in which the earned paid sick time or equivalent paid time off is used. “Same hourly rate” for salaried employees shall be determined in the following order of priority, but shall in no case be less than minimum wage:

i. The wages an employee earns during each pay period covered by the salary divided by the number of hours agreed to be worked during each pay period, if the number of hours to be worked during each pay period was previously established.

ii. The wages an employee earns during each workweek covered by the salary in the current year divided by 40 hours.

d. For employees paid on a commission, piece-rate, or fee-for-service basis, “same hourly rate” shall be determined in the following order of priority, but shall in no case be less than minimum wage:

i. The hourly rate of pay previously agreed upon by the employer and the employee as:

(1) A minimum hourly rate for work performed; or

(2) An hourly rate for payment of earned paid sick time or equivalent paid time off.

ii. The wages that the employee would have been paid, if known, for the period of time in which earned paid sick time or equivalent paid time off is used, divided by the number of hours of earned paid sick time or equivalent paid time off used.

iii. A reasonable estimation of the commission, piece-rate, or fee-for-service compensation that the employee would have been paid for the period of time in which the earned paid sick time or equivalent paid time off is used, divided by the number of hours of earned paid sick time or equivalent paid time off used.

iv. The hourly average of all commission, piecerate, or fee-for-service compensation that the employee earned during the previous 90 days, if the employee worked regularly during the previous 90-day period, based on:

(1) hours that the employee actually worked; or

(2) a 40-hour workweek.

v. The hourly average of all commission, piecerate, or fee-for-service compensation that the employee earned during the previous 365 days, based on:

(1) hours that the employee actually worked; or

(2) a 40-hour workweek.

e. “Same hourly rate” includes shift differentials and premiums meant to compensate an employee for work performed under differing conditions (such as hazard pay or a shift differential for working at night) if the employee would have been entitled to the shift differential or premium for the period of time in which earned paid sick time or equivalent paid time off is used.

f. “Same hourly rate” does not include:

i. Additions to an employee’s base rate for overtime or holiday pay;

- ii. Subject to subsection (e), bonuses or other types of incentive pay; and
- iii. Tips or gifts.

26. “Smallest increment that the employer’s payroll system uses to account for absences or use of other time” means the smallest increment of time that an employer utilizes, by policy or practice, to account for absences or use of other paid time off.

27. “Tip” means a sum that a customer presents as a gift in recognition of some service performed, and includes gratuities. The sum may be in the form of cash, amounts paid by bank check or other negotiable instrument payable at par, or amounts the employer transfers to the employee under directions from a credit customer who designates an amount to be added to a bill as a tip. Gifts in forms other than cash or its equivalent as described in this definition, such as event tickets, passes, or merchandise, are not tips.

28. “Violation” means a transgression of any statute or rule, or any part of a statute or rule, including both acts and omissions.

29. “Willfully” means acting with actual knowledge of the requirements of the Act or this Article, or acting with reckless disregard of the requirements of the Act or this Article.

30. “Workday” means any fixed period of 24 consecutive hours.

31. “Workweek” means any fixed and regularly recurring period of seven consecutive workdays.

ARIZONA DEPARTMENT OF AGRICULTURE

Title 3, Chapter 8 (Pest Management Division)

Amend: R3-8-102, R3-8-103, R3-8-107, R3-8-202, R3-8-203, R3-8-204, R3-8-210,
R3-8-211, R3-8-212, R3-8-216, R3-8-301, R3-8-308, R3-8-310, R3-8-401,
R3-8-402, R3-8-404, R3-8-501, R3-8-502, R3-8-503, R3-8-606



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: January 4, 2023; February 7, 2023

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: January 20, 2023

SUBJECT: ARIZONA DEPARTMENT OF AGRICULTURE
Title 3, Chapter 8 (Pest Management Division)

Amend: R3-8-102, R3-8-103, R3-8-107, R3-8-202, R3-8-203, R3-8-204, R3-8-210, R3-8-211, R3-8-212, R3-8-216, R3-8-301, R3-8-308, R3-8-310, R3-8-401, R3-8-402, R3-8-404, R3-8-501, R3-8-502, R3-8-503, R3-8-606

Staff Update:

As a reminder, this regular rulemaking from the Arizona Department of Agriculture (Department) was considered at the December 28, 2022 Study Session and January 4, 2023 Council Meeting. This rulemaking seeks to amend twenty (20) rules in Title 3, Chapter 8, Articles 1-6 related to the Pest Management Division. Specifically, these articles relate to the following:

- Article 1 - General and Administrative Provisions
- Article 2 - Certification, Registration and Licensure; Continuing Education
- Article 3 - Pest Management
- Article 4 - Supervision
- Article 5 - Recordkeeping and Reporting
- Article 6 - Inspections; Disciplinary Procedures

The Department indicates this rulemaking is intended to reduce or ameliorate a regulatory burden on the pest control industry, while achieving the same regulatory objectives, provide

increased consumer protection and allow the industry to use newer and potentially better termiticide products to Arizona homeowners. The Department indicates, for the past two years, the Pest Management Division ("PMD") temporarily reduced license fees by at least 25% for all pest control related licenses. Due to the COVID-19 pandemic and various economic challenges that have transpired as a result of the pandemic, the Department indicates the proposed rules would make the reduced license fees permanent. Furthermore, the Department indicates the proposed rules extend the time it takes an applicant to be certified to apply pesticides from 90 days to 120 days. The proposed rules also contain language to eliminate conflicting record keeping requirements; eliminate overreaching regulations by dictating the size of lettering on pest control vehicles; open up the door to allow Arizona to use modern termiticides, that allow less gallons to be applied to the environment; and the proposed rules eliminate the burden licensees currently experience with short final grade timeframe requirements.

The Department also indicated the proposed amendments to rules R3-8-203 and R3-8-204 would add context to some of the offenses that could be considered a lack of moral character. However, the Council raised concerns that the proposed rule language states "[t]he PMD may refer to A.R.S. § 41-1093.04 for guidance," when it appears those statutory requirements are mandatory, with no apparent exception or carve out for the PMD.

Given these concerns, at the January 4, 2023 Council Meeting, the Council voted to table consideration of this rulemaking to the current meeting cycle and directed the Department to provide draft revisions to rule language in R3-8-203 and R3-8-204 for the Council's consideration. On January 20, 2023, the Department provided several draft revisions for the Council to review, which are included in the final materials. If any of the draft revisions satisfy the Council's concerns, the Council may vote to approve the rulemaking with changes at the February 7, 2023 Council Meeting pursuant to Council rule R1-6-204(A).

Katie Hobbs
Governor



Mark W. Killian
Director

ARIZONA DEPARTMENT OF AGRICULTURE

Pest Management Division

1110 W. Washington St., Suite 450, Phoenix, AZ 85007
(602) 542-4373

January 20, 2023

Dear Nicole Sornsins and Council Members:

We'd like to thank the Governor's Review Council for granting our agency the opportunity to address the concerns the members of this council had with our rules involving Moral Turpitude outlined in *R3-8-203(B)* and *R3-8-204(E)*. The language in the original Final Rulemaking Package is as follows:

A.A.C. R3-8-203

B. An applicator shall be of good moral character. A conviction for a felony, or a conviction for a misdemeanor involving moral turpitude, as defined in A.R.S. § 1-215, may demonstrate a lack of good moral character. ~~A conviction for any of the following offenses shall be considered to demonstrate a lack of good moral character:~~ The PMD may refer to A.R.S. § 41-1093.04 for guidance on offenses that justify denial, suspension, or revocation of a license.

- ~~1. Murder involving the death of a law enforcement officer.~~
- ~~2. An offense described in A.R.S. § 13-2308.01 related to terrorism.~~
- ~~3. A sexual offense of any type where the victim is a minor that is a class 4 or higher felony.~~

A.A.C. R3-8-204

E. A QA shall be of good moral character. A conviction for a felony, or a conviction for a misdemeanor involving moral turpitude, as defined in A.R.S. § 1-215, may demonstrate a lack of good moral character. ~~A conviction for any of the following offenses shall be considered to demonstrate a lack of good moral character:~~ The PMD may refer to A.R.S. § 41-1093.04 for guidance on offenses that justify denial, suspension, or revocation of a license.

- ~~1. Murder involving the death of a law enforcement officer.~~
- ~~2. An offense described in A.R.S. § 13-2308.01 related to terrorism.~~
- ~~3. A sexual offense of any type where the victim is a minor that is a class 4 or higher felony.~~

It is the position of the agency and the pest management industry that the State statutes, (specifically A.R.S. §§ 1-215; 3-3621(G), 3-3624(B)(8), and 41-1093.04) govern the agency with regard to assessing criminal history, and the above referenced rules are not strictly needed. Therefore, if it pleases the Council, we respectfully ask that it evaluate the following options and provide guidance to the agency as to which would be acceptable:

- a. **Approve the Final Rulemaking with the deletion of A.A.C R3-8-203(B) and R3-8-204(E) in their entirety; or**
- b. **Approve the Final Rulemaking with no proposed amendments to the current versions of A.A.C R3-8-203(B) and R3-8-204(E); or**
- c. **Approve the Final Rulemaking and amend the rules to change the last sentence regarding A.R.S. § 41 1093.04 to: "The PMD shall refer to A.R.S. § 41-1093.04 to determine which offenses justify denial, suspension, or revocation of a license."**

The agency respectfully submits that Option "a" is the best alternative, because Option "b" would leave a rule in place that incorrectly states the law; and Option "c" is just reiterating what is already in statute, and therefore, is not strictly needed.¹ However, the agency will follow the direction of the Council in this matter.

An approval of this Final Rulemaking package would ensure, sooner than later, that potential licensees wanting to test to become applicators will have the extended time frames they already desperately need to obtain licenses. It would allow industry, sooner than later, to use newer termiticide products to help protect millions of homeowners. And, most importantly, approval would ensure that the agency maintains the State primacy granted to us by the U.S. EPA to regulate the use of pesticides in the State of Arizona.

We respectfully, appreciate your consideration in these matters.

Respectfully,

Vince Craig
Associate Director
Pest Management Division

¹ Per Section 1, Page 2, of the Arizona Rulemaking Manual, "a statement of, or citation to, statutory authority" should not be included in rules.



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: January 4, 2023

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: December 14, 2022

SUBJECT: ARIZONA DEPARTMENT OF AGRICULTURE
Title 3, Chapter 8 (Pest Management Division)

Amend: R3-8-102, R3-8-103, R3-8-107, R3-8-202, R3-8-203, R3-8-204,
R3-8-210, R3-8-211, R3-8-212, R3-8-216, R3-8-301, R3-8-308,
R3-8-310, R3-8-401, R3-8-402, R3-8-404, R3-8-501, R3-8-502,
R3-8-503, R3-8-606

Summary:

This regular rulemaking from the Arizona Department of Agriculture (Department) seeks to amend twenty (20) rules in Title 3, Chapter 8, Articles 1-6 related to the Pest Management Division. Specifically, these articles relate to the following:

- Article 1 - General and Administrative Provisions
- Article 2 - Certification, Registration and Licensure; Continuing Education
- Article 3 - Pest Management
- Article 4 - Supervision
- Article 5 - Recordkeeping and Reporting
- Article 6 - Inspections; Disciplinary Procedures

The Department indicates this rulemaking is intended to reduce or ameliorate a regulatory burden on the pest control industry, while achieving the same regulatory objectives, provide

increased consumer protection and allow the industry to use newer and potentially better termiticide products to Arizona homeowners. The Department indicates, for the past two years, the Pest Management Division ("PMD") temporarily reduced license fees by at least 25% for all pest control related licenses. Due to the Covid-19 pandemic and various economic challenges that have transpired as a result of the pandemic, the Department indicates the proposed rules would make the reduced license fees permanent. Furthermore, the Department indicates the proposed rules extend the time it takes an applicant to be certified to apply pesticides from 90 days to 120 days. The proposed rules also contain language to eliminate conflicting record keeping requirements; eliminate overreaching regulations by dictating the size of lettering on pest control vehicles; open up the door to allow Arizona to use modern termiticides, that allow less gallons to be applied to the environment; and the proposed rules eliminate the burden licensees currently experience with short final grade timeframe requirements. The Department indicates the proposed rules also add context to some of the offenses that could be considered a lack of moral character.

1. **Are the rules legal, consistent with legislative intent, and within the agency's statutory authority?**

The Department cites both general and specific statutory authority for these rules.

2. **Do the rules establish a new fee or contain a fee increase?**

This rulemaking does not establish a new fee or contain a fee increase. Instead, this rulemaking makes various pest control related license fee reductions.

3. **Does the preamble disclose a reference to any study relevant to the rules that the agency reviewed and either did or did not rely upon?**

The Department indicates it did not review or rely on any study in conducting this rulemaking.

4. **Summary of the agency's economic impact analysis:**

The Department indicates this rulemaking is intended to reduce or ameliorate a regulatory burden on the pest control industry, provide increased consumer protection, and allow the industry to use newer and potentially better termiticide products to Arizona homeowners. The Department indicates, for the past 2 years the Pest Management Division ("PMD") temporarily reduced license fees by at least 25% for all pest control related licenses. Due to the Covid-19 pandemic and various economic challenges that have transpired as a result of the pandemic, the proposed rules would make the reduced license fees permanent. The Department estimates that the majority of regulated parties would qualify as small businesses. The proposed rule amendments are designed to clarify and update the rules, and reduce regulatory burdens on small and large businesses alike.

By clarifying certain laws, the proposed rulemaking would eliminate unnecessary practices for which pest control companies were charging consumers due to the ambiguity of the laws as it relates to courtesy termite inspections.

5. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Department states there are no less intrusive or less costly alternatives for administering the rules.

6. **What are the economic impacts on stakeholders?**

Licensed pest control companies will directly benefit from the rulemaking with the reduction of licensing fees. Individuals desiring to be certified as pest control applicators benefit because the time frame to obtain certification will be extended. Finally, consumers will benefit because the rule changes allow licensed pest control companies to use modern termiticides for the protection of the properties treated for termites.

7. **Are the final rules a substantial change, considered as a whole, from the proposed rules and any supplemental proposals?**

The Department indicates there were no changes to the rules between the Notice of Proposed Rulemaking published in the Administrative Register and the Notice of Final Rulemaking now before the Council.

8. **Does the agency adequately address the comments on the proposed rules and any supplemental proposals?**

The Department indicates it received two written comments from stakeholders about the proposed rulemaking. One stakeholder (who represents the Arizona Pest Professional Association) informed the agency that its members supported the rulemaking. Another stakeholder, expressed concern that stakeholders were not properly notified of the proposed changes. Additionally, the same stakeholder questioned whether the agency Director had the authority to charge someone with a crime. A copy of the comments and the agency's responses are included with the final materials for the Council's consideration. Council staff believes the Commission has adequately addressed the written comments.

9. **Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Pursuant to A.R.S. § 41-1037(A), if an agency proposes an amendment to an existing rule that requires the issuance of a regulatory permit, license, or agency authorization, the agency shall use a general permit, as defined by A.R.S. § 41-1001(11), if the facilities, activities or practices in the class are substantially similar in nature unless certain exceptions apply.

The Department indicates the licenses, registrations and certifications issued under Title 3, Chapter 8 do not qualify to be issued as general permits pursuant to A.R.S. § 41-1037. Specifically, the Department indicates the criteria to obtain these licenses, registrations and certifications are not technically feasible as general permits and would not meet applicable statutory requirements. The Department also states it would not be permitted to issue the licenses as general permits under federal laws, such as 40 CFR Part 171. As such, the Department meets several exceptions to the general permit requirement of A.R.S. § 41-1037, including those found in A.R.S. § 41-1037(A)(1), (2), and (3). As such, the Department is in compliance with A.R.S. § 41-1037.

10. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?

The Department indicates it enforces federal pesticide labeling laws under 40 CFR Part 156. However, the Department indicates the rules of this Title 3, Chapter 8 are not more stringent than federal law.

11. Conclusion

This regular rulemaking from the Department seeks to amend twenty (20) rules in Title 3, Chapter 8, Articles 1-6 related to the Pest Management Division. Specifically, the Department indicates the proposed rules would make temporarily reduced license fees permanent, extend the time it takes an applicant to be certified to apply pesticides from 90 days to 120 days, eliminate conflicting record keeping requirements, eliminate overreaching regulations by dictating the size of lettering on pest control vehicles, open up the door to allow Arizona to use modern termiticides, that allow less gallons to be applied to the environment, and eliminate the burden licensees currently experience with short final grade timeframe requirements. The Department indicates the proposed rules also add context to some of the offenses that could be considered a lack of moral character.

The Department is seeking an immediate effective date pursuant to A.R.S. § 41-1032(A)(2) and (5), “to avoid a violation of federal law or regulation or state law, if the need for an immediate effective date is not created due to the agency's delay or inaction” and “to adopt a rule that is less stringent than the rule that is currently in effect and that does not have an impact on the public health, safety, welfare or environment, or that does not affect the public involvement and public participation process,” respectively. Specifically, the Department states the rulemaking it would like to reduce the regulatory burden on the regulated community immediately as well as facilitate the use of newer termiticide products to provide Arizona residents with potentially greater protection from termite infestations and extend the timeframe for applicators to be certified, thus lessening any barriers that may exist for the purposes of becoming licensed. Council staff believes the Department has provided sufficient information that demonstrates a need for an immediate effective date.

Council staff recommends approval of this rulemaking.



Arizona Department of Agriculture

Pest Management Division

postal: 1802 W. Jackson Street #78, Phoenix, Arizona 85007 ~ physical: 1110 W. Washington Street, Phoenix, AZ 85007
P: (602) 255-4373

November 22, 2022

Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 N. 15th Avenue, Suite 402
Phoenix, Arizona 85007

RE: Request for Placement on Agenda - Final Rulemaking A.A.C. Title 3, Chapter 8, Articles 1-7

Dear Ms. Sornsin:

The Arizona Department of Agriculture is requesting to place a final rulemaking on the Governor's Regulatory Review Council agenda for consideration and discussion. Enclosed with this letter you will find the Arizona Department of Agriculture's (Department) final rulemaking packet for A.A.C. Title 3, Chapter 8, Articles 1-7.

The close of record for the proposed rulemaking occurred on November 14, 2022 following a public hearing for oral comments. During the comment period, following the filing of the proposed rulemaking, two written comments were received by the Department and the commenter was provided a response for one of the comments. The other commenter was not provided a response, because their comment was expressing support for the rulemaking and therefore, required no response. No other comments were received regarding the proposed rulemaking during the comment period. This rulemaking activity is not in relation to a five-year review report. The rulemaking does not establish any new fees. The rulemaking does not contain any fee increases. There were no studies conducted related to the rulemaking. No additional employees are necessary to implement and enforce the changes to the rules.

An immediate effective date is requested for the rules under A.R.S. § 41-1032 (A)(2) and (5). The Department would like to reduce the regulatory burden on the regulated community immediately as well as

Request for Placement on Agenda

November 21, 2022

Page 2

facilitate the use of newer termiticide products to provide Arizona residents with potentially greater protection from termite infestations and extend the timeframe for applicators to be certified, thus lessening any barriers that may exist for the purposes of becoming licensed.

Enclosed with this letter is:

1. The Notice of Final Rulemaking
2. The Economic, Small Business, and Consumer Impact Statement
3. The Authorizing statutes
4. Federal laws and regulations referenced in the rulemaking
5. A copy of the written comment received and the response provided
6. A copy of the initial and final requests and authorizations from the Governor's Office for approval to conduct rulemaking as prescribed under the moratorium of rulemaking, EO 2022-01.

Please contact Vince Craig at (602) 255-3663 or vcraig@azda.gov with any questions about this rulemaking.

Sincerely,

Mark Killian

Director

cc: Vince Craig, Associate Director

NOTICE OF FINAL RULEMAKING

TITLE 3. AGRICULTURE

CHAPTER 8. DEPARTMENT OF AGRICULTURE - PEST MANAGEMENT DIVISION

PREAMBLE

1. Article, Part, or Section Affected

Rulemaking Action

R3-8-102	Amend
R3-8-103	Amend
R3-8-107	Amend
R3-8-202	Amend
R3-8-203	Amend
R3-8-204	Amend
R3-8-210	Amend
R3-8-211	Amend
R3-8-212	Amend
R3-8-216	Amend
R3-8-301	Amend
R3-8-308	Amend
R3-8-310	Amend
R3-8-401	Amend
R3-8-402	Amend
R3-8-404	Amend
R3-8-501	Amend
R3-8-502	Amend
R3-8-503	Amend
R3-8-606	Amend

2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. § 3-107

Implementing statute: A.R.S. § 3-3603

3. The effective date of the rule:

a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):

To adopt a rule that is less stringent and provide a benefit to the regulated community, under the provisions of A.R.S. § 41-1032 (4) and (5), the Department requests that an immediate effective date be prescribed as it would reduce regulatory burden while still achieving our regulatory objectives, enable termite companies to use modern/advanced termiticide products in the State of Arizona, which could potentially provide consumers with greater protection from termites, make the 25% license reduction fees the agency temporarily implemented, permanent and extend the time frame from 90 days to 120 days for individuals to become pest control certified, thus lessening any barriers that may

exist for the purposes of becoming licensed and extend the date for termite companies to complete final grade treatments to homes, thus reducing the amount of regulatory burden that currently exists.

b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):

Not applicable

4. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the proposed rule:

Docket Opening, Notice of Rulemaking: Vol. 28, Issue 24 A.A.R. Pg. 1453, June 17, 2022

Notice of Proposed Rulemaking: Vol. 28, Issue 41 A.A.R. Pg. 3266, October 14, 2022

5. The agency's contact person who can answer questions about the rulemaking:

Name: Vince Craig

Address: Arizona Department of Agriculture
1802 W. Jackson St. #78
Phoenix, AZ 85007

Telephone: (602) 255-3663

E-mail: vcraig@azda.gov

6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:

This rulemaking is intended to reduce or ameliorate a regulatory burden on the pest control industry, while achieving the same regulatory objectives, provide increased consumer protection and allow the industry to use newer and potentially better termiticide products to Arizona homeowners. For the past 2 years the Pest Management Division ("PMD") temporarily reduced license fees by at least 25% for all pest control related licenses. Due to the Covid-19 pandemic and various economic challenges that have transpired as a result of the pandemic, the proposed rules would make the reduced license fees permanent. Furthermore, the proposed rules extends the time it takes an applicant to be certified to apply pesticides from 90 days to 120 days. The proposed rules also contain language to eliminate conflicting record keeping requirements; eliminate overreaching regulations by dictating the size of lettering on pest control vehicles; open up the door to allow Arizona to use modern termiticides, that allow less gallons to be applied to the environment (which is something that basically every state in the country allows); and the proposed rules eliminate the burden licensees currently experience with short final grade timeframe requirements. The proposed rules also add context to some of the offenses that could be considered a lack of moral character.

7. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

No study was conducted

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

The rulemaking does not diminish any previous authority of a political subdivision of this state.

9. The summary of the economic, small business, and consumer impact:

This rulemaking is intended to reduce or ameliorate a regulatory burden on the pest control industry, while achieving the same regulatory objectives, provide increased consumer protection and allow the industry to use newer and potentially better termiticide products to Arizona homeowners. For the past 2 years the Pest Management Division ("PMD") temporarily reduced license fees by at least 25% for all pest control related licenses. Due to the Covid-19 pandemic and various economic challenges that have transpired as a result of the pandemic, the proposed rules would make the reduced license fees permanent. It is estimated that the majority of regulated parties would qualify as small businesses. The

proposed rule amendments are designed to clarify and update the rules, and reduce regulatory burdens on small and large businesses alike.

By clarifying certain laws, the proposed rulemaking would eliminate unnecessary practices for which pest control companies were charging consumers due to the ambiguity of the laws as it relates to courtesy termite inspections.

For example, A.A.C. R3-8-308(B) may be interpreted to require a company to perform a termite inspection prior to treatment even if the consumer does not hire the company to perform an inspection. Members of the industry have complained that competitors are not following this requirement.

PMD has not enforced this aspect of the rule as written, and does not want to be obligated to do so, because enforcement would result in unnecessary costs to regulated parties and consumers. For a termite inspection, a company may charge a consumer between \$60 and \$100. The average cost would conceivably be \$80 ($\$60 + \$100 / 2 = \80). During the 2020 calendar year, termite companies performed 74,256 termite treatments. If a company is forced to perform an inspection prior to treatment, even though the consumer may have hired another company to perform an inspection, the termite company may charge the consumer an additional \$60 to \$100 for the inspection, plus whatever fee the company charges for the termite treatment. When multiplied by the number of termite treatments, the cost to consumers would be quite large. Clarifying the rule to delete this requirement will definitively avoid that extra cost to the consuming public. It will also avoid a requirement for regulated parties to report termite inspections to PMD. PMD charges a \$2.00 reporting fee for inputting, storing and maintaining such reports. Enforcing the rule as written would result in imposition of \$148,512 additional regulatory fees (74,256 additional mandatory inspections multiplied by the \$2.00 reporting fee). Therefore, clarification is necessary, and failure to clarify the rule has a potential to increase costs of regulated parties and consumers.

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

The Department received two written comments from stakeholders about the proposed rulemaking. One stakeholder (who represents the Arizona Pest Professional Association) informed the agency that its members supported the rulemaking. Therefore, the agency did not provide a response. Another stakeholder expressed concern that stakeholders were not properly notified of the proposed changes. Additionally, the same stakeholder questioned whether the agency Director had the authority to charge someone with a crime. The following response was made to the commenter: "The information was provided to the parties carbon copied in your email, several months ago and notice went out to stakeholders via listserv. As it relates to the comments you've made in connection with the Rules, I will retain them for purposes of the proposed rulemaking."

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

No other matters are prescribed to the Department.

- a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:** The licenses, registrations and certifications issued under this Chapter do not qualify to be issued as a General Permit pursuant to A.R.S. § 41-1037. The criteria to obtain these licenses, registrations and certifications are not technically feasible and would not meet applicable statutory requirements. It would also not be permitted under federal laws it relates to 40 CFR Part 171.
- b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:** The Department enforces federal pesticide labeling laws under 40 CFR Part 156. However, the rules of this Chapter are not more stringent than federal law.
- c. Whether a person submitted an analysis to the agency that compares the rule's impact on the competitiveness of business in this state to the impact on business in other states:**

No analysis was conducted.

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

Federal rules under 40 CFR§171.101(c), (e) through (h), and (n) (82 FR 1029, January 4, 2017) are incorporated by reference in rule 102(1); 40 CFR§171.103(d)(3), (5) through (8), and (14) (82 FR 1029, January 4, 2017) are incorporated by reference in rules 102(2) and 211(C); 40 CFR § 171.201(a) through (d) (82 FR 1040, January 4, 2018) is incorporated by reference in rule 401(H); and 40 CFR § 171.201(e)(82 FR 1040, January 4, 2018) is incorporated by reference in rules 501(G) and 502(D); 7 U.S.C. § 1361 (Section 14b of FIFRA)(June 25, 1947, ch. 125, § 14, as added Pub. L. 92–516, § 2, Oct. 21, 1972, 86 Stat. 992; amended Pub. L. 95–396, § 17, Sept. 30, 1978, 92 Stat. 832; Pub. L. 100–532, title VI, § 604, Oct. 25, 1988, 102 Stat. 2678; Pub. L. 102–237, title X, § 1006(a)(8), Dec. 13, 1991, 105 Stat. 1895.) is incorporated by reference in rule 606(G)(3) and (4). These materials are incorporated by reference and are on file with the Department. These rules do not include any later amendments or editions of the incorporated matter.

14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

The rulemaking was not made, amended, or repealed by emergency rulemaking.

15. The full text of the rules follows:

TITLE 3. AGRICULTURE

CHAPTER 8. PEST MANAGEMENT DIVISION

ARTICLE 1. GENERAL AND ADMINISTRATIVE PROVISIONS

Section

- R3-8-102. Certification Categories; Scope
- R3-8-103. Fees; Charges; Exemption
- R3-8-107. Licensing Time-frames

ARTICLE 2. CERTIFICATION, REGISTRATION AND LICENSURE; CONTINUING EDUCATION

Section

- R3-8-202. Business License
- R3-8-203. Applicator Certification
- R3-8-204. Qualified Applicator Certification
- R3-8-210. Certification Broadening
- R3-8-211. Certification Examination
- R3-8-212. Reciprocity
- R3-8-216. Continuing Education Approval

ARTICLE 3. PEST MANAGEMENT

Section

- R3-8-301. Using Pesticides and Devices
- R3-8-308. Performing Wood-destroying Insect Management
- R3-8-310. Business Management

ARTICLE 4. SUPERVISION

- R3-8-401. Supervising an Applicator
- R3-8-402. Qualifying a Business or School District
- R3-8-404. Branch Supervisors

ARTICLE 5. RECORDKEEPING AND REPORTING

- R3-8-501. Applicator Recordkeeping
- R3-8-502. Qualifying Party Recordkeeping
- R3-8-503. Business Licensee and Political Subdivision Recordkeeping and Retention

ARTICLE 6. INSPECTIONS; DISCIPLINARY PROCEDURES

Section

R3-8-606. Penalties

ARTICLE 1. GENERAL AND ADMINISTRATIVE PROVISIONS

R3-8-102. Certification Categories; Scope

The name and scope of each certification category are as follows and as prescribed in 40 CFR § 171.101(c), (e) through (h) (82 FR 1029, January 4, 2017), and (n). This material is incorporated by reference, is on file with the Department, and does not include any later amendments or editions:

- ~~1. Industrial and institutional pest management in, on, around or adjacent to a structure not covered by another category; pest management in or on asphalt, concrete, gravel, rocks and similar surfaces, including man-holes, not covered by another certification category; pest management of health related pests wherever found; but excluding anti-microbial pest management and fungi inspection~~
- ~~2. Wood-destroying organism management:
 - ~~a. Wood-destroying organism treatment: inspecting for the presence or absence of wood-destroying organisms and treating for wood-destroying organisms in or about a residential or other structure by a means other than use of a fumigant.~~
 - ~~b. Wood-destroying insect inspection: inspecting for the presence or absence of wood-destroying insects only and excluding preparing treatment proposals.~~~~
- ~~3. Ornamental and turf: pest management, including weeds, pests in trees, shrubs, and flowers, turf and bare ground, not covered by the right-of-way category, by means other than the use of a fumigant. Excludes any pests within a structure.~~
- ~~4. Right-of-way: pest management of pests, including weeds, in the maintenance of public roads, electric powerlines, pipelines, railway rights of way or other similar areas by a means other than use of a fumigant, but excluding pest management in the maintenance of ornamental trees, shrubs and flowers.~~
- ~~5. Aquatic: pest management, including weeds, in standing or running water.~~
- ~~6. Fumigation: pest management using fumigants; except as provided in the wood preservation category.~~

1. The categories shall be as follows, and as prescribed in 40 CFR § 171.101(c), (e) through (h), and (n) (82 FR 1029, January 4, 2017). This material is incorporated by reference, is on file with the Department, and does not include any later amendments or editions; and,

2. The competency standards shall be as follows, and as prescribed in 40 CFR § 171.103(d)(3), (5) through (8), and (14) (82 FR 1029, January 4, 2017). This material is incorporated by reference, is on file with the Department, and does not include any later amendments or editions.

3. State-only categories.

a. Wood-destroying organism management.

i. Wood-destroying organism treatment: inspecting for the presence or absence of wood-destroying organisms and treating for wood-destroying organisms in or about a residential or other structure by a means other than use of a fumigant.

ii. Wood-destroying insect inspection: inspecting for the presence or absence of wood-destroying insects only and excluding preparing treatment proposals.

~~7b. Wood preservation: application of pesticides, including fumigants labeled for use on utility poles or railroad ties, directly to structural components of wood or wood products, to prevent or manage wood degradation by wood destroying organisms~~

including fungi and bacteria, which are not part of an existing structure. This includes drilling a cavity into a structural timber, inserting a methylisothiocyanate or other similar product into the cavity, and sealing the cavity.

4. Competency standards for state-only categories.

- a. Wood-destroying organism treatment certification applicants must be able to do the following;
 - i. Demonstrate practical knowledge of inspection of structures for the presence or absence of wood-destroying organisms, including recognition of wood-destroying organisms and signs of their presence, and understanding their life cycle, biology, and affect on building structural components;
 - ii. Demonstrate practical knowledge of treatment of structures to control the wood-destroying organisms;
 - iii. Demonstrate practical knowledge of the formulations appropriate for control of wood-destroying organisms;
 - iv. Demonstrate practical knowledge of methods of application that avoid contamination of sensitive areas, minimize damage and contamination to treated areas, minimize exposure to people and pets, and minimize environmental impacts;
 - v. Read and understand pesticide labels, labeling and safety data sheets for pesticides, and apply pesticides according to label and labeling instructions; and
Complete a treatment proposal, TARF and WDIIR.
- b. Wood-destroying insect inspection involves no use of pesticides, and certification applicants must be able to do the following;
 - i. Demonstrate practical knowledge of inspection of structures for the presence or absence of wood-destroying insects, including recognition of wood-destroying insects and signs of their presence, and understanding their life cycle, biology, and affect on building structural members; and
 - ii. Complete a WDIIR.
- c. Wood preservation certification applicants must be able to do the following;
 - i. Demonstrate practical knowledge of inspection of wood for the presence or absence of wood-destroying organisms, including recognition of wood-destroying organisms and signs of their presence, and understanding their life cycle, biology, and affect on wood;
 - ii. Demonstrate practical knowledge of treatment of wood to control the wood-destroying organisms;
 - iii. Demonstrate practical knowledge of the formulations appropriate for control of wood-destroying organisms;
 - iv. Demonstrate practical knowledge of methods of application that avoid contamination of sensitive areas, minimize damage and contamination to treated areas, minimize exposure to people and pets, and minimize environmental impacts; and
 - v. Read and understand pesticide labels, labeling and safety data sheets for pesticides, and apply pesticides according to label and labeling instructions.

R3-8-103. Fees; Charges; Exemption

- A. A person shall pay the following application and renewal fees for licensure, certification, and registration:
 1. For an applicator:
 - a. Applicator certification, ~~\$755~~.
 - b. Applicator certification broadening application, \$0.
 - c. QA certification, ~~\$10075~~.
 - d. QA certification broadening application, ~~\$2515~~.
 2. For a qualifying party:
 - a. Registration at same time as application for or renewal of the business license, \$0.
 - b. Registration at a different time than application for or renewal of the business license, ~~\$5035~~.
 - c. Registration broadening, ~~\$2515~~.
 - d. Temporary qualifying party registration, ~~\$10075~~.

3. For a business:
 - a. Business license, ~~\$250~~185.
 - b. Business license for federal entity, \$0.
 - c. Applicator registration, \$0 per applicator.
4. For a branch:
 - a. Branch office registration, ~~\$50~~35 per branch.
 - b. Branch supervisor registration at same time as branch office registration, \$0.
 - c. Branch supervisor registration at a different time than branch office registration, ~~\$25~~15.
- B.** A person renewing an applicator certification, QA certification, business license, branch office registration, or branch supervisor registration shall receive a 10 percent reduction in the renewal fee for renewals submitted for a two year renewal period.
- C.** In addition to the fees listed in subsection (A), a person shall pay a \$10 handling fee for each application or renewal form not submitted electronically when PMD allows electronic submission.
- D.** A person shall pay a late fee equal to ten percent of the renewal fee for any license, certification, or registration that is not renewed timely.
 1. If a business license remains expired for more than 30 days, to renew the license, a person shall also pay an additional late fee of \$15 per month that the license remains expired, not to exceed \$165. Late fees are in addition to the renewal fee.
 2. If a certification remains expired for more than 30 days, to renew the certification, a person shall also pay an additional late fee of \$10 per month the certification remains expired, not to exceed \$110. Late fees are in addition to the renewal fee.
- E.** A business licensee shall pay the following TARF fees:
 1. Electronic submissions, \$2;
 2. Electronic final grade treatment TARF submissions, \$0;
 3. Electronic TARF submissions for a pretreatment or new- construction treatment of an addition that abuts the slab of an originally treated structure, \$0, if the business licensee:
 - a. Performed the pretreatment or new-construction treatment of the main structure,
 - b. Filed a TARF regarding the pretreatment or new- construction treatment,
 - c. Has the structure under warranty, and
 - d. Treats the abutting addition under the terms of the site warranty;
 4. All paper submissions, \$8; and
 5. Late fee equal to the original TARF fee for any TARF submission more than 30 days after the due date, except that the late fee for an electronic final grade treatment TARF submission more than 30 days after the due date shall be \$2.
- F.** If the PMD administers a certification examination, an applicant shall pay \$50 to take the examination. If an examination service or testing vendor administers a certification examination, an applicant shall pay the examination service or testing vendor the examination cost established in the vendor's contract with the PMD.
- G.** PMD employees are exempt from the applicator and examination fees listed in this Section.
- H.** An applicant who makes a payment for a fee due under this Section that is rejected by a financial institution will be subject to all of the following:
 1. The PMD shall void any approval of the application or renewal.
 2. The applicant shall pay any financial institution fee incurred by the PMD.
 3. The PMD may require the applicant to pay all fees due using a method other than a personal or business check.
 4. An application for renewal will be considered untimely if the substitute payment is not received by the PMD by the original due date, and the applicant will be subject to a late fee based on the date of receipt of the substitute payment.

- I. The PMD may reject an application or request for service that is submitted with the incorrect fee and not process the application or provide the service. An application for renewal will be considered untimely if the substitute payment is not received by the PMD by the original due date, and the applicant will be subject to a late fee based on the date of receipt of the substitute payment.

R3-8-107. Licensing Time-frames

- A. Overall time-frame. The PMD shall issue or deny a license within the overall time-frames listed in Table 1. The overall time-frame, which is the total number of days provided for both the administrative completeness and substantive review time-frames, begins when the PMD receives an application.
- B. Administrative completeness review time-frame.
 1. During the administrative completeness review time-frame, the PMD shall notify the applicant in writing whether the application is complete or incomplete. If the application is incomplete, the PMD shall specify in the notice what information is missing. If the PMD does not provide notice to the applicant within the administrative completeness review time-frame, the PMD shall deem the application complete.
 2. An applicant with an incomplete license application shall supply the missing information within the completion request period listed in Table 1. The administrative completeness review and overall time-frames are suspended from the postmark date of the notice of missing information until the date the PMD receives the information.
 3. If an applicant fails to submit the missing information before expiration of the completion request period, the PMD shall consider the application withdrawn and close the file. An applicant whose file is closed may apply for a license by submitting a new application and application fee.
- C. Substantive review time-frame.
 1. The substantive review time-frame listed in Table 1 begins when an application is administratively complete or at the end of the administrative completeness review time- frame in Table 1, whichever occurs first. If the PMD determines during the substantive review that additional information is needed, the PMD shall send the applicant a comprehensive written request for additional information.
 2. Both the substantive review and overall time-frames are suspended from the date of the PMD request until the date that the PMD receives the additional information. The applicant shall submit the additional information within the additional information period listed in Table 1.
 3. If the applicant fails to provide the additional information within the additional information period in Table 1, the PMD shall consider the application withdrawn and close the application. An applicant whose file is closed may apply for a license by submitting a new application and application fee.
- D. Within the overall time-frame listed in Table 1, the PMD shall:
 1. Deny a license or approval to an applicant if the PMD determines that the applicant does not meet all the substantive criteria required by the PMD's statutes and this Chapter; or
 2. Grant a license or approval to an applicant if the PMD determines that the applicant meets all the substantive criteria required by the PMD's statutes and this Chapter.
- E. If the PMD denies a license or approval under subsection (D)(1), the PMD shall provide a written notice of denial to the applicant that explains:
 1. The reason for the denial, with citations to supporting statutes or rules;
 2. The applicant's right to seek a fair hearing to challenge the denial; and
 3. The time for appealing the denial.

ARTICLE 2. CERTIFICATION, REGISTRATION AND LICENSURE; CONTINUING EDUCATION

R3-8-202. Business License

A. An applicant for a business license shall submit the following information on a form obtained from the PMD:

1. About the business:
 - a. Business name;
 - b. Name and form of business organization;
 - c. Names of the following persons authorized to act on behalf of the business:
 - i. Owner if a sole proprietorship;
 - ii. Managing or general partner if a partnership;
 - iii. President and other authorized officers if a corporation;
 - iv. All the managers or members if a limited liability company; or
 - v. Person authorized to make decisions for the business if any other type of business form;
 - vi. Names of all principals of the business including all individuals or other corporations or partnerships that own at least ten percent interest of the business.
 - ~~e~~d. Telephone number;
 - ~~e~~e. Physical address;
 - ~~e~~f. Mailing address, if different from physical address;
 - ~~e~~g. E-mail address; and
 - h. Chemical storage address.
1. Daytime telephone number of individuals identified under subsection (A)(1)(c);
2. Name of the qualifying party; and
3. The dated signature and title of an authorized representative of the business affirming that the information provided is true and correct.

B. In addition to the form required under subsection (A), an applicant shall submit:

1. The fee specified in R3-8-103;
2. The proof of financial security required by A.R.S. § 3-3615;
3. The name and physical address of the statutory agent of the business; and
4. A copy of the Articles of Incorporation or Organization, Certificate of Limited Partnership, trust, trade name certificate, partnership agreement, or other evidence of the form of business organization.

C. A business cannot be licensed without a registered qualifying party.

D. If the PMD determines there may be cause to deny a license to an applicant, the PMD may send a written notice to the applicant requiring the applicant to appear at a specific location, date and time to answer questions.

E. A business license expires on May 31, and is:

1. Issued with an expiration in the following calendar year as an initial licensure; and
2. Renewable for one or two years, depending on the renewal period selected by the applicant.

F. A business license may not be transferred except in accordance with R3-8-209 and may not be renewed beyond the expiration of the registration for the business's qualifying party.

G. If an applicant's proof of financial security includes an insurance policy which provides for a deductible in excess of one percent of the total financial security for each occurrence, the applicant shall provide other evidence of financial security for the excess deductible amount as required by A.R.S. § 3-3615. Financial security in the following forms will be acceptable, provided that the nature of the security provides adequate protection for persons who may suffer bodily injury or property damage as a result of the operations of the applicant:

1. Liability insurance, self-insured retention or surety bond issued by an insurer that holds a valid certificate of authority or that is permitted to transact surplus lines insurance in this state;
2. Bank statement evidencing a deposit of money in an amount equal to, or greater than, the excess deductible amount; or
3. Certified Check in an amount equal to, or greater than, the excess deductible amount.

R3-8-203. Applicator Certification

A. Application. An applicant for applicator certification shall submit the fee specified in R3-8- 103 and the following information on a form obtained from the PMD:

1. Full name;
2. Applicator certification number, if any;
3. Home address;
4. Mailing address, if different from the home address;
5. Telephone number;
6. E-mail address;
7. Date of birth;
8. Social Security number;
9. A statement whether the applicant has ever had a license or permit to practice pest management denied, revoked, or suspended and if the answer is yes, the date, jurisdiction taking the action, nature of the action, and explanation of the circumstances;
10. Name of employer, if any;
11. Employer's business license number, if applicable;
12. Employer's telephone number, if applicable; and
13. The applicant's dated signature affirming that the information provided is true and correct.

Information and documentation concerning lawful presence required by A.R.S. § 41- 1080.

B. An applicator shall be of good moral character. A conviction for a felony, or a conviction for a misdemeanor involving moral turpitude, as defined in A.R.S. § 1-215, may demonstrate a lack of good moral character. ~~A conviction for any of the following offenses shall be considered to demonstrate a lack of good moral character.~~ The PMD may refer to A.R.S. § 41-1093.04 for guidance on offenses that justify denial, suspension, or revocation of a license.

- ~~1. Murder involving the death of a law enforcement officer.~~
- ~~2. An offense described in A.R.S. § 13-2308.01 related to terrorism.~~
- ~~3. A sexual offense of any type where the victim is a minor that is a class 4 or higher felony.~~

C. Examination. An applicant shall take and pass the certification examinations as provided in R3-8-211 in order to become certified.

D. An applicant for initial certification shall be at least 18 years of age.

E. If the PMD determines there may be cause to deny certification to an applicant, the PMD may send a written notice to the applicant requiring the applicant to appear at a specific location, date and time to answer questions.

F. Certification. Applicator certification is not transferable, expires on May 31, and is:

1. Issued with an expiration in the following calendar year as an initial certification,
2. Renewable for one or two years, depending on the renewal period selected by the applicant, and
3. Renewed for all certification categories for the same renewal period, and
4. The responsibility of the individual to whom it is issued.

R3-8-204. Qualified Applicator Certification

A. Before applying for QA certification, an applicant shall fulfill the experience requirement for each category.

B. Application. An applicant for QA certification shall submit the fee specified in R3-8-103 and the following information on a form obtained from the PMD:

1. Full name;
 2. Applicator certification number, if any;
 3. QA certification number, if any;
 4. Home address;
 5. Mailing address, if different from the home address;
 6. Telephone number;
 7. E-mail address;
 8. Date of birth;
 9. Social Security number;
 10. A statement whether the applicant has ever had a license or permit to practice pest management denied, revoked, or suspended and if the answer is yes, date, jurisdiction taking the action, nature of the action, and explanation of the circumstances;
 11. Name of employer, if any;
 12. Employer's business license number, if applicable;
 13. Employer's telephone number, if applicable;
 14. Certification categories for which application is made; and
 15. The applicant's dated signature affirming that the information provided is true and correct.
 16. Information and documentation concerning lawful presence required by A.R.S. § 41- 1080, if not on file.
- C.** Experience. An applicant shall possess one of the following qualifications:
1. Certification as an applicator for 24 months within the ten years preceding the application in the category applied for.
 2. Certification as an applicator for 12 months within the ten years preceding the application and either:
 - a. Successful completion of 12 semester hours or its equivalent within the 10 years preceding the application in pest management courses directly related to each category applied for; or
 - b. A Bachelor's degree in agricultural sciences, biological sciences, or pest management with 12 semester hours or its equivalent in pest management courses directly related to each category applied for.
 3. Twenty four months of verifiable experience in the business of pest management, in another State where licensure was not required, within the ten years preceding application directly related to the category applied for.
- D.** For an individual who applies for QA certification within one year of honorable separation from active military duty, the time periods "preceding the application" in subsection (C) are tolled during the term of active military duty.
- E.** A QA shall be of good moral character. A conviction for a felony, or a conviction for a misdemeanor involving moral turpitude, as defined in A.R.S. § 1-215, may demonstrate a lack of good moral character. ~~A conviction for any of the following offenses shall be considered to demonstrate a lack of good moral character:~~ The PMD may refer to A.R.S. § 41-1093.04 for guidance on offenses that justify denial, suspension, or revocation of a license.
- ~~1. Murder involving the death of a law enforcement officer.~~
 - ~~2. An offense described in A.R.S. § 13-2308.01 related to terrorism.~~
 - ~~3. A sexual offense of any type where the victim is a minor that is a class 4 or higher felony.~~
- F.** PMD review.
1. After notification by the PMD that the applicant is eligible for certification, the applicant may schedule and take the certification examinations described under R3-8- 211.
 2. If the PMD determines there may be cause to deny certification to an applicant, the PMD may send a written notice to the applicant requiring the applicant to appear at a specific location, date and time to answer questions.

- G.** Examination. An applicant shall take and pass the certification examinations as provided in R3-8-211 in order to become certified.
- H.** Certification. QA certification is not transferable, expires on May 31, and is:
1. Issued with an expiration in the following calendar year as an initial certification,
 2. Renewable for one or two years, depending on the renewal period selected by the applicant,
 3. Renewed for all certification categories for the same renewal period, and
 4. The responsibility of the individual to whom it is issued.
- I.** For the purposes of this Section, pest management courses means courses in entomology, zoology, vertebrate management, plant pathology, agronomy, general horticulture, plant biology or botany, biochemistry, organic or inorganic chemistry, the eradication or management of weeds, toxicology, the environmental impact of pesticides, or any combination thereof.

R3-8-210. Certification Broadening

- A.** To broaden an applicator certification, the applicant shall:
1. Submit the application described in ~~R4-29-203~~R3-8-203,
 2. Submit the fee required under ~~R4-29-103~~R3-8-103, and
 3. Take and pass the certification examination for the specific category in which broadening is sought.
- B.** A QA is eligible to broaden a QA certification only if, in the category in which broadening is sought, the QA has a valid applicator certification or a qualification listed in ~~R4-29-204(C)~~R3-8-204(C).
- C.** To broaden a QA certification, the QA shall:
1. Submit the application described in ~~R4-29-204~~R3-8-204 and indicate on the application the category in which broadening is sought,
 2. Submit the fee required under ~~R4-29-103~~R3-8-103,
 3. Submit the evidence of experience required under ~~R4-29-204(C)~~R3-8-204(C) for the category in which broadening is sought except as provided in subsection (D) of this Section, and
 4. Take and pass the certification examination for the specific category in which broadening is sought.
- D.** Experience exemptions. A QA may become certified without meeting the experience requirement of ~~R4-29-204(C)~~R3-8-204(C) in the categories of:
1. Right-of-way or ornamental and turf if the individual has QA certification in the category of industrial and institutional, wood-destroying organism treatment, ornamental and turf, or right-of-way.
 2. Wood-destroying organism management if the individual has QA certification in the industrial and institutional category.
 3. Wood preservation if the individual has QA certification in the wood-destroying organism treatment category.

R3-8-211. Certification Examination

- A.** An applicant for applicator certification or QA certification shall make arrangements to take the certification examinations by contacting the PMD or the examination service or testing vendor with which the PMD has contracted. An individual may apply for applicator certification in any of the categories found in R3-8-102.
- ~~**B.** The core and category specific examinations may measure knowledge and understanding of the following content areas:~~
- ~~1. Pesticide label and labeling and pesticide types and formulations;~~
 - ~~2. Pest identification, life cycles, and habits;~~
 - ~~3. Safety and environmental factors relating to the use, handling, storage, and disposal of pesticides;~~
 - ~~4. Application techniques, calibration and dilution, and equipment types, uses, and maintenance; and~~
 - ~~5. Laws and rules.~~
- B.** The Department shall ensure that the core examination tests the knowledge and understanding of 40 CFR 171.103(c) (82 FR 1029, January 4, 2017). This material is incorporated by reference, is on file with the Department, and does not contain any later

amendments or additions.

C. The category competency standards shall be as prescribed in 40 CFR § 171.103(d)(3), (5) through (8), and (14) (82 FR 1029, January 4, 2017). This material is incorporated by reference, is on file with the Department, and does not contain any later amendments or additions.

ED. To be certified, an applicant shall score at least 75 percent on the general standards (“core”) examination and on the category-specific examination in each category for which the applicant seeks certification.

FE. An applicant who fails an examination may not retake the examination for at least seven days or more than two times in a 6-month period.

GF. An examination score is only valid for the earlier of 12 months from the date of application for certification or 12 months from the examination date.

HG. The PMD shall void the examination score and deny the application of an applicant that the PMD determines cheated on an examination. The applicant may not reapply for one year.

R3-8-212. Reciprocity

~~Notwithstanding the examination requirements in R4-29-203(C), R4-29-204(G), and R4-29-211,~~ The director may waive the examination requirements in whole or in part for an individual who is certified as an applicator ~~pursuant to A.R.S. Title 3, Chapter 2 or by another state,~~ by another state, federal, or tribal agency under an approved EPA certification plan. In order to qualify for reciprocity:

1. An applicant must apply for Arizona reciprocal certification. In that application, the candidate must:
 - a. Shall provide information as in R3-8-203 or R3-3-204, as applicable.
 - b. Submit the department required form to their state, federal or tribal agency for verification of certification.
2. Upon verification of like competency standards for each category of certification requested, the department shall issue an Arizona certification.
3. In addition to reasons for revocation under A.R.S. Title 3, Chapter 20, Articles 1 through 5, and the rules adopted thereunder, the Department can terminate an applicator’s certification upon notification that the applicator’s original certification has been terminated for any reason.

R3-8-216. Continuing Education Approval

A. Only continuing education courses approved by the PMD may be used to satisfy the continuing education requirement in R3-8-215. The PMD shall approve a continuing education course only if the course addresses: what is found in R3-8-211(B) and (C).

- ~~1. Pesticide labels and labeling;~~
- ~~2. Safety, environmental factors, and consequences;~~
- ~~3. Pesticide use and disposal;~~
- ~~4. Laws and rules related to pest management and the business of pest management;~~
- ~~5. Application techniques;~~
- ~~6. Calibration and dilution;~~
- ~~7. Equipment;~~
- ~~8. Pest identification;~~
- ~~9. Life cycles and habits;~~
- ~~10. Calculation and measurements;~~
- ~~11. New pest management technologies;~~
- ~~12. Integrated pest management; or~~
- ~~13. Licensee responsibilities.~~

B. A person who wishes to have the PMD determine whether a course qualifies for CEU credit shall submit the following information to the PMD:

1. Type of continuing education listed under subsection (A);
 2. Name of continuing education provider;
 3. Address and telephone number of continuing education provider;
 4. Course outline, listing the subjects and indicating the amount of time allocated for each subject;
 5. Brief description of the information covered within each subject;
 6. Brief biography of the presenter, demonstrating the presenter's qualifications;
 7. Whether a fee is charged for attending the course;
 8. Date and location of each session;
 9. Whether the course is open to the public;
 10. Number of continuing education units sought;
 11. Previous continuing education number, if any; and
 12. Dated signature of applicant;
- C.** The provider of an approved continuing education course shall:
1. Enter attendance information using the PMD's on-line continuing education reporting tool within 10 days after the date of the continuing education course, and
 2. Maintain a copy of the verification of attendance and original sign-in sheet that lists the attendees' names and certification numbers for two years.
 3. Allow PMD and Department employees to attend the course and review course materials without charge, except that the provider has no obligation to provide food to the employees that is made available for paying attendees.
 4. Notify PMD in writing of the date, time and place of each continuing education course at least two weeks before each course. In-house and online courses are exempt from this requirement.
- D.** Unless otherwise indicated in the notice of approval, the PMD's approval of a continuing education course is valid for two years.
- E.** Approval of a continuing education course is not renewable. To reapply for approval of a continuing education course, a person shall comply with the requirements of subsection (B).
- F.** The provider of an approved continuing education course shall provide notice and updated information to the PMD within 10 days after the subject matter or instructor of the course changes.
- G.** To evaluate the effectiveness of a continuing education course, the PMD may monitor an approved continuing education course at no cost.
- H.** The PMD shall revoke its approval of a continuing education course if the PMD determines that the course fails to meet the standards for approval listed in this Section, the continuing education provider provided false information on its application or false information pertaining to attendance, or the continuing education provider fails to comply with the PMD's statutes and this Chapter.
- I.** The PMD may modify the number of CEUs earned for a CEU course if the CEU course varies significantly in content or length from the approved curriculum. If the PMD modifies the number of CEUs earned, the PMD shall send a letter of modification to the course organizer, who shall be required to inform all individuals who attended the course.

ARTICLE 3. PEST MANAGEMENT

R3-8-301. Using Pesticides and Devices

- A.** An applicator shall use only a pesticide that is currently registered for use by the Department or was registered by the Department and does not have a passed EPA end use date.
- B.** An applicator shall not misuse a pesticide or device. It is misuse of a pesticide or device if an applicator:
 1. Applies, handles, stores, or disposes of a pesticide or device in a manner that is inconsistent with the label or labeling;

2. Provides a pest management service or handles a pesticide without wearing clothing and using the personal protective equipment required by the label or labeling to protect the applicator from pesticide exposure;
 3. Uses a pesticide in a manner that causes the pesticide to come into contact with a person, other than the applicator, animal, or property, other than the property receiving the pest management service, unless the contact results from an accident beyond the reasonable control of the applicator;
 4. Uses a pesticide in a food-handling establishment that ~~the label or labeling recommends not be used in a~~ is not labeled for food-handling establishment; and
 5. Uses a pesticide in a manner that contaminates food, feed, or drugs or equipment used to prepare or serve food, feed, or drugs.
- C.** While mixing a pesticide with water, an applicator shall protect the water supply from back-siphoning of the pesticide mixture. An applicator shall not add water to a tank in which a pesticide is mixed or from which a pesticide is dispensed by protruding a fill-pipe or hose connection into the tank. An applicator shall ensure that a fill-pipe or hose connection terminates at least two inches above the tank fill opening or is equipped with an effective anti-siphoning device.
- D.** An applicator shall ensure that all equipment, including auxiliary equipment such as a hose or metering device, used for mixing or applying a pesticide is in good repair and operating properly.
- E.** An applicator shall apply, store, or dispose of a pesticide designated by the EPA as restricted use only if the applicator is certified or working under the immediate supervision of an applicator certified in the category for which the restricted-use pesticide is applicable.
- F.** An applicator shall clean a pesticide spill in accordance with the pesticide label and labeling directions and in a manner that minimizes exposure to humans and other non-target organisms. If a pesticide spill may endanger humans, an applicator shall clean the pesticide spill in accordance with recommendations by health and medical personnel and local authorities.
- G.** An applicator shall apply a pesticide at a rate provided by a Special Local Need registration issued by the Department and the pesticide labeling. The applicator shall have in the applicator's possession at the time of the application both the Special Local Need labeling and the EPA section 3 label and labeling.
- H.** If information regarding provision of a particular pest management service is not available on the pesticide label or labeling or addressed in the PMD's statutes or this Chapter, an applicator shall comply with the pesticide manufacturer's recommendation and the general industry practice prevailing in the community at the time the pest management service is provided.
- I.** If there is a conflict between any provision in this Section and labeling instructions, an applicator shall follow the more specific instruction.

R3-8-308. Performing Wood-destroying Insect Management

- A.** An applicator shall not perform wood-destroying insect management or fumigation unless the applicator is certified in the category of wood-destroying organism treatment or fumigation, respectively, or working under the immediate supervision of an applicator who is certified in the category of wood-destroying organism treatment or fumigation respectively.
- B.** An applicator shall not perform wood-destroying insect management, issue a treatment proposal, or quote a fee for service until the business licensee that employs the applicator ensures that:
1. An on-site inspection of the property is performed, ~~in accordance with R3-8-307,~~ by a certified applicator meeting the training requirement under A.R.S. § 3-3632(E),
 2. A treatment proposal is prepared, based upon the on-site inspection, on a form approved by the PMD and contains the information required under A.R.S. § 3-3632(B) and (C), and
 3. The treatment proposal is delivered to the person requesting the proposal or treatment, prior to the treatment.

- C. An applicator shall apply a termiticide only in the quantity, strength, dosage, and manner prescribed on the termiticide label unless otherwise specified by this Chapter or a PMD order.
- D. Pretreatment for commercial or residential construction.
1. Unless a contract between the business licensee and customer specifies additional requirements, an applicator performing a pretreatment shall:
 - a. Establish a horizontal barrier of termiticide before any concrete slab under roof is poured or in conjunction with establishing the footings and supports for a raised foundation; and
 - b. Establish a vertical barrier of termiticide in all critical areas visible during the time of pretreatment. An area is critical at the time of pretreatment if the area is identified as critical by the termiticide label or if there is soil in the immediate vicinity of:
 - i. A penetration or protrusion through the slab;
 - ii. An observable preset for crack or joint control;
 - iii. A formed-up change of grade level;
 - iv. Abutting slabs;
 - v. A bath trap or tear-out;
 - vi. The interior of a foundation or stem wall; or
 - vii. A pier, pillar, pipe, or other object that extends from the soil to the structure.
 2. Except as specified ~~in subsection (D)(3) and unless on~~ the termiticide label ~~requires more~~, an applicator shall treat all critical areas during a pretreatment at a rate ~~of four gallons of chemical preparation per 10 linear feet~~ allowed by the product label, for each foot of depth from grade level to the footer. If there is no adjacent footer, the applicator shall treat to a depth of one foot or as specified by labeling instructions.
 3. Unless the termiticide label requires more, an applicator is not required to treat a critical area during a pretreatment beyond a depth of four feet if:
 - a. Treating beyond a depth of four feet will, or reasonably may, cause an off-site application;
 - b. Access to the footer is not possible because of its distance below grade; or
 - c. Treating beyond a depth of four feet will, or reasonably may cause an environmental contamination.
 4. If an applicator does not treat a critical area during a pretreatment beyond a depth of four feet because the applicator determines that one of the exceptions in subsection (D)(3) is applicable, the applicator shall:
 - a. Apply the amount of termiticide possible without causing an off-site application or environmental contamination, and
 - b. Include evidence of the exception in the treatment record. Evidence of the exception may include:
 - i. A photograph of the interior grade and adjacent location that would or reasonably might be contaminated by treating beyond a depth of four feet,
 - ii. A photograph of the site after the pretreatment but before concrete placement,
 - iii. A written statement from the general contractor concerning the fill material and compaction rating,
 - iv. A written statement from the concrete subcontractor describing the depth of the footer as greater than four feet, or
 - v. A written compaction rating statement from the engineering subcontractor.
 5. If an applicator is advised before concrete is poured that a treated area is disturbed and the continuous horizontal or vertical chemical barrier established under subsection (D)(1) is broken, and if the applicator is provided an opportunity to re-treat the disturbed area, the applicator shall re-treat the disturbed area and re-establish a continuous horizontal and vertical chemical barrier.

6. Immediately after completing a pretreatment, an applicator shall securely affix a tag to the pretreatment site. The applicator shall ensure that the tag is visible, readily available for inspection, and unlikely to be covered with concrete or soil. If there is a contractor's permit or inspection board at the pretreatment site, the applicator may affix the tag to the board. The applicator shall ensure that the tag contains the following information about the pretreatment:
 - a. Name of business licensee;
 - b. Address of business licensee;
 - c. Telephone number of business licensee;
 - d. License number of business licensee;
 - e. Location or address of project;
 - f. Date of pretreatment application;
 - g. Time that application was started (not time that applicator arrived at the site);
 - h. Time that application ended (not time that applicator left the site);
 - i. Trade name of pesticide used;
 - j. Percentage of active ingredient in the pesticide used;
 - k. Number of gallons of chemical preparation applied;
 - l. Square footage of area treated;
 - m. Linear footage of area treated;
 - n. Type of slab construction;
 - o. Name of applicator; and
 - p. Certification number of applicator or, if not certified, the name and certification number of the applicator providing immediate supervision.
 7. If it is necessary for an applicator to abandon a pretreatment site before completing the treatment, the applicator shall complete and affix the tag described in subsection (D)(6), representing the work completed, and after marking the tag "TREATMENT INCOMPLETE."
 8. If a contractor requires a copy of the tag described in subsection (D)(6) for the customer's file, an applicator shall prepare and provide the contractor with a duplicate tag that is clearly marked "DUPLICATE."
- E. New-construction treatment for commercial or residential construction.**
1. Unless specifically precluded by the termiticide label, an applicator performing a new-construction treatment shall treat all critical areas visible at the time of the treatment. An area is critical at the time of a new-construction treatment if the area is identified as critical by the termiticide label or if there is soil in the immediate vicinity of:
 - a. A penetration or protrusion through the slab;
 - b. An observable crack or joint;
 - c. Abutting slabs;
 - d. A bath trap or tear-out;
 - e. The interior of a foundation or stem wall; or
 - f. A pier, pillar, pipe, or other object that extends from the soil to the structure.
 2. An applicator shall comply with subsections (D)(2) through (D)(4) when treating a critical area during a new-construction treatment except that the treatment shall be at the labeled rate rather than at a rate of four gallons of chemical preparation per 10 linear feet for each foot of depth.
 3. If an applicator is advised that a treated area is disturbed, the applicator shall re-treat the disturbed area.
 4. Immediately after completing a new-construction treatment, an applicator shall securely affix a tag to the new-construction site in the manner described in subsection (D)(6). The applicator shall ensure that the tag contains the information listed in subsection

(D)(6).

5. An applicator shall comply with subsections (D)(7) and (D)(8) when performing a new-construction treatment.
- F.** Final grade treatment for commercial or residential construction.
1. A business licensee that performs a pretreatment or new-construction treatment shall perform a final grade treatment. The final grade treatment must occur after all grading and other construction-related soil disturbance is complete, but ~~within twelve months of the original pretreatment or new-construction treatment,~~ within 18 months of the original pretreatment or new construction treatment. The business licensee shall keep a written or electronic record as to as to why the final grade has not been completed and an estimated time for completion. This record shall be available upon written requests for inspection by the Agency.
 2. ~~An applicator shall treat the soil along the exterior of foundation walls at a rate of four gallons of chemical preparation per 10 linear feet (unless precluded by label directions) after all grading and other construction-related soil disturbance is complete, but within twelve months of the original pretreatment or new-construction treatment.~~ Except as specified on the termiticide label, an applicator shall treat all critical areas during a pretreatment at a rate allowed by the product label.
 3. An applicator shall leave a record of the final grade treatment in an unlocked electrical or circuit-breaker box, if available. Otherwise, the applicator shall conspicuously post or leave the record with the property agent. The applicator shall ensure that the record of the final grade treatment contains the information listed in subsection (D)(6), except the information required under subsections (D)(6)(l) and (D)(6)(n) is not required.
- G.** An applicator who performs a pretreatment, new-construction treatment or final grade treatment shall ensure that a copy of the information recorded on a tag required under subsection (D) or (E) or the final grade treatment record required under subsection (F) is provided to the business licensee for inclusion in the business licensee's service records.
- H.** A warranty regarding subterranean termite treatment shall only be issued to a builder if the structure received a pretreatment or a new-construction treatment.
- I.** Post-construction treatment for commercial or residential construction.
1. If an applicator uses a drilling and injecting application method for a post-construction treatment, the applicator shall space the treatment holes in each treated area no more than 24 inches apart or in accordance with the termiticide label, whichever is more restrictive. If an applicator determines that a structural feature makes it necessary to space treatment holes more than 24 inches apart, the applicator may space the treatment holes more than 24 inches apart if the greater distance is within the limits on the termiticide label.
 2. After completing a post-construction treatment using a drilling and injection application method, an applicator shall securely patch all treatment holes, including those in an un-finished basement, enclosed porch, garage, or workshop, with a material that is non-porous and non-cellulose.
 3. Unless precluded by label directions, any application to treat the soil along the exterior of foundation walls shall be made at an effective treatment rate of four gallons of chemical preparation per ten linear feet in a trench six inches wide or other method of treatment prescribed by the label to achieve the effective treatment rate.
 4. All post construction treatments shall be made in accordance with the treatment proposal delivered as required under subsection (B). Any deviations to the original proposal shall be redelivered in writing in a revised treatment proposal and shall be approved prior to performing the treatment by the person who requested the original proposal or their authorized agent.

R3-8-310. Business Management

A. Financial responsibility.

1. A business licensee shall maintain the financial responsibility required by A.R.S. § 3- 3615 and this Chapter.

2. A business licensee shall ensure that the required financial responsibility covers all pest management activities provided from the primary business office and each branch office.
 3. If there is an interruption in the financial responsibility of a business licensee, the business licensee shall immediately stop providing pest management services.
- B. Use of business name and license number.**
1. A business licensee shall prominently display the license issued by the PMD at the primary business office and each branch office.
 2. A business licensee shall prominently display the business name and license number, as recorded on the license issued by the PMD, on:
 - a. Customer proposals or contracts for pest management services;
 - b. Service records;
 - c. Inspection reports;
 - d. Written materials provided to customers or potential customers;
 - e. Correspondence;
 - f. Advertisements; and
 - g. Service vehicles and trailers used in providing pest management services. The business licensee shall ensure that the business name and license number display on a service vehicle or trailer used in providing pest management services conforms to the following:
 - i. Is affixed to the service vehicle or trailer used in providing pest management services within 30 days after the PMD issues the license or issues a business license change or after the service vehicle or trailer is acquired, whichever is sooner;
 - ii. Is in a color that contrasts with the color of the service vehicle and trailer;
 - iii. Is on both sides of the service vehicle and trailer;
 - iv. ~~Uses at least two-inch letters for the principal words in the business name and at least one and one-half inch letters for other words in the business name; and~~
 - v. ~~Uses at least two-inch numbers for the license number.~~
 3. A business licensee that always uses a service vehicle and trailer together is required to mark only the service vehicle or trailer as described in subsection (B)(2)(g). A business licensee that uses a vehicle only for sales, solicitations, or solely for inspections and does not carry a pesticide, and does not otherwise use the vehicle to provide a pest management service, is not required to mark the vehicle as described in subsection (B)(2)(g).
 4. When complying with subsection (B)(2), a business licensee may use a slogan, trade name, or trade mark in addition to the business name and license number. When complying with subsection (B)(2), a business licensee may use a word or phrase to indicate its former licensed business name if it had a previously licensed business name.

ARTICLE 4. SUPERVISION

R3-8-401. Supervising an Applicator

- A.** A QP and business licensee shall ensure that an applicator receives the training, equipment, and supervision that the applicator requires to comply fully with the PMD's statutes, this Chapter, and label and labeling directions.
- B.** A QP shall be readily available to an applicator while the applicator provides pest management services.
- C.** A QP shall ensure that the use, application, storage, or disposal of a pesticide is performed or supervised by an individual certified in a category applicable to the pesticide being used, applied, stored, or disposed.

- D. A QP shall ensure that immediate supervision, which requires supervision by a certified applicator who is physically present, is provided when an uncertified applicator performs pest management services in the wood-destroying organism management, aquatic, or fumigation category, uses a restricted use pesticide, or uses a pesticide under an experimental use permit. A QP shall ensure that a certified applicator provides immediate supervision to not more than two uncertified applicators at a time.
- E. In circumstances other than those described in subsection (D), a QP shall ensure that direct supervision, which does not require a supervising certified applicator to be physically present, is provided. A QP shall ensure that a certified applicator providing direct supervision considers the potential danger to the public or environment if the uncertified applicator misuses a pesticide. A QP shall ensure that a certified applicator providing direct supervision instructs the uncertified applicator in the following areas and has written evidence that the instruction was provided and understood:
 1. Proper loading, mixing, applying, storing, and disposing of the pesticide;
 2. Use of required safety equipment; and
 3. Method and means by which to contact the supervisor immediately.
- F. A QP shall ensure that an applicator has the protective clothing, safety supplies, and equipment specified by the label or labeling of each product used by the applicator and by the PMD's statutes and this Chapter. The QP shall ensure that the applicator is instructed regarding how to use, maintain, clean, and store the protective clothing, safety supplies, and equipment.
- G. A QP, business licensee, and political subdivision shall not allow an uncertified applicator to apply a pesticide for more than ~~90~~ 120 days after the applicator is registered.

H. Direct Supervision Requirements For Restricted Use Pesticides. When a restricted use pesticide is applied by a non-certified applicator, the certified applicator providing direct or immediate supervision shall meet the requirements of 40 CFR § 171.201(a) through (d) (82 FR 1040, January 4, 2018). This material is incorporated by reference, is on file with the Department, and does not contain any later amendments or additions.

R3-8-402. Qualifying a Business or School District

- A. A business licensee or school district shall employ a QP in each category of pest management in which the business licensee or school district provides pest management services. A business licensee or school district may employ multiple QPs.
- B. A QP may not qualify more than one business licensee or school district at a time.
- C. Notwithstanding subsection (B), the director may allow a QP to qualify more than one school district if the director believes that the number of applicators, pest management needs, and distance of the school districts will not hinder the QP's ability to comply with ~~R4-29-403~~ R3-8-403.
- D. A QP may only qualify a business licensee or school district in the categories of pest management in which the QP is registered.

R3-8-404. Branch Supervisors

With respect to a branch office, the branch supervisor shall fulfill all the duties and responsibilities of a QP in this Article, except as follows:

1. The branch supervisor shall be present at the branch office at a minimum of once every 14 days to review pesticide use, storage and disposal and by ensuring the training, equipping, and supervision of the applicators.
2. The branch office may operate in each category of pest management in which the QP is registered even if the branch supervisor is not a certified applicator in the category, though ~~R4-29-201(C)~~ R3-8-201(C) still applies.
3. The branch supervisor is not responsible for ensuring that the business licensee maintains current proof of financial security.

ARTICLE 5. RECORDKEEPING AND REPORTING

R3-8-501. Applicator Recordkeeping

- A.** An applicator shall make all records required by law and provide the records to the business licensee or political subdivision that supervises, directs, or employs the applicator within five business days.
- B.** Service records. An applicator shall make a record of each pest management service provided. The applicator shall include the following information in the service record:
1. Name and address of the customer;
 2. Specific site at which a pesticide was applied;
 3. Date and time of service;
 4. Target pest or purpose of service;
 5. Trade name of pesticide applied;
 6. EPA registration number of any restricted use pesticide applied;
 7. Amount of pesticide applied, in terms of percent active ingredient and ~~total amount diluent (water, etc.); total amount of concentrate and total amount of diluent (water, etc.); or total amount of ready-to-use product by weight or volume (e.g. lbs, grams, ounces, etc.);~~ volume of diluted mixture or in terms of total amount of liquid concentrate, ready-to-use product, granular material, or bait stations; and
 8. Name and certification number of the applicator or if the applicator is uncertified, name of the uncertified applicator and the name and certification number of the applicator providing supervision.
- C.** Pesticide purchase records. An applicator shall make a record of each restricted-use pesticide purchased or otherwise acquired. The applicator shall include the following information in the pesticide purchase record:
1. Date of purchase or acquisition;
 2. Trade name of pesticide;
 3. EPA registration number of pesticide;
 4. Quantity of pesticide purchased or acquired; and
 5. Name and license number of the applicator making the pesticide purchase record or name of the business licensee.
- D.** Pesticide disposal records. An applicator shall make a record of each pesticide disposed, sold, lost, or otherwise relinquished. The applicator shall include the following information in the pesticide disposal record:
1. Date of disposal;
 2. Trade name of pesticide;
 3. EPA registration number of pesticide;
 4. Quantity of pesticide disposed;
 5. Percent active ingredient in the pesticide disposed,
 6. Method of disposal,
 7. Location and type of disposal site or service; and
 8. Name and license number of the applicator making the pesticide disposal record or name of the business licensee.
- E.** WDIIR. An applicator who completes a WDIIR shall:
1. Complete the WDIIR using ~~a~~ the most current form approved by the PMD. A trademark or logo may be placed on the WDIIR if it does not alter the format or substance of the PMD approved form;
 2. Submit an original WDIIR to the QP or branch supervisor within seven days after completing the wood-destroying insect inspection;
 3. Submit a supplemental WDIIR to the QP or branch supervisor within seven days after completing a supplemental wood-destroying insect inspection to verify that a corrective treatment was performed or a condition conducive was corrected. The applicator shall include the original inspection number on the supplemental WDIIR;

4. If required by a federal agency, complete another inspection form in addition to but not instead of the PMD -approved WDIIR; and
 5. Ensure that the following information is included on the WDIIR:
 - a. Name, address, telephone number, and license number of business licensee. This information may be pre-printed on the WDIIR;
 - b. Time and Date of wood-destroying insect inspection, and the WDIIR number;
 - c. Purpose of the inspection report;
 - d. Whether the report is from an original or supplemental inspection;
 - e. Name of property owner or seller;
 - f. Address of inspected property;
 - g. Inspected and un-inspected structures at the site and the reason why structures are un-inspected;
 - h. Areas of the structure not inspected because they were obstructed or inaccessible and the cause of the obstruction or inaccessibility;
 - i. Whether visible evidence of wood-destroying insects is observed;
 - j. Whether visible evidence of infestation from wood-destroying insects is observed and if so, the date on which a proper management measure is performed, if applicable;
 - k. Whether visible damage from wood-destroying insects is observed and if so, the insect causing the damage and the areas in which the damage is observed;
 - l. Whether visible evidence of previous treatment is observed and if so, the nature of the evidence;
 - m. If damage from wood-destroying insects is observed, whether or when the damage will be corrected and whether the damage will be corrected by the business licensee or another company;
 - n. Visible conditions conducive to infestation by wood-destroying insects;
 - o. Diagram or graph of the structure clearly indicating wood-destroying insects, damage, conducive conditions observed, and areas where further inspection is recommended, and a statement or indication on the diagram or graph clearly identifying inaccessible areas; and
 - p. Dated signature and certification number of the individual making the inspection. The individual making the inspection shall sign the WDIIR by hand or electronically and shall not use a signature stamp or allow another individual to affix the signature.
- F.** Wood-destroying organism treatment proposal. An applicator who is qualified under A.R.S. § 3-3632(B) and (E) shall complete a wood-destroying organism treatment proposal using a form approved by the PMD and provide a copy of the proposal to the person requesting the proposal or treatment and the QP.
- G.** Non-certified applicator records: When supervising an applicator of a restricted use pesticide, records shall be kept as required in 40 CFR § 171.201(e) (82 FR 1040, January 4, 2018). This material is incorporated by reference, is on file with the Department, and does not contain any later amendments or additions.

R3-8-502. Qualifying Party Recordkeeping

- A.** In addition to ensuring that the records required under R3-8-501 are made, a QP shall ensure that complete records are made and maintained of the training, supervision, and equipping provided to an applicator.
- B.** At a minimum, QP training records must consist of the following information:
 1. Date of the training,
 2. Printed name and signature of the trainee,
 3. Printed name and signature of the trainer,

4. Brief description of topic(s) covered, and
 5. Copies of labels and any other pertinent material used in training.
- C. A QP shall maintain the records described in this Section for three years, including after the applicator's employment ending date.
- D. Non-certified applicator records: When supervising an applicator of a restricted use pesticide, records shall be kept as required in 40 CFR§171.201(e) (82 FR 1040, January 4, 2018). This material is incorporated by reference, is on file with the Department, and does not contain any later amendments or additions.**

R3-8-503. Business Licensee and Political Subdivision Recordkeeping and Retention

- A. In addition to ensuring that the records required under R3-8-501 and R3-8-502 are made and maintained, a business licensee and political subdivision shall make and maintain records of the following:
1. The specimen label and SDS for each registered pesticide currently used by an applicator supervised, directed or employed by the business licensee or political subdivision;
 2. The financial responsibility required under R3-8-310(A), if applicable;
 3. Purchase records of each pesticide purchased or otherwise acquired that include the following information:
 - a. Date of purchase or acquisition;
 - b. Trade name of pesticide;
 - c. Quantity of pesticide purchased or acquired; and
 - d. Name of the business licensee;
 4. Date on which a service vehicle or trailer is acquired;
 5. Incident reports submitted to the ~~OPM~~PMD as required under R3-8-504;
 6. A pest management service provided, including a service provided under a warranty;
 7. The evidence of customer refusal of a re-treatment or post-construction treatment required under R3-8-309(J);
 8. Written inspection reports;
 9. Business licensee contracts for pest management services; and
 10. Personnel records including for each applicator supervised, directed or employed by the business licensee or political subdivision:
 - a. Date of hire or beginning of relationship;
 - b. Date on which pest management services are first performed;
 - c. Training and continuing education received;
 - d. Supervision received;
 - e. Protective clothing, safety supplies, and equipment issued to employee;
 - f. Name of supervisor; and
 - g. Employment or relationship ending date.
- B. A business licensee or political subdivision shall maintain the records as follows:
1. Records under subsection (A)(1), as long as the registered pesticide is used by the business licensee or political subdivision. The business licensee shall maintain the records required under subsection (A)(1) at the primary business office or branch office from which the registered pesticide is used or at which the registered pesticide is stored;
 2. Records under subsection (A)(2), current;
 3. Records under subsection (A)(3) or R3-8-501(C) and (D), three years from the date of purchase or disposal;

4. Records under subsection (A)(4), as long as the service vehicle or trailer is owned by the business licensee or political subdivision;
 5. Records under subsection (A)(5), until the statute of limitation for possible legal action resulting from the incident is expired or until resulting legal action is completed;
 6. Records under subsection (A)(6) and (A)(7), three years;
 7. Records under subsections (A)(8) and (A)(9), three years from the date on the inspection report or customer contract;
 8. Records under subsection (A)(10), three years, including after the employment ending date;
 9. WDIIRs completed under subsection (C), three years; and
 10. Records under subsections (A)(5) and (A)(6) that pertain to the use of a restricted-use pesticide shall be maintained separate from other records.
- C.** When an applicator supervised, directed or employed by a business licensee submits a WDIIR, the business licensee shall record the following on the WDIIR:
1. TARP number,
 2. If the business licensee has the property under warranty:
 - a. Account number,
 - b. Target pest,
 - c. Date of initial treatment,
 - d. Date of warranty expiration, and
 3. The TARP number of each TARP completed regarding the property after the WDIIR is completed.
- D.** TARP. A business licensee or political subdivision shall:
1. Submit to the PMD a TARP, using a form approved by the PMD, within 30 days of completing an action specified under subsection (D)(3). For the purpose of reporting, a pretreatment or new-construction treatment is complete when no further preventative treatment is necessary until the final grade treatment unless it is necessary to re-treat a disturbed continuous chemical barrier. In a multiple-unit project, a pretreatment or new- construction is complete when no further preventative treatment is necessary for the last unit at the project until the final grade treatment unless it is necessary to re-treat a disturbed continuous chemical barrier;
 2. Include the fee with each TARP and, if applicable, the penalty required under R3-8-103;
 3. Unless exempt under subsection (D)(4), submit a TARP after completing each of the following:
 - a. Pretreatment, including pretreatment of an addition that does not abut the slab of a previously pretreated structure;
 - b. New-construction treatment, including new-construction treatment of an addition that does not abut the slab of a previously new-construction treated structure;
 - c. Final grade treatment;
 - d. Initial corrective termite treatment at a site; and
 - e. WDIIR.
 4. Not submit a TARP after completing:
 - a. A supplemental WDIIR; or
 - b. The first initial corrective insect termite treatment at a site if the business licensee:
 - i. Performed a pretreatment or new-construction treatment at the site,
 - ii. Filed a TARP regarding the pretreatment or new-construction treatment, and
 - iii. Performs the initial corrective termite treatment under R3-8-309(D) or under a warranty.
 5. Include the information required under A.R.S. § 3-3631 and the following on a TARP:
 - a. License number of the licensed business that performed the work;

- b. Name of the QP;
- c. For a WDIIR, indicate whether:
 - i. There was evidence of infestation, conditions conducive to infestation, or damage present;
 - ii. Previous treatment was performed for an infestation; and
 - iii. Corrective actions were taken for conditions conducive or damage present;
- d. For a pretreatment, new-construction treatment, or final grade treatment to establish an exterior vertical barrier, indicate:
 - i. Chemical used and its EPA registration number,
 - ii. Amount of chemical used,
 - iii. Percentage of active ingredient in the chemical used, and
 - iv. Square and linear footage treated; and
- e. For a post-construction corrective termite treatment, indicate:
 - i. Type of treatment,
 - ii. Target organism,
 - iii. Chemical used and its EPA registration number,
 - iv. Amount of chemical used, and
 - v. Percentage of active ingredient in the chemical used.

ARTICLE 6. INSPECTIONS; DISCIPLINARY PROCEDURES

R3-8-606. Penalties

A. When assessing a civil penalty for a violation, the Director shall assess a civil penalty for each violation based on the violation's total point value set out in this Section. To calculate the total point value, the Director shall sum the points for each aggravating factor and may subtract the points for each mitigating factor. The Director, in his sole discretion, may treat multiple violations as a single violation for the purpose of calculating the civil penalty.

B. Aggravating factors.

- 1. Pesticide type.
 - a. General use. 2
 - b. Experimental use or special local need. 3
 - c. Restricted use or unregistered. 5
- 2. Harm to humans and non-target animals.
 - a. None or unverified potential harm. 0
 - b. Potential harm. 3
 - c. Actual, verifiable harm. 5
- 3. Harm to environment and economic loss.
 - a. None or unverified potential harm. 0
 - b. Potential harm or loss. 3
 - c. Actual, verifiable loss of \$10,000 or less. 4
 - d. Actual, verifiable loss exceeding \$10,000. 5
 - e. Actual, verifiable environmental harm. 5
- 4. Non-pesticide violations.
 - a. Negligent violations. 4
 - b. Knowing or willful violations. 8
- 5. Prior similar violations.

- | | | |
|----|--|---|
| a. | None. | 0 |
| b. | Warning letter within 12 months. | 1 |
| c. | One or more within 36 months,
but none
within 12 months. | 2 |
| d. | One within 12 months. | 3 |
| e. | More than one within 24 months,
but nonewithin 12 months. | 4 |
| f. | More than one within 12 months. | 5 |
| 6. | Culpability. | |
| a. | Negligent violations. | 2 |
| b. | Knowing or willful violations. | 4 |
- C. Mitigating factors.** In considering whether to subtract points for mitigating factors, the Director may consider whether the mitigating act occurred before, during, or after PMD's investigation.
- | | | |
|----|--|---|
| 1. | Good will. | |
| a. | Admission of fault <u>or cooperation</u> | 1 |
| b. | Admission and cooperation | 2 |
| c. | Admission, cooperation, and
corrective action prior to request. | 3 |
| 2. | Environmental benefit. | |
| a. | Clean up. | 1 |
| b. | Move toward less toxic methods. | 2 |
| c. | Develop IPM program. | 3 |
| 3. | Consumer benefit | |
| a. | Consumer education. | 1 |
| b. | Make consumer whole. | 2 |
| c. | Extend warranty. | 3 |
| 4. | Other benefits. | |
| a. | Training (CEU). | 1 |
| b. | Equipment (modification or new). | 2 |
| c. | Purchase and use of computer for TARFs. | 3 |
- D. Civil penalty.** To calculate the civil penalty, the Director shall:
- For total point values of 6-10, multiply the value by \$100 and then subtract \$500.
 - For total point values of 11-15, multiply the value by \$100 and then subtract \$600.
 - For total point values of more than 16, assess the maximum penalty of \$1000.
- E. Other penalties.** In addition to assessing a civil penalty, the Director:
- For any total point value, may require extra continuing education.
 - For total point values of 6-11, may impose probation requirements.
 - For total point values of 12-17, shall impose probation requirements and may suspend the license, certification, or registration.
 - For total point values of 18 or more, shall suspend or revoke the license, certification, or registration.
 - May take any other action permitted by law, including imposing probation requirements after a suspension ends.

F. In addition to the civil penalties prescribed by this section, the director may charge a person who knowingly or willfully commits a violation of this article which causes:

1. Harm to the environment or economic loss of \$10,000 or less with a class 1 misdemeanor.
2. Harm to humans or animals, or the environment or an economic loss exceeding \$10000 with a class 6 felony.

G. In addition the director may deny, suspend or revoke applicator certification for:

1. Misuse of a pesticide
2. Falsifying records required to be kept by a certified applicator
3. A criminal conviction under section 14(b) of FIFRA (7 U.S.C. § 136l) (June 25, 1947, ch. 125, § 14, as added Pub. L. 92-516, § 2, Oct. 21, 1972, 86 Stat. 992; amended Pub. L. 95-396, § 17, Sept. 30, 1978, 92 Stat. 832; Pub. L. 100-532, title VI, § 604, Oct. 25, 1988, 102 Stat. 2678; Pub. L. 102-237, title X, § 1006(a)(8), Dec. 13, 1991, 105 Stat. 1895.). This material is incorporated by reference, is on file with the Department, and includes no later amendments or additions.
4. A final order imposing civil penalty under section 14(a) of FIFRA (7 U.S.C. § 136l) (June 25, 1947, ch. 125, § 14, as added Pub. L. 92-516, § 2, Oct. 21, 1972, 86 Stat. 992; amended Pub. L. 95-396, § 17, Sept. 30, 1978, 92 Stat. 832; Pub. L. 100-532, title VI, § 604, Oct. 25, 1988, 102 Stat. 2678; Pub. L. 102-237, title X, § 1006(a)(8), Dec. 13, 1991, 105 Stat. 1895.). This material is incorporated by reference, is on file with the Department, and includes no later amendments or additions.
5. A violation of State laws or regulations relevant to the State certification plan.

GOVERNOR'S REGULATORY REVIEW COUNCIL

APPROVAL OF FINAL RULES

1. **Agency name:** ARIZONA DEPARTMENT OF AGRICULTURE
2. **Chapter heading:** DEPARTMENT OF AGRICULTURE – PEST MANAGEMENT DIVISION
3. **Code citation for the Chapter:** 3 A.A.C. 8
3. **The Subchapters, if applicable; the Articles; the Parts, if applicable; and the Sections involved in the rulemaking, listed in alphabetical and numerical order:**
Article, Part, or Section Affected (as applicable) Rulemaking Action

R3-8-102	Amend
R3-8-103	Amend
R3-8-107	Amend
R3-8-202	Amend
R3-8-203	Amend
R3-8-204	Amend
R3-8-210	Amend
R3-8-211	Amend
R3-8-212	Amend
R3-8-216	Amend
R3-8-301	Amend
R3-8-308	Amend
R3-8-310	Amend
R3-8-401	Amend
R3-8-402	Amend

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT
TITLE 3. AGRICULTURE
CHAPTER 8. DEPARTMENT OF AGRICULTURE – PEST MANAGEMENT DIVISION
ARTICLES 1 - 7

Summary

The statutory purpose of the Pest Management Division (PMD) is to license pest control businesses in Arizona and the pesticide applicators and inspectors employed by these companies. It also enforces laws governing pesticide use and storage. Arizona Revised Statute designates the Director of the Arizona Department of Agriculture as the head of PMD and assigns the Director the authority and responsibility to enforce PMD law.

1. Identification of the proposed rulemaking.

This rulemaking is intended to reduce or ameliorate a regulatory burden on the pest control industry, while achieving the same regulatory objectives, provide increased consumer protection and allow the industry to use newer and potentially better termiticide products to Arizona homeowners. For the past 2 years the Pest Management Division ("PMD") temporarily reduced license fees by at least 25% for all pest control related licenses. Due to the Covid-19 pandemic and various economic challenges that have transpired as a result of the pandemic, the proposed rules would make the reduced license fees permanent. Furthermore, the proposed rules extends the time it takes an applicant to be certified to apply pesticides from 90 days to 120 days. The proposed rules also contain language to eliminate conflicting record keeping requirements; eliminate overreaching regulations by dictating the size of lettering on pest control vehicles; open up the door to allow Arizona to use modern termiticides, that allow less gallons to be applied to the environment (which is something that basically every state in the country allows); and the proposed rules eliminate the burden licensees currently experience with short final grade timeframe requirements. The proposed rules also add context to some of the offenses that could be considered a lack of moral character

2. Identification of the persons who will be directly affected by, bear the costs of or directly benefit from the proposed rulemaking.

Licensed pest control companies will directly benefit from the rulemaking with the reduction of licensing fees. Individuals desiring to be certified as pest control applicators benefit because the time frame to obtain certification will be extended. Finally, consumers will benefit because the Rule changes allow licensed pest control companies to use modern termiticides for the protection of the properties treated for termites.

3. A cost benefit analysis of the following:

(a) The probable costs and benefits to the implementing agency and other agencies directly affected by the implementation and enforcement of the proposed rule making. The probable costs to the implementing agency shall include the number of new full-time employees necessary to implement and enforce the proposed rule. The preparer of the economic, small business and consumer impact statement shall notify the joint legislative budget committee of the number of new full-time employees necessary to implement and enforce the rule before the rule is approved by the council.

The effect of the rulemaking will not require any additional full-time employees to the Department and there will be no additional costs for the implementation of the rulemaking since the Department has already implemented a program for the licensing and regulation of the pest control industry.

(b) The probable costs and benefits to a political subdivision of this state directly affected by the implementation and enforcement of the proposed rule making.

Political subdivision employees will receive the same reduction in license fees as employees working for pest control companies. Additionally, political subdivisions and their employees will receive the same time frame extension that pest control companies receive for their employees to become certified as pest control applicators.

- (c) The probable costs and benefits to businesses directly affected by the proposed rule making, including any anticipated effect on the revenues or payroll expenditures of employers who are subject to the proposed rule making.**

The rulemaking is not expected to negatively affect revenues or payrolls for the regulated community. Businesses may benefit from the reduction of licensing fees and the increased time frame for applicators to become certified should result in less employees being laid off due to not being certified within the current statutory timeframes.

- 4. A general description of the probable impact on private and public employment in businesses, agencies and political subdivisions of this state directly affected by the proposed rule making.**

It is not expected that employment in businesses, agencies, or political subdivisions will be directly affected by the rulemaking.

- 5. A statement of the probable impact of the proposed rule making on small businesses. The statement shall include:**

- (a) An identification of the small businesses subject to the proposed rule making.**

The majority of the regulated parties would qualify as small businesses. The proposed rule amendments are designed to clarify rules, reduce regulatory burdens on small and large businesses alike.

- (b) The administrative and other costs required for compliance with the proposed rule making.**

No administrative or other costs are required and therefore, not expected, for the implementation of this proposed rulemaking.

- (c) A description of the methods prescribed in section 41-1035 that the agency may use to reduce the impact on small businesses, with reasons for the agency's decision to use or not to use each method.**

The propose rule making is reducing reporting requirements. Therefore small business will benefit from this change. The deadlines are less stringent. For example, completing final grade treatments has been extended from 12 months to 18 months. Therefore, small businesses will benefit from that extension as well. The proposed rules cannot “simplify” reporting requirements as such requirements serve to protect the public in the event of pesticide exposure. Performance standards and exemption from the proposed rules are non-applicable, as all of the changes are designed to benefit small businesses. And, the rulemaking serves to amend the rules to facilitate that benefit.

(d) The probable cost and benefit to private persons and consumers who are directly affected by the proposed rule making.

The proposed rulemaking allows termite companies to use modern termiticides which have the potential of providing the consumer with great protection from termite infestations. By clarifying certain laws, the proposed rulemaking would eliminating unnecessary practices for which pest control companies were charging consumers due to the ambiguity the laws as it relates to courtesy termite inspections.

For example, A.A.C. R3-8-308(B) may be interpreted to require a company to perform a termite inspection prior to treatment even if the consumer does not hire the company to perform an inspection. Members of the industry have complained that competitors are not following this requirement.

PMD has not enforced this aspect of the rule as written, and does not want to be obligated to do so, because enforcement would result in unnecessary costs to regulated parties and consumers. For a termite inspection, a company may charge a consumer between \$60 and \$100. The average cost would conceivably be \$80 ($\$60 + \$100 / 2 = \80). During the 2020 calendar year, termite companies performed 74,256 termite treatments. If a company is forced to perform an inspection prior to treatment, even though the consumer may have hired another company to perform an inspection, the termite company may charge the consumer an additional \$60 to \$100 for the inspection, plus whatever fee the company charges for the termite treatment. When multiplied by the number of termite treatments, the cost to consumers would be quite large. Clarifying the rule to delete this requirement will definitively avoid that extra cost to the

consuming public. It will also avoid a requirement for regulated parties to report termite inspections to PMD. PMD charges a \$2.00 reporting fee for inputting, storing and maintaining such reports. Enforcing the rule as written would result in imposition of \$148,512 additional regulatory fees (74,256 additional mandatory inspections multiplied by the \$2.00 reporting fee). Therefore, clarification is necessary, and failure to clarify the rule has a potential to increase costs of regulated parties and consumers.

6. A statement of the probable effect on state revenues.

All fees generated from the licensing and oversight of Program licensees are placed in the Pest Management Fund and therefore does not affect state revenue.

7. A description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed rule making, including the monetizing of the costs and benefits for each option and providing the rationale for not using nonselected alternatives.

There are no less intrusive or less costly alternatives for administering the rules.

8. A description of any data on which a rule is based with a detailed explanation of how the data was obtained and why the data is acceptable data. An agency advocating that any data is acceptable data has the burden of proving that the data is acceptable. For the purposes of this paragraph, "acceptable data" means empirical, replicable and testable data as evidenced in supporting documentation, statistics, reports, studies or research.

Data from the PMD TARF database was used to establish that many termite companies are non-compliant with completing final grades within 12 months. In communication with the pest control industry, it was agreed that 18 months would be more of an ideal timeframe to complete final grades. And, a review of the PMD Pest Management Fund was used to determine that a permanent reduction of licensee fees would not negatively impact the division and all of the statutory duties could still be performed with the reduced fees.



Vince Craig <vcraig@azda.gov>

AzPPO comments on rule package

1 message

Brandy Petrone <brandy@goodmanschwartz.com>
To: Vince Craig <vcraig@azda.gov>
Cc: Emily Raymond <Emily@goodmanschwartz.com>

Mon, Nov 14, 2022 at 10:54 AM

Mr. Vince Craig
Associate Director, Pest Management Division
Arizona Department of Agriculture
[1802 W Jackson St, #78](#)
[Phoenix, AZ 85007](#)

Mr. Craig,

On behalf of the Arizona Pest Professional Organization (AzPPO), the statewide trade association for the structural pest control industry, I am writing to support the Rulemaking published by the Department of Agriculture's Pest Management Division which makes changes to Title 3, Chapter 8, the rules that govern the pest management industry.

AzPPO appreciates the Department's proactive process for garnering informal feedback ahead of the formal rulemaking process. During the informal process, AzPPO was able to provide feedback to the Pest Management Division.

In addition to ensuring our state can continue to regulate our industry versus having federal regulations, the rules make permanent a fee decrease. The industry had requested the fee reduction and believes that making it permanent will prevent an increase in costs to the industry at a time when inflationary costs increases are causing all costs to increase for businesses; at the same time this will not have a negative impact to the public safety responsibilities for the Division, which is a top priority for AzPPO.

In addition, the changes made to the R3-8-308 update Division rules to align with industry standards relating to termiticides, which we support. This same section also clears up confusing language for how pretreatments and records for pretreatments for new construction are to be handled, a clarification that is needed.

AzPPO supports the proposed rulemaking for 28 A.A.R. 1453 filed by the Arizona Department of Agriculture's Pest Management Division and thanks Department staff for their work on these issues.

Sincerely,

Brandy Petrone
Goodman Schwartz Public Affairs
[3200 N Central, Suite 2200](#)
[Phoenix, AZ 85012](#)
O: 602-277-0911
C: 602-821-8318



Vince Craig <vcraig@azda.gov>

RE: PMD proposed rule changes

Vince Craig <vcraig@azda.gov>

Wed, Jun 22, 2022 at 3:18 PM

To: Lisa Gervase <lgervase@gervaselaw.com>

Cc: Arizona Pest Professional Organization <info@azppo.org>, Cody Smith <cody@dynamicpestcontrol.com>

Hi Lisa.

Hello Lisa.

The information was provided to the parties carbon copied in your email, several months ago and notice went out to stakeholders via listserv. As it relates to the comments you've made in connection with the Rules, I will retain them for purposes of the proposed rulemaking.

On Wed, Jun 22, 2022 at 10:36 AM <lgervase@gervaselaw.com> wrote:

Vince,

Another question I just noticed pertains to the disciplinary options that would permit the Director to “charge” a person with a crime. What is the statutory authority for this? The Director has injunctive relief per statute and certain violations are classified as a crime (if there is corresponding prosecution/conviction) but I believe for any “charge”, the matter would have to be referred to criminal prosecution. Among other reasons, state agency administrative law matters and criminal matters have different burdens of proof.

Thanks.

Lisa

From: lgervase@gervaselaw.com <lgervase@gervaselaw.com>**Sent:** Wednesday, June 22, 2022 10:31 AM**To:** 'Vince Craig' <vcraig@azda.gov>**Cc:** 'Arizona Pest Professional Organization' <info@azppo.org>; 'Cody Smith' <cody@dynamicpestcontrol.com>**Subject:** PMD proposed rule changes

Hi Vince,

Hope all is well. I'm not sure whether I'll be able to join tomorrow's PMD AC meeting (as I'm out of town) but had a few questions/comments on my first quick glance of the rules. I'm wondering whether the stakeholders have been noticed of the proposed changes since the notice of tomorrow's meeting didn't include a copy of the outline of changes and the proposed rule changes. I obtained them from the PMD's website.

For material in the rules that is to be “incorporated by reference”, A.R.S. § 41-1028 has the standards for incorporating materials by reference in rules (such as including the date and information about where to obtain a copy of the material). Also, the technicalities of incorporating material by reference can be found at these rules: R1-1-409 Citations to the Code, Register, Statutes, and Federal Laws and Regulations and R1-1-414 Materials Incorporated by Reference; Eligibility, and Citations.

For citing to 1-215 for “moral turpitude”, are only the items listed in that definition going to constitute moral turpitude? That definition doesn’t include items such as “theft”, which is broader than “larceny” (which is included in 1-215).

Also, how does SB 1294 (ARS 13-911), effective 1/1/2023 (sealing criminal records) affect moral turpitude and felony conviction issues as far as license denials and grounds for discipline?

Thank you.

Sincerely,

Lisa Gervase

Attorney

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"A lie can get halfway around the world before the truth can even get its boots on." - Mark Twain

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Vince Craig

Associate Director

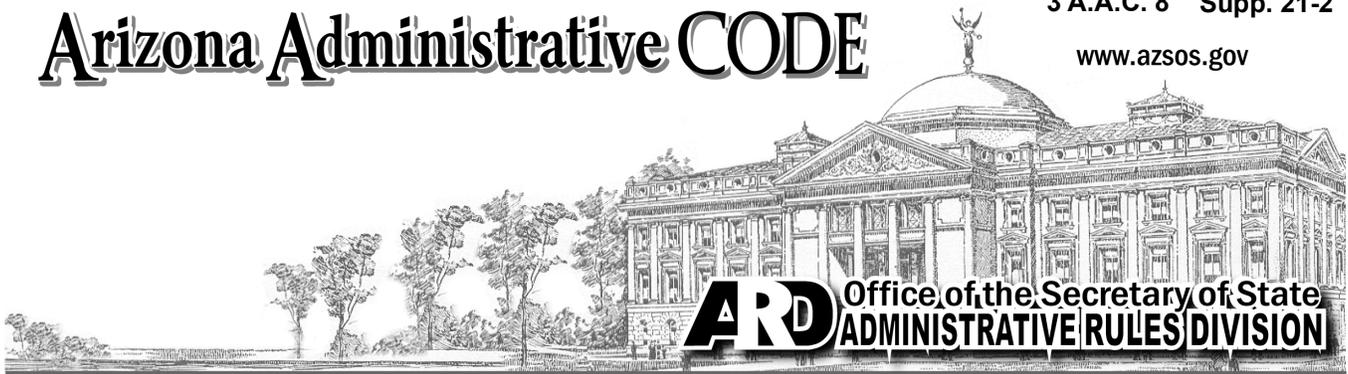
Arizona Department of Agriculture

Pest Management Division

Direct: 602 255 3663

Main: 602 542 4373

Web: <https://agriculture.az.gov/>



TITLE 3. AGRICULTURE

CHAPTER 8. DEPARTMENT OF AGRICULTURE - PEST MANAGEMENT DIVISION

The table of contents on the first page contains quick links to the referenced page numbers in this Chapter. Refer to the notes at the end of a Section to learn about the history of a rule as it was published in the *Arizona Administrative Register*.

Sections, Parts, Exhibits, Tables or Appendices codified in this supplement. The list provided contains quick links to the updated rules.

This Chapter contains Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of April 1, 2021 through June 30, 2021.

[R3-8-103.](#) [Fees; Charges; Exemption](#)4

Questions about these rules? Contact:

Name: Vince Craig, Associate Director, PMD
Address: Department of Agriculture
Pest Management Division
1688 W. Adams St.
Phoenix, AZ 85007
Telephone: (602) 255-3663
Fax: (602) 542-0466
E-mail: vcraig@azda.gov
Website: <https://agriculture.az.gov/about-us/divisions/pest-management-division>

The release of this Chapter in Supp. 21-2 replaces Supp. 19-1, 1-27 pages

Please note that the Chapter you are about to replace may have rules still in effect after the publication date of this supplement. Therefore, all superseded material should be retained in a separate binder and archived for future reference.

PREFACE

Under Arizona law, the Department of State, Office of the Secretary of State (Office), accepts state agency rule filings and is the publisher of Arizona rules. The Office of the Secretary of State does not interpret or enforce rules in the *Administrative Code*. Questions about rules should be directed to the state agency responsible for the promulgation of the rule.

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION

RULES

The definition for a rule is provided for under A.R.S. § 41-1001. “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

The *Code* is separated by subject into titles. Titles are divided into chapters. A chapter includes state agency rules. Rules in chapters are divided into Articles, then Sections. The “R” stands for “rule” with a sequential numbering and lettering outline separated into subsections.

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each chapter.

First Quarter: January 1 - March 31

Second Quarter: April 1 - June 30

Third Quarter: July 1 - September 30

Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2019 is cited as Supp. 19-1.

Please note: The Office publishes by chapter, not by individual rule section. Therefore there might be only a few sections codified in each chapter released in a supplement. Historical notes at the end of a section provide an effective date and information when a rule was last updated.

AUTHENTICATION OF PDF CODE CHAPTERS

The Office began to authenticate chapters of the *Administrative Code* in Supp. 18-1 to comply with A.R.S. § 41-1012(B) and A.R.S. § 5302(1), (2)(d) through (e), and (3)(d) through (e).

A certification verifies the authenticity of each *Code* chapter posted as it is released by the Office of the Secretary of State. The authenticated pdf of the *Code* includes an integrity mark with a certificate ID. Users should check the validity of the signature, especially if the pdf has been downloaded. If the digital signature is invalid it means the document’s content has been compromised.

HOW TO USE THE CODE

Rules may be in effect before a supplement is released by the Office. Therefore, the user should refer to issues of the *Arizona Administrative Register* for recent updates to rule Sections.

ARIZONA REVISED STATUTE REFERENCES

The Arizona Revised Statutes (A.R.S.) are available online at the Legislature’s website, www.azleg.gov. An agency’s authority

note to make rules is often included at the beginning of a chapter. Other Arizona statutes may be referenced in rule under the A.R.S. acronym.

SESSION LAW REFERENCES

Arizona Session Law references in a chapter can be found at the Secretary of State’s website, under Services-> Legislative Filings.

EXEMPTIONS FROM THE APA

It is not uncommon for an agency to be exempt from the steps outlined in the rulemaking process as specified in the Arizona Administrative Procedures Act, also known as the APA (Arizona Revised Statutes, Title 41, Chapter 6, Articles 1 through 10). Other agencies may be given an exemption to certain provisions of the Act.

An agency’s exemption is written in law by the Arizona State Legislature or under a referendum or initiative passed into law by Arizona voters.

When an agency files an exempt rulemaking package with our Office it specifies the law exemption in what is called the preamble of rulemaking. The preamble is published in the *Register* online at www.azsos.gov/rules, click on the *Administrative Register* link.

Editor’s notes at the beginning of a chapter provide information about rulemaking sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

The Office makes a distinction to certain exemptions because some rules are made without receiving input from stakeholders or the public. Other exemptions may require an agency to propose exempt rules at a public hearing.

EXEMPTIONS AND PAPER COLOR

At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

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Rhonda Paschal, managing rules editor, assisted with the editing of this chapter.



Administrative Rules Division
The Arizona Secretary of State electronically publishes each A.A.C. Chapter with a digital certificate. The certificate-based signature displays the date and time the document was signed and can be validated in Adobe Acrobat Reader.

TITLE 3. AGRICULTURE

CHAPTER 8. DEPARTMENT OF AGRICULTURE - PEST MANAGEMENT DIVISION

Authorizing statute: A.R.S. § 3-107(A)(1); A.R.S. § 3-3603(A)(1)

Laws 2016, Ch. 221 established the Pest Management Division within the Department of Agriculture (Department). The Department was exempt from the rulemaking requirements of Title 41, Chapter 6 under this law. Rules were recodified to this Chapter from 4 A.A.C. 29 at 23 A.A.R. 1976, effective June 30, 2017; once recodified the rules were amended at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

ARTICLE 1. GENERAL AND ADMINISTRATIVE PROVISIONS

Article 1, consisting of Sections R3-8-101 through R3-8-107 Table 1, and R3-8-108 recodified from 4 A.A.C. 29 at 23 A.A.R. 1976, effective June 30, 2017(Supp. 17-2).

Table listing sections R3-8-101 through R3-8-108 with corresponding page numbers (e.g., R3-8-101. Definitions 3).

ARTICLE 2. CERTIFICATION, REGISTRATION AND LICENSURE; CONTINUING EDUCATION

Article 2, consisting of Sections R3-8-201 through R4-29-216, recodified from 4 A.A.C. 29 at 23 A.A.R. 1976, effective June 30, 2017(Supp. 17-2).

Table listing sections R3-8-201 through R3-8-216 with corresponding page numbers (e.g., R3-8-201. Activities that Require a License; Exemptions 7).

ARTICLE 3. PEST MANAGEMENT

Article 3, consisting of Sections R3-8-301 through R3-8-320, recodified from 4 A.A.C. 29 at 23 A.A.R. 1976, effective June 30, 2017(Supp. 17-2).

Table listing sections R3-8-301 through R3-8-303 with corresponding page numbers (e.g., R3-8-301. Using Pesticides and Devices 14).

Table listing sections R3-8-304 through R3-8-320 with corresponding page numbers (e.g., R3-8-304. Devices Exempt from Licensure and Registration; Advertising15).

ARTICLE 4. SUPERVISION

Article 4, consisting of Sections R3-8-401 through R3-8-418, recodified from 4 A.A.C. 29 at 23 A.A.R. 1976, effective June 30, 2017(Supp. 17-2).

Table listing sections R3-8-401 through R3-8-418 with corresponding page numbers (e.g., R3-8-401. Supervising an Applicator20).

ARTICLE 5. RECORDKEEPING AND REPORTING

Article 5, consisting of Sections R3-8-501 through R3-8-505, and Appendix A, recodified from 4 A.A.C. 29 at 23 A.A.R. 1976, effective June 30, 2017(Supp. 17-2).

Table listing sections R3-8-501 with corresponding page numbers (e.g., R3-8-501. Applicator Recordkeeping22).

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Article 7, consisting of Sections R3-8-701 through R3-8-708, recodified from 4 A.A.C. 29 at 23 A.A.R. 1976, effective June 30, 2017(Supp. 17-2).

ARTICLE 6. INSPECTIONS; DISCIPLINARY PROCEDURES

Article 6, consisting of Sections R3-8-601 through R3-8-609, recodified from 4 A.A.C. 29 at 23 A.A.R. 1976, effective June 30, 2017(Supp. 17-2).

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CHAPTER 8. DEPARTMENT OF AGRICULTURE - PEST MANAGEMENT DIVISION

ARTICLE 1. GENERAL AND ADMINISTRATIVE PROVISIONS**R3-8-101. Definitions**

In addition to the definitions provided in A.R.S. § 3-3601, the following terms apply to this Chapter:

“Administratively complete” means the application contains all components required by statute or this Chapter to be submitted to the PMD to enable the PMD to determine whether to grant a license or approval.

“Advertisement” means a written or oral notice, including a business card, website, or telephone directory listing, which is intended, directly or indirectly, to induce a person to enter into an agreement for pest management services.

“Applicator” means an individual who provides pest management services. Applicator does not include a laborer.

“Applicator certification” means a certified applicator license.

“Broadening” means to add another category of work to an existing certification.

“Certified applicator” means an individual who is licensed by the PMD to provide pest management services, including a QA.

“CEU” means continuing education unit.

“Continuing education unit” means 50 minutes of participation in continuing education.

“Control” or “manage” means, with respect to pests, to exterminate, eradicate, destroy, kill, repel, attract, sterilize, mitigate, remove, or a combination of these activities.

“Department” means the Arizona Department of Agriculture.

“Disassociate” means to die, become disabled, resign, retire, be ill or take leave for more than 14 days, be terminated, or be called to active military duty.

“Entire structure” means all critical areas as defined in this Chapter and as specified on product labeling for both the interior and exterior of a structure.

“EPA” means the U.S. Environmental Protection Agency.

“EPA registration number” means the actual EPA registration number of a product or the federal provision exempting the product from EPA registration.

“Faulty grade” means the top of the foundation is even with or below the adjacent earth. The existing earth level shall be considered grade. Specific exceptions are basement construction and sunken room construction when the surrounding foundation is at least 3 inches above the exterior grade level.

“Fog or fogging” means applying a pesticide by a flammable, aerosolizing thermal or other generator that forms particles less than 10 microns in diameter.

“Food-handling establishment” means a place, other than a private residence, in which food is received, served, stored, packaged, prepared, or processed.

“Fumigant” means a chemical substance with a vapor pressure greater than five millimeters of mercury at 25 degrees Centigrade that is used to destroy plant or animal life.

“Fumigation” means a method of pest management that completely fills an area with a fumigant to suffocate or poison pests within the area.

“Fungi” means saprophytic and parasitic organisms that lack chlorophyll such as molds, rusts, mildews, smuts, and yeast, except those on or in living people or animals or processed foods, beverages, or pharmaceuticals.

“Health care institution” means a health care institution licensed pursuant to title 36, chapter 4 and includes doctor and dental offices.

“Label” means a written, printed, electronic or graphic document that is approved by the EPA and on or attached to a pesticide container, the wrapper of a pesticide container, or a device.

“Labeling” means a written, printed, electronic or graphic document that is authorized by the manufacturer or a state or federal agency to accompany a pesticide or device, or is referred to on the label or in literature accompanying the pesticide or device.

“Laborer” means an individual who performs physical labor necessary for an applicator to provide pest management services, including drilling and trenching, but who does not handle any pesticide container that has ever been opened, identify infestations, make inspections, make inspection reports or recommendations with respect to infestations, or use any device for the purpose of eliminating, exterminating, controlling or preventing infestations, except that laborer includes an individual who assists with the use of a tarp on a structure for a fumigation performed by an applicator.

“Pest” means a vertebrate or invertebrate insect, bird, mammal, or other animal or organism, or a weed or plant pathogen that is in an undesirable location.

“Pesticide,” as defined in A.R.S. § 3-3601, includes an insecticide, fungicide, rodenticide, termiticide, fumigant, larvicide, piscicide, adulticide, herbicide, nematocide, avicide, or molluscicide.

“PMD” means Pest Management Division.

“Primary service,” as used in A.R.S. § 3-3613(B)(3), means applying an herbicide as the only or predominant service under a verbal or written contract to maintain a property.

“Project” means an individual address or a privately owned or individually owned dwelling.

“QA” means certified qualified applicator.

“QP” means qualifying party.

“Qualified applicator certification” means a certified qualified applicator license.

“SDS” means safety data sheet, which is a written communication regarding a hazardous chemical that meets the standards at 29 CFR 1910.1200(g).

“Service container” means a receptacle that is used to hold, store, or transport a pesticide concentrate or use-dilution preparation other than the original labeled receptacle provided by the manufacturer, a measuring instrument, or application equipment.

“Signal word” means a word printed on a label that indicates the toxicity level of the pesticide in the container to which the label is affixed.

“Special Local Need registration” means an authorization from the Department to use a pesticide, which meets an Arizona-specific need, in Arizona according to the terms of the registration.

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“Specimen label” means a label other than the label attached to a pesticide container that contains the same information as the labeling; including an electronic label.

“Structure” means all parts of a building, whether vacant or occupied, in all stages of construction.

“Subterranean termites” means the several species of termites that usually maintain contact with the soil, including those in the families Rhinotermitidae and Termitidae.

“Supplemental wood-destroying insect inspection” means a re-examination made by an applicator of the business licensee that conducted a previous wood-destroying insect inspection and within 30 days of the previous examination to determine whether corrective treatment has been performed or conditions conducive to wood-destroying insects have been corrected.

“Tag” means a written document that is required under this Chapter to be posted conspicuously at a pretreatment or new-construction treatment site.

“TARF” means termite action report form.

“Termiticide” means a chemical registered by the EPA and the Department and used for control of termites.

“Water-retention basin” means an area to temporarily hold water run-off until the water dissipates.

“WDIIR” means wood-destroying insect inspection report.

“Wood-destroying insect inspection” means an inspection for the presence or absence of wood-destroying insects.

Historical Note

New Section recodified from R4-29-101 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

R3-8-102. Certification Categories; Scope

The name and scope of each certification category are as follows:

1. Industrial and institutional: pest management in, on, around or adjacent to a structure not covered by another category; pest management in or on asphalt, concrete, gravel, rocks and similar surfaces, including man holes, not covered by another certification category; pest management of health related pests wherever found; but excluding anti-microbial pest management and fungi inspection
2. Wood-destroying organism management.
 - a. Wood-destroying organism treatment: inspecting for the presence or absence of wood-destroying organisms and treating for wood-destroying organisms in or about a residential or other structure by a means other than use of a fumigant.
 - b. Wood-destroying insect inspection: inspecting for the presence or absence of wood-destroying insects only and excluding preparing treatment proposals.
3. Ornamental and turf: pest management, including weeds, pests in trees, shrubs, and flowers, turf and bare ground, not covered by the right-of-way category, by means other than the use of a fumigant. Excludes any pests within a structure.
4. Right-of-way: pest management of pests, including weeds, in the maintenance of public roads, electric powerlines, pipelines, railway rights-of-way or other similar areas by a means other than use of a fumigant, but excluding pest management in the maintenance of ornamental trees, shrubs and flowers.

5. Aquatic: pest management, including weeds, in standing or running water.
6. Fumigation: pest management using fumigants; except as provided in the wood preservation category.
7. Wood preservation: application of pesticides, including fumigants labeled for use on utility poles or railroad ties, directly to structural components of wood or wood products, to prevent or manage wood degradation by wood-destroying organisms including fungi and bacteria, which are not part of an existing structure.

Historical Note

New Section recodified from R4-29-102 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

R3-8-103. Fees; Charges; Exemption

- A. Beginning March 1, 2019 through June 30, 2022, a person shall pay the following application and renewal fees for licensure, certification, and registration:
 1. For an applicator:
 - a. Applicator certification, \$55.
 - b. Applicator certification broadening application, \$0.
 - c. QA certification, \$75.
 - d. QA certification broadening application, \$15.
 2. For a qualifying party:
 - a. Registration at same time as application for or renewal of the business license, \$0.
 - b. Registration at a different time than application for or renewal of the business license, \$35.
 - c. Registration broadening, \$15.
 - d. Temporary qualifying party registration, \$75.
 3. For a business:
 - a. Business license, \$185.
 - b. Business license for federal entity, \$0.
 - c. Applicator registration, \$0 per applicator.
 4. For a branch:
 - a. Branch office registration, \$35 per branch.
 - b. Branch supervisor registration at same time as branch office registration, \$0.
 - c. Branch supervisor registration at a different time than branch office registration, \$15.
- B. Beginning July 1, 2022, a person shall pay the following application and renewal fees for licensure, certification, and registration:
 1. For an applicator:
 - a. Applicator certification, \$75.
 - b. Applicator certification broadening application, \$0.
 - c. QA certification, \$100.
 - d. QA certification broadening application, \$25.
 2. For a qualifying party:
 - a. Registration at same time as application for or renewal of the business license, \$0.
 - b. Registration at a different time than application for or renewal of the business license, \$50.
 - c. Registration broadening, \$25.
 - d. Temporary qualifying party registration, \$100.
 3. For a business:
 - a. Business license, \$250.
 - b. Business license for federal entity, \$0.
 - c. Applicator registration, \$0 per applicator.
 4. For a branch:
 - a. Branch office registration, \$50 per branch.
 - b. Branch supervisor registration at same time as branch office registration, \$0.

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- c. Branch supervisor registration at a different time than branch office registration, \$25.
- C. A person renewing an applicator certification, QA certification, business license, branch office registration, or branch supervisor registration shall receive a 10 percent reduction in the renewal fee for renewals submitted for a two year renewal period.
- D. In addition to the fees listed in subsection (A), a person shall pay a \$10 handling fee for each application or renewal form not submitted electronically when PMD allows electronic submission.
- E. A person shall pay a late fee equal to ten percent of the renewal fee for any license, certification, or registration that is not renewed timely.
1. If a business license remains expired for more than 30 days, to renew the license, a person shall also pay an additional late fee of \$15 per month that the license remains expired, not to exceed \$165. Late fees are in addition to the renewal fee.
 2. If a certification remains expired for more than 30 days, to renew the certification, a person shall also pay an additional late fee of \$10 per month the certification remains expired, not to exceed \$110. Late fees are in addition to the renewal fee.
- F. A business licensee shall pay the following TARF fees:
1. Electronic submissions, \$2;
 2. Electronic final grade treatment TARF submissions, \$0;
 3. Electronic TARF submissions for a pretreatment or new-construction treatment of an addition that abuts the slab of an originally treated structure, \$0, if the business licensee:
 - a. Performed the pretreatment or new-construction treatment of the main structure,
 - b. Filed a TARF regarding the pretreatment or new-construction treatment,
 - c. Has the structure under warranty, and
 - d. Treats the abutting addition under the terms of the site warranty;
 4. All paper submissions, \$8; and
 5. Late fee equal to the original TARF fee for any TARF submission more than 30 days after the due date, except that the late fee for an electronic final grade treatment TARF submission more than 30 days after the due date shall be \$2.
- G. If the PMD administers a certification examination, an applicant shall pay \$50 to take the examination. If an examination service or testing vendor administers a certification examination, an applicant shall pay the examination service or testing vendor the examination cost established in the vendor's contract with the PMD.
- H. PMD employees are exempt from the applicator and examination fees listed in this Section.
- I. An applicant who makes a payment for a fee due under this Section that is rejected by a financial institution will be subject to all of the following:
1. The PMD shall void any approval of the application or renewal.
 2. The applicant shall pay any financial institution fee incurred by the PMD.
 3. The PMD may require the applicant to pay all fees due using a method other than a personal or business check.
 4. An application for renewal will be considered untimely if the substitute payment is not received by the PMD by the original due date, and the applicant will be subject to a late fee based on the date of receipt of the substitute payment.
- J. The PMD may reject an application or request for service that is submitted with the incorrect fee and not process the application or provide the service. An application for renewal will be considered untimely if the substitute payment is not received by the PMD by the original due date, and the applicant will be subject to a late fee based on the date of receipt of the substitute payment.
- Historical Note**
- New Section recodified from R4-29-103 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2). Section amended by final expedited rulemaking at 25 A.A.R. 720, effective February 25, 2019 (Supp. 19-1). Section amended by final expedited rulemaking at 27 A.A.R. 1007, with an immediate effective date of June 8, 2021 (Supp. 21-2).
- R3-8-104. Pest Management Division Council**
- A. A five-member Pest Management Division Council is established to assist and make recommendations to the director regarding the administration and implementation of A.R.S. Title 3, Chapter 20.
- B. The members shall meet the following qualifications:
1. Three members shall be business licensees or qualifying parties and shall each have a minimum of five years of pest management experience.
 - a. At least one of these three members shall be a business licensee who has five or fewer applicators.
 - b. For one of these three members, first priority shall be given to a business licensee or QP based outside of Maricopa and Pima Counties and secondary priority shall be given to a business licensee or QP who is not based outside of those counties but is associated with a business that has an office in Arizona outside of those counties. If there are no qualified first or secondary priority applicants, the Director may appoint any business licensee or QP with a minimum of five years of pest management experience.
 2. One member shall be a representative of a political subdivision.
 3. One member shall be a public member who does not provide pest management services or work for a business licensee.
- C. Members shall serve three year staggered terms. Members shall not serve consecutive terms, except that a member who is appointed to fill a vacancy may serve the unexpired term that fills the vacancy plus one regular term. A member shall be ineligible for reappointment for three years.
- D. The office of a member shall be deemed vacant under any of the following circumstances:
1. The member no longer satisfies the qualification in subsection (B).
 2. The member is unable to perform the duties of the office.
 3. The absence of the member from three consecutive Committee meetings if the absences have not been excused by the Committee.
- E. The Committee shall annually select a chairman and vice-chairman from among its members.
- Historical Note**
- New Section recodified from R4-29-104 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).
- R3-8-105. Reserved**

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Historical Note

New reserved Section recodified from R4-29-105 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

R3-8-106. Reserved**Historical Note**

New reserved Section recodified from R4-29-106 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

R3-8-107. Licensing Time-frames

- A.** Overall time-frame. The PMD shall issue or deny a license within the overall time-frames listed in Table 1. The overall time-frame, which is the total number of days provided for both the administrative completeness and substantive review time-frames, begins when the PMD receives an application.
- B.** Administrative completeness review time-frame.
1. During the administrative completeness review time-frame, the PMD shall notify the applicant in writing whether the application is complete or incomplete. If the application is incomplete, the PMD shall specify in the notice what information is missing. If the PMD does not provide notice to the applicant within the administrative completeness review time-frame, the PMD shall deem the application complete.
 2. An applicant with an incomplete license application shall supply the missing information within the completion request period listed in Table 1. The administrative completeness review and overall time-frames are suspended from the postmark date of the notice of missing information until the date the PMD receives the information.
 3. If an applicant fails to submit the missing information before expiration of the completion request period, the PMD shall consider the application withdrawn and close the file. An applicant whose file is closed may apply for a license by submitting a new application and application fee.
- C.** Substantive review time-frame.
1. The substantive review time-frame listed in Table 1 begins when an application is administratively complete

or at the end of the administrative completeness review time-frame in Table 1, whichever occurs first. If the PMD determines during the substantive review that additional information is needed, the PMD shall send the applicant a comprehensive written request for additional information.

2. Both the substantive review and overall time-frames are suspended from the date of the PMD's request until the date that the receives the additional information. The applicant shall submit the additional information within the additional information period listed in Table 1.
 3. If the applicant fails to provide the additional information within the additional information period in Table 1, the PMD shall consider the application withdrawn and close the application. An applicant whose file is closed may apply for a license by submitting a new application and application fee.
- D.** Within the overall time-frame listed in Table 1, the PMD shall:
1. Deny a license or approval to an applicant if the PMD determines that the applicant does not meet all the substantive criteria required by the PMD's statutes and this Chapter; or
 2. Grant a license or approval to an applicant if the PMD determines that the applicant meets all the substantive criteria required by the PMD's statutes and this Chapter.
- E.** If the PMD denies a license or approval under subsection (D)(1), the PMD shall provide a written notice of denial to the applicant that explains:
1. The reason for the denial, with citations to supporting statutes or rules;
 2. The applicant's right to seek a fair hearing to challenge the denial; and
 3. The time for appealing the denial.

Historical Note

New Section recodified from R4-29-107 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

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Table 1. Time-frames (Calendar Days)

License	Authority	Administrative Completeness Review	Applicant Response to Completion Request	Substantive Completeness Review	Applicant Response to Additional Information Request	Overall Time-frame
Applicator	A.R.S. § 3-3614					
New	R3-8-203	30	45	60	360	90
Renewal	R3-8-208	30	45	60	15	90
Broaden	R3-8-210	30	45	60	360/ ∞*	90
Qualified applicator (QA)	A.R.S. § 3-3614					
New	R3-8-204	30	45	60	360	90
Renewal	R3-8-208	30	45	60	15	90
Broaden	R3-8-210	30	45	60	360	90
Qualifying party (QP)	A.R.S. § 3-3616					
New	R3-8-205	30	45	60	90	90
Renewal	R3-8-208	30	45	60	15	90
Broaden	R3-8-210	30	45	60	90	90
Temporary	R3-8-205	10	10	10	15	20
Business	A.R.S. § 3-3615; R3-8-202; R3-8-208; R3-8-209	30	45	60	15	90
Branch Office	A.R.S. § 3-3617; R3-8-206	30	45	60	15	90
Branch supervisor	A.R.S. § 3-3617					
New	R3-8-206	30	45	60	90	90
Renewal	R3-8-208	30	45	60	15	90
Continuing Education Approval	R3-8-216	20	20	55	15	75

* ∞ (Infinity) response refers to examination scores for current applications only.

Historical Note

New Article 1, Table 1 recodified from 4 A.A.C. 29, Article 1, Table 1, at 23 A.A.R. 1976, effective June 30, 2017; Table 1 amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

R3-8-108. Reserved

Historical Note

New reserved Section recodified from R4-29-108 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

ARTICLE 2. CERTIFICATION, REGISTRATION AND LICENSURE; CONTINUING EDUCATION

R3-8-201. Activities that Require a License; Exemptions

- A. Business license. A person doing an activity defined as the business of pest management shall first possess a valid business license, unless the person is:
 - 1. A political subdivision;
 - 2. Acting on behalf of a business licensee or political subdivision; or
 - 3. Otherwise exempt by this Chapter or the PMD’s statutes.
- B. Qualifying party registration. A business licensee or school district shall only do an activity defined as the business of pest management if the business licensee or school district has a registered qualifying party. The business licensee or school district shall only provide pest management services in a certification category if the qualifying party is registered in that certification category.
- C. Applicator licensure.
 - 1. An individual who provides pest management services shall be a certified applicator and only provide pest management services in a certification category for which the applicator is currently certified except as provided under

- subsections (C)(2) and (C)(3) or as otherwise exempt by this Chapter or the PMD’s statutes.
- 2. A certified applicator desiring to work in a category for which the applicator is not certified shall become certified in the category within 30 calendar days after beginning work in that category and shall be supervised as provided in subsection (C)(3)(c) while working in that category.
- 3. An individual may provide pest management services on behalf of a business licensee without being a certified applicator if the individual:
 - a. Is registered as an applicator of the business licensee under R3-8-207;
 - b. Has been registered as an applicator of the business licensee for not more than 90 calendar days out of the last 365 days; and
 - c. Is supervised by a certified applicator who:
 - i. Is certified in the category for which supervision is provided;
 - ii. Provides immediate supervision when the individual performs pest management services in the wood-destroying organism treatment, aquatic, or fumigation category, uses a restricted use pesticide, or uses a pesticide under an experimental use permit; and
 - iii. Provides direct supervision when the individual performs pest management services not covered by subsection (C)(3)(c)(ii).

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4. An individual may not provide pest management services at a school, child care facility, health care institution, or food-handling establishment unless the individual is a certified applicator in the certification category for which services are being provided.
 5. An individual using an animal to assist with identifying infestations or making inspections for the purpose of identifying or attempting to identify infestations shall be a certified applicator in the certification category for which services are being provided.
- D.** Applicator registration. An applicator may not provide pest management services on behalf of a business licensee or political subdivision unless the applicator is registered as an applicator of the business licensee or political subdivision pursuant to R3-8-207.
- E.** Exemptions. A person is not required to be licensed who:
1. Provides general information about a label or labeling, the identification or management of a pest, integrated pest management or the use of a registered pesticide; does not directly or indirectly charge for the information; and does not make an on-site recommendation.
 2. Performs sales work that does not include:
 - a. Identifying on-site infestations or making inspections for the purpose of identifying or attempting to identify infestations;
 - b. Making written or oral inspection reports or on-site recommendations with respect to infestations; or
 - c. The application of pesticides or the use of devices for the purpose of eliminating, exterminating, controlling or preventing infestations.
 3. Is an authorized representative of any educational institution engaged in research in the study of pest management and does not provide pest management services for hire.
 4. Is a certified home inspector and documents evidence of wood-destroying organisms on a home inspection, but does not prepare a WDIIR, prepare a treatment proposal, make treatment estimates, bids, or recommendations, apply pesticides, or use devices.
 5. Only uses, applies or installs home improvement articles, such as insulation, caulk and paint, that are pre-incorporated with a pesticide.

Historical Note

New Section recodified from R4-29-201 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

R3-8-202. Business License

- A.** An applicant for a business license shall submit the following information on a form obtained from the PMD:
1. About the business:
 - a. Business name;
 - b. Name and form of business organization;
 - c. Names of the following persons authorized to act on behalf of the business:
 - i. Owner if a sole proprietorship;
 - ii. Managing or general partner if a partnership;
 - iii. President and other authorized officers if a corporation;
 - iv. All the managers or members if a limited liability company; or
 - v. Person authorized to make decisions for the business if any other type of business form;
 - vi. Names of all principals of the business including all individuals or other corporations or partnerships that own at least ten percent interest of the business.
 - c. Telephone number;
 - d. Physical address;
 - e. Mailing address, if different from physical address
 - f. E-mail address; and
 - h. Chemical storage address.
 2. Daytime telephone number of individuals identified under subsection (A)(1)(c);
 3. Name of the qualifying party; and
 4. The dated signature and title of an authorized representative of the business affirming that the information provided is true and correct.
- B.** In addition to the form required under subsection (A), an applicant shall submit:
1. The fee specified in R3-8-103;
 2. The proof of financial security required by A.R.S. § 3-3615;
 3. The name and physical address of the statutory agent of the business; and
 4. A copy of the Articles of Incorporation or Organization, Certificate of Limited Partnership, trust, trade name certificate, partnership agreement, or other evidence of the form of business organization.
- C.** A business cannot be licensed without a registered qualifying party.
- D.** If the PMD determines there may be cause to deny a license to an applicant, the PMD may send a written notice to the applicant requiring the applicant to appear at a specific location, date and time to answer questions.
- E.** A business license expires on May 31, and is:
1. Issued with an expiration in the following calendar year as an initial licensure; and
 2. Renewable for one or two years, depending on the renewal period selected by the applicant.
- F.** A business license may not be transferred except in accordance with R3-8-209 and may not be renewed beyond the expiration of the registration for the business's qualifying party.
- G.** If an applicant's proof of financial security includes an insurance policy which provides for a deductible in excess of one percent of the total financial security for each occurrence, the applicant shall provide other evidence of financial security for the excess deductible amount as required by A.R.S. § 3-3615. Financial security in the following forms will be acceptable, provided that the nature of the security provides adequate protection for persons who may suffer bodily injury or property damage as a result of the operations of the applicant:
1. Liability insurance, self-insured retention or surety bond issued by an insurer that holds a valid certificate of authority or that is permitted to transact surplus lines insurance in this state;
 2. Bank statement evidencing a deposit of money in an amount equal to, or greater than, the excess deductible amount; or
 3. Certified Check in an amount equal to, or greater than, the excess deductible amount.

Historical Note

New Section recodified from R4-29-202 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

R3-8-203. Applicator Certification

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- A.** Application. An applicant for applicator certification shall submit the fee specified in R3-8-103 and the following information on a form obtained from the PMD:
1. Full name;
 2. Applicator certification number, if any;
 3. Home address;
 4. Mailing address, if different from the home address;
 5. Telephone number;
 6. E-mail address;
 7. Date of birth;
 8. Social Security number;
 9. A statement whether the applicant has ever had a license or permit to practice pest management denied, revoked, or suspended and if the answer is yes, the date, jurisdiction taking the action, nature of the action, and explanation of the circumstances;
 10. Name of employer, if any;
 11. Employer's business license number, if applicable;
 12. Employer's telephone number, if applicable; and
 13. The applicant's dated signature affirming that the information provided is true and correct.
 14. Information and documentation concerning lawful presence required by A.R.S. § 41-1080.
- B.** An applicator shall be of good moral character. A conviction for a felony or a misdemeanor involving moral turpitude may demonstrate a lack of good moral character. A conviction for any of the following offenses shall be considered to demonstrate a lack of good moral character:
1. Murder involving the death of a law enforcement officer.
 2. An offense described in A.R.S. § 13-2308.01 related to terrorism.
 3. A sexual offense of any type where the victim is a minor that is a class 4 or higher felony.
- C.** Examination. An applicant shall take and pass the certification examinations as provided in R3-8-211 in order to become certified.
- D.** An applicant for initial certification shall be at least 18 years of age.
- E.** If the PMD determines there may be cause to deny certification to an applicant, the PMD may send a written notice to the applicant requiring the applicant to appear at a specific location, date and time to answer questions.
- F.** Certification. Applicator certification is not transferable, expires on May 31, and is:
1. Issued with an expiration in the following calendar year as an initial certification,
 2. Renewable for one or two years, depending on the renewal period selected by the applicant, and
 3. Renewed for all certification categories for the same renewal period, and
 4. The responsibility of the individual to whom it is issued.
- Historical Note**
- New Section recodified from R4-29-203 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).
- R3-8-204. Qualified Applicator Certification**
- A.** Before applying for QA certification, an applicant shall fulfill the experience requirement for each category.
- B.** Application. An applicant for QA certification shall submit the fee specified in R3-8-103 and the following information on a form obtained from the PMD:
1. Full name;
 2. Applicator certification number, if any;
 3. QA certification number, if any;
 4. Home address;
 5. Mailing address, if different from the home address;
 6. Telephone number;
 7. E-mail address;
 8. Date of birth;
 9. Social Security number;
 10. A statement whether the applicant has ever had a license or permit to practice pest management denied, revoked, or suspended and if the answer is yes, date, jurisdiction taking the action, nature of the action, and explanation of the circumstances;
 11. Name of employer, if any;
 12. Employer's business license number, if applicable;
 13. Employer's telephone number, if applicable;
 14. Certification categories for which application is made; and
 15. The applicant's dated signature affirming that the information provided is true and correct.
 16. Information and documentation concerning lawful presence required by A.R.S. § 41-1080, if not on file.
- C.** Experience. An applicant shall possess one of the following qualifications:
1. Certification as an applicator for 24 months within the ten years preceding the application in the category applied for.
 2. Certification as an applicator for 12 months within the ten years preceding the application and either:
 - a. Successful completion of 12 semester hours or its equivalent within the 10 years preceding the application in pest management courses directly related to each category applied for; or
 - b. A Bachelor's degree in agricultural sciences, biological sciences, or pest management with 12 semester hours or its equivalent in pest management courses directly related to each category applied for.
 3. Twenty four months of verifiable experience in the business of pest management, in another State where licensure was not required, within the ten years preceding application directly related to the category applied for.
- D.** For an individual who applies for QA certification within one year of honorable separation from active military duty, the time periods "preceding the application" in subsection (C) are tolled during the term of active military duty.
- E.** A QA shall be of good moral character. A conviction for a felony or a misdemeanor involving moral turpitude may demonstrate a lack of good moral character. A conviction for any of the following offenses shall be considered to demonstrate a lack of good moral character:
1. Murder involving the death of a law enforcement officer.
 2. An offense described in A.R.S. § 13-2308.01 related to terrorism.
 3. A sexual offense of any type where the victim is a minor that is a class 4 or higher felony.
- F.** PMD review.
1. After notification by the PMD that the applicant is eligible for certification, the applicant may schedule and take the certification examinations described under R3-8-211.
 2. If the PMD determines there may be cause to deny certification to an applicant, the PMD may send a written notice to the applicant requiring the applicant to appear at a specific location, date and time to answer questions.
- G.** Examination. An applicant shall take and pass the certification examinations as provided in R3-8-211 in order to become certified.
- H.** Certification. QA certification is not transferable, expires on May 31, and is:

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1. Issued with an expiration in the following calendar year as an initial certification,
 2. Renewable for one or two years, depending on the renewal period selected by the applicant,
 3. Renewed for all certification categories for the same renewal period, and
 4. The responsibility of the individual to whom it is issued.
- I.** For the purposes of this Section, pest management courses means courses in entomology, zoology, vertebrate management, plant pathology, agronomy, general horticulture, plant biology or botany, biochemistry, organic or inorganic chemistry, the eradication or management of weeds, toxicology, the environmental impact of pesticides, or any combination thereof.

Historical Note

New Section recodified from R4-29-204 at 23 A.A.R.

1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

R3-8-205. Qualifying Party Registration; Temporary Qualifying Party Registration

- A.** An applicant for registration as a QP shall submit the fee specified in R3-8-103 and the following information on a form obtained from the PMD:
1. Full Name;
 2. QA certification number;
 3. Certification categories to be registered;
 4. Name, and license number if applicable, of the business or school district for which the applicant will act as the QP; and
 5. Dated signature of the applicant affirming that the information provided is true and correct;
- B.** An individual may only register as a QP in categories for which the individual possesses QA certification.
- C.** A certified applicator who is the representative of a business licensee or school district may register as a temporary QP if the QP has become disassociated with the business licensee or school district within the last 45 days. A certified applicator may only register as a temporary QP in the categories for which both the former QP was registered and the certified applicator is certified.
- D.** An applicant for registration as a temporary QP shall submit the fee specified in R3-8-103 and:
1. The information required in subsection (A), except subsection (A)(2);
 2. The applicant's applicator certification number;
 3. Written confirmation signed by the business licensee, school district, or former QP indicating that the former QP has become disassociated with the business licensee or school district; and
 4. A written statement signed by the business licensee or school district that:
 - a. The business licensee or school district has not operated in the business of pest management for more than five business days since the disassociation in the categories for which the disassociated QP was registered; and
 - b. The business licensee or school district wants the certified applicator to act as a temporary QP.
- E.** A business licensee or school district shall not use a temporary QP to qualify the business or school district in a category for more than 180 days in any 12 month period.
- F.** Registration.
1. QP registration is not transferable, expires on May 31, and is:

- a. Issued with an expiration in the following calendar year as an initial registration,
 - b. Renewable for one or two years, depending on the renewal period selected by the applicant, and
 - c. Renewed for all registration categories for the same renewal period.
2. Temporary QP registration is not transferable, is valid for 90 calendar days and may be renewed once for the business license.
 3. A QP or temporary QP may only register to qualify one business licensee or school district except as provided in subsection (F)(4).
 4. A QP for school districts shall separately register as a QP for each school district served, but may not register as a QP for more than one school district without approval from the director pursuant to R3-8-402(C).

Historical Note

New Section recodified from R4-29-205 at 23 A.A.R.

1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

R3-8-206. Branch Office Registration; Branch Supervisor Registration

- A.** A business licensee may not do business from a branch office unless the branch office and a branch supervisor are registered with the PMD.
- B.** To register a branch office, the business licensee shall submit the fee specified in R3-8-103 and the following information on a form obtained from the PMD:
1. The business licensee's name and licensee number.
 2. About the branch office:
 - a. Full name of branch supervisor;
 - b. Branch supervisor's applicator certification number;
 - c. Telephone and fax numbers;
 - d. Physical address;
 - e. Mailing address, if different from physical address;
 - f. E-mail address; and
 - g. Chemical storage address; and
 3. The dated signature of an authorized representative of the business licensee.
- C.** A branch office shall do business in the name of the business licensee only.
- D.** To register as a branch supervisor, the applicant shall submit the fee specified in R3-8-103 and the following information on a form obtained from the PMD:
1. Full name,
 2. Applicator certification number,
 3. Business name and license number,
 4. Physical and mailing address of branch office where the applicant will be the supervisor,
 5. Branch office telephone and fax numbers,
 6. Dated signature of the applicant affirming that the information provided is true and correct, and
 7. Dated signature of an authorized representative of the business licensee.
- E.** A branch supervisor may only register to supervise a branch office at one physical location.
- F.** Registration. Registration as a branch office or branch supervisor is not transferable, expires on May 31, and is:
1. Issued with an expiration in the following calendar year as an initial registration, and
 2. Renewable for one or two years, depending on the renewal period selected by the applicant.

Historical Note

New Section recodified from R4-29-206 at 23 A.A.R.

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1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

R3-8-207. Applicator Registration

- A.** Every applicator of a business licensee or political subdivision shall be registered with the PMD as an applicator for that business licensee or political subdivision before providing pest management services for the business licensee or political subdivision. This requirement is in addition to applicator certification requirements.
- B.** To register an applicator, a person shall submit the fee specified in R3-8-103 and the following information about the applicator on a form obtained from the PMD:
1. Full name;
 2. Name, and license number if applicable, of the business licensee or political subdivision;
 3. For an applicator of a business licensee, identification of the primary or branch office where the applicator's pest management records will be kept;
 4. For a certified applicator, the applicator's certification number;
 5. For an uncertified applicator, the applicator's:
 - a. Home address;
 - b. Mailing address, if different from the home address;
 - c. E-mail address;
 - d. Telephone number;
 - e. Date of birth;
 - f. Social Security number; and
 6. Dated signature of the applicant affirming that the information provided is true and correct.
- C.** An uncertified applicator shall be at least 18 years of age.
- D.** Applicator registration is valid from the date the PMD receives all the information required under subsection (B) and the registration fee.
- E.** Applicator registration is non-transferable and expires on May 31.
- F.** A business licensee and QP are jointly responsible for ensuring compliance with this Section.
- G.** The director shall assess a business licensee with a \$150 civil penalty for each unregistered applicator.

Historical Note

New Section recodified from R4-29-207 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

R3-8-208. License, Certification and Registration Renewal

- A.** An application to renew a business license, applicator or QA certification, or qualifying party, branch office, branch supervisor, or applicator registration is due May 1 of the year the license, certification, or registration expires. Failure to receive a renewal application does not justify a failure to timely renew.
- B.** An applicant for renewal shall submit the following information on a form obtained from the PMD:
1. All renewals:
 - a. A change in physical address and mailing address, if any;
 - b. E-mail address;
 - c. Telephone number;
 - d. Dated signature of the applicant affirming that the information provided is true and correct; and
 - e. License specific information described in this subsection, if applicable.
 2. Business license:
 - a. Full name of the qualifying party in each category for which the business provides pest management services, and
 - b. Proof that the licensee still meets the financial security requirement in A.R.S. § 3-3615; and
 - c. A change in the chemical storage address, if any.

3. Applicator and QA certification:
 - a. Name of employer, if any;
 - b. A statement whether the applicant has had a license or permit to practice pest management denied, revoked, or suspended during the last 12 months and if the answer is yes, the date, jurisdiction taking the action, nature of the action, and explanation of the circumstances; and
 4. Applicator registration: The names and if applicable certification numbers of all of the business licensee's current applicators.
- C.** An applicant for renewal shall select a one or two year renewal period and shall pay the renewal fee listed in R3-8-103 for each year of renewal.
- D.** CEU requirements. The director shall not renew a certification unless, prior to the expiration of the current certification, the applicant obtains the CEUs required by R3-8-215.
- E.** Expired license, certification, or registration.
 1. An applicant who submits a complete renewal application, including the renewal fee, after the expiration of the license, certification, or registration shall pay the late fee listed under R3-8-103 as a penalty in addition to the renewal fee.
 2. An applicant may renew an expired applicator or QA certification without retaking the written examinations provided the applicant has satisfied the CEU requirements, during their most recent certification period.
 3. A certification that has been expired for more than 11 months may not be renewed. The former certificate holder may apply as a new applicant and shall retake and pass the applicable certification examinations.
 4. A business license that has been expired for more than one year may not be renewed. The former licensee may apply as a new applicant.
 5. Notwithstanding subsections (E)(1) through (4), an applicant who fails to renew because the applicant is on active military duty may obtain the continuing education required under R3-8-215 and apply for renewal within one year of honorable separation from active military duty without paying a late fee.
- F.** Renewal effective date.
 1. If an applicant submits a complete application for renewal, including the renewal fee, before the expiration of the license, certification, or registration, then the license certification, or registration does not expire until:
 - a. The renewal has been approved; or
 - b. In the case of denial or new limits on the license, certification, or registration, the last day for seeking review of the PMD order or later date fixed by a court.
 2. If an applicant fails to submit a complete application for renewal, including the renewal fee, before the expiration of the license, certification, or registration, then the license, certification, or registration expires as provided in this Article and is not valid until the PMD has approved the renewal application. A business, branch office, or applicator with an expired license, registration, or certification may not provide pest management services or otherwise engage in the business of pest management. A qualifying party with an expired registration may

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not qualify a business licensee or school district. A branch supervisor with an expired registration may not supervise a branch office.

G. Surrendering a certification or license.

1. An applicator or business licensee may surrender their certification or license at any time, except for the following situations:
 - a. The applicator or business licensee is currently the subject of an investigation; or
 - b. The applicator or business licensee owes civil penalties or termite action registration form fees.
2. An applicator or business licensee that has surrendered their certification or license is not absolved of any termite action registration form fees or civil penalties based on actions or omissions that occurred prior to surrendering their certification or license.
3. The Office shall not refund any certification or licensing fees paid prior to the applicator or business license surrendering their certification or license.

Historical Note

New Section recodified from R4-29-208 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

R3-8-209. Change in Business Licensee

- A.** Transfer to spouse. A business license may be transferred to the licensee's spouse without a fee by submission of a Business License Entity Change Application if the licensee's spouse submits evidence of marriage to the licensee, keeps the same business name for the remainder of the licensee period and agrees to honor all of the licensee's customer contracts and warranties.
- B.** Transfer to new entity. A person may request a transfer of a business license to a new entity without a fee by submitting a Business License Entity Change Application if:
 1. The owners of the current business licensee own a majority of the new entity,
 2. The new entity keeps the same business name as the current business licensee for the remainder of the licensing period,
 3. The new entity agrees to honor all customer contracts and warranties provided by the current business licensee, and
 4. The current business licensee and the new entity are not the same form of entity.
- C.** When a business license is transferred under subsection (A) or (B), the new licensee shall be responsible for any outstanding fees or penalties owed to the PMD and for any disciplinary action taken by the PMD as a result of violations of this Chapter or the PMD's statutes by the former licensee.
- D.** Except as provided in subsections (A) and (B), a change in ownership of a licensed sole proprietorship requires a new business license.
- E.** If, through a change in ownership, a licensed business's office becomes a branch office of another licensed business, the new owner shall notify the PMD and comply with R3-8-206.
- F.** A business licensee shall report any change in the principals of the business to the PMD within 30 days. Principal means a person who owns at least a 10 percent interest in a business. Principal includes an owner that is itself a business as well as owners of a principal.
- G.** If a business licensee changes the name of the business, the licensee shall provide the following information on a Business Name Change Application submitted to the PMD prior to the change:
 1. Name of business entity;

2. Current business name;
 3. Business license number;
 4. New business name requested;
 5. Copy of the Registered Trade Name Certificate, amended Articles of Organization or Incorporation, amended Certificate of Limited Partnership, or amended Statement of Partnership Authority or Qualification showing the new name; and
 6. Dated signature of the authorized representative of the business licensee affirming that the information provided is true and correct.
- H.** If a business licensee changes the form of the business, the licensee shall provide the following information on a Business Entity Change Application submitted to the PMD within 30 days of the change:
1. Name of licensed business entity;
 2. Business name and license number;
 3. Name and form of new business entity;
 4. Names of the following persons authorized to act on behalf of the new business entity:
 - a. Owner if a sole proprietorship,
 - b. Managing or general partner if a partnership,
 - c. President and other authorized officers if a corporation,
 - d. All the managers or members if a limited liability company, or
 - e. Person authorized to make decisions for the business if any other type of business form;
 5. Copy of the new business entity's Articles of Organization or Incorporation, Certificate of Limited Partnership, trust, trade name certificate, partnership agreement, or other evidence of the form of business organization;
 6. As applicable, the Articles of Merger or Consolidation, Statement of Merger, or approved partnership conversion; and
 7. Dated signature of the authorized representative of the business licensee affirming that the information provided is true and correct.

Historical Note

New Section recodified from R4-29-209 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

R3-8-210. Certification Broadening

- A.** To broaden an applicator certification, the applicant shall:
 1. Submit the application described in R4-29-203,
 2. Submit the fee required under R4-29-103, and
 3. Take and pass the certification examination for the specific category in which broadening is sought.
- B.** A QA is eligible to broaden a QA certification only if, in the category in which broadening is sought, the QA has a valid applicator certification or a qualification listed in R4-29-204(C).
- C.** To broaden a QA certification, the QA shall:
 1. Submit the application described in R4-29-204 and indicate on the application the category in which broadening is sought,
 2. Submit the fee required under R4-29-103,
 3. Submit the evidence of experience required under R4-29-204(C) for the category in which broadening is sought except as provided in subsection (D) of this Section, and
 4. Take and pass the certification examination for the specific category in which broadening is sought.

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- D.** Experience exemptions. A QA may become certified without meeting the experience requirement of R4-29-204(C) in the categories of:
1. Right-of-way or ornamental and turf if the individual has QA certification in the category of industrial and institutional, wood-destroying organism treatment, ornamental and turf, or right-of-way.
 2. Wood-destroying organism management if the individual has QA certification in the industrial and institutional category.
 3. Wood preservation if the individual has QA certification in the wood-destroying organism treatment category.
1. Responding to inquiries or concerns by the Director or the Director's designee regarding compliance with A.R.S. Title 3, Chapter 20.
 2. Identifying for the Director or the Director's designee where records required by this Chapter are maintained, where personal protection equipment is located, and where pesticides are stored.
 3. Demonstrating that all applicators are properly certified.
- B.** The political subdivision shall annually submit the following information about the responsible individual(s) during the month of May on a form obtained from the Director or the Director's designee:

1. Full name;
 2. Physical address;
 3. Mailing address, if different from the physical address;
 4. E-mail address;
 5. Telephone number;
 6. Dated signature of the responsible individual(s) affirming that the information provided is true and correct.
- C.** If the political subdivision changes its responsible individual(s), the political subdivision shall provide the information about the new responsible individual(s) listed in subsection (B) to the Director within 30 days.
- D.** School districts are exempt from this Section.

Historical Note

New Section recodified from R4-29-210 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

R3-8-211. Certification Examination

- A.** An applicant for applicator certification or QA certification shall make arrangements to take the certification examinations by contacting the PMD or the examination service or testing vendor with which the PMD has contracted.
- B.** The core and category-specific examinations may measure knowledge and understanding of the following content areas:
1. Pesticide label and labeling and pesticide types and formulations;
 2. Pest identification, life cycles, and habits;
 3. Safety and environmental factors relating to the use, handling, storage, and disposal of pesticides;
 4. Application techniques, calibration and dilution, and equipment types, uses, and maintenance; and
 5. Laws and rules.
- C.** To be certified, an applicant shall score at least 75 percent on the general standards ("core") examination and on the category-specific examination in each category for which the applicant seeks certification.
- D.** An applicant who fails an examination may not retake the examination for at least seven days or more than two times in a 6-month period.
- E.** An examination score is only valid for the earlier of 12 months from the date of application for certification or 12 months from the examination date.
- F.** The PMD shall void the examination score and deny the application of an applicant that the PMD determines cheated on an examination. The applicant may not reapply for one year.

Historical Note

New Section recodified from R4-29-211 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

R3-8-212. Reciprocity

Notwithstanding the examination requirements in R4-29-203(C), R4-29-204(G), and R4-29-211, the director may waive the examination requirements in whole or in part for an individual who is certified as an applicator pursuant to A.R.S. Title 3, Chapter 2 or by another state.

Historical Note

New Section recodified from R4-29-212 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

R3-8-213. Political Subdivision Responsible Individual

- A.** A political subdivision that uses pesticides to conduct pest management on property that is owned, leased or managed by the political subdivision, including easements, shall designate an individual or individuals responsible for the following:

Historical Note

New Section recodified from R4-29-213 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

R3-8-214. Reserved**Historical Note**

New reserved Section recodified from R4-29-214 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

R3-8-215. Continuing Education

- A.** A certified applicator who is not a QA shall, during the current certification period, obtain six CEUs in order to renew the certification for one year or 12 CEUs in order to renew for two years.
- B.** A QA shall, during the current certification period, obtain 12 CEUs in order to renew the certification for one year or 24 CEUs in order to renew for two years.
- C.** For an individual who holds both a certified applicator license and a QA license, obtaining the units required in subsection (B) satisfies the requirement in subsection (A).
- D.** CEUs earned during a certification period that are in excess of the requirements in this Section do not carry forward for use in a subsequent certification period.
- E.** An applicator who teaches a continuing education course may earn one unit of continuing education for each hour taught, not more than once during a calendar year.
- F.** No CEU credit will be earned by an attendee of a continuing education course who does not complete the course.
- G.** No CEU credit will be earned by an attendee of a continuing education course who had previously attended the same course during the same licensing period.

Historical Note

New Section recodified from R4-29-215 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

R3-8-216. Continuing Education Approval

- A.** Only continuing education courses approved by the PMD may be used to satisfy the continuing education requirement in R3-

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- 8-215. The PMD shall approve a continuing education course only if the course addresses:
1. Pesticide labels and labeling;
 2. Safety, environmental factors, and consequences;
 3. Pesticide use and disposal;
 4. Laws and rules related to pest management and the business of pest management;
 5. Application techniques;
 6. Calibration and dilution;
 7. Equipment;
 8. Pest identification;
 9. Life cycles and habits;
 10. Calculation and measurements;
 11. New pest management technologies;
 12. Integrated pest management; or
 13. Licensee responsibilities.
- B.** A person who wishes to have the PMD determine whether a course qualifies for CEU credit shall submit the following information to the PMD:
1. Type of continuing education listed under subsection (A);
 2. Name of continuing education provider;
 3. Address and telephone number of continuing education provider;
 4. Course outline, listing the subjects and indicating the amount of time allocated for each subject;
 5. Brief description of the information covered within each subject;
 6. Brief biography of the presenter, demonstrating the presenter's qualifications;
 7. Whether a fee is charged for attending the course;
 8. Date and location of each session;
 9. Whether the course is open to the public;
 10. Number of continuing education units sought;
 11. Previous continuing education number, if any; and
 12. Dated signature of applicant;
- C.** The provider of an approved continuing education course shall:
1. Enter attendance information using the PMD's on-line continuing education reporting tool within 10 days after the date of the continuing education course, and
 2. Maintain a copy of the verification of attendance and original sign-in sheet that lists the attendees' names and certification numbers for two years.
 3. Allow PMD and Department employees to attend the course and review course materials without charge, except that the provider has no obligation to provide food to the employees that is made available for paying attendees.
 4. Notify PMD in writing of the date, time and place of each continuing education course at least two weeks before each course. In-house and online courses are exempt from this requirement.
- D.** Unless otherwise indicated in the notice of approval, the PMD's approval of a continuing education course is valid for two years.
- E.** Approval of a continuing education course is not renewable. To reapply for approval of a continuing education course, a person shall comply with the requirements of subsection (B).
- F.** The provider of an approved continuing education course shall provide notice and updated information to the PMD within 10 days after the subject matter or instructor of the course changes.
- G.** To evaluate the effectiveness of a continuing education course, the PMD may monitor an approved continuing education course at no cost.
- H.** The PMD shall revoke its approval of a continuing education course if the PMD determines that the course fails to meet the standards for approval listed in this Section, the continuing education provider provided false information on its application or false information pertaining to attendance, or the continuing education provider fails to comply with the PMD's statutes and this Chapter.
- I.** The PMD may modify the number of CEUs earned for a CEU course if the CEU course varies significantly in content or length from the approved curriculum. If the PMD modifies the number of CEUs earned, the PMD shall send a letter of modification to the course organizer, who shall be required to inform all individuals who attended the course.

Historical Note

New Section recodified from R4-29-216 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

ARTICLE 3. PEST MANAGEMENT**R3-8-301. Using Pesticides and Devices**

- A.** An applicator shall use only a pesticide that is currently registered for use by the Department or was registered by the Department and does not have a passed EPA end use date.
- B.** An applicator shall not misuse a pesticide or device. It is misuse of a pesticide or device if an applicator:
1. Applies, handles, stores, or disposes of a pesticide or device in a manner that is inconsistent with the label or labeling;
 2. Provides a pest management service or handles a pesticide without wearing clothing and using the personal protective equipment required by the label or labeling to protect the applicator from pesticide exposure;
 3. Uses a pesticide in a manner that causes the pesticide to come into contact with a person, other than the applicator, animal, or property, other than the property receiving the pest management service, unless the contact results from an accident beyond the reasonable control of the applicator;
 4. Uses a pesticide in a food-handling establishment that the label or labeling recommends not be used in a food-handling establishment; and
 5. Uses a pesticide in a manner that contaminates food, feed, or drugs or equipment used to prepare or serve food, feed, or drugs.
- C.** While mixing a pesticide with water, an applicator shall protect the water supply from back-siphoning of the pesticide mixture. An applicator shall not add water to a tank in which a pesticide is mixed or from which a pesticide is dispensed by protruding a fill-pipe or hose connection into the tank. An applicator shall ensure that a fill-pipe or hose connection terminates at least two inches above the tank fill opening or is equipped with an effective anti-siphoning device.
- D.** An applicator shall ensure that all equipment, including auxiliary equipment such as a hose or metering device, used for mixing or applying a pesticide is in good repair and operating properly.
- E.** An applicator shall apply, store, or dispose of a pesticide designated by the EPA as restricted use only if the applicator is certified or working under the immediate supervision of an applicator certified in the category for which the restricted-use pesticide is applicable.
- F.** An applicator shall clean a pesticide spill in accordance with the pesticide label and labeling directions and in a manner that minimizes exposure to humans and other non-target organisms. If a pesticide spill may endanger humans, an applicator

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shall clean the pesticide spill in accordance with recommendations by health and medical personnel and local authorities.

- G. An applicator shall apply a pesticide at a rate provided by a Special Local Need registration issued by the Department and the pesticide labeling. The applicator shall have in the applicator's possession at the time of the application both the Special Local Need labeling and the EPA section 3 label and labeling.
- H. If information regarding provision of a particular pest management service is not available on the pesticide label or labeling or addressed in the PMD's statutes or this Chapter, an applicator shall comply with the pesticide manufacturer's recommendation and the general industry practice prevailing in the community at the time the pest management service is provided.
- I. If there is a conflict between any provision in this Section and labeling instructions, an applicator shall follow the more specific instruction.

Historical Note

New Section recodified from R4-29-301 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

R3-8-302. Storing and Disposing of Pesticides and Devices

- A. An applicator shall store and dispose of a pesticide or device in a manner consistent with its label and labeling.
- B. An applicator shall store a pesticide in a closed container that is free from corrosion, leakage, or pesticide contamination on the outside of the container and properly labeled.
- C. An applicator shall ensure that a service container bears a durable and legible specimen label with the following information:
 1. The name, address, and telephone number of the business licensee or political subdivision;
 2. The common chemical or trade name of the principal active ingredients;
 3. The EPA registration number;
 4. The strength of the concentrate or dilution expressed as a percentage of active ingredients;
 5. Any signal word required on the label; and
 6. The phrase "KEEP OUT OF REACH OF CHILDREN."
- D. An applicator shall not place words or markings on a service container or on the label affixed to the service container that are unrelated to the pesticide in the service container, except for markings related to a method of tracking the product.
- E. If the label affixed to a pesticide container becomes lost or damaged, an applicator shall attach a specimen label to the pesticide container.
- F. An applicator shall replace a damaged container, other than a fumigant container, with an identically labeled container or a properly labeled service container.
- G. Application equipment from which a pesticide is directly discharged and in which the pesticide is not stored is not subject to the labeling requirements of this Section.
- H. An applicator shall not store a pesticide in a manner which food, beverage, feed, drugs, cosmetics, eating utensils, or tobacco products can be contaminated.
- I. An applicator shall not store a pesticide in a container that was used for food, beverage, feed, drugs, or cosmetics, or which by size, shape, or marking could be confused as being a food, beverage, feed, drug, or cosmetic.
- J. An applicator shall not store a fumigant within a residence, office or cab of a vehicle.
- K. An applicator shall ensure that a pesticide in an original or service container, an empty pesticide container that has not been prepared for disposal in accordance with its label, or a return-

able or reusable pesticide container is kept in a locked storage space when on an unattended service vehicle or is within view and under the supervision of the applicator responsible for the service vehicle.

- L. An applicator shall ensure that a pesticide in portable application equipment is kept locked when on an unattended service vehicle or is within view and under the supervision of the applicator responsible for the service vehicle.
- M. To prevent damage during transit, an applicator shall ensure that a pesticide container is secured in a locked storage space while the pesticide container is transported on a service vehicle.

Historical Note

New Section recodified from R4-29-302 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

R3-8-303. Pesticide and Device Storage Area

- A. A business licensee or political subdivision shall provide a pesticide and device storage area that complies with all federal, state, and local laws. The storage area may include an area on a service vehicle.
- B. A business licensee or political subdivision shall secure the storage area required under subsection (A) from unauthorized entry by equipping its entrance or access with a lock.
- C. Immediately after storing a pesticide, a business licensee or political subdivision shall conspicuously post a sign at the entrance or access to a non-vehicle storage area and on a vehicle storage area indicating there is a pesticide, chemical, or poison stored inside.
- D. A business licensee or political subdivision shall provide sufficient ventilation to the outside of the storage area required under subsection (A) to prevent build-up of odors and preclude chemical injury to an individual or animal.
- E. A business licensee or political subdivision shall provide the following in or immediately adjacent to the storage area required under subsection (A), including a storage area on a service vehicle:
 1. Electric or battery-powered lighting that is sufficient to read a pesticide label;
 2. Fully charged and operational fire extinguisher or fire suppression system appropriate to each pesticide stored in the area;
 3. Emergency medical information including the telephone number of the state or local poison control center;
 4. Material capable of absorbing a spill or leak of at least one gallon;
 5. Specimen label and SDS for each pesticide stored in the area; and
 6. Washing facilities that include at least one gallon of fresh water, soap, and towels.

Historical Note

New Section recodified from R4-29-303 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

R3-8-304. Devices Exempt from Licensure and Registration; Advertising

- A. The following devices are not subject to the licensure and registration requirements of this Chapter or the PMD's statutes:
 1. Physical barriers used to remove or prevent infestation by pests;
 2. Equipment used for the physical removal of pests or the habitat of pests;
 3. Mechanical equipment used for the physical removal of weeds and other vegetation;
 4. Mechanical traps used without a pesticide;

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5. Installation equipment used for home improvement or modifications;
 6. Raptors used to control or relocate other birds; and
 7. Fire arms.
- B.** An unlicensed person who engages in the business of pest management, but is exempt from licensure and registration because the person does not apply any pesticides and only uses devices listed in subsection (A) shall prominently display or include the phrase “Not licensed to apply pesticides” in all written and oral advertisements.

Historical Note

New Section recodified from R4-29-304 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

R3-8-305. Equipping a Service Vehicle

A business licensee or political subdivision shall provide each service vehicle with the following:

1. All equipment and supplies required by the label and labeling to apply properly the pesticides on the service vehicle;
2. A measuring and pouring device compatible with the pesticides on the service vehicle;
3. Protective clothing and safety equipment suitable for use when handling, mixing, or applying the pesticides on the service vehicle;
4. Material capable of absorbing a spill or leak of at least one gallon;
5. A storage container large enough to hold material contaminated by absorbing a spill or leak of pesticides;
6. At least one gallon of clean, drinkable water for each individual using the service vehicle at one time;
7. Uncontaminated change of clothing;
8. Specimen label and SDS for each pesticide on the service vehicle; and
9. A locking storage space designed to prevent a pesticide container from being damaged while in transit.

Historical Note

New Section recodified from R4-29-305 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

R3-8-306. Providing Notice to Customers

- A.** Immediately following an application, the applicator shall provide a written notice to a customer for whom the applicator provides a pest management service that contains the:
1. Name and address of the customer;
 2. Specific site to which a pesticide was applied;
 3. Date of service;
 4. Target pest or purpose of service;
 5. Trade name of pesticide applied;
 6. EPA registration number of restricted use pesticide applied;
 7. Amount of pesticide applied, in terms of percent active ingredient and volume of diluted mixture or in terms of total amount of liquid concentrate, ready-to-use product, granular material, or bait stations;
 8. Name and certification number of the applicator or if the applicator is uncertified, the name of the uncertified applicator and the name and certification number of the applicator providing supervision; and
 9. Following statement printed in at least an eight-point font: “Warning—Pesticides can be harmful. Keep children and pets away from pesticide applications until dry, dissipated, or aerated. For more information, contact [business licensee’s name and business license number

issued by the PMD] at [business licensee’s telephone number].”

- B.** The applicator may provide the notice required by subsection (A) electronically.
- C.** An applicator who provides a pest management service at a school shall comply with the notification requirements in A.R.S. § 3-3606.

Historical Note

New Section recodified from R4-29-306 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

R3-8-307. Performing a Wood-destroying Insect Inspection; WDIIRs

- A.** Only an applicator certified in the category of wood-destroying organism management, who works under the direct employment of a business license and who has received the training required under A.R.S. § 3-3633 may complete a WDIIR.
- B.** An applicator completing a WDIIR shall inspect all areas of a structure including crawlspaces that are visible or accessible at the time of the inspection. The applicator may use techniques such as non-destructive probing and sounding.
- C.** An applicator completing a WDIIR may exclude from inspection an area that is permanently covered by a floor covering, wall covering, or built-in appurtenance such as a bookcase, cabinet, appliance, equipment, or furniture or that would require removing or marring finish work or moving furniture, appliances, or equipment. The applicator shall note on the WDIIR all areas that are not inspected and the reason the areas are not inspected.
- D.** An applicator completing a WDIIR shall inspect all areas where there is evidence of current or previous infestation and where a condition conducive to infestation exists. A condition conducive to infestation includes:
1. Faulty grade level. If a structure contains a slab or floor that is at or below grade, the existing earth level is considered grade level;
 2. Inaccessible sub-area such as an area with less than 24 inches of clear space between the bottom of a floor joist and grade level;
 3. Excessive cellulose debris. Cellulose debris is excessive when:
 - a. The debris can be raked into a pile of at least one cubic foot,
 - b. A stump or wood imbedded in a footing of the structure is in contact with earth, or
 - c. Firewood or a lumber pile is within six inches of the structure;
 4. Earth-to-wood contact, which involves wood that is part of a structure or that is attached to or securely abuts the structure and is in contact with the ground; or
 5. Excessive moisture or evidence of a moisture condition in or around a structure.
- E.** To verify whether a corrective treatment was performed or a condition conducive to infestation was corrected, an applicator may conduct a supplemental inspection within 30 days after an original inspection. An inspection conducted more than 30 days after an original inspection is not a supplemental inspection.
- F.** An applicator completing a WDIIR may exclude from inspection other structures at the site. The applicator shall note on the WDIIR all structures at the site that are not inspected and the reason the structures are not inspected.
- G.** WDIIRs shall be prepared in accordance with R3-8-501(E).

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Historical Note

New Section recodified from R4-29-307 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

R3-8-308. Performing Wood-destroying Insect Management

- A.** An applicator shall not perform wood-destroying insect management or fumigation unless the applicator is certified in the category of wood-destroying organism treatment or fumigation, respectively, or working under the immediate supervision of an applicator who is certified in the category of wood-destroying organism treatment or fumigation respectively.
- B.** An applicator shall not perform wood-destroying insect management, issue a treatment proposal, or quote a fee for service until the business licensee that employs the applicator ensures that:
1. An on-site inspection of the property is performed, in accordance with R3-8-307, by a certified applicator meeting the training requirement under A.R.S. § 3-3632(E),
 2. A treatment proposal is prepared, based upon the on-site inspection, on a form approved by the PMD and contains the information required under A.R.S. § 3-3632(B) and (C), and
 3. The treatment proposal is delivered to the person requesting the proposal or treatment, prior to the treatment.
- C.** An applicator shall apply a termiticide only in the quantity, strength, dosage, and manner prescribed on the termiticide label unless otherwise specified by this Chapter or a PMD order.
- D.** Pretreatment for commercial or residential construction.
1. Unless a contract between the business licensee and customer specifies additional requirements, an applicator performing a pretreatment shall:
 - a. Establish a horizontal barrier of termiticide before any concrete slab under roof is poured or in conjunction with establishing the footings and supports for a raised foundation; and
 - b. Establish a vertical barrier of termiticide in all critical areas visible during the time of pretreatment. An area is critical at the time of pretreatment if the area is identified as critical by the termiticide label or if there is soil in the immediate vicinity of:
 - i. A penetration or protrusion through the slab;
 - ii. An observable preset for crack or joint control;
 - iii. A formed-up change of grade level;
 - iv. Abutting slabs;
 - v. A bath trap or tear-out;
 - vi. The interior of a foundation or stem wall; or
 - vii. A pier, pillar, pipe, or other object that extends from the soil to the structure.
 2. Except as specified in subsection (D)(3) and unless the termiticide label requires more, an applicator shall treat all critical areas during a pretreatment at a rate of four gallons of chemical preparation per 10 linear feet for each foot of depth from grade level to the footer. If there is no adjacent footer, the applicator shall treat to a depth of one foot.
 3. Unless the termiticide label requires more, an applicator is not required to treat a critical area during a pretreatment beyond a depth of four feet if:
 - a. Treating beyond a depth of four feet will, or reasonably may, cause an off-site application;
 - b. Access to the footer is not possible because of its distance below grade; or
 - c. Treating beyond a depth of four feet will, or reasonably may cause an environmental contamination.
4. If an applicator does not treat a critical area during a pretreatment beyond a depth of four feet because the applicator determines that one of the exceptions in subsection (D)(3) is applicable, the applicator shall:
 - a. Apply the amount of termiticide possible without causing an off-site application or environmental contamination, and
 - b. Include evidence of the exception in the treatment record. Evidence of the exception may include:
 - i. A photograph of the interior grade and adjacent location that would or reasonably might be contaminated by treating beyond a depth of four feet,
 - ii. A photograph of the site after the pretreatment but before concrete placement,
 - iii. A written statement from the general contractor concerning the fill material and compaction rating,
 - iv. A written statement from the concrete subcontractor describing the depth of the footer as greater than four feet, or
 - v. A written compaction rating statement from the engineering subcontractor.
 5. If an applicator is advised before concrete is poured that a treated area is disturbed and the continuous horizontal or vertical chemical barrier established under subsection (D)(1) is broken, and if the applicator is provided an opportunity to re-treat the disturbed area, the applicator shall re-treat the disturbed area and re-establish a continuous horizontal and vertical chemical barrier.
 6. Immediately after completing a pretreatment, an applicator shall securely affix a tag to the pretreatment site. The applicator shall ensure that the tag is visible, readily available for inspection, and unlikely to be covered with concrete or soil. If there is a contractor's permit or inspection board at the pretreatment site, the applicator may affix the tag to the board. The applicator shall ensure that the tag contains the following information about the pretreatment:
 - a. Name of business licensee;
 - b. Address of business licensee;
 - c. Telephone number of business licensee;
 - d. License number of business licensee;
 - e. Location or address of project;
 - f. Date of pretreatment application;
 - g. Time that application was started (not time that applicator arrived at the site);
 - h. Time that application ended (not time that applicator left the site);
 - i. Trade name of pesticide used;
 - j. Percentage of active ingredient in the pesticide used;
 - k. Number of gallons of chemical preparation applied;
 - l. Square footage of area treated;
 - m. Linear footage of area treated;
 - n. Type of slab construction;
 - o. Name of applicator; and
 - p. Certification number of applicator or, if not certified, the name and certification number of the applicator providing immediate supervision.
 7. If it is necessary for an applicator to abandon a pretreatment site before completing the treatment, the applicator shall complete and affix the tag described in subsection (D)(6), representing the work completed, and after marking the tag "TREATMENT INCOMPLETE."

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8. If a contractor requires a copy of the tag described in subsection (D)(6) for the customer's file, an applicator shall prepare and provide the contractor with a duplicate tag that is clearly marked "DUPLICATE."
- E.** New-construction treatment for commercial or residential construction.
1. Unless specifically precluded by the termiticide label, an applicator performing a new-construction treatment shall treat all critical areas visible at the time of the treatment. An area is critical at the time of a new-construction treatment if the area is identified as critical by the termiticide label or if there is soil in the immediate vicinity of:
 - a. A penetration or protrusion through the slab;
 - b. An observable crack or joint;
 - c. Abutting slabs;
 - d. A bath trap or tear-out;
 - e. The interior of a foundation or stem wall; or
 - f. A pier, pillar, pipe, or other object that extends from the soil to the structure.
 2. An applicator shall comply with subsections (D)(2) through (D)(4) when treating a critical area during a new-construction treatment except that the treatment shall be at the labeled rate rather than at a rate of four gallons of chemical preparation per 10 linear feet for each foot of depth.
 3. If an applicator is advised that a treated area is disturbed, the applicator shall re-treat the disturbed area.
 4. Immediately after completing a new-construction treatment, an applicator shall securely affix a tag to the new-construction site in the manner described in subsection (D)(6). The applicator shall ensure that the tag contains the information listed in subsection (D)(6).
 5. An applicator shall comply with subsections (D)(7) and (D)(8) when performing a new-construction treatment.
- F.** Final grade treatment for commercial or residential construction.
1. A business licensee that performs a pretreatment or new-construction treatment shall perform a final grade treatment. The final grade treatment must occur after all grading and other construction-related soil disturbance is complete, but within twelve months of the original pretreatment or new-construction treatment.
 2. An applicator shall treat the soil along the exterior of foundation walls at a rate of four gallons of chemical preparation per 10 linear feet (unless precluded by label directions) after all grading and other construction-related soil disturbance is complete, but within twelve months of the original pretreatment or new-construction treatment.
 3. An applicator shall leave a record of the final grade treatment in an unlocked electrical or circuit-breaker box, if available. Otherwise, the applicator shall conspicuously post or leave the record with the property agent. The applicator shall ensure that the record of the final grade treatment contains the information listed in subsection (D)(6), except the information required under subsections (D)(6)(l) and (D)(6)(n) is not required.
- G.** An applicator who performs a pretreatment, new-construction treatment or final grade treatment shall ensure that a copy of the information recorded on a tag required under subsection (D) or (E) or the final grade treatment record required under subsection (F) is provided to the business licensee for inclusion in the business licensee's service records.
- H.** A warranty regarding subterranean termite treatment shall only be issued to a builder if the structure received a pretreatment or a new-construction treatment.
- I.** Post-construction treatment for commercial or residential construction.
1. If an applicator uses a drilling and injecting application method for a post-construction treatment, the applicator shall space the treatment holes in each treated area no more than 24 inches apart or in accordance with the termiticide label, whichever is more restrictive. If an applicator determines that a structural feature makes it necessary to space treatment holes more than 24 inches apart, the applicator may space the treatment holes more than 24 inches apart if the greater distance is within the limits on the termiticide label.
 2. After completing a post-construction treatment using a drilling and injection application method, an applicator shall securely patch all treatment holes, including those in an unfinished basement, enclosed porch, garage, or workshop, with a material that is nonporous and non-cellulose.
 3. Unless precluded by label directions, any application to treat the soil along the exterior of foundation walls shall be made at an effective treatment rate of four gallons of chemical preparation per ten linear feet in a trench six inches wide or other method of treatment prescribed by the label to achieve the effective treatment rate.
 4. All post construction treatments shall be made in accordance with the treatment proposal delivered as required under subsection (B). Any deviations to the original proposal shall be redelivered in writing in a revised treatment proposal and shall be approved prior to performing the treatment by the person who requested the original proposal or their authorized agent.

Historical Note

New Section recodified from R4-29-308 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

R3-8-309. Termite Warranties and Retreatments

- A.** If a business licensee or an employee of a business licensee is advised before concrete is poured that a pretreatment area is disturbed and the continuous chemical barrier is broken and if an opportunity is provided to re-treat the disturbed area or is advised that a new-construction treatment area is disturbed, the business licensee shall ensure that the disturbed area is retreated.
- B.** A business licensee that provides a subterranean termite treatment warranty shall ensure that the effective date of the warranty is the date on which treatment begins.
- C.** If subterranean termites occur in or on a residential or commercial structure within three years after a business licensee first performs a pretreatment or new-construction treatment of the structure, the business licensee shall re-treat the affected area of the structure free of charge in accordance with the label specifications of a termiticide available for use. If subterranean termites occur in or on an addition that does not abut the slab of a residential or commercial structure within three years after a business licensee first performs a pretreatment or new-construction treatment of the non-abutting addition, the business licensee shall re-treat the non-abutting addition free of charge in accordance with the label specifications of a termiticide available for use. For the purpose of this subsection, the business licensee is the business licensee who performed the pretreatment or new-construction treatment or a successor that acquired the business assets pertaining to wood-destroying insect treatment.
- D.** If subterranean termites occur a third time on the exterior of a one or two unit residential structure within three years after a

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business licensee first performs a pretreatment or new-construction treatment, the business licensee shall re-treat the entire exterior perimeter of the structure free of charge.

1. As used in this subsection, exterior means a portion of a residential structure where termite activity originates and that is not livable and not a garage;
 2. For the purpose of this subsection and subsection (E):
 - a. A first occurrence means the first time evidence of subterranean termites exists after a pretreatment or new-construction treatment;
 - b. A second occurrence means evidence of subterranean termites exists at least 25 feet away from the site of the first occurrence and at least 45 days after the date of re-treatment for the first occurrence; and
 - c. A third occurrence means evidence of subterranean termites exists at least 25 feet away from the sites of both the first and second occurrences and at least 45 days after the date of re-treatment for the second occurrence.
 - E. If subterranean termites occur a third time on the interior of a one or two unit residential structure within three years after a business licensee first performs a pretreatment or new-construction treatment, the business licensee shall perform a post-construction treatment of the entire structure free of charge. As used in this subsection, interior means a portion of a residential structure where termite activity originates and that is livable or a garage.
 - F. A business licensee that performs a re-treatment under subsection (C) or (D) or a post-construction treatment under subsection (E) shall not charge the consumer for any expense incurred in providing the re-treatment or post-construction treatment to which the consumer is entitled under this Chapter.
 - G. If a business licensee goes to a structure to perform a re-treatment under subsection (C) or (D) or a post-construction treatment under subsection (E) and determines there is no evidence of subterranean termites, the business licensee may charge the consumer a reasonable amount for the expenses incurred in making the trip.
 - H. If a business licensee determines that a re-treatment or post-construction treatment is necessary because the continuous chemical barrier is disturbed, the business licensee may charge the reasonable cost of reestablishing the barrier.
 - I. If a customer refuses a re-treatment or post-construction treatment as described in this Section, access to the customer's property, or to allow drilling in an area where drilling is necessary, the business licensee shall obtain the customer's printed name and dated signature on a document evidencing that the business licensee:
 1. Informed the customer of the right to a re-treatment or post-construction treatment at no charge,
 2. Provided the customer with a copy of this Section and the termiticide label requirements,
 3. Provided the customer with the PMD's telephone number, and
 4. Explained to the customer the benefits of having and the detriments of not having a re-treatment or post-construction treatment.
1. A business licensee shall maintain the financial responsibility required by A.R.S. § 3-3615 and this Chapter.
 2. A business licensee shall ensure that the required financial responsibility covers all pest management activities provided from the primary business office and each branch office.
 3. If there is an interruption in the financial responsibility of a business licensee, the business licensee shall immediately stop providing pest management services.
- B. Use of business name and license number.**
1. A business licensee shall prominently display the license issued by the PMD at the primary business office and each branch office.
 2. A business licensee shall prominently display the business name and license number, as recorded on the license issued by the PMD, on:
 - a. Customer proposals or contracts for pest management services;
 - b. Service records;
 - c. Inspection reports;
 - d. Written materials provided to customers or potential customers;
 - e. Correspondence;
 - f. Advertisements; and
 - g. Service vehicles and trailers used in providing pest management services. The business licensee shall ensure that the business name and license number display on a service vehicle or trailer used in providing pest management services conforms to the following:
 - i. Is affixed to the service vehicle or trailer used in providing pest management services within 30 days after the PMD issues the license or issues a business license change or after the service vehicle or trailer is acquired, whichever is sooner;
 - ii. Is in a color that contrasts with the color of the service vehicle and trailer;
 - iii. Is on both sides of the service vehicle and trailer;
 - iv. Uses at least two-inch letters for the principal words in the business name and at least one and one-half inch letters for other words in the business name; and
 - v. Uses at least two-inch numbers for the license number.
 3. A business licensee that always uses a service vehicle and trailer together is required to mark only the service vehicle or trailer as described in subsection (B)(2)(g). A business licensee that uses a vehicle only for sales, solicitations, or solely for inspections and does not carry a pesticide, and does not otherwise use the vehicle to provide a pest management service, is not required to mark the vehicle as described in subsection (B)(2)(g).
 4. When complying with subsection (B)(2), a business licensee may use a slogan, trade name, or trade mark in addition to the business name and license number. When complying with subsection (B)(2), a business licensee may use a word or phrase to indicate its former licensed business name if it had a previously licensed business name.

Historical Note

New Section recodified from R4-29-309 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

R3-8-310. Business Management**A. Financial responsibility.****Historical Note**

New Section recodified from R4-29-310 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August

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29, 2017 (Supp. 17-2).

R3-8-311. Reserved**Historical Note**

New reserved Section recodified from R4-29-311 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

R3-8-312. Reserved**Historical Note**

New reserved Section recodified from R4-29-312 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

R3-8-313. Reserved**Historical Note**

New reserved Section recodified from R4-29-313 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

R3-8-314. Reserved**Historical Note**

New reserved Section recodified from R4-29-314 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

R3-8-315. Reserved**Historical Note**

New reserved Section recodified from R4-29-315 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

R3-8-316. Reserved**Historical Note**

New reserved Section recodified from R4-29-316 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

R3-8-317. Reserved**Historical Note**

New reserved Section recodified from R4-29-317 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

R3-8-318. Reserved**Historical Note**

New reserved Section recodified from R4-29-318 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

R3-8-319. Reserved**Historical Note**

New reserved Section recodified from R4-29-319 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

R3-8-320. Reserved**Historical Note**

New reserved Section recodified from R4-29-320 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

ARTICLE 4. SUPERVISION**R3-8-401. Supervising an Applicator**

- A. A QP and business licensee shall ensure that an applicator receives the training, equipment, and supervision that the applicator requires to comply fully with the PMD's statutes, this Chapter, and label and labeling directions.
- B. A QP shall be readily available to an applicator while the applicator provides pest management services.
- C. A QP shall ensure that the use, application, storage, or disposal of a pesticide is performed or supervised by an individual certified in a category applicable to the pesticide being used, applied, stored, or disposed.

- D. A QP shall ensure that immediate supervision, which requires supervision by a certified applicator who is physically present, is provided when an uncertified applicator performs pest management services in the wood-destroying organism management, aquatic, or fumigation category, uses a restricted use pesticide, or uses a pesticide under an experimental use permit. A QP shall ensure that a certified applicator provides immediate supervision to not more than two uncertified applicators at a time.
- E. In circumstances other than those described in subsection (D), a QP shall ensure that direct supervision, which does not require a supervising certified applicator to be physically present, is provided. A QP shall ensure that a certified applicator providing direct supervision considers the potential danger to the public or environment if the uncertified applicator misuses a pesticide. A QP shall ensure that a certified applicator providing direct supervision instructs the uncertified applicator in the following areas and has written evidence that the instruction was provided and understood:
 1. Proper loading, mixing, applying, storing, and disposing of the pesticide;
 2. Use of required safety equipment; and
 3. Method and means by which to contact the supervisor immediately.
- F. A QP shall ensure that an applicator has the protective clothing, safety supplies, and equipment specified by the label or labeling of each product used by the applicator and by the PMD's statutes and this Chapter. The QP shall ensure that the applicator is instructed regarding how to use, maintain, clean, and store the protective clothing, safety supplies, and equipment.
- G. A QP, business licensee, and political subdivision shall not allow an uncertified applicator to apply a pesticide for more than 90 days after the applicator is registered.

Historical Note

New Section recodified from R4-29-401 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

R3-8-402. Qualifying a Business or School District

- A. A business licensee or school district shall employ a QP in each category of pest management in which the business licensee or school district provides pest management services. A business licensee or school district may employ multiple QPs.
- B. A QP may not qualify more than one business licensee or school district at a time.
- C. Notwithstanding subsection (B), the director may allow a QP to qualify more than one school district if the director believes that the number of applicators, pest management needs, and distance of the school districts will not hinder the QP's ability to comply with R4-29-403.
- D. A QP may only qualify a business licensee or school district in the categories of pest management in which the QP is registered.

Historical Note

New Section recodified from R4-29-402 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

R3-8-403. Qualifying Party Management

- A. A QP shall be physically present at the primary business office at least once every 14 days and at each branch office at least once every 120 days and ensure that all of the following are done:

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1. Determine pesticide use by reviewing records of pesticide acquisitions, storage, disposal, and current inventory;
 2. Review the pesticide inventory, including pesticides stored on a service vehicle, to determine compliance with labels, labeling, and the PMD's statutes and rules;
 3. Review the training, supervision, and equipping of applicators employed by the business licensee or school district to determine whether the training, supervision, and equipping is sufficient to enable the applicators to comply with labels, labeling, and the PMD's statutes and rules;
 4. Review personnel records to determine whether an applicator employed by the business licensee or school district is registered and certified in all applicable categories within the time-frames specified by R3-8-201;
 5. Review office records and recordkeeping procedures to determine compliance with required recordkeeping and reporting; and
 6. Ensure that any deficiency noted when the responsibilities listed in subsections (A)(1) through (A)(5) are performed is corrected.
- B.** A QP shall develop a written plan that specifies how the duties and responsibilities of the QP are to be fulfilled if the QP is absent or unavailable for any reason. The QP shall ensure that the plan is implemented when the QP is absent or unavailable.
- C.** A QP shall not delegate the responsibility to be physically present at least every 14 days at the primary business office and at least every 120 days at branch offices unless the QP submits written documentation to the PMD from a licensed medical or mental health care professional that indicates the licensed medical or mental health care professional is treating the QP and is of the opinion that the QP is unable to fulfill the responsibility to be physically present as required.
- D.** A QP shall:
1. Be active in the management of all pest management related activities of the business licensee or school district.
 2. During normal business hours, be readily available to the applicators of the business licensee or school district.
 3. Ensure that a business licensee maintains current proof of financial security.
- E.** A temporary QP has the same duties and responsibilities as a regular QP.

Historical Note

New Section recodified from R4-29-403 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

R3-8-404. Branch Supervisors

With respect to a branch office, the branch supervisor shall fulfill all the duties and responsibilities of a QP in this Article, except as follows:

1. The branch supervisor shall be present at the branch office at a minimum of once every 14 days to review pesticide use, storage and disposal and by ensuring the training, equipping, and supervision of the applicators.
2. The branch office may operate in each category of pest management in which the QP is registered even if the branch supervisor is not a certified applicator in the category, though R4-29-201(C) still applies.
3. The branch supervisor is not responsible for ensuring that the business licensee maintains current proof of financial security.

Historical Note

New Section recodified from R4-29-404 at 23 A.A.R.

1976, effective June 30, 2017 (Supp. 17-2).

R3-8-405. Supervision of Qualifying Party

A business licensee or school district shall ensure that a QP of the business licensee or school district receives the training, equipment, and supervision that the QP requires to comply fully with the PMD's statutes and rules and label and labeling directions.

Historical Note

New Section recodified from R4-29-405 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

R3-8-406. Responsible Individuals

A responsible individual for a political subdivision shall

1. Respond to inquiries or concerns by the Director or the Director's designee regarding compliance with A.R.S. Title 3, Chapter 20.
2. Identify for the Director or the Director's designee where records required by this Chapter are maintained, where personal protection equipment is located, and where pesticides are stored.
3. Demonstrate that all applicators are properly certified.

Historical Note

New Section recodified from R4-29-406 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

R3-8-407. Joint Responsibility

- A.** An applicator, qualifying party, branch supervisor, or business licensee who supervises another person shall ensure that the supervised person is properly trained and equipped and receives the supervision necessary for the supervised person to provide pest management services in accordance with the pesticide label and labeling, this Chapter and the PMD statutes.
- B.** An applicator, qualifying party, branch supervisor, or business licensee who supervises another person may be held jointly responsible for the acts or omissions of the supervised person.
- C.** It is an affirmative defense to joint responsibility as described in subsection (B) if an applicator, qualifying party, branch supervisor, or business licensee complied with subsection (A) and can demonstrate that compliance with contemporaneously maintained records.
- D.** A QP and business licensee shall comply with every provision in this Chapter regarding applicator duties and responsibilities.

Historical Note

New Section recodified from R4-29-407 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

R3-8-408. Reserved**Historical Note**

New reserved Section recodified from R4-29-408 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

R3-8-409. Reserved**Historical Note**

New reserved Section recodified from R4-29-409 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

R3-8-410. Reserved**Historical Note**

New reserved Section recodified from R4-29-410 at 23

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A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

R3-8-411. Reserved**Historical Note**

New reserved Section recodified from R4-29-411 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

R3-8-412. Reserved**Historical Note**

New reserved Section recodified from R4-29-412 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

R3-8-413. Reserved**Historical Note**

New reserved Section recodified from R4-29-413 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

R3-8-414. Reserved**Historical Note**

New reserved Section recodified from R4-29-414 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

R3-8-415. Reserved**Historical Note**

New reserved Section recodified from R4-29-415 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

R3-8-416. Reserved**Historical Note**

New reserved Section recodified from R4-29-416 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

R3-8-417. Reserved**Historical Note**

New reserved Section recodified from R4-29-417 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

R3-8-418. Reserved**Historical Note**

New reserved Section recodified from R4-29-418 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

ARTICLE 5. RECORDKEEPING AND REPORTING**R3-8-501. Applicator Recordkeeping**

- A.** An applicator shall make all records required by law and provide the records to the business licensee or political subdivision that supervises, directs, or employs the applicator within five business days.
- B.** Service records. An applicator shall make a record of each pest management service provided. The applicator shall include the following information in the service record:
1. Name and address of the customer;
 2. Specific site at which a pesticide was applied;
 3. Date of service;
 4. Target pest or purpose of service;
 5. Trade name of pesticide applied;
 6. EPA registration number of any restricted use pesticide applied;
 7. Amount of pesticide applied, in terms of percent active ingredient and total amount diluent (water, etc.); total amount of concentrate and total amount of diluent (water, etc.); or total amount of ready-to-use product by weight or volume (e.g. lbs, grams, ounces, etc.); and
 8. Name and certification number of the applicator or if the applicator is uncertified, name of the uncertified applica-

tor and the name and certification number of the applicator providing supervision.

- C.** Pesticide purchase records. An applicator shall make a record of each restricted-use pesticide purchased or otherwise acquired. The applicator shall include the following information in the pesticide purchase record:
1. Date of purchase or acquisition;
 2. Trade name of pesticide;
 3. EPA registration number of pesticide;
 4. Quantity of pesticide purchased or acquired; and
 5. Name and license number of the applicator making the pesticide purchase record or name of the business licensee.
- D.** Pesticide disposal records. An applicator shall make a record of each pesticide disposed, sold, lost, or otherwise relinquished. The applicator shall include the following information in the pesticide disposal record:
1. Date of disposal;
 2. Trade name of pesticide;
 3. EPA registration number of pesticide;
 4. Quantity of pesticide disposed;
 5. Percent active ingredient in the pesticide disposed,
 6. Method of disposal,
 7. Location and type of disposal site or service; and
 8. Name and license number of the applicator making the pesticide disposal record or name of the business licensee.
- E.** WDIIR. An applicator who completes a WDIIR shall:
1. Complete the WDIIR using a form approved by the PMD. A trademark or logo may be placed on the WDIIR if it does not alter the format or substance of the PMD approved form;
 2. Submit an original WDIIR to the QP or branch supervisor within seven days after completing the wood-destroying insect inspection;
 3. Submit a supplemental WDIIR to the QP or branch supervisor within seven days after completing a supplemental wood-destroying insect inspection to verify that a corrective treatment was performed or a condition conducive was corrected. The applicator shall include the original inspection number on the supplemental WDIIR;
 4. If required by a federal agency, complete another inspection form in addition to but not instead of the PMD - approved WDIIR; and
 5. Ensure that the following information is included on the WDIIR:
 - a. Name, address, telephone number, and license number of business licensee. This information may be pre-printed on the WDIIR;
 - b. Date of wood-destroying insect inspection, and the WDIIR number;
 - c. Purpose of the inspection report;
 - d. Whether the report is from an original or supplemental inspection;
 - e. Name of property owner or seller;
 - f. Address of inspected property;
 - g. Inspected and un-inspected structures at the site and the reason why structures are un-inspected;
 - h. Areas of the structure not inspected because they were obstructed or inaccessible and the cause of the obstruction or inaccessibility;
 - i. Whether visible evidence of wood-destroying insects is observed;
 - j. Whether visible evidence of infestation from wood-destroying insects is observed and if so, the date on

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- which a proper management measure is performed, if applicable;
- k. Whether visible damage from wood-destroying insects is observed and if so, the insect causing the damage and the areas in which the damage is observed;
 - l. Whether visible evidence of previous treatment is observed and if so, the nature of the evidence;
 - m. If damage from wood-destroying insects is observed, whether or when the damage will be corrected and whether the damage will be corrected by the business licensee or another company;
 - n. Visible conditions conducive to infestation by wood-destroying insects;
 - o. Diagram or graph of the structure clearly indicating wood-destroying insects, damage, conducive conditions observed, and areas where further inspection is recommended, and a statement or indication on the diagram or graph clearly identifying inaccessible areas; and
 - p. Dated signature and certification number of the individual making the inspection. The individual making the inspection shall sign the WDIIR by hand or electronically and shall not use a signature stamp or allow another individual to affix the signature.

- F. Wood-destroying organism treatment proposal.** An applicator who is qualified under A.R.S. § 3-3632(B) and (E) shall complete a wood-destroying organism treatment proposal using a form approved by the PMD and provide a copy of the proposal to the person requesting the proposal or treatment and the QP.

Historical Note

New Section recodified from R4-29-501 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

R3-8-502. Qualifying Party Recordkeeping

- A.** In addition to ensuring that the records required under R4-29-501 are made, a QP shall ensure that complete records are made and maintained of the training, supervision, and equipment provided to an applicator.
- B.** At a minimum, QP training records must consist of the following information:
 1. Date of the training,
 2. Printed name and signature of the trainee,
 3. Printed name and signature of the trainer,
 4. Brief description of topic(s) covered, and
 5. Copies of labels and any other pertinent material used in training.
- C.** A QP shall maintain the records described in this Section for three years, including after the applicator's employment ending date.

Historical Note

New Section recodified from R4-29-502 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

R3-8-503. Business Licensee and Political Subdivision Recordkeeping and Retention

- A.** In addition to ensuring that the records required under R3-8-501 and R3-8-502 are made and maintained, a business licensee and political subdivision shall make and maintain records of the following:
 1. The specimen label and SDS for each registered pesticide currently used by an applicator supervised, directed or employed by the business licensee or political subdivision;
 2. The financial responsibility required under R3-8-310(A), if applicable;
 3. Purchase records of each pesticide purchased or otherwise acquired that include the following information:
 - a. Date of purchase or acquisition;
 - b. Trade name of pesticide;
 - c. Quantity of pesticide purchased or acquired; and
 - d. Name of the business licensee;
 4. Date on which a service vehicle or trailer is acquired;
 5. Incident reports submitted to the OPM PMD as required under R3-8-504;
 6. A pest management service provided, including a service provided under a warranty;
 7. The evidence of customer refusal of a re-treatment or post-construction treatment required under R3-8-309(J);
 8. Written inspection reports;
 9. Business licensee contracts for pest management services; and
 10. Personnel records including for each applicator supervised, directed or employed by the business licensee or political subdivision:
 - a. Date of hire or beginning of relationship;
 - b. Date on which pest management services are first performed;
 - c. Training and continuing education received;
 - d. Supervision received;
 - e. Protective clothing, safety supplies, and equipment issued to employee;
 - f. Name of supervisor; and
 - g. Employment or relationship ending date.
- B.** A business licensee or political subdivision shall maintain the records as follows:
 1. Records under subsection (A)(1), as long as the registered pesticide is used by the business licensee or political subdivision. The business licensee shall maintain the records required under subsection (A)(1) at the primary business office or branch office from which the registered pesticide is used or at which the registered pesticide is stored;
 2. Records under subsection (A)(2), current;
 3. Records under subsection (A)(3) or R3-8-501(C) and (D), three years from the date of purchase or disposal;
 4. Records under subsection (A)(4), as long as the service vehicle or trailer is owned by the business licensee or political subdivision;
 5. Records under subsection (A)(5), until the statute of limitation for possible legal action resulting from the incident is expired or until resulting legal action is completed;
 6. Records under subsection (A)(6) and (A)(7), three years;
 7. Records under subsections (A)(8) and (A)(9), three years from the date on the inspection report or customer contract;
 8. Records under subsection (A)(10), three years, including after the employment ending date;
 9. WDIIRs completed under subsection (C), three years; and
 10. Records under subsections (A)(5) and (A)(6) that pertain to the use of a restricted-use pesticide shall be maintained separate from other records.
- C.** When an applicator supervised, directed or employed by a business licensee submits a WDIIR, the business licensee shall record the following on the WDIIR:
 1. TARG number,
 2. If the business licensee has the property under warranty:
 - a. Account number,
 - b. Target pest,

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- c. Date of initial treatment,
- d. Date of warranty expiration, and
3. The TARF number of each TARF completed regarding the property after the WDIIR is completed.
- D. TARF.** A business licensee or political subdivision shall:
1. Submit to the PMD a TARF, using a form approved by the PMD, within 30 days of completing an action specified under subsection (D)(3). For the purpose of reporting, a pretreatment or new-construction treatment is complete when no further preventative treatment is necessary until the final grade treatment unless it is necessary to re-treat a disturbed continuous chemical barrier. In a multiple-unit project, a pretreatment or new-construction is complete when no further preventative treatment is necessary for the last unit at the project until the final grade treatment unless it is necessary to re-treat a disturbed continuous chemical barrier;
 2. Include the fee with each TARF and, if applicable, the penalty required under R3-8-103;
 3. Unless exempt under subsection (D)(4), submit a TARF after completing each of the following:
 - a. Pretreatment, including pretreatment of an addition that does not abut the slab of a previously pretreated structure;
 - b. New-construction treatment, including new-construction treatment of an addition that does not abut the slab of a previously new-construction treated structure;
 - c. Final grade treatment;
 - d. Initial corrective termite treatment at a site; and
 - e. WDIIR.
 4. Not submit a TARF after completing:
 - a. A supplemental WDIIR; or
 - b. The first initial corrective insect termite treatment at a site if the business licensee:
 - i. Performed a pretreatment or new-construction treatment at the site,
 - ii. Filed a TARF regarding the pretreatment or new-construction treatment, and
 - iii. Performs the initial corrective termite treatment under R3-8-309(D) or under a warranty.
 5. Include the information required under A.R.S. § 3-3631 and the following on a TARF:
 - a. License number of the licensed business that performed the work;
 - b. Name of the QP;
 - c. For a WDIIR, indicate whether:
 - i. There was evidence of infestation, conditions conducive to infestation, or damage present;
 - ii. Previous treatment was performed for an infestation; and
 - iii. Corrective actions were taken for conditions conducive or damage present;
 - d. For a pretreatment, new-construction treatment, or final grade treatment to establish an exterior vertical barrier, indicate:
 - i. Chemical used and its EPA registration number,
 - ii. Amount of chemical used,
 - iii. Percentage of active ingredient in the chemical used, and
 - iv. Square and linear footage treated; and
 - e. For a post-construction corrective termite treatment, indicate:
 - i. Type of treatment,
 - ii. Target organism,
 - iii. Chemical used and its EPA registration number,
 - iv. Amount of chemical used, and
 - v. Percentage of active ingredient in the chemical used.

Historical Note

New Section recodified from R4-29-503 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

R3-8-504. Reporting Incidents and Bulk Releases

- A.** Notice to PMD of an incident.
1. A business licensee and political subdivision shall provide written notice to the PMD within one business day after one of the following incidents is confirmed by medical personnel or an applicable regulatory agency to be caused by a pesticide applied by the business licensee or political subdivision:
 - a. Death or illness of an individual;
 - b. Contamination of food, feed, drugs, or water supply;
 - c. Contamination of a structure that results in the hospitalization of an occupant or evacuation of the structure; or
 - d. Contamination of the environment that results in evacuation of the area.
 2. A QP shall determine if the business licensee or school district has complied with subsection (A)(1). If compliance has not occurred, the QP shall provide the written notice required by subsection (A)(1) to the PMD within the time-frame specified in subsection (A)(1).
- B.** Notice to PMD of a bulk release.
1. A business licensee or political subdivision shall notify the PMD at the Pesticide Hotline, 1-800-423-8876, as soon as practical after a bulk release, but no later than three hours after the bulk release. If the bulk release is on a public highway or railway, or results in the death of an individual, the person shall immediately report the release to the Arizona Department of Public Safety Duty Office.
 2. A QP shall determine if the business licensee or school district has complied with subsection (B)(1). If compliance has not occurred, the QP shall provide the notices specified in subsection (B)(1) within one business day after the release.

Historical Note

New Section recodified from R4-29-504 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

R3-8-505. Groundwater Protection List Reporting

- A.** For each application of a soil-applied pesticide containing an active ingredient that appears on the Arizona Department of Environmental Quality groundwater protection list and has been detected in Arizona groundwater within the last five years, the QP shall submit the following information on a quarterly basis on a form approved by the PMD:
1. The county of use,
 2. The name of product used and the EPA registration number,
 3. The amount applied,
 4. The dates covered by the report, and
 5. Business license number.
- B.** For the purposes of this Section, "soil-applied pesticide" means a pesticide intended for application to or injection into the soil or for which the label requires or recommends that the application be followed within seventy-two hours by irriga-

CHAPTER 8. DEPARTMENT OF AGRICULTURE - PEST MANAGEMENT DIVISION

tion. Soil-applied pesticides include pesticides applied for final grade treatment, post-construction exterior trench or rod treatment, or pre-emergent weed control, but exclude pesticides applied within the stem wall or footer of a structure or to soil that will be promptly covered with concrete.

Historical Note

New Section recodified from R4-29-505 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

Appendix A. Reserved**Historical Note**

Reserved Article 5, Appendix A recodified from Article 5, Appendix A at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

ARTICLE 6. INSPECTIONS; DISCIPLINARY PROCEDURES**R3-8-601. Inspection of Licensee Records**

- A. Upon written request by the PMD for the production of records, an applicator, QP, branch supervisor, business licensee, or political subdivision shall:
1. Make the records required under this Chapter available for review by the PMD within 24 hours or by a later date specified by the PMD.
 2. Make the records available at the PMD unless another location is agreed upon.
 3. Be available to interpret the submitted records if requested by the PMD.
- B. If a person cannot timely comply with a request made under subsection (A), the person shall immediately provide written notice to the PMD, indicate the reason for noncompliance, and request greater specificity regarding the information to be made available or additional time in which to comply.
- C. If the PMD requests a record from a business licensee or political subdivision when there may be an immediate risk to the health or safety of an individual, non-target animal, or the environment, the business licensee or political subdivision shall provide the record to the PMD within one hour.
- D. An applicator or branch supervisor is only responsible for producing records within the applicator's or branch supervisor's control.

Historical Note

New Section recodified from R4-29-601 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

R3-8-602. Compliance with PMD Monitoring

- A. If the PMD makes a written request of an applicator for a list of the time and location of pest management services that the applicator is scheduled to provide on a specified date, the applicator shall make the information available within 24 hours. The applicator may make the information available in a manner prescribed by the PMD.
- B. If an applicator cannot timely comply with a request made under subsection (A), the applicator shall immediately provide written notice to the PMD, indicate the reason for noncompliance, and request greater specificity regarding the information to be made available or additional time in which to comply.

Historical Note

New Section recodified from R4-29-602 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August

29, 2017 (Supp. 17-2).

R3-8-603. Corrective Work Orders

- A. If the PMD issues a corrective work order requiring a licensee to remedy deficiencies in treatment or to comply with this Chapter or the PMD's statutes, the licensee shall notify the PMD in writing by the date specified in the order that the corrective work is complete.
- B. The director may consider a licensee's compliance with a corrective work order or lack thereof in imposing appropriate disciplinary action.
- C. Failure to timely complete the corrective action or notify the PMD of the completion is a separate ground for disciplinary action.
- D. A corrective work order issued by the PMD is not subject to A.R.S. § 41-1009(E)-(F) unless the PMD indicates in the order that timely compliance with the order will result in no disciplinary action being taken for a deficiency or violation.

Historical Note

New Section recodified from R4-29-603 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

R3-8-604. Disciplinary Action

To determine the disciplinary action that is appropriate, the Director may consider the following:

1. Prior violations,
2. Dishonest or self-serving motive,
3. Amount of experience as a licensee,
4. Submission of false evidence or statements or other deceptive practices during the investigative or disciplinary process,
5. Acknowledgement of wrongful nature of violation,
6. Practices put in place to prevent a similar violation from occurring again,
7. Compliance with a corrective work order,
8. Degree of harm resulting from the violation, and
9. Whether harm resulting from the violation was cured.

Historical Note

New Section recodified from R4-29-604 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

R3-8-605. Consent Agreements

- A. A consent agreement shall include the following:
1. General nature of violations,
 2. Citation to statutes and rules alleged to be violated,
 3. Disciplinary action to be taken,
 4. Effective date of the disciplinary action if different from the date of the consent agreement,
 5. Corrective action to be taken, and
 6. Date to complete any corrective action.
- B. A person entering into a consent agreement with the PMD shall waive the right to a formal hearing, rehearing, or judicial review of the matters contained in the consent agreement.

Historical Note

New Section recodified from R4-29-605 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

R3-8-606. Penalties

- A. When assessing a civil penalty for a violation, the Director shall assess a civil penalty for each violation based on the violation's total point value set out in this Section. To calculate the total point value, the Director shall sum the points for each

CHAPTER 8. DEPARTMENT OF AGRICULTURE - PEST MANAGEMENT DIVISION

aggravating factor and may subtract the points for each mitigating factor. The Director, in his sole discretion, may treat multiple violations as a single violation for the purpose of calculating the civil penalty.

B. Aggravating factors.

1. Pesticide type.
 - a. General use. 2
 - b. Experimental use or special local need. 3
 - c. Restricted use or unregistered. 5
2. Harm to humans and non-target animals.
 - a. None or unverified potential harm. 0
 - b. Potential harm. 3
 - c. Actual, verifiable harm. 5
3. Harm to environment and economic loss.
 - a. None or unverified potential harm. 0
 - b. Potential harm or loss. 3
 - c. Actual, verifiable loss of \$10,000 or less. 4
 - d. Actual, verifiable loss exceeding \$10,000. 5
 - e. Actual, verifiable environmental harm. 5
4. Non-pesticide violations.
 - a. Negligent violations. 4
 - b. Knowing or willful violations. 8
5. Prior similar violations.
 - a. None. 0
 - b. Warning letter within 12 months. 1
 - c. One or more within 36 months, but none within 12 months. 2
 - d. One within 12 months. 3
 - e. More than one within 24 months, but none within 12 months. 4
 - f. More than one within 12 months. 5
6. Culpability.
 - a. Negligent violations. 2
 - b. Knowing or willful violations. 4

C. Mitigating factors. In considering whether to subtract points for mitigating factors, the Director may consider whether the mitigating act occurred before, during, or after PMD's investigation.

1. Good will.
 - a. Admission of fault. 1
 - b. Admission and cooperation 2
 - c. Admission, cooperation, and corrective action prior to request. 3
2. Environmental benefit.
 - a. Clean up. 1
 - b. Move toward less toxic methods. 2
 - c. Develop IPM program. 3
3. Consumer benefit.
 - a. Consumer education. 1
 - b. Make consumer whole. 2
 - c. Extend warranty. 3
4. Other benefits.
 - a. Training (CEU). 1
 - b. Equipment (modification or new). 2
 - c. Purchase and use of computer for TARFs. 3

D. Civil penalty. To calculate the civil penalty, the Director shall:

1. For total point values of 6-10, multiply the value by \$100 and then subtract \$500.
2. For total point values of 11-15, multiply the value by \$100 and then subtract \$600.
3. For total point values of more than 16, assess the maximum penalty of \$1000.

E. Other penalties. In addition to assessing a civil penalty, the Director:

1. For any total point value, may require extra continuing education.

2. For total point values of 6-11, may impose probation requirements.
3. For total point values of 12-17, shall impose probation requirements and may suspend the license, certification, or registration.
4. For total point values of 18 or more, shall suspend or revoke the license, certification, or registration.
5. May take any other action permitted by law, including imposing probation requirements after a suspension ends.

Historical Note

New Section recodified from R4-29-606 at 23 A.A.R. 1976, effective June 30, 2017; Section amended by exempt rulemaking at 23 A.A.R. 1949, effective August 29, 2017 (Supp. 17-2).

R3-8-607. Reserved

Historical Note

New reserved Section recodified from R4-29-607 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

R3-8-608. Reserved

Historical Note

New reserved Section recodified from R4-29-608 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

R3-8-609. Reserved

Historical Note

New reserved Section recodified from R4-29-609 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

ARTICLE 7. RESERVED

R3-8-701. Reserved

Historical Note

New reserved Section recodified from R4-29-701 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

R3-8-702. Reserved

Historical Note

New reserved Section recodified from R4-29-702 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

R3-8-703. Reserved

Historical Note

New reserved Section recodified from R4-29-703 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

R3-8-704. Reserved

Historical Note

New reserved Section recodified from R4-29-704 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

R3-8-705. Reserved

Historical Note

New reserved Section recodified from R4-29-705 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

R3-8-706. Reserved

Historical Note

New reserved Section recodified from R4-29-706 at 23 A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

R3-8-707. Reserved

Historical Note

New reserved Section recodified from R4-29-707 at 23

CHAPTER 8. DEPARTMENT OF AGRICULTURE - PEST MANAGEMENT DIVISION

A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

Historical Note

New reserved Section recodified from R4-29-708 at 23
A.A.R. 1976, effective June 30, 2017 (Supp. 17-2).

R3-8-708. Reserved

3-107. Organizational and administrative powers and duties of the director

A. The director shall:

1. Formulate the program and policies of the department and adopt administrative rules to effect its program and policies.
2. Ensure coordination and cooperation in the department in order to achieve a unified policy of administering and executing its responsibilities.
3. Subject to section 35-149, accept, expend and account for gifts, grants, devises and other contributions of money or property from any public or private source, including the federal government. All contributions shall be included in the annual report under paragraph 6 of this subsection. Monies received under this paragraph shall be deposited, pursuant to sections 35-146 and 35-147, in special funds for the purpose specified, which are exempt from the provisions of section 35-190 relating to lapsing of appropriations.
4. Contract and enter into interagency and intergovernmental agreements pursuant to title 11, chapter 7, article 3 with any private party or public agency.
5. Administer oaths to witnesses and issue and direct the service of subpoenas requiring witnesses to attend and testify at or requiring the production of evidence in hearings, investigations and other proceedings.
6. Not later than September 30 each year, issue a report to the governor and the legislature of the department's activities during the preceding fiscal year. The report may recommend statutory changes to improve the department's ability to achieve the purposes and policies established by law. The director shall provide a copy of the report to the Arizona state library, archives and public records.
7. Establish, equip and maintain a central office in Phoenix and field offices as the director deems necessary.
8. Sign all vouchers to expend money under this title, which shall be paid as other claims against this state out of the appropriations to the department.
9. Coordinate agricultural education efforts to foster an understanding of Arizona agriculture and to promote a more efficient cooperation and understanding among agricultural educators, producers, dealers, buyers, mass media and the consuming public to stimulate the production, consumption and marketing of Arizona agricultural products.
10. Employ staff subject to title 41, chapter 4, article 4 and terminate employment for cause as provided by title 41, chapter 4, article 5.
11. Conduct hearings on appeals by producers regarding the assessed actual costs of the plow up and the penalty of one hundred fifty per cent for unpaid costs pursuant to section 3-204.01. The director may adopt rules to implement this paragraph.
12. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

B. The director may:

1. Authorize in writing any qualified officer or employee in the department to perform any act that the director is authorized or required to do by law.

2. Construct and operate border inspection stations or other necessary facilities in this state and cooperate by joint agreement with an adjoining state in constructing and operating border inspection stations or other facilities within the boundaries of this state or of the adjoining state.
3. Cooperate with agencies of the United States and other states and other agencies of this state and enter into agreements in developing and administering state and federal agricultural programs regarding the use of department officers, inspectors or other resources in this state, in other states or in other countries.
4. Cooperate with the office of tourism in distributing Arizona tourist information.
5. Enter into compliance agreements with any person, state or regulatory agency. For the purposes of this paragraph, "compliance agreement" means any written agreement or permit between a person and the department for the purpose of enforcing the department's requirements.
6. Abate, suppress, control, regulate, seize, quarantine or destroy any agricultural product or foodstuff that is adulterated or contaminated as the result of an accident at a commercial nuclear generating station as defined in section 26-301, paragraph 1. A person owning an agricultural product or foodstuff that has been subject to this paragraph may request a hearing pursuant to title 41, chapter 6, article 10.
7. Engage in joint venture activities with businesses and commodity groups that are specifically designed to further the mission of the department, that comply with the constitution and laws of the United States and that do not compete with private enterprise.
8. Sell, exchange or otherwise dispose of personal property labeled with the "Arizona grown" trademark. Revenues received pursuant to this paragraph shall be credited to the commodity promotion fund established by section 3-109.02.

3-3603. Powers and duties of director

A. The director is responsible for administering this chapter and shall:

1. Adopt rules that are necessary or proper to administer and implement this chapter, including rules that may be more stringent than a corresponding federal law for:

- (a) Administrative provisions.
- (b) Licensure, certification and registration requirements and qualifications, including training and education requirements and financial security standards.
- (c) Health and safety provisions.
- (d) Duties and responsibilities.
- (e) Recordkeeping and production of records requirements.
- (f) Licensee inspection and treatment report requirements.
- (g) Disciplinary action provisions.
- (h) Equipment provisions.
- (i) Advertising requirements.
- (j) Using, storing and applying pesticides and devices used in pest management.

2. Notify the business licensee, applicator and qualifying party in writing of any inquiry into possible violations by the business licensee, applicator or qualifying party by the close of business on the tenth business day after the day on which the director initiated the inquiry if the director anticipates an enforcement action. If in the course of the investigation the division identifies any alleged violations by a different business licensee, applicator or qualified party, the director shall notify the additional alleged violator by the close of business on the tenth business day after the day on which the director initiated the new inquiry.

3. Develop and either conduct or contract to conduct certified applicator and certified qualified applicator tests at locations throughout this state. If the director contracts for these tests, the contracts may provide for specific examination fees or a reasonable range of fees determined by the director to be paid directly to the contractor by the applicant. The director shall make all efforts to contract with private parties to electronically administer the tests.

4. Maintain a computer system to benefit and protect the public that includes the following information on pretreatments, new-construction treatments, final grade treatments, initial corrective treatments and wood-destroying insect inspection reports:

- (a) The name of the individual who performed the work.
- (b) The address or location of the work or project.
- (c) The name of the pest management company.
- (d) The name of the qualifying party.
- (e) The applicator license numbers.
- (f) The nature and date of the work performed.

(g) Any other information that is required by rule.

5. Establish offices the director deems necessary to carry out the purposes of this chapter.
6. Subject to title 41, chapter 4, article 4, employ personnel the director deems necessary to carry out the purposes of this chapter and designate their duties.
7. Oversee the approval, content and method of delivery of continuing education courses.
8. Deny a license to any person who has had a license revoked for a period of five years from the time of revocation.
9. License applicators and qualified applicators and license businesses in accordance with this chapter and rules adopted pursuant to this chapter.
10. Register qualifying parties, branch supervisors and branch offices in accordance with this chapter and rules adopted pursuant to this chapter.
11. Require the payment of a penalty for any late license renewal.
12. Refuse to issue a business license in a name that is not registered with the secretary of state or filed with the Arizona corporation commission.
13. Adopt a wood-destroying insect inspection report form for use by business licensees.
14. Receive monies authorized under this chapter for deposit, pursuant to sections 35-146 and 35-147, in the appropriate funds.

B. The director may:

1. Compel attendance of witnesses, administer oaths or affirmations and take testimony concerning all matters coming within the director's jurisdiction.
2. Issue subpoenas for the taking of depositions, the production of documents and things and the entry on land for inspection and measuring, surveying, photographing, testing or sampling the property or any designated object or operation on the property relevant to an inquiry or complaint.
3. Contract and enter into interagency and intergovernmental agreements with any private party or public agency.
4. With at least twenty-four hours' notice, unless there may be an immediate risk to public health and safety, require a business licensee, qualifying party or applicator to produce specific records. On a showing of good cause by the business licensee, qualifying party or applicator, the director may excuse failure to timely comply.
5. Deny or revoke a license based on the information in the application.
6. Issue advisory notices for de minimis violations.
7. Investigate alleged violations of this chapter, rules adopted pursuant to this chapter, consent agreements, orders and any condition imposed in connection with a license.
8. Require the public to provide notices regarding alleged violations in writing.
9. Pursuant to section 41-1092.11, summarily suspend a license issued under this chapter to protect the health, safety and welfare of the public.

10. Issue a corrective work order requiring a business licensee or applicator to remedy deficiencies in treatment or to comply with this chapter or any rules adopted pursuant to this chapter before or after a formal hearing.
 11. On receipt of a complaint or on initiation of a complaint by the division, investigate any alleged violation of unlicensed activity pursuant to this chapter. If the director determines that an unlicensed person is performing an act that is required to be performed by a person licensed pursuant to this chapter, the director shall take one or more of the following enforcement actions:
 - (a) Issue a cease and desist order requiring the person to immediately cease operations.
 - (b) Impose on the person a civil penalty of not more than \$1,000 for the first occurrence and not more than \$2,000 for the second occurrence.
 - (c) File an action to enjoin the person from engaging in the unlicensed activity.
 - (d) Request that the county attorney or attorney general file charges against the person.
 12. Refuse to issue a business license in a name that is likely to be misleading or to imply any distorted representation about the business.
 13. Register a certified applicator who is a representative of a business licensee as a temporary qualifying party if the qualifying party becomes disassociated with the business licensee.
 14. Provide and conduct classes to train individuals in preparation for certified applicator and certified qualified applicator tests. The director may assess a fee for each class. The director may contract with a commercial enterprise or an accredited institution to conduct the class.
 15. Provide and conduct continuing education classes quarterly. The director may assess a fee for each credit hour. The director may contract with a commercial enterprise or an accredited institution to conduct the class under the supervision of division staff.
 16. Enter into consent agreements and issue consent orders.
 17. Designate by rule devices that are exempt from the licensure, certification and registration requirements of this chapter.
 18. Charge a person for providing copies of rules, forms or policies proposed for adoption and for educational materials.
 19. Require a business licensee or qualifying party to register with the division or to otherwise identify all of the licensed or unlicensed applicators of the business or supervised by the qualifying party.
 20. Require a business licensee to produce records for the purpose of verifying that an individual is an applicator of the business licensee.
 21. Charge a handling fee in addition to the transaction amount for any transaction that could have been completed electronically and was not.
 22. Deny or refuse to renew a license of a person who owes unpaid fees or civil penalties to the division.
 23. Educate the public regarding the licensure, certification and registration requirements of this chapter.
- C. The director or any duly authorized agents may enter any private or public property, including a service vehicle, on which pesticides are located or are reasonably believed to be located to be used for purposes related to pest management or any office of a business engaged in pest management. The owner, managing agent or occupant of the property or office shall permit entry for the purpose of inspecting and investigating conditions

relating to the use, storage, application and disposal of pesticides, including worker safety materials and records pertaining to pest management. If a person refuses to admit the director or the authorized agent in accordance with this subsection, the director may obtain a warrant from a court of competent jurisdiction. If a licensed or certified person refuses to admit the director or an authorized agent in accordance with this subsection during regular business hours, the director may impose disciplinary action on the person.

D. The director or any duly authorized agents may monitor compliance by a person with this chapter and rules adopted pursuant to this chapter while the person is providing pest management services.

E. The director may maintain a list of persons who have violated section 3-3624, subsection A, paragraph 1. The list shall include any known related business names used by those persons. The department shall post the list on the department's website. The director shall remove a person and any known related business names that the person used from the list within ten business days after the person becomes licensed pursuant to this chapter and submits a written request to the director to remove the person's name from the list. The director shall provide a copy of the list to any member of the public that requests a copy.



Simon Larscheidt <simon.larscheidt@azdoa.gov>

Response requested during the 12/28/22 Study Session

Vince Craig <vcraig@azda.gov>

Fri, Dec 30, 2022 at 10:20 AM

To: Anakaren Lemus <anakaren.lemus@azdoa.gov>, Nicole Sornsinsin <Nicole.Sornsinsin@azdoa.gov>, Simon Larscheidt <simon.larscheidt@azdoa.gov>

Dear Parties,

A couple of the Councilpersons had questions and concerns about our Rules Package during the 12/28/22 Study Session. I was unable to satisfactorily answer those questions and was directed by Chairperson Sornsinsin to go back to obtain those answers. I have typed up a response that should address all of the concerns expressed during the Study Session.

It is my hope that I have taken the necessary steps to address this matter and that our Final Rulemaking along with my response can be considered at the next Study Session.

If I failed to follow any specific steps, I apologize. This entire process is very new to me and I welcome any feedback or direction that you may have.

Respectfully,

--

Vince Craig

Associate Director

Arizona Department of Agriculture

Pest Management Division

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Phoenix, AZ 85007**Mailing Address:**1802 W. Jackson Street, #78
Phoenix, AZ 85007**123022 Study Session response to GRRC.pdf**

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Dear Nicole Sornsin:

I thank you and the Committee Members for the opportunity to respond to questions asked by Councilpersons Bentley and Thorward. It is my hope that this additional correspondence addresses the concerns the Council has so that we can move forward with the Final Rulemaking.

The proposed rule for which the Council had questions is as follows:

A.A.C. R3-8-203

B. An applicator shall be of good moral character. A conviction for a felony, or a conviction for a misdemeanor involving moral turpitude, as defined in A.R.S. § 1-215, may demonstrate a lack of good moral character. ~~A conviction for any of the following offenses shall be considered to demonstrate a lack of good moral character:~~ The PMD may refer to A.R.S. § 41-1093.04 for guidance on offenses that justify denial, suspension, or revocation of a license.

- ~~1. Murder involving the death of a law enforcement officer.~~
- ~~2. An offense described in A.R.S. § 13-2308.01 related to terrorism.~~
- ~~3. A sexual offense of any type where the victim is a minor that is a class 4 or higher felony.~~

There was discussion in the Committee about what would constitute as moral turpitude. PMD plans to use the list found in the statutory definition found in A.R.S § 1-215(24): “extortion, burglary, larceny, bribery, embezzlement, robbery, racketeering, money laundering, forgery, fraud, murder, voluntary manslaughter or a sexual offense that requires the individual to register pursuant to section 13-3821.”

Because PMD’s current rules do not reflect this statutory definition (it does not include all violations listed), we believe it is appropriate to update our rules to match this definition. The current language acknowledges only 3 acts of Moral Turpitude: murder a law enforcement officer, sexual misconduct with a minor if it's a class 4 or higher or terrorism. The agency, and the pest control industry which supports the rules package, believe that by only listing those 3 offenses it sends a bad message regarding other offenses. For example, the current PMD rule only lists murder of a law enforcement officer. Such language could suggest that the murder of anyone else is less important. If an applicant has a recent history of theft or burglary, should PMD allow that applicant access to people’s homes? The agency and the industry believe that by updating the rule to reference those acts listed in A.R.S. § 1-215(24), whenever the people of Arizona change or update that statute, the PMD rule will always be in step with State law and would not need to be amended to coincide with how the rest of Arizona defines offenses involving moral turpitude. The industry and the agency believe that adopting the language in the statute also sends a strong message as to what type of applicators should be entering people's homes.

A comment was asked if adopting this new language would mean that the agency would or could bar entry to someone who committed (as an example) offenses such as check forgery from "20 years ago". The answer is likely to be “no,” depending on the status of the applicant’s current

record. The new rule's language already addresses such situations. It specifically states that the PMD may refer to A.R.S. § 41-1093.04 for guidance. That statute specifically states that the offense should be less than "7 years old" and denial would be contingent on whether the state's interest to protect public safety is superior to the person's right to have a license (e.g. a serial rapist, several convictions for murder, child trafficking, etc...). In recent legislation, the requirement of good moral character for PMD applicants was not repealed as it was for other licensees. That decision indicates that the legislature believes that the public must be protected from pest control applicators who have unrestricted access to private property and who have demonstrated lack of good moral character because of certain criminal convictions.

I respectfully thank you and the Council's time and consideration.

Vince Craig, Arizona Department of Agriculture, Pest Management Division

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 6, Article 9



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: February 7, 2023

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: January 19, 2023

SUBJECT: Department of Health Services
Title 9, Chapter 6

This Five-Year-Review Report (5YRR) from the Department of Health Services relates to rules in Title 9, Chapter 6 regarding Communicable Diseases and Infestations. Specifically, this report covers two rules in Article 9, regarding Health Professional Exposures.

The Department did not propose any changes to the rules in the last 5YRR.

Proposed Action

Currently, the Department is not proposing any changes to the rules unless substantive or legislative changes occur.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes, the Department cites to both general and specific statutory authority.

2. **Summary of the agency’s economic impact comparison and identification of stakeholders:**

The EIS stated that the Arizona Department of Health Services (Department) estimated the costs and benefits from the rules as follows:

- The Department – costs less than \$1,000 with drafting the rulemaking and providing education to stakeholders and benefits less than \$1,000 associated with the newly required notification process;
- Correctional facilities, including chief medical officers – costs less than \$1,000 for educating employees about the new notification requirements and costs less than \$1,000 for notifications made according to the rule;
- Occupational health providers – costs less than \$1,000 with notification and benefits less than \$1,000 associated with notification of test results in a short time-frame;
- Health care providers of court-ordered subjects – costs less than \$1,000 with notification and benefits less than \$1,000 from the clarity of the rules;
- Petitioners – no cost and meaningful benefit but not readily subject to quantification from the information in the notification and short notification time-frame;
- Living court-ordered subjects – meaningful benefit but not readily subject to quantification from the information in the notification and short notification time-frame; and
- Employing entities – costs less than \$1,000 related to an increased number of petitioners and benefit less than \$1,000 from the short notification time-frame and clarity of the notification requirements.

The Department believes that the costs and benefits identified in this EIS are generally consistent with the actual costs and benefits of the rules.

3. **Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?**

The Department has determined that the rules in 9 A.A.C. 6, Article 9 impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

4. **Has the agency received any written criticisms of the rules over the last five years?**

No, the Department indicates they did not receive any written criticisms to the rules.

5. **Has the agency analyzed the rules’ clarity, conciseness, and understandability?**

Yes, the Department indicates the rules are clear, concise, and understandable.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

Yes, the Department indicates the rules are consistent with other rules and statutes.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes, the Department indicates the rules are effective in achieving their objectives.

8. **Has the agency analyzed the current enforcement status of the rules?**

Yes, the Department indicates the rules are enforced as written.

9. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

Not applicable. There are no corresponding federal laws to the rules.

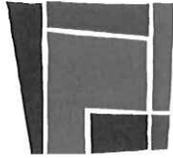
10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The rules were adopted before July 29, 2010 and do not require the issuance of a regulatory permit.

11. **Conclusion**

As mentioned above, the Department is not proposing any changes to the rules. Council staff finds the rules are clear, concise, understandable and effective in achieving their objectives.

Council staff recommends approval of this report.



ARIZONA DEPARTMENT
OF HEALTH SERVICES

December 12, 2022

VIA EMAIL: grrc@azdoa.gov

Nicole Sornsin, Esq., Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Department of Health Services, 9 A.A.C. 6, Article 9, Five-Year-Review Report for Communicable Diseases and Infestations

Dear Ms. Sornsin:

Please find enclosed the Five-Year Review Report (Report) from the Arizona Department of Health Services (Department) for 9 A.A.C. 6, Article 9, Health Professional Exposures, which is due on February 28, 2023.

The Department reviewed the rules in 9 A.A.C. 6, Article 9, with the intention that the rules do not expire pursuant to A.R.S. § 41-1056(J).

The Department hereby certifies compliance with A.R.S. § 41-1091.

For questions about this report, please contact me at (602) 542-1020.

Sincerely,



Stacie Gravito
Director's Designee

SG:lf

Enclosures

Douglas A. Ducey | Governor

Don Herrington | Interim Director



ARIZONA DEPARTMENT OF HEALTH SERVICES

Arizona Department of Health Services

Five-Year-Review Report

Title 9. Health Services

Chapter 6. Department of Health Services -

Communicable Diseases and Infestations

Article 9. Health Professional Exposures

January 2023

1. **Authorization of the rule by existing statutes**

General Statutory Authority: A.R.S. §§ 36-132(A)(1), 36-136(A)(7), and 36-136(G)

Specific Statutory Authority: A.R.S. §§ 36-3207 and 36-136(I)(1)

2. **The objective of each rule:**

Rule	Objective
R9-6-901	To define terms used in the Article to enable the reader to clearly understand the requirements of the Article and allow for consistent interpretation.
R9-6-902	The objectives of the rule are to: <ul style="list-style-type: none"> a. Establish procedures for providing notification of court-ordered test results to applicable persons; and b. Specify additional requirements related to court-ordered test results, such as confidentiality and reporting in accordance with A.A.C. Title 9, Chapter 6.

3. **Are the rules effective in achieving their objectives?**

Yes X No

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

Rule	Explanation

4. **Are the rules consistent with other rules and statutes?**

Yes X No

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation

5. **Are the rules enforced as written?**

Yes X No

If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issue.

Rule	Explanation

6. **Are the rules clear, concise, and understandable?** Yes X No

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

Rule	Explanation

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No X

If yes, please fill out the table below:

Rule	Explanation

8. **Economic, small business, and consumer impact comparison:**

Arizona Revised Statutes (A.R.S.) § 36-136(I)(1) requires the Arizona Department of Health Services (Department) to “define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases.” A.R.S. § 32-3207 allows a health professional to petition a court “for the testing of a patient or deceased person if there is probable cause to believe that in the course of that health professional's practice there was a significant exposure.” A.R.S. § 32-3207(D) requires the Department to adopt rules that establish notification procedures to be used for a court-ordered test result. The Department has adopted in Arizona Administrative Code (A.A.C.) Title 9, Chapter 6, Article 9, rules to implement these statutes. A.A.C. R9-6-901 provides definitions of terms used in the Article, and A.A.C. R9-6-902 establishes the court-ordered test results notification procedures and required contents of a court-ordered test result notification.

The rules in 9 A.A.C. 6, Article 9 were adopted by regular rulemaking effective April 1, 2008. In accordance with A.R.S. § 32-3207(D), the Department established notification procedures for the results of court-ordered tests requested by a health professional who believed that, during the course of practice, there was a significant exposure resulting from the transfer of blood or bodily fluids from another person or a decedent onto the health professional. An economic, small business, and consumer impact statement (EIS) was submitted to the Council as part of the Notice of Final Rulemaking package. The EIS designated annual cost/revenue changes as minimal when less than \$1,000, moderate when between \$1,000 and \$10,000, and substantial when \$10,000 or greater in additional costs or revenues. A cost is listed as significant when meaningful or important, but not

readily subject to quantification. The EIS stated that the Department estimated the costs and benefits from the rules as follows:

- The Department – minimal costs associated with drafting the rulemaking and providing education to stakeholders and minimal benefits associated with the newly required notification process;
- Correctional facilities, including chief medical officers – minimal costs for educating employees about the new notification requirements and minimal costs for notifications made according to the rule;
- Occupational health providers – minimal costs associated with notification and minimal benefits associated with notification of test results in a short time-frame;
- Health care providers of court-ordered subjects – minimal costs associated with notification and minimal benefits from the clarity of the rules;
- Petitioners – no cost and significant benefit from the information in the notification and short notification time-frame;
- Living court-ordered subjects – significant benefit from the information in the notification and short notification time-frame; and
- Employing entities – minimal cost related to an increased number of petitioners and minimal benefit from the short notification time-frame and clarity of the notification requirements.

A.R.S. § 32-3207 does not provide for notification of the Department that a court has ordered testing of a subject or of an A.R.S. § 32-3207 court-ordered subject’s test results. However, the Department does receive results of tests conducted for HIV/AIDS (and other sexually transmitted diseases) ordered by a court pursuant to A.R.S. § 13-1415. The Department determined that the number of reports of A.R.S. § 13-1415 court-ordered tests received annually by the Department has not increased over the last five years. The annual number of A.R.S. § 32-3207 court-ordered tests has decreased over the last five years when it became rather common to order such tests for a short period of time. The Department believes that the costs and benefits identified in this EIS are generally consistent with the actual costs and benefits of the rules.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes ___ No X

10. **Has the agency completed the course of action indicated in the agency’s previous five-year-review report?**

Please state what the previous course of action was and if the agency did not complete the action, please explain why not.

In the 2018 Five-Year-Review Report, the Department stated that there was no plan to amend the rules in 9 A.A.C. 6, Article 9 unless substantive issues, a legislative change, or an issue affecting health and safety arise. No substantive health and safety issues have arisen, nor has there been a legislative change, so the Department has adhered to the plan.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The Department has determined that the rules in 9 A.A.C. 6, Article 9 impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No X

Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?

Federal laws do not apply to the rules in 9 A.A.C. 6, Article 9.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

The rules were adopted before July 29, 2010, and do not require the issuance of a regulatory permit, license, or agency authorization.

14. **Proposed course of action**

If possible, please identify a month and year by which the agency plans to complete the course of action.

Since the rules are consistent with statutory requirements, impose the least burden and costs to those regulated by the rule, and are enforced without difficulty, the Department does not plan to amend the rules unless a substantive or legislative change occurs, or an issue affecting health or safety arises.

TITLE 9. HEALTH SERVICES

CHAPTER 6. DEPARTMENT OF HEALTH SERVICES - COMMUNICABLE DISEASES AND INFESTATIONS

Authority: A.R.S. §§ 36-132(A)(1) and 36-136(G)

ARTICLE 9. HEALTH PROFESSIONAL EXPOSURES

R9-6-901. Definitions

In this Article, unless otherwise specified:

1. "Employer" means an individual in the senior leadership position with the agency or entity for which a health professional works or that individual's designee.
2. "Health professional" means the same as in A.R.S. § 32-3201.
3. "Occupational health provider" means a physician, physician assistant, registered nurse practitioner, or registered nurse, as defined in A.R.S. § 32-1601, who provides medical services for work-related health conditions for an agency or entity for which a health professional works.
4. "Petitioner" means a health professional who petitions a court, under A.R.S. § 32-3207, to order testing of an individual.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 1953, effective April 3, 2002 (Supp. 02-2). Section R9-6-901 recodified to R9-6-1001 at 13 A.A.R. 1745, effective April 27, 2007 (Supp. 07-2). New Section made by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2).

R9-6-902. Notice of Test Results

- A. Within 10 working days after the date of receipt of a laboratory report for a test ordered by a health care provider as a result of a court order issued under A.R.S. § 32-3207, the ordering health care provider shall:
 1. If the test is conducted on the blood of a court-ordered subject who is incarcerated or detained:
 - a. Provide a written copy of the laboratory report to the chief medical officer of the correctional facility in which the court-ordered subject is incarcerated or detained; and
 - b. Notify the petitioner's occupational health provider in writing of the results of the test; and
 2. If the test is conducted on the blood of a court-ordered subject who is not incarcerated or detained:
 - a. Unless the court-ordered subject is deceased, notify the court-ordered subject as specified in subsection (D);
 - b. If requested by the court-ordered subject, provide a written copy of the laboratory report to the court-ordered subject; and
 - c. Notify the petitioner's occupational health provider in writing of the results of the test.
- B. Within five working days after the date of receipt of a laboratory report for a court-ordered subject who is incarcerated or detained, the chief medical officer of the correctional facility in which the court-ordered subject is incarcerated or detained shall:
 1. Notify the court-ordered subject as specified in subsection (D);
 2. If requested by the court-ordered subject, provide a written copy of the laboratory report to the court-ordered subject; and
 3. Notify the officer in charge of the correctional facility as specified in subsection (E).
- C. Within five working days after the petitioner's occupational health provider receives written notice of test results as required in subsection (A), the petitioner's occupational health provider shall notify the petitioner, as specified in subsection (D), and the petitioner's employer, as specified in subsection (E).
- D. An individual who provides notice to a court-ordered subject or petitioner as required under subsection (A), (B) or (C) shall describe the test results and provide or arrange for the court-ordered subject or petitioner to receive the following information about each agent for which the court-ordered subject was tested:
 1. A description of the disease or syndrome caused by the agent, including its symptoms;
 2. A description of how the agent is transmitted to others;
 3. The average window period for the agent;
 4. An explanation that a negative test result does not rule out infection and that retesting for the agent after the average window period has passed is necessary to rule out infection;
 5. Measures to reduce the likelihood of transmitting the agent to others and that it is necessary to continue the measures until a negative test result is obtained after the average window period has passed or until an infection, if detected, is eliminated;
 6. That it is necessary to notify others that they may be or may have been exposed to the agent by the individual receiving notice;
 7. The availability of assistance from local health agencies or other resources; and
 8. The confidential nature of the court-ordered subject's test results.
- E. An individual who provides notice to the officer in charge of a correctional facility, as required under subsection (B), or to the petitioner's employer, as required under subsection (C), shall describe the test results and provide or arrange for the officer in charge of the facility or the employer to receive the following information about each agent for which a court-ordered subject's test results indicate the presence of infection:
 1. A description of the disease or syndrome caused by the agent, including its symptoms;
 2. A description of how the agent is transmitted to others;

CHAPTER 6. DEPARTMENT OF HEALTH SERVICES - COMMUNICABLE DISEASES AND INFESTATIONS

3. Measures to reduce the likelihood of transmitting the agent to others;
 4. The availability of assistance from local health agencies or other resources; and
 5. The confidential nature of the court-ordered subject's test results.
- F.** An individual who provides notice under this Section shall not provide a copy of the laboratory report to anyone other than the court-ordered subject and, if the court-ordered subject is incarcerated or detained, the chief medical officer of the correctional facility in which the court-ordered subject is incarcerated or detained.
- G.** An individual who provides notice under this Section shall protect the confidentiality of the court-ordered subject's personal identifying information and test results.
- H.** A health care provider who orders a test on the blood of a court-ordered subject who is not incarcerated or detained may, at the time the court-ordered subject is seen by the ordering health care provider, present the court-ordered subject with a telephone number and instruct the court-ordered subject to contact the ordering health care provider after a stated period of time for notification of the test results.
- I.** A health care provider who orders a test has not satisfied the obligation of the health care provider to notify under subsection (A) if:
1. The health care provider provides a telephone number and instructions, as allowed by subsection (H), for a court-ordered subject to contact the ordering health care provider and receive the information specified in subsection (D); and
 2. The court-ordered subject does not contact the ordering health care provider.
- J.** A health care provider who orders a test on a court-ordered subject's blood shall comply with all applicable reporting requirements contained in this Chapter.

Historical Note

Section renumbered from R9-6-409 and amended by final rulemaking at 8 A.A.R. 1953, effective April 3, 2002 (Supp. 02-2). Section R9-6-902 recodified to R9-6-1002 at 13 A.A.R. 1745, effective April 27, 2007 (Supp. 07-2). New Section made by final rulemaking at 14 A.A.R. 1502, effective April 1, 2008 (Supp. 08-2).

Statutory Authority

36-132. [Department of health services; functions; contracts](#)

A. The department, in addition to other powers and duties vested in it by law, shall:

1. Protect the health of the people of the state.
2. Promote the development, maintenance, efficiency and effectiveness of local health departments or districts of sufficient population and area that they can be sustained with reasonable economy and efficient administration, provide technical consultation and assistance to local health departments or districts, provide financial assistance to local health departments or districts and services that meet minimum standards of personnel and performance and in accordance with a plan and budget submitted by the local health department or districts to the department for approval, and recommend the qualifications of all personnel.
3. Collect, preserve, tabulate and interpret all information required by law in reference to births, deaths and all vital facts, and obtain, collect and preserve information relating to the health of the people of this state and the prevention of diseases as may be useful in the discharge of functions of the department not in conflict with chapter 3 of this title and sections 36-693, 36-694 and 39-122.
4. Operate such sanitariums, hospitals or other facilities assigned to the department by law or by the governor.
5. Conduct a statewide program of health education relevant to the powers and duties of the department, prepare educational materials and disseminate information as to conditions affecting health, including basic information for the promotion of good health on the part of individuals and communities, and prepare and disseminate technical information concerning public health to the health professions, local health officials and hospitals. In cooperation with the department of education, the department of health services shall prepare and disseminate materials and give technical assistance for the purpose of education of children in hygiene, sanitation and personal and public health, and provide consultation and assistance in community organization to counties, communities and groups of people.
6. Administer or supervise a program of public health nursing, prescribe the minimum qualifications of all public health nurses engaged in official public health work, and encourage and aid in coordinating local public health nursing services.
7. Encourage and aid in coordinating local programs concerning control of preventable diseases in accordance with statewide plans that shall be formulated by the department.
8. Encourage and aid in coordinating local programs concerning maternal and child health, including midwifery, antepartum and postpartum care, infant and preschool health and the health of

schoolchildren, including special fields such as the prevention of blindness and conservation of sight and hearing.

9. Encourage and aid in the coordination of local programs concerning nutrition of the people of this state.

10. Encourage, administer and provide dental health care services and aid in coordinating local programs concerning dental public health, in cooperation with the Arizona dental association. The department may bill and receive payment for costs associated with providing dental health care services and shall deposit the monies in the oral health fund established by section 36-138.

11. Establish and maintain adequate serological, bacteriological, parasitological, entomological and chemical laboratories with qualified assistants and facilities necessary for routine examinations and analyses and for investigations and research in matters affecting public health.

12. Supervise, inspect and enforce the rules concerning the operation of public bathing places and public and semipublic swimming pools adopted pursuant to section 36-136, subsection I, paragraph 10.

13. Take all actions necessary or appropriate to ensure that bottled water sold to the public and water used to process, store, handle, serve and transport food and drink are free from filth, disease-causing substances and organisms and unwholesome, poisonous, deleterious or other foreign substances. All state agencies and local health agencies involved with water quality shall provide to the department any assistance requested by the director to ensure that this paragraph is effectuated.

14. Enforce the state food, caustic alkali and acid laws in accordance with chapter 2, article 2 of this title, chapter 8, article 1 of this title and chapter 9, article 4 of this title, and collaborate in the enforcement of the federal food, drug, and cosmetic act (52 Stat. 1040; 21 United States Code sections 1 through 905).

15. Recruit and train personnel for state, local and district health departments.

16. Conduct continuing evaluations of state, local and district public health programs, study and appraise state health problems and develop broad plans for use by the department and for recommendation to other agencies, professions and local health departments for the best solution of these problems.

17. License and regulate health care institutions according to chapter 4 of this title.

18. Issue or direct the issuance of licenses and permits required by law.

19. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.

20. Subject to the availability of monies, develop and administer programs in perinatal health care, including:

- (a) Screening in early pregnancy for detecting high-risk conditions.
- (b) Comprehensive prenatal health care.
- (c) Maternity, delivery and postpartum care.
- (d) Perinatal consultation, including transportation of the pregnant woman to a perinatal care center when medically indicated.
- (e) Perinatal education oriented toward professionals and consumers, focusing on early detection and adequate intervention to avert premature labor and delivery.

21. License and regulate the health and safety of group homes for persons with developmental disabilities. The department shall issue a license to an accredited facility for a period of the accreditation, except that no licensing period shall be longer than three years. The department is authorized to conduct an inspection of an accredited facility to ensure that the facility meets health and safety licensure standards. The results of the accreditation survey shall be public information. A copy of the final accreditation report shall be filed with the department of health services. For the purposes of this paragraph, "accredited" means accredited by a nationally recognized accreditation organization.

B. The department may accept from the state or federal government, or any agency of the state or federal government, and from private donors, trusts, foundations or eleemosynary corporations or organizations grants or donations for or in aid of the construction or maintenance of any program, project, research or facility authorized by this title, or in aid of the extension or enforcement of any program, project or facility authorized, regulated or prohibited by this title, and enter into contracts with the federal government, or an agency of the federal government, and with private donors, trusts, foundations or eleemosynary corporations or organizations, to carry out such purposes. All monies made available under this section are special project grants. The department may also expend these monies to further applicable scientific research within this state.

C. The department, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

D. The department may enter into contracts with organizations that perform nonrenal organ transplant operations and organizations that primarily assist in the management of end-stage renal disease and related problems to provide, as payors of last resort, prescription medications necessary to supplement treatment and transportation to and from treatment facilities. The contracts may provide for department payment of administrative costs it specifically authorizes.

[32-3207. Health professionals disease hazard; testing; petition; definition](#)

A. A health professional may petition the court to allow for the testing of a patient or deceased person if there is probable cause to believe that in the course of that health professional's practice there was a significant exposure.

B. The court shall hear the petition promptly. If the court finds that probable cause exists to believe that significant exposure occurred between the patient or deceased person and the health professional, the court shall order that either:

1. The person who transferred blood or bodily fluids onto the health professional provide two specimens of blood for testing.

2. If the person is deceased, the medical examiner draw two specimens of blood for testing.

C. On written notice from the employer of the health professional, the medical examiner is authorized to draw two specimens of blood for testing during the autopsy or other examination of the deceased person's body. The medical examiner shall release the specimen to the employing agency or entity for testing only after the court issues its order pursuant to subsection B. If the court does not issue an order within thirty days after the medical examiner collects the specimen, the medical examiner shall destroy the specimen.

D. Notice of the test results shall be provided as prescribed by the department of health services to the person tested, the health professional named in the petition and the health professional's employer. If the person is incarcerated or detained, the notice shall also be provided to the chief medical officer of the facility in which the person is incarcerated or detained.

E. For the purposes of this section, "significant exposure" means contact of a person's ruptured or broken skin or mucous membranes with another person's blood or bodily fluid, other than tears, saliva or perspiration, of a magnitude that the centers for disease control of the United States public health service have epidemiologically demonstrated can result in the transmission of blood borne or bodily fluid carried diseases.

[36-136. Powers and duties of director; compensation of personnel; rules; definitions](#)

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.

2. Perform all duties necessary to carry out the functions and responsibilities of the department.

3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.

4. Administer and enforce the laws relating to health and sanitation and the rules of the department.

5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.

6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.

7. Prepare sanitary and public health rules.

8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement

entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. If in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

F. The compensation of all personnel shall be as determined pursuant to section 38-611.

G. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for not longer than eighteen months.

I. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar

as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.

2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.

3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.

4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:

(a) Served at a noncommercial social event such as a potluck.

(b) Prepared at a cooking school that is conducted in an owner-occupied home.

(c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.

(d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fundraising or an employee social event.

(e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.

(f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.

(g) A cottage food product that is not potentially hazardous or a time or temperature control for safety food and that is prepared in a kitchen of a private home for commercial purposes, including fruit jams and jellies, dry mixes made with ingredients from approved sources, honey, dry pasta and roasted nuts. Cottage food products must be packaged at home with an attached label that clearly states the name and registration number of the food preparer, lists all the ingredients in the product and the product's production date and includes the following statement: "This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection." If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must complete a food handler training course from an accredited program and maintain active certification. The food preparer must register with an online registry established by the department pursuant to paragraph 13 of this subsection. The food preparer must display the preparer's certificate of registration when operating as a temporary food establishment. For the purposes of this subdivision, "not potentially hazardous" means cottage food products that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

(h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.

(i) Produce in a packing or holding facility that is subject to the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) as administered by the Arizona department of agriculture pursuant to title 3, chapter 3, article 4.1. For the purposes of this subdivision, "holding", "packing" and "produce" have the same meanings prescribed in section 3-525.

(j) Spirituous liquor produced on the premises licensed by the department of liquor licenses and control. This exemption includes both of the following:

(i) The area in which production and manufacturing of spirituous liquor occurs, as defined in an active basic permit on file with the United States alcohol and tobacco tax and trade bureau.

(ii) The area licensed by the department of liquor licenses and control as a microbrewery, farm winery or craft distiller that is open to the public and serves spirituous liquor and commercially prepackaged food, crackers or pretzels for consumption on the premises. A producer of spirituous liquor may not provide, allow or expose for common use any cup, glass or other receptacle used for drinking purposes. For the purposes of this item, "common use" means the use of a drinking receptacle for drinking purposes by or for more than one person without the receptacle being thoroughly cleansed and sanitized between consecutive uses by methods prescribed by or acceptable to the department.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for preserving or storing food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparing food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. Rules adopted pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.

12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.

13. Establish an online registry of food preparers that are authorized to prepare cottage food products for commercial purposes pursuant to paragraph 4 of this subsection. A registered food preparer shall renew the registration every three years and shall provide to the department updated registration information within thirty days after any change.

14. Prescribe an exclusion for fetal demise cases from the standardized survey known as "the hospital consumer assessment of healthcare providers and systems".

J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

K. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

L. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

N. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection I of this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.

O. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption is exempt from the rules prescribed in subsection I of this section.

P. Until the department adopts an exclusion by rule as required by subsection I, paragraph 14 of this section, the standardized survey known as "the hospital consumer assessment of healthcare providers and systems" may not include patients who experience a fetal demise.

Q. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (j) of this section, spirituous liquor and commercially prepackaged food, crackers or pretzels that meet the requirements of subsection I, paragraph 4, subdivision (j) of this section are exempt from the rules prescribed in subsection I of this section.

R. For the purposes of this section:

1. "Cottage food product":

(a) Means a food that is not potentially hazardous or a time or temperature control for safety food as defined by the department in rule and that is prepared in a home kitchen by an individual who is registered with the department.

(b) Does not include foods that require refrigeration, perishable baked goods, salsas, sauces, fermented and pickled foods, meat, fish and shellfish products, beverages, acidified food products, nut butters or other reduced-oxygen packaged products.

2. "Fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

36-3207. Health care directives: effect on insurance and medical coverage

A. A person shall not require a person to execute or prohibit a person from executing a health care directive as a condition for providing health care services or insurance.

B. An insurer shall not refuse to pay for goods or services under a patient's insurance policy because the decision to use the goods or services was made by the patient's surrogate.

C. If a patient's death follows the withholding or withdrawing of any medical care pursuant to a surrogate's decision not expressly precluded by the patient's health care directive, that death does not constitute a homicide or a suicide and does not impair or invalidate an insurance policy, an annuity or any other contract that is conditioned on the life or death of the patient regardless of any terms of that contract.

DEPARTMENT OF HEALTH SERVICES
Title 9, Chapter 6, Article 3



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: February 7, 2023

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: January 19, 2023

SUBJECT: Department of Health Services
Title 9, Chapter 6

This Five-Year-Review Report (5YRR) from the Department of Health Services relates to rules in Title 9, Chapter 6, Article 3 regarding Control Measures for Communicable Diseases and Infestations.

This is the first 5YRR of these rules that were amended effectively on January 1, 2018.

Proposed Action

The Department plans to amend their rules in order to make them more clear, concise, understandable, and effective in achieving their objectives. The department plans to submit an Expedited Rulemaking to the Council that addresses the issues identified in the report, by July 2023.

1. Has the agency analyzed whether the rules are authorized by statute?

Yes, the Department cites to both general and specific statutory authority.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The requirements in 9 A.A.C. 6, Article 3 are the minimum necessary to prevent the spread of communicable diseases, many of which could be deadly, and to ensure public health and safety. The Department believes the impacts of these rule changes include improving clarity to reduce confusion, simplifying submission processes, and providing more flexibility in removal from exclusion from working. The Department believes there are no less intrusive or less costly alternatives for achieving the purpose of the rule; the changes impose a minimal-to-moderate burden while observing a minimal-to-substantial benefit.

The Department identifies stakeholders as: the Department; local health agencies; local agencies responsible for vector control; health care providers and institutions; correctional facilities, including both public and private; schools, child care establishments, and shelters; businesses employing individuals infected with a communicable disease; owners or operators of aquatic venues; health insurance providers, including the Arizona Health Care Cost Containment System (AHCCCS); cases or suspect cases of a communicable disease; contacts of individuals infected with a communicable disease; other patients or residents in a health care institution; other prisoners or detainees in a correctional facility; and the general public.

3. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?

The Department believes that the protection of the health and safety of the citizens of Arizona, as well as visitors, outweigh the probable costs of the rules. The Department also believes that the rules impose the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

4. Has the agency received any written criticisms of the rules over the last five years?

The Department indicates that while they did not receive any written criticisms to the rules, they received written suggestions about the rules. Council staff believes the Department properly responded.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

Yes, the Department indicates the rules are overall clear, concise, and understandable with the exception of the following:

R9-6-305 - Control Measures for Multi-drug resistant Organisms
R9-6-381 - Syphilis

6. Has the agency analyzed the rules' consistency with other rules and statutes?

Yes, the Department indicates the rules are consistent with other rules and statutes with the exception of the following:

R9-6-303 - Isolation, Quarantine, Exclusion, and Other Control Measures

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes, the Department indicates the rules are overall effective in achieving their objectives with the exception of the following:

R9-6-338 - Gonorrhea

R9-6-361 - Novel Coronavirus (e.g., SARS or MERS)

R9-6-362 - Pediculosis (Lice Infection)

8. **Has the agency analyzed the current enforcement status of the rules?**

Yes, the Department indicates the rules are overall enforced as written with the exception of the following:

R9-6-361 - Novel Coronavirus (e.g., SARS or MERS)

9. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

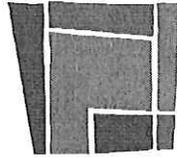
The Department indicates the rules are consistent with federal guidance, such as guidance from the Center for Disease Control and Prevention.

10. **For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?**

Not applicable. The rules do not require the issuance of a regulatory permit.

11. **Conclusion**

As mentioned above, the Department is proposing to amend the rules in order to make them more clear, concise, understandable, and effective in achieving their objectives. The Department plans to submit a Notice of Final Expedited rulemaking to the Council by July 2023.



ARIZONA DEPARTMENT OF HEALTH SERVICES

December 12, 2022

VIA EMAIL: grrc@azdoa.gov

Nicole Sornsin, Esq., Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Avenue, Suite 305
Phoenix, AZ 85007

RE: Department of Health Services, 9 A.A.C. 6, Article 3, Five-Year-Review Report for Communicable Diseases and Infestations

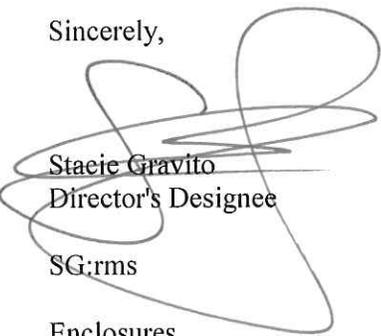
Dear Ms. Sornsin:

Please find enclosed the Five-Year Review Report (Report) from the Arizona Department of Health Services (Department) for 9 A.A.C. 6, Article 3, which is due on or before December 30, 2022.

The Department hereby certifies compliance with A.R.S. § 41-1091.

For questions about this Report, please contact Ruthann Smejkal at Ruthann.Smejkal@azdhs.gov.

Sincerely,



Stacie Gravito
Director's Designee

SG:rms

Enclosures

Douglas A. Ducey | Governor

Don Herrington | Interim Director

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Health and Wellness for all Arizonans



Arizona Department of Health Services

Five-Year-Review Report

Title 9. Health Services

Chapter 6. Department of Health Services

Communicable Diseases and Infestations

Article 3. Control Measures for Communicable Diseases and Infestations

December 2022

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 36-136(G)

Specific Statutory Authority: A.R.S. §§ 36-136(I)(1), 36-788, 36-789

2. The objective of each rule:

Rule	Objective
R9-6-301	To define terms used the Article to enable the reader to understand clearly the requirements of the Article and allow for consistent interpretation.
R9-6-302	To specify the responsibilities of a local health agency in controlling the spread of a communicable disease.
R9-6-303	To specify the processes by which a local health agency may isolate or quarantine an individual or group of individuals.
R9-6-304	To specify the responsibilities of a person in charge of a food establishment in ensuring compliance with food handler exclusion requirements.
R9-6-305	To establish requirements for informing a receiving health care institution or correctional facility when an individual who is known to be infected with a multi-drug-resistant organism is transferred to the health care institution or correctional facility.
R9-6-306	To specify the case control measures for amebiasis.
R9-6-307	To specify the case control measures for anaplasmosis.
R9-6-308	To specify the case control measures and environmental control measures for anthrax.
R9-6-309	To specify the case control measures and environmental control measures for arboviral infections.
R9-6-310	To specify the case control measures for babesiosis.
R9-6-311	To specify the case control measures for basidiobolomycosis.
R9-6-312	To specify the case control measures and environmental control measures for botulism.
R9-6-313	To specify the case control measures for brucellosis.
R9-6-314	To specify the case control measures for campylobacteriosis.
R9-6-315	To specify the case control measures and outbreak control measures for carbapenem-resistant enterobacteriaceae.
R9-6-316	To specify the case control measures for Chagas infection or disease.

R9-6-317	To specify the case control measures and contact control measures for chancroid.
R9-6-318	To specify the case control measures and environmental control measures for chikungunya.
R9-6-319	To specify the case control measures and contact control measures for <i>Chlamydia trachomatis</i> infections.
R9-6-320	To specify the case control measures and contact control measures for cholera.
R9-6-321	To specify the case control measures for <i>Clostridium difficile</i> infections.
R9-6-322	To specify the outbreak control measures for coccidioidomycosis.
R9-6-323	To specify the case control measures for Colorado tick fever.
R9-6-324	To specify the case control measures and outbreak control measures for acute conjunctivitis.
R9-6-325	To specify the case control measures for Creutzfeldt-Jakob disease.
R9-6-326	To specify the case control measures and environmental control measures for cryptosporidiosis.
R9-6-327	To specify the case control measures for <i>Cyclospora</i> infection.
R9-6-328	To specify the case control measures for cysticercosis.
R9-6-329	To specify the case control measures and environmental control measures for dengue.
R9-6-330	To specify the control measures for an outbreak of diarrhea, nausea, or vomiting and related environmental control measures.
R9-6-331	To specify the case control measures and contact control measures for diphtheria.
R9-6-332	To specify the case control measures for ehrlichiosis.
R9-6-333	To specify the case control measures and contact control measures for an emerging or exotic disease.
R9-6-334	To specify the case control measures for viral or parasitic encephalitis.
R9-6-335	To specify the case control measures and environmental control measures for Shiga toxin-producing <i>Escherichia coli</i> .
R9-6-336	To specify the case control measures for giardiasis.
R9-6-337	To specify the case control measures for glanders.
R9-6-338	To specify the case control measures and contact control measures for gonorrhea.
R9-6-339	To specify the case control measures and contact control measures for <i>Haemophilus influenzae</i> invasive disease.
R9-6-340	To specify the case control measures and contact control measures for Hansen's disease (Leprosy).
R9-6-341	To specify the case control measures and environmental control measures for hantavirus infection.
R9-6-342	To specify the case control measures and contact control measures for hemolytic uremic syndrome.
R9-6-343	To specify the case control measures and contact control measures for hepatitis A.
R9-6-344	To specify the case control measures and contact control measures for hepatitis B or hepatitis B co-infected with hepatitis D.
R9-6-345	To specify outbreak control measures for hepatitis C.
R9-6-346	To specify the case control measures for hepatitis E.
R9-6-347	To specify the case control measures, contact control measures, and environmental control measures for HIV infection.
R9-6-348	To specify the case control measures for influenza-associated mortality in a child.

R9-6-349	To specify the case control measures and environmental control measures for legionellosis.
R9-6-350	To specify the case control measures for leptospirosis.
R9-6-351	To specify the case control measures for listeriosis.
R9-6-352	To specify the case control measures for Lyme disease.
R9-6-353	To specify the case control measures for lymphocytic choriomeningitis.
R9-6-354	To specify the case control measures and environmental control measures for malaria.
R9-6-355	To specify the case control measures and contact control measures for measles.
R9-6-356	To specify the case control measures for melioidosis.
R9-6-357	To specify the case control measures and contact control measures for meningococcal invasive disease.
R9-6-358	To specify the case control measures and outbreak control measures for methicillin-resistant <i>Staphylococcus aureus</i> (MRSA).
R9-6-359	To specify the case control measures and contact control measures for mumps.
R9-6-360	To specify the outbreak control measures and environmental control measures for norovirus.
R9-6-361	To specify the case control measures and contact control measures for novel coronaviruses, including severe acute respiratory syndrome or Middle East respiratory syndrome (SARS and MERS).
R9-6-362	To specify the case control measures and contact control measures for pediculosis.
R9-6-363	To specify the case control measures and contact control measures for pertussis.
R9-6-364	To specify the case control measures for and contact control measures plague.
R9-6-365	To specify the case control measures for poliomyelitis.
R9-6-366	To specify the case control measures and environmental control measures for psittacosis.
R9-6-367	To specify the case control measures for Q fever.
R9-6-368	To specify the case control measures and contact control measures for rabies in a human.
R9-6-369	To specify the case control measures for borreliosis (relapsing fever).
R9-6-370	To specify the control measures for an outbreak of respiratory disease in a health care institution or correctional facility.
R9-6-371	To specify the case control measures and contact control measures for rubella.
R9-6-372	To specify the case control measures and contact control measures for congenital rubella syndrome.
R9-6-373	To specify the case control measures and environmental control measures for salmonellosis.
R9-6-374	To specify the case control measures, contact control measures, and outbreak control measures for scabies.
R9-6-375	To specify the case control measures for shigellosis.
R9-6-376	To specify the case control measures and contact control measures for smallpox.
R9-6-377	To specify the case control measures and environmental control measures for spotted fever rickettsiosis.
R9-6-378	To specify the case control measures for non-invasive streptococcal group A infection and outbreak control measures for invasive streptococcal group A infection.
R9-6-379	To specify the case control measures for streptococcal group B infection in an infant younger than 90 days of age.
R9-6-380	To specify the outbreak control measures for <i>Streptococcus pneumoniae</i> invasive infection.

R9-6-381	To specify the case control measures, contact control measures, and outbreak control measures for syphilis.
R9-6-382	To specify the case control measures for taeniasis.
R9-6-383	To specify the case control measures for tetanus.
R9-6-384	To specify the case control measures for toxic shock syndrome.
R9-6-385	To specify the case control measures for trichinosis.
R9-6-386	To specify the case control measures and contact control measures for tuberculosis. To specify when an individual is not considered to be a tuberculosis case.
R9-6-387	To specify the case control measures for tularemia.
R9-6-388	To specify the case control measures and contact control measures for typhoid fever.
R9-6-389	To specify the case control measures for typhus fever.
R9-6-390	To specify the case control measures for a vaccinia-related adverse event.
R9-6-391	To specify the case control measures for vancomycin-resistant or vancomycin-intermediate <i>Staphylococcus aureus</i> .
R9-6-392	To specify the case control measures and contact control measures for varicella.
R9-6-393	To specify the case control measures for a <i>Vibrio</i> infection.
R9-6-394	To specify the case control measures and contact control measures for viral hemorrhagic fever.
R9-6-395	To specify the case control measures and environmental control measures for West Nile virus-related syndromes
R9-6-396	To specify the case control measures and environmental control measures for yellow fever.
R9-6-397	To specify the case control measures for yersiniosis.
R9-6-398	To specify the case control measures and environmental control measures for Zika virus infections.

3. **Are the rules effective in achieving their objectives?** Yes X No __

If not, please identify the rule(s) that is not effective and provide an explanation for why the rule(s) is not effective.

Rule	Explanation
R9-6-338	The rule is effective in achieving its purpose. However, because tetracycline ophthalmic ointment is no longer available in the United States, the rule would be more effective if another alternative to erythromycin ophthalmic ointment were included in the rule.
R9-6-361	The rule is effective in achieving its purpose. However, because it was not feasible for a local health agency to comply with the requirements in subsection (A)(2) once the COVID-19 infection became widespread, the rule would be more effective if changes were made to address the current widespread infection and similar widespread infections in the future.
R9-6-362	The rule is effective in achieving its purpose. However, it would be just as effective and less burdensome if case control measures for pediculosis (lice infestation) in schools did not require exclusion of a student who is a case, since the benefit of a child's education may outweigh the public health benefits of a case being excluded.

4. **Are the rules consistent with other rules and statutes?** Yes __ No X

If not, please identify the rule(s) that is not consistent. Also, provide an explanation and identify the provisions that are not consistent with the rule.

Rule	Explanation
R9-6-303	The citation in subsection (F) to A.R.S. § 36-136(G) is incorrect and should be changed to A.R.S. § 36-136(H).

5. **Are the rules enforced as written?** Yes __ No X

If not, please identify the rule(s) that is not enforced as written and provide an explanation of the issues with enforcement. In addition, include the agency's proposal for resolving the issue.

Rule	Explanation
R9-6-361	The Department has not enforced subsection (A) of the rule for COVID-19 infections because it was not feasible for a diagnosing health care provider, health care institution, or local health agency to comply with the requirements in the rule once the infection became widespread.

6. **Are the rules clear, concise, and understandable?** Yes X No __

If not, please identify the rule(s) that is not clear, concise, or understandable and provide an explanation as to how the agency plans to amend the rule(s) to improve clarity, conciseness, and understandability.

Rule	Explanation
R9-6-305	The rule is clear, concise, and understandable, but it would be clearer if a single term were used, rather than "case," "patient," and "individual." The rule would also be improved if it clarified that the multi-drug-resistant organism could be a fungus, and that the receiving facility is informed of the type of precaution measures being taken for the case, as is the current practice.
R9-6-381	The rule is clear, concise, and understandable, but subsection (A)(3)(c) would be clearer if it read "subsections (A)(1) and (A)(2)" rather than "subsection (A)(1) and (A)(2)."

7. **Has the agency received written criticisms of the rules within the last five years?** Yes __ No X

If yes, please fill out the table below:

Rule	Explanation
Multiple	Although the Department did not receive any written criticisms of the rules, the Department did receive written suggestions about the rules. To ensure that the rules would be effective when implemented by local health agencies, these agencies were invited by the Department to submit suggestions for improvement of the rules. One local health agency submitted written suggestions, which are summarized below, together with the Department's responses to the suggestions: R9-6-304: Suggestion - to add that any food handler exclusion requirements must be in compliance with Title I of the Americans with Disabilities Act of 1990.

	<p>Response – The Department believes that these regulations do not necessarily fit under the Department’s specific authority for preventing and controlling communicable diseases, under which these rules have been adopted, and the requirement does not belong in the rule.</p> <p>R9-6-305:</p> <p>Suggestion - to clarify that a multi-drug-resistant organism could also be a fungus and that current practice includes informing a receiving facility of the types of isolation precautions being used for the case.</p> <p>Response – The Department has included these suggestions in paragraph 6 of this report.</p> <p>R9-6-314 (cited as R9-6-311), R9-6-326, R9-6-335 (cited as R9-6-329), R9-6-336 (cited as R9-6-331), R9-6-360, R9-6-373 (cited as R9-6-367), R9-6-375 (cited as R9-6-370), R9-6-393 (cited as R9-6-389), and R9-6-397 (cited as R9-6-393):</p> <p>Suggestion - to add further exclusion requirements for food handlers who are infected with an enteric pathogen to align with regulations in the FDA Employee Health and Personal Hygiene Handbook.</p> <p>Response – There have been no recent food-borne outbreaks that have led to food handlers as a source, so the Department does not believe it is necessary to impose these additional burdens on food handlers and their employers.</p> <p>R9-6-342:</p> <p>Suggestion - to remove contact control measures for hemolytic uremic syndrome from the rule.</p> <p>Response – Given that cases exhibit the most serious symptoms associated with enterohemorrhagic strains of bacteria and that children under five years of age are most susceptible, the Department does not believe it is in the best interests of public health to make this change.</p> <p>R9-6-362 (cited as R9-6-355):</p> <p>Suggestion - to remove case control measures for pediculosis (lice infestation) from the rule.</p> <p>Response – To recognize that the benefit of a child’s education may outweigh the public health benefit of exclusion, the Department has addressed this suggestion in paragraph 3 of this report.</p> <p>R9-6-382:</p> <p>Suggestion - to add “laboratory or treatment criteria” to clarify what is meant by “free of infestation.”</p> <p>Response – The Department believes that the wording in the rule should remain broad to accommodate new diagnostic capabilities and treatment methodologies.</p>
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8. Economic, small business, and consumer impact comparison:

Arizona Revised Statutes (A.R.S.) § 36-136(I)(1) requires the Arizona Department of Health Services (Department) to make rules defining and prescribing “reasonably necessary measures for detecting, reporting, preventing, and controlling communicable and preventable diseases.” The Department has adopted rules to implement this statute in Arizona Administrative Code (A.A.C.) Title 9, Chapter 6. In 9 A.A.C. 6, Article 3, the Department has adopted rules covering control measures for communicable diseases. These include definitions of terms used in the Article, the responsibilities of a local health agency in controlling the spread of a communicable disease, requirements related to isolation and quarantine, food control measures, and control measures for specific communicable diseases. The rules in Article 3 were last revised as part of a rulemaking effective January 1, 2018. An economic, small business, and consumer impact statement (EIS) is available for this rulemaking. Annual

cost/revenue changes were designated as minimal when more than \$0 and \$5,000 or less, moderate when between \$5,000 and \$30,000, and substantial when \$30,000 or greater in additional costs or revenues. A cost was listed as significant when meaningful or important, but not readily subject to quantification. The Department anticipated that persons affected by the changes in Article 3 included the Department; local health agencies; local agencies responsible for vector control; health care providers; health care institutions; correctional facilities, including both public and private; schools, child care establishments, and shelters; businesses employing individuals infected with a communicable disease, including owners or operators of restaurants or other food establishments; owners or operators of aquatic venues; health insurance providers, including the Arizona Health Care Cost Containment System (AHCCCS); cases or suspect cases of a communicable disease; contacts of individuals infected with a communicable disease; other patients or residents in a health care institution; other prisoners or detainees in a correctional facility; and the general public.

In this rulemaking, four definitions were added to clarify requirements. Other clarifications included that a local health agency may conduct an epidemiologic or other investigation, even if not specifically required by this Chapter, in cooperation with the Department; the Department may order the exclusion of a food handler from working according to the requirements in the Article; more than one specimen may be requested for a case of specified diseases, with a local health agency ensuring that each specimen is submitted to the Arizona State Laboratory; only a case or suspect case with diarrhea is required to be excluded from working for certain disorders but a suspect case with diarrhea is required to be excluded from working for other disorders; and when a local health agency must notify the Department about a specified disease. The Department believed that the clarifications would provide a significant benefit to all affected persons.

The new rules specified that a clinical laboratory is required for some communicable diseases to submit to the Arizona State Laboratory, a component of the Department, an isolate of the organism for each positive culture, if one is available, or a specimen for each positive test result, since testing methodologies in clinical laboratories for some disorders no longer require the laboratory to develop an isolate. This change was estimated to provide a significant benefit to clinical laboratories and cause the Department a minimal increase in costs if the Arizona State Laboratory had to develop additional isolates from submitted specimens to protect public health. A change to require an isolate or specimen for other diseases only by request was believed to reduce the number of unnecessary isolates/specimens received and provide a significant benefit to a clinical laboratory and a moderate benefit to the Department when receiving, cataloging, and storing these isolates/specimens. Changes related to ensuring specimen/isolate submission were estimated to cause at most a minimal additional cost to a local health agency.

The Department anticipated that changes that added requirements for epidemiologic investigations for communicable diseases could impose a minimal-to-moderate burden on a local health agency, depending on the number of cases or outbreaks, and that a local health agency could receive a minimal-to-substantial benefit from the removal of requirements for epidemiologic investigations for other communicable diseases. The addition of some responsibilities for local health agencies in the new rules was anticipated to cause a minimal-to-substantial

increase in cost to a local health agency, depending on the number of cases or outbreaks. If a local health agency is not responsible for conducting environmental assessments for vector control within a jurisdiction, a local agency responsible for vector control in the jurisdiction was estimated to incur a minimal-to-moderate burden for performing additional assessments if the local agency responsible for vector control were not already performing these assessments.

The Department believed that notification to a receiving facility that an individual known to be infected with certain antibiotic-resistant agents was being transferred to the facility is a standard of practice, but that this requirement could cause a minimal-to-moderate cost to a health care provider, health care institution, or correctional facility, depending on the number of cases for which notification by the health care provider, health care institution, or correctional facility would need to be made. This cost was believed to be offset by a minimal-to-substantial benefit to the receiving health care provider, health care institution, or correctional facility by reducing the chance the infection would spread. New requirements for a diagnosing health care provider to institute isolation precautions for certain diseases, including tuberculosis, and for a health care provider for a pregnant syphilis case to order serologic testing for syphilis at 28 to 32 weeks gestation and at delivery to reduce the risk of the baby being born with congenital syphilis were expected to impose a minimal-to-moderate cost on a health care provider who diagnoses one of these diseases or is treating a pregnant syphilis case and provide a significant benefit in reducing the threat of transmission, including transmission to the fetus or newborn, thereby avoiding stillbirth, premature birth, and/or potential deformities in the newborn.

The addition of requirements for isolation precautions for certain diseases was believed to cause a health care institution to incur minimal-to-moderate costs to institute control measures for these communicable diseases, and that a health care institution could receive minimal-to-substantial benefits from having the control measures in place. Additional requirements related to tuberculosis were thought to provide a significant benefit to a health care institution by making requirements clearer and consistent with standards of care, but could cause a health care institution to incur moderate additional costs if approval of release from isolation and airborne precautions of a tuberculosis suspect case took longer than before.

An administrator of a correctional facility might receive a minimal-to-moderate benefit from the earlier detection of cases and the institution of isolation precautions to reduce the number of new cases and a minimal-to-substantial benefit from the removal of requirements to report certain communicable diseases. The Department anticipated that a correctional facility could incur minimal-to-moderate costs to institute control measures for added communicable diseases, but receive minimal-to-substantial benefits from having the control measures in place, thus reducing the chance of an outbreak occurring. A correctional facility was thought to receive a minimal-to-substantial benefit from the changes related to removal of a tuberculosis case from isolation precautions. Similarly, the Department believed that a shelter could incur minimal-to-moderate costs for implementing additional control measures for measles, mumps, pertussis, and rubella recommended by a local health agency but receive a significant benefit from not having a case of one of these communicable diseases infect other individuals on the premises.

Workers in sensitive occupations who are infected with certain communicable diseases are excluded from working until specific criteria are met to reduce the chance for wide-spread transmission of the disease. The Department anticipated that the owner of a business employing one of these infected workers could incur a minimal-to-moderate cost due to more stringent exclusion criteria for some diseases and could receive a minimal-to-moderate benefit from less stringent exclusion criteria for other diseases and from the potential reduction in the number of new cases or an outbreak arising from an infected worker employed at the business. The environmental control and health education requirements added in the new rules were thought to also provide a significant benefit to a business employing an individual infected with a communicable disease if an environmental assessment includes the business as a possible source of infection and any issues are identified so the owner or operator of the business can take steps to resolve the issues.

Because the rulemaking added an exclusion from an individual using an aquatic venue for specific periods after diarrhea has resolved for certain water-borne diseases, the Department believed that an owner or operator of an aquatic venue could incur minimal decreased revenue from fewer individuals with one of these diseases using the aquatic venue during the time period specified in rule for exclusion and could receive up to a substantial benefit from not having the aquatic venue contaminated and having to shut down operations until the area was no longer contaminated. The Department also anticipates that a health insurance company or health plan, including AHCCCS or Medicare, could receive up to a substantial benefit from the rule change requiring notification upon transfer through the reduction in the number of new cases for which the health insurance company or health plan would be required to pay for care.

Notification requirements upon transfer were anticipated to provide a significant benefit to an individual infected with one of these diseases since the receiving health care provider, health care institution, or correctional facility would be able to provide better care to the individual. The added environmental control and health education requirements were believed to provide a significant indirect benefit to a case or suspect case by helping to protect the family members of the case or suspect case from becoming infected. Additional control measures in R9-6-303 were believed to reduce the time of or avoid the need for isolation or exclusion in some instances, providing a significant benefit to an individual who would otherwise have been isolated or excluded. Because local health agencies were allowed to determine when a case or suspect case should be excluded for certain diseases and when they could be removed from exclusion, an infected individual who may be removed from isolation or exclusion earlier was believed to receive a significant benefit, but an individual who is excluded longer to protect public health could incur a significant cost.

The removal of contact control measures for certain diseases were anticipated to provide a significant benefit to a contact of an individual infected with a communicable disease. Other changes affecting when and for how long a contact is to be quarantined or excluded or adding additional control measures that may be used were thought to provide a significant benefit to a contact. Requirements for environmental control measures and health education could also provide a significant benefit to the household or neighborhood contacts of an infected individual by identifying potential sources of infection and thereby reducing the risk of infection to the contacts.

Notification before transfer of an individual infected with one of certain communicable diseases could also provide a significant benefit to staff or patients of a receiving facility.

The general public was believed to receive a significant benefit from changes to control measures, such as education, vector control, environmental measures, exclusions, and isolation, established to prevent additional cases. Reduced transmission leading to less risk to others was thought to provide a significant benefit to society in general.

One of the communicable diseases added to the rules as part of the rulemaking was R9-6-361, Novel Coronavirus (e.g., SARS or MERS). These communicable diseases had previously been included under R9-6-333, Emerging or Exotic Diseases, but were made into their own rule Section as part of the rulemaking. The rule contains a requirement for a diagnosing health care provider or an administrator of a health care institution to ensure that isolation and airborne and contact precautions are put in place. The rule also requires a local health agency to conduct an epidemiological investigation. COVID-19 is a disease included under this category of agent. It was critical for public health that COVID-19 infections were specifically reportable under 9 A.A.C. 6, Article 2, as a novel coronavirus, and that the Department clearly had the authority to require reporting. The requirements in the rule were also important for public health to try to slow the spread of the disease. However, the Department estimates that the economic burden on diagnosing health care providers, health care institutions, and local health agencies at the beginning of the pandemic to comply with the requirements in R9-6-361 was substantial, rather than minimal-to-moderate as stated in the EIS. Except for control measures related to COVID-19, the Department believes the economic impact is as estimated.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes No

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

Please state what the previous course of action was and if the agency did not complete the action, please explain why not.

This is the first five-year-review report of rules that were amended effective January 1, 2018.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The rules in 9 A.A.C. 6, Article 3, cover control measures for communicable diseases. These include definitions of terms used in the Article, the responsibilities of a local health agency in controlling the spread of a communicable disease, requirements related to isolation and quarantine, food control measures, and control measures for specific communicable diseases. The requirements in the rules are the minimum necessary to prevent the spread of communicable diseases, many of which could be deadly, and to ensure public health and safety. The Department believes that the protection of the health and safety of the citizens of Arizona, as well as visitors, outweigh the probable costs of the rules. The Department also believes that the rules impose the least

burden and costs to persons regulated by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No X

Please provide a citation for the federal law(s). And if the rule(s) is more stringent, is there statutory authority to exceed the requirements of federal law(s)?

Although consistent with federal guidance, such as guidance from the Centers for Disease Control and Prevention, the rules in 9 A.A.C. 6, Article 3, are based on state statutes.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

The rules in 9 A.A.C. 6, Article 3 do not require the issuance of a regulatory permit.

14. **Proposed course of action**

If possible, please identify a month and year by which the agency plans to complete the course of action.

Although the items described in paragraphs 3 through 6 are not substantive and do not inhibit a reader from understanding and complying with the rules, changing the rules to address the items may provide clarity to readers. The Department plans to revise the rules to address these items and to submit a Notice of Final Expedited Rulemaking to the Council by July 2023.

TITLE 9. HEALTH SERVICES
CHAPTER 6. DEPARTMENT OF HEALTH SERVICES - COMMUNICABLE DISEASES AND
INFESTATIONS

ARTICLE 3. CONTROL MEASURES FOR COMMUNICABLE DISEASES
AND INFESTATIONS

R9-6-301. Definitions

In this Article, unless otherwise specified:

1. "Aquatic venue" means an artificially constructed structure or modified natural structure that:
 - a. Is used:
 - i. For water contact recreation, as defined in A.A.C. R9-8-801; or
 - ii. To treat a diagnosed injury, illness, or medical condition under the supervision of a health professional, as defined in A.R.S. § 32-3201;
 - b. Is open to all individuals or to all residents of a community, members of a club or camp, individuals being treated by a specific health professional, or patrons of other such establishments; and
 - c. Includes a:
 - i. Natural bathing place as defined in A.A.C. R18-5-201,
 - ii. Public spa as defined in A.A.C. R18-5-201,
 - iii. Public swimming pool as defined in A.A.C. R18-5-201,
 - iv. Semi-artificial bathing place as defined in A.A.C. R18-5-201,
 - v. Semi-public spa as defined in A.A.C. R18-5-201,
 - vi. Semi-public swimming pool as defined in A.A.C. R18-5-201, and
 - vii. Water-play area, an artificially constructed depression in which water issues from showers or other nozzles and drains away to leave little or no standing water.
2. "Blood bank" means a facility where human whole blood or a blood component is collected, prepared, tested, processed, or stored, or from which human whole blood or a blood component is distributed.
3. "Blood center" means a mobile or stationary facility that procures human whole blood or a blood component that is transported to a blood bank.
4. "Contact precautions" means, in addition to use of standard precautions:
 - a. Placing an individual in a private room or a cohort room with a distance of three or more feet separating the individual's bed from the bed of another individual; and
 - b. Ensuring the use of a gown and gloves by other individuals when entering the room in which the individual is located.
5. "Contaminated" means to have come in contact with a disease-causing agent or toxin.
6. "Disinfection" means killing or inactivating communicable-disease-causing agents on inanimate objects by directly applied chemical or physical means.
7. "Disinfestation" means any physical, biological, or chemical process to reduce or eliminate undesired arthropod or rodent populations.
8. "Droplet precautions" means, in addition to use of standard precautions:
 - a. Placing an individual in a private room or a cohort room with a distance of three or more feet and a curtain separating the individual's bed from the bed of another individual;
 - b. Ensuring that the individual wears a mask covering the individual's mouth and nose, if medically appropriate, when not in the room described in subsection (8)(a); and
 - c. Ensuring the use of a mask covering the mouth and nose by other individuals when entering the room in which the individual is located.
9. "Follow-up" means the practice of investigating and monitoring cases, carriers, contacts, or suspect cases to detect, treat, or prevent disease.
10. "Incapacitated adult" means an individual older than 18 years of age for whom a guardian has been appointed by a court of competent jurisdiction.
11. "Isolation precautions" means methods to limit the transmission of an infectious agent, based on the infectious agent and the location of infection in or on the infected individual or animal, that includes isolation of the infected individual or animal and may include any one or combination of the following:
 - a. Standard precautions,
 - b. Contact precautions,
 - c. Droplet precautions, or
 - d. Airborne precautions.
12. "Midwife" has the same meaning as in A.R.S. § 36-751.
13. "Multi-drug-resistant organism" means a bacterial agent on a Department-provided list that is known to not be killed or whose growth is not slowed by specific classes of antibiotics.
14. "Pediculocide" means a shampoo or cream rinse manufactured and labeled for controlling head lice.

15. "Person in charge" means the individual present at a food establishment who is responsible for the food establishment's operation at the time in question.
16. "Plasma center" means a facility where the process of plasmapheresis or another form of apheresis is conducted.
17. "State health officer" means the Director of the Department or the Director's designee.
18. "Vector" means a living animal, usually a mosquito, tick, flea, or other arthropod, that may transmit an infectious agent to an individual.

R9-6-302. Local Health Agency Control Measures

A local health agency shall:

1. Review each report received under Article 2 for completeness and accuracy;
2. Confirm each diagnosis;
3. Conduct epidemiologic and other investigations required by this Chapter or in cooperation with the Department;
4. Facilitate notification of known contacts;
5. Conduct surveillance;
6. Determine trends;
7. Implement control measures, quarantines, isolations, and exclusions as required by the Arizona Revised Statutes and this Chapter;
8. Disseminate surveillance information to health care providers;
9. Provide health education to a disease case or contact to reduce the risk of transmission of the respective disease; and
10. Report to the Department, as specified in R9-6-206 and this Article.

R9-6-303. Isolation, Quarantine, Exclusion, and Other Control Measures

A. When a local health agency is required by this Article to isolate or quarantine an individual or group of individuals, the local health agency:

1. Shall issue a written order:
 - a. For isolation or quarantine and other control measures;
 - b. To each individual or group of individuals and, for each individual who is a minor or incapacitated adult, the individual's parent or guardian, except as provided in subsection (A)(2);
 - c. That specifies:
 - i. The isolation or quarantine and other control measure requirements being imposed, including, if applicable, requirements for physical examinations and medical testing to ascertain and monitor each individual's health status;
 - ii. The identity of each individual or group of individuals subject to the order;
 - iii. The premises at which each individual or group of individuals is to be isolated or quarantined;
 - iv. The date and time at which isolation or quarantine and other control measure requirements begin; and
 - v. The justification for isolation or quarantine and other control measure requirements, including, if known, the disease for which the individual or individuals are believed to be cases, suspect cases, or contacts; and
 - d. That may provide information about existing medical treatment, if available and necessary to render an individual less infectious, and the consequences of an individual's failure to obtain the medical treatment; and
2. May post the written order in a conspicuous place at the premises at which a group of individuals is to be isolated or quarantined if:
 - a. The written order applies to the group of individuals, and
 - b. It would be impractical to provide a copy to each individual in the group.

B. A local health agency may issue a written order for additional control measures:

1. Except as provided in subsection (A)(2), to each affected individual, group of individuals, or person and, for each individual who is a minor or incapacitated adult, the individual's parent or guardian;
2. That specifies:
 - a. The control measure requirements being imposed, including, if applicable, requirements for:
 - i. Being excluded from working as a food handler, caring for patients or residents in a health care institution, or caring for children in or attending a school or child care establishment;
 - ii. Avoiding other locations where the individual or an individual in the group of individuals may pose a health risk to other individuals;
 - iii. Observing airborne precautions, droplet precautions, or contact precautions and the methods by which the individual shall comply with the requirement;
 - iv. Prophylaxis or immunization, as applicable, as an alternative to or to reduce the length of exclusion;
 - v. Physical examinations and medical testing to ascertain and monitor the individual's health status; or
 - vi. Not creating a situation where additional individuals may be exposed to the communicable disease;
 - b. The identity of each individual, group of individuals, or person subject to the order;
 - c. The date and time at which the control measure requirements begin; and
 - d. The justification for the control measure requirements, including:

- i. If known, the disease for which the individual or individuals are believed to be cases, suspect cases, or contacts; and
 - ii. If applicable, the possible consequences of the individual, group of individuals, or person failing to follow the recommendations of the Department or the local health agency to control the spread of the communicable disease; and
 - 3. That may provide information about the disease, existing medical treatment, if applicable, and the consequences of an individual's failure to comply with the order.
- C. Within 10 calendar days after the issuing of a written order described in subsection (A) or (B), if a local health agency determines that isolation, quarantine, or other control measure requirements need to continue for more than 10 calendar days after the date of the order, the local health agency shall file a petition for a court order that:
 - 1. Authorizes the continuation of isolation, quarantine, or other control measure requirements pertaining to an individual, a group of individuals, or a person;
 - 2. Includes the following:
 - a. The isolation, quarantine, or other control measure requirements being imposed, including, if applicable, requirements for physical examinations and medical testing to ascertain and monitor an individual's health status;
 - b. The identity of each individual, group of individuals, or person subject to isolation, quarantine, or other control measure requirements;
 - c. If applicable, the premises at which each individual or group of individuals is isolated or quarantined;
 - d. The date and time at which isolation, quarantine, or other control measure requirements began; and
 - e. The justification for isolation, quarantine, or other control measure requirements, including, if applicable and known, the disease for which the individual or individuals are believed to be cases, suspect cases, or contacts; and
 - 3. Is accompanied by the sworn affidavit of a representative of the local health agency or the Department attesting to the facts asserted in the petition, together with any further information that may be relevant and material to the court's consideration.
- D. A local health agency that files a petition for a court order under subsection (C) shall provide notice to each individual, group of individuals, or person identified in the petition according to the Arizona Rules of Civil Procedure, except that notice shall be provided within 24 hours after the petition is filed.
- E. In the event of noncompliance with a written order issued under subsection (A) or (B), a local health agency may contact law enforcement to request assistance in enforcing the order.
- F. If the Department determines that isolation, quarantine, or other control measure requirements are necessary, the Department, under A.R.S. § 36-136(G), may take any of the actions specified in subsections (A) through (E).

R9-6-304. Food Establishment Control Measures

The person in charge of a food establishment shall ensure compliance with all food handler exclusion requirements in this Article or as ordered by a local health agency or the Department.

R9-6-305. Control Measures for Multi-drug-resistant Organisms

Case control measures:

- 1. A diagnosing health care provider or an administrator of a health care institution transferring a case with active infection of a bacterial disease, for which the agent is known to be a multi-drug-resistant organism, to another health care provider or health care institution or to a correctional facility shall, either personally or through a representative, ensure that the receiving health care provider, health care institution, or correctional facility is informed that the patient is infected with a multi-drug-resistant organism.
- 2. An administrator of the correctional facility transferring a case with active infection of a bacterial disease, for which the agent is known to be a multi-drug-resistant organism, to another correctional facility or to a health care institution shall, either personally or through a representative, ensure that the receiving correctional facility or health care institution is informed that the individual is infected with a multi-drug-resistant organism.

R9-6-306. Amebiasis

Case control measures: A local health agency shall:

- 1. Exclude an amebiasis case or suspect case with diarrhea from:
 - a. Working as a food handler, caring for children in or attending a child care establishment, or caring for patients or residents in a health care institution until:
 - i. Either:
 - (1) Treatment with an amebicide is initiated, and
 - (2) A stool specimen negative for amoebae is obtained from the amebiasis case or suspect case; or
 - ii. The local health agency has determined that the amebiasis case or suspect case is unlikely to infect other individuals; and
 - b. Using an aquatic venue for two weeks after diarrhea has resolved;

2. Conduct an epidemiologic investigation of each reported amebiasis case or suspect case; and
3. For each amebiasis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-307. Anaplasmosis

Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported anaplasmosis case or suspect case; and
2. For each anaplasmosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-308. Anthrax

A. Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of an anthrax case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported anthrax case or suspect case;
3. For each anthrax case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
4. Ensure that an isolate or a specimen, as available, from each anthrax case or suspect case is submitted to the Arizona State Laboratory.

B. Environmental control measures: A local health agency shall, in conjunction with the Department and applicable federal agencies, provide or arrange for disinfection of areas or objects contaminated by *Bacillus anthracis* through sterilization by dry heating, incineration of objects, or other appropriate means.

R9-6-309. Arboviral Infection

A. Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported arboviral infection case or suspect case;
2. For each arboviral infection case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
3. Ensure that each arboviral infection case is provided with health education that includes measures to:
 - a. Avoid mosquito bites, and
 - b. Reduce mosquito breeding sites.

B. Environmental control measures: In cooperation with the Department, a local health agency or another local agency responsible for vector control within a jurisdiction shall conduct an assessment of the environment surrounding each arboviral infection case or suspect case and implement vector control measures as necessary.

R9-6-310. Babesiosis

Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported babesiosis case or suspect case; and
2. For each babesiosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-311. Basidiobolomycosis

Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported basidiobolomycosis case or suspect case; and
2. For each basidiobolomycosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-312. Botulism

A. Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a botulism case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported botulism case or suspect case; and
3. For each botulism case or suspect case:
 - a. Submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and

- b. Ensure that one or more specimens from each botulism case or suspect case are submitted to the Arizona State Laboratory.
- B. Environmental control measures:** An individual in possession of:
1. Food known to be contaminated by *Clostridium botulinum* or *Clostridium botulinum* toxin shall boil the contaminated food for 10 minutes and then discard it, and
 2. Utensils known to be contaminated by *Clostridium botulinum* or *Clostridium botulinum* toxin shall boil the contaminated utensils for 10 minutes before reuse or disposal.

R9-6-313. Brucellosis

Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported brucellosis case or suspect case;
2. For each brucellosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
3. Ensure that an isolate or a specimen, as available, from each brucellosis case is submitted to the Arizona State Laboratory.

R9-6-314. Campylobacteriosis

Case control measures: A local health agency shall:

1. Exclude a campylobacteriosis case or suspect case with diarrhea from:
 - a. Working as a food handler, caring for children in or attending a child care establishment, or caring for patients or residents in a health care institution until:
 - i. Diarrhea has resolved,
 - ii. A stool specimen negative for *Campylobacter* spp. is obtained from the campylobacteriosis case or suspect case, or
 - iii. The local health agency has determined that the case or suspect case is unlikely to infect other individuals; and
 - b. Using an aquatic venue until diarrhea has resolved;
2. Conduct an epidemiologic investigation of each reported campylobacteriosis case or suspect case; and
3. For each campylobacteriosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-315. Carbapenem-resistant Enterobacteriaceae

A. Case control measures:

1. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall:
 - a. Institute isolation precautions as necessary for a carbapenem-resistant enterobacteriaceae case or carrier to prevent transmission; and
 - b. If a carbapenem-resistant enterobacteriaceae case or carrier is being transferred to another health care provider or health care institution or to a correctional facility, comply with R9-6-305.
2. An administrator of a correctional facility, either personally or through a representative, shall:
 - a. Institute isolation precautions as necessary for a carbapenem-resistant enterobacteriaceae case or carrier to prevent transmission; and
 - b. If a carbapenem-resistant enterobacteriaceae case or carrier is being transferred to another correctional facility or to a health care institution, comply with R9-6-305.
3. A local health agency, in consultation with the Department, shall:
 - a. Ensure that a case or carrier of carbapenem-resistant enterobacteriaceae is isolated as necessary to prevent transmission; and
 - b. Upon request, ensure that an isolate or a specimen, as available, from each case or carrier of carbapenem-resistant enterobacteriaceae is submitted to the Arizona State Laboratory.

B. Outbreak control measures: A local health agency shall:

1. Conduct an epidemiologic investigation for each outbreak or suspected outbreak of carbapenem-resistant enterobacteriaceae; and
2. For each outbreak or suspected outbreak of carbapenem-resistant enterobacteriaceae, submit to the Department the information required under R9-6-206(E).

R9-6-316. Chagas Infection and Related Disease (*American Trypanosomiasis*)

Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported Chagas infection or disease case or suspect case; and
2. For each Chagas infection or disease case:

- a. Submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
- b. Provide to the Chagas infection or disease case or ensure that another person provides to the Chagas infection or disease case health education that includes:
 - i. The treatment options for Chagas infection or disease,
 - ii. Where the Chagas infection or disease case may receive treatment for Chagas infection or disease, and
 - iii. For women of childbearing age, the risks of transmission of Chagas infection or disease to a fetus.

R9-6-317. Chancroid (*Haemophilus ducreyi*)

- A. Case control measures: A local health agency shall:
 - 1. Conduct an epidemiologic investigation of each reported chancroid case or suspect case;
 - 2. For each chancroid case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
 - 3. Comply with the requirements specified in R9-6-1103 concerning treatment and health education for a chancroid case.
- B. Contact control measures: When a chancroid case has named a contact, a local health agency shall comply with the requirements specified in R9-6-1103 concerning notification, testing, treatment, and health education for the contact.

R9-6-318. Chikungunya

- A. Case control measures: A local health agency shall:
 - 1. Upon receiving a report under R9-6-202 of a chikungunya case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
 - 2. Conduct an epidemiologic investigation of each reported chikungunya case or suspect case;
 - 3. For each chikungunya case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
 - 4. Ensure that each chikungunya case is provided with health education that includes measures to:
 - a. Avoid mosquito bites, and
 - b. Reduce mosquito breeding sites.
- B. Environmental control measures: In cooperation with the Department, a local health agency or another local agency responsible for vector control within a jurisdiction shall conduct an assessment of the environment surrounding each chikungunya case or suspect case and implement vector control measures as necessary.

R9-6-319. *Chlamydia trachomatis* Infection

- A. Case control measures:

A local health agency shall comply with the requirements specified in R9-6-1103 concerning treatment and health education for a *Chlamydia trachomatis* infection case that seeks treatment from the local health agency.
- B. Contact control measures: If an individual who may have been exposed to chlamydia through sexual contact with a *Chlamydia trachomatis* infection case seeks treatment for symptoms of chlamydia infection from a local health agency, the local health agency shall comply with the requirements specified in R9-6-1103 concerning treatment and health education for the individual.

R9-6-320. Cholera

- A. Case control measures: A local health agency shall:
 - 1. Upon receiving a report under R9-6-202 of a cholera case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
 - 2. Exclude a cholera case or suspect case from:
 - a. Working as a food handler, caring for patients or residents in a health care institution, or caring for children in or attending a child care establishment until a stool specimen negative for toxigenic *Vibrio cholerae* is obtained from the cholera case or suspect case; and
 - b. Using an aquatic venue until diarrhea has resolved;
 - 3. Conduct an epidemiologic investigation of each reported cholera case or suspect case; and
 - 4. For each cholera case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).
- B. Contact control measures: A local health agency shall provide follow-up for each cholera contact for five calendar days after exposure.

R9-6-321. *Clostridium difficile*

Case control measures:

1. A diagnosing health care provider or an administrator of a health care institution transferring a known *Clostridium difficile* case with active infection and diarrhea to another health care provider or health care institution or to a correctional facility shall, either personally or through a representative, ensure that the receiving health care provider, health care institution, or correctional facility is informed that the patient is a known *Clostridium difficile* case.
2. If a known *Clostridium difficile* case with active infection and diarrhea is being transferred from a correctional facility to another correctional facility or to a health care institution, an administrator of the correctional facility, either personally or through a representative, shall ensure that the receiving correctional facility or health care institution is informed that the individual is a known *Clostridium difficile* case.

R9-6-322. Coccidioidomycosis (Valley Fever)

Outbreak control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported outbreak of coccidioidomycosis; and
2. For each outbreak of coccidioidomycosis, submit to the Department the information required under R9-6-206(E).

R9-6-323. Colorado Tick Fever

Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported Colorado tick fever case or suspect case; and
2. For each Colorado tick fever case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-324. Conjunctivitis: Acute

A. Case control measures: An administrator of a school or child care establishment, either personally or through a representative, shall exclude an acute conjunctivitis case from attending the school or child care establishment until the symptoms of acute conjunctivitis subside or treatment for acute conjunctivitis is initiated and maintained for 24 hours.

B. Outbreak control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported conjunctivitis outbreak; and
2. For each conjunctivitis outbreak, submit to the Department the information required under R9-6-206(E).

R9-6-325. Creutzfeldt-Jakob Disease

Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported Creutzfeldt-Jakob disease case or suspect case; and
2. For each Creutzfeldt-Jakob disease case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-326. Cryptosporidiosis

A. Case control measures: A local health agency shall:

1. Exclude a cryptosporidiosis case or suspect case with diarrhea from:
 - a. Working as a food handler, caring for patients or residents in a health care institution, or caring for children in or attending a child care establishment until diarrhea has resolved; and
 - b. Using an aquatic venue for two weeks after diarrhea has resolved;
2. Conduct an epidemiologic investigation of each reported cryptosporidiosis case or suspect case; and
3. For each cryptosporidiosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

B. Environmental control measures: A local health agency shall conduct a sanitary inspection or ensure that a sanitary inspection is conducted of each facility or location regulated under 9 A.A.C. 8 that is associated with an outbreak of cryptosporidiosis.

R9-6-327. Cyclospora Infection

Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported *Cyclospora* infection case or suspect case; and
2. For each *Cyclospora* infection case submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-328. Cysticercosis

Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported cysticercosis case or suspect case; and
2. For each cysticercosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-329. Dengue

- A. Case control measures:** A local health agency shall:
1. Upon receiving a report under R9-6-202 of a dengue case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
 2. Conduct an epidemiologic investigation of each reported dengue case or suspect case;
 3. For each dengue case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
 4. Ensure that each dengue case is provided with health education that includes measures to:
 - a. Avoid mosquito bites, and
 - b. Reduce mosquito breeding sites.
- B. Environmental control measures:** In cooperation with the Department, a local health agency or another local agency responsible for vector control within a jurisdiction shall conduct an assessment of the environment surrounding each dengue case or suspect case and implement vector control measures as necessary.

R9-6-330. Diarrhea, Nausea, or Vomiting

- A. Outbreak control measures:** A local health agency shall:
1. Conduct an epidemiologic investigation of each reported outbreak of diarrhea, nausea, or vomiting;
 2. Submit to the Department the information required under R9-6-206(E); and
 3. Exclude each case that is part of an outbreak of diarrhea, nausea, or vomiting from:
 - a. Working as a food handler, caring for patients or residents in a health care institution, or caring for children in or attending a child care establishment until:
 - i. Diarrhea and vomiting have resolved, or
 - ii. The local health agency has determined that the case is unlikely to infect other individuals; and
 - b. Using an aquatic venue for two weeks after diarrhea has resolved.
- B. Environmental control measures:** A local health agency shall conduct a sanitary inspection or ensure that a sanitary inspection is conducted of each facility or location regulated under 9 A.A.C. 8 that is associated with an outbreak of diarrhea, nausea, or vomiting.

R9-6-331. Diphtheria

- A. Case control measures:**
1. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall:
 - a. Isolate and institute droplet precautions for a pharyngeal diphtheria case or suspect case until two successive sets of cultures negative for *Corynebacterium diphtheriae* are obtained from nose and throat specimens collected from the case or suspect case at least 24 hours apart and at least 24 hours after cessation of treatment; and
 - b. Isolate and institute contact precautions for a cutaneous diphtheria case or suspect case until two successive sets of cultures negative for *Corynebacterium diphtheriae* are obtained from skin specimens collected from the case or suspect case at least 24 hours apart and at least 24 hours after cessation of treatment
 2. A local health agency shall:
 - a. Upon receiving a report under R9-6-202 of a diphtheria case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
 - b. Conduct an epidemiologic investigation of each reported diphtheria case or suspect case; and
 - c. For each diphtheria case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).
- B. Contact control measures:** A local health agency shall:
1. Exclude each diphtheria contact from working as a food handler, caring for patients or residents in a health care institution, or caring for children in or attending a school or child care establishment until a set of cultures negative for *Corynebacterium diphtheriae* is obtained from the contact's nose and throat specimens;
 2. In consultation with the Department, quarantine a contact of a diphtheria case, if indicated, until two successive sets of cultures negative for *Corynebacterium diphtheriae* are obtained from nose and throat specimens collected from the contact at least 24 hours apart;
 3. Offer each previously immunized diphtheria contact prophylaxis and a vaccine containing diphtheria toxoid; and
 4. Offer each unimmunized diphtheria contact prophylaxis and the primary vaccine series.

R9-6-332. Ehrlichiosis

Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported ehrlichiosis case or suspect case; and
2. For each ehrlichiosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-333. Emerging or Exotic Disease

A. Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of an emerging or exotic disease case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
2. In consultation with the Department, isolate an emerging or exotic disease case or suspect case as necessary to prevent transmission;
3. Conduct an epidemiologic investigation of each reported emerging or exotic disease case or suspect case; and
4. For each emerging or exotic disease case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

B. Contact control measures: A local health agency, in consultation with the Department, shall quarantine or exclude an emerging or exotic disease contact as necessary, according to R9-6-303, to prevent transmission.

R9-6-334. Encephalitis, Viral or Parasitic

Case control measures: A local health agency shall:

1. Upon receiving a report of encephalitis under R9-6-202, notify the Department:
 - a. For a case or suspect case of parasitic encephalitis, within 24 hours after receiving the report and provide to the Department the information contained in the report; and
 - b. For a case or suspect case of viral encephalitis, within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported viral or parasitic encephalitis case or suspect case; and
3. For each encephalitis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-335. Escherichia coli, Shiga Toxin-producing

A. Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 or R9-6-203 of a Shiga toxin-producing *Escherichia coli* case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Exclude a Shiga toxin-producing *Escherichia coli* case or suspect case with diarrhea from:
 - a. Working as a food handler, caring for patients or residents in a health care institution, or caring for children in or attending a child care establishment until:
 - i. Two successive stool specimens, collected from the Shiga toxin-producing *Escherichia coli* case or suspect case at least 24 hours apart, are negative for Shiga toxin-producing *Escherichia coli*;
 - ii. Diarrhea has resolved; or
 - iii. The local health agency has determined that the case or suspect case is unlikely to infect other individuals; and
 - b. Using an aquatic venue for two weeks after diarrhea has resolved;
3. Conduct an epidemiologic investigation of each reported Shiga toxin-producing *Escherichia coli* case or suspect case; and
4. For each Shiga toxin-producing *Escherichia coli* case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

B. Environmental control measures: A local health agency shall:

1. If an animal located in a private residence is suspected to be the source of infection for a Shiga toxin-producing *Escherichia coli* case or outbreak, provide health education for the animal's owner about Shiga toxin-producing *Escherichia coli* and the risks of becoming infected with Shiga toxin-producing *Escherichia coli*; and
2. If an animal located in a setting other than a private residence is suspected to be the source of infection for a Shiga toxin-producing *Escherichia coli* case or outbreak:
 - a. Provide health education for the animal's owner about Shiga toxin-producing *Escherichia coli* and the risks of becoming infected with Shiga toxin-producing *Escherichia coli*, and
 - b. Require the animal's owner to provide information to individuals with whom the animal may come into contact about Shiga toxin-producing *Escherichia coli* and methods to reduce the risk of transmission.

R9-6-336. Giardiasis

Case control measures: A local health agency shall:

1. Exclude a giardiasis case or suspect case with diarrhea from:
 - a. Working as a food handler, caring for patients or residents in a health care institution, or caring for children in or attending a child care establishment until:
 - i. Treatment for giardiasis is initiated and diarrhea has resolved, or
 - ii. The local health agency has determined that the case or suspect case is unlikely to infect other individuals; and
 - b. Using an aquatic venue for two weeks after diarrhea has resolved;
2. Conduct an epidemiologic investigation of each reported giardiasis case or suspect case; and
3. For each giardiasis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-337. Glanders

Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a glanders case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported glanders case or suspect case;
3. For each glanders case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
4. Ensure that an isolate or a specimen, as available, from each glanders case or suspect case is submitted to the Arizona State Laboratory.

R9-6-338. Gonorrhea

A. Case control measures:

1. For the prevention of gonorrheal ophthalmia, a physician, physician assistant, registered nurse practitioner, or midwife attending the birth of an infant in this state shall treat the eyes of the infant immediately after the birth with one of the following, unless treatment is refused by the parent or guardian:
 - a. Erythromycin ophthalmic ointment 0.5%, or
 - b. Tetracycline ophthalmic ointment 1%.
2. A local health agency shall comply with the requirements specified in R9-6-1103 concerning treatment and health education for a gonorrhea case that seeks treatment from the local health agency.

B. Contact control measures: If an individual who may have been exposed to gonorrhea through sexual contact with a gonorrhea case seeks treatment for symptoms of gonorrhea from a local health agency, the local health agency shall comply with the requirements specified in R9-6-1103 concerning treatment and health education for the individual.

R9-6-339. *Haemophilus influenzae*: Invasive Disease

A. Case control measures:

1. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and institute droplet precautions for a *Haemophilus influenzae* meningitis or epiglottitis case or suspect case for 24 hours after the initiation of treatment.
2. A local health agency shall:
 - a. Upon receiving a report under R9-6-202 or R9-6-203 of a *Haemophilus influenzae* invasive disease case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
 - b. Conduct an epidemiologic investigation of each reported *Haemophilus influenzae* invasive disease case or suspect case; and
 - c. For each *Haemophilus influenzae* invasive disease case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

B. Contact control measures: A local health agency shall evaluate the level of risk of transmission from each contact's exposure to a *Haemophilus influenzae* invasive disease case and, if indicated, shall provide or arrange for each contact to receive immunization or treatment.

R9-6-340. Hansen's Disease (Leprosy)

A. Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported Hansen's disease case or suspect case; and
2. For each Hansen's disease case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

- B. Contact control measures: In consultation with the Department, a local health agency shall examine contacts of a Hansen's disease case, if indicated, for signs and symptoms of leprosy at six-to-twelve month intervals for five years after the last exposure to an infectious case.

R9-6-341. Hantavirus Infection

- A. Case control measures: A local health agency shall:
 - 1. Upon receiving a report under R9-6-202 of a hantavirus infection case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
 - 2. Ensure that a hantavirus infection case or, if the case is a child or incapacitated adult, the parent or guardian of the case receives health education about reducing the risks of becoming reinfected with or of having others become infected with hantavirus;
 - 3. Conduct an epidemiologic investigation of each reported hantavirus infection case or suspect case; and
 - 4. For each hantavirus infection case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).
- B. Environmental control measures: A local health agency shall conduct an environmental assessment for each hantavirus infection case or suspect case.

R9-6-342. Hemolytic Uremic Syndrome

- A. Case control measures: A local health agency shall:
 - 1. Upon receiving a report under R9-6-202 of a hemolytic uremic syndrome case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
 - 2. Conduct an epidemiologic investigation of each reported hemolytic uremic syndrome case or suspect case; and
 - 3. For each hemolytic uremic syndrome case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).
- B. Contact control measures: A local health agency shall exclude a hemolytic uremic syndrome contact with diarrhea of unknown cause from working as a food handler until diarrhea has resolved.

R9-6-343. Hepatitis A

- A. Case control measures: A local health agency shall:
 - 1. Upon receiving a report under R9-6-202 or R9-6-203 of a hepatitis A case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
 - 2. Exclude a hepatitis A case or suspect case from working as a food handler, caring for patients or residents in a health care institution, or caring for children in or attending a child care establishment during the first 14 calendar days of illness or for seven calendar days after onset of jaundice;
 - 3. Conduct an epidemiologic investigation of each reported hepatitis A case or suspect case; and
 - 4. For each hepatitis A case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).
- B. Contact control measures: A local health agency shall:
 - 1. Exclude a hepatitis A contact with symptoms of hepatitis A from working as a food handler during the first 14 calendar days of illness or for seven calendar days after onset of jaundice;
 - 2. For 45 calendar days after exposure, monitor a food handler who was a contact of a hepatitis A case during the infectious period for symptoms of hepatitis A; and
 - 3. Evaluate the level of risk of transmission from each contact's exposure to a hepatitis A case and, if indicated, provide or arrange for each contact to receive prophylaxis and immunization.

R9-6-344. Hepatitis B and Hepatitis D

- A. Case control measures:
 - 1. A local health agency shall:
 - a. Evaluate a health care provider identified as the source of hepatitis B virus transmission in the work place and, if indicated, ensure reassignment of the health care provider to a position where the occupational risk of transmission is eliminated;
 - b. Conduct an epidemiologic investigation of each reported case or suspect case of hepatitis B or hepatitis B co-infected with hepatitis D; and
 - c. For each acute case of hepatitis B or hepatitis B co-infected with hepatitis D or case of perinatal hepatitis B, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).
 - 2. The operator of a blood bank, blood center, or plasma center shall notify a donor of a test result with significant evidence suggestive of hepatitis B, as required under A.R.S. § 32-1483 and 21 CFR 630.6.

- B.** Contact control measures: A local health agency shall:
1. Refer each non-immune hepatitis B contact to a health care provider for prophylaxis and initiation of the hepatitis B vaccine series, and
 2. Provide health education related to the progression of hepatitis B disease and the prevention of transmission of hepatitis B infection to each non-immune hepatitis B contact.

R9-6-345. Hepatitis C

Outbreak control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported hepatitis C outbreak;
2. For each hepatitis C outbreak, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(E);
3. Evaluate a health care provider identified as the source of hepatitis C virus transmission in the work place and, if indicated, ensure reassignment of the health care provider to a position where the occupational risk of transmission is eliminated; and
4. Ensure that health education related to the progression of hepatitis C disease and the prevention of transmission of hepatitis C infection is provided to each individual who may have been exposed to hepatitis C during the outbreak.

R9-6-346. Hepatitis E

Case control measures: A local health agency shall:

1. Exclude a hepatitis E case or suspect case from working as a food handler, caring for patients or residents in a health care institution, or caring for children in or attending a child care establishment during the first 14 calendar days of illness or for seven calendar days after onset of jaundice;
2. Conduct an epidemiologic investigation of each reported hepatitis E case or suspect case; and
3. For each hepatitis E case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-347. HIV Infection and Related Disease

A. Case control measures:

1. A local health agency shall:
 - a. Conduct an epidemiologic investigation, including a review of medical records, of each reported HIV-infected individual or suspect case; and
 - b. For each HIV-infected individual, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).
2. The operator of a blood bank, blood center, or plasma center shall notify a donor of a test result with significant evidence suggestive of HIV infection, as required under A.R.S. § 32-1483 and 21 CFR 630.6.
3. The Department and a local health agency shall offer anonymous HIV-testing to an individual as specified in R9-6-1005.

B. Contact control measures: The Department or the Department's designee shall confidentially notify an individual reported to be at risk for HIV infection under A.R.S. § 36-664(I) as specified in R9-6-1006(A).

C. Environmental control measures: An employer, as defined under A.R.S. § 23-401, or health care provider shall comply with the requirements specified in A.R.S. § 23-403 and A.A.C. R20-5-602.

R9-6-348. Influenza-Associated Mortality in a Child

Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a case or suspect case of an influenza-associated death of a child, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported case or suspect case of influenza-associated mortality in a child; and
3. For each case of influenza-associated mortality in a child, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-349. Legionellosis (Legionnaires' Disease)

A. Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a legionellosis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported legionellosis case or suspect case; and

3. For each legionellosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).
- B.** Environmental control measures: The owner of a water, cooling, or ventilation system or equipment that is determined by the Department or a local health agency to be associated with a case of *Legionella* infection shall comply with the environmental control measures recommended by the Department or local health agency to prevent the exposure of other individuals.

R9-6-350. Leptospirosis

Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a leptospirosis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported leptospirosis case or suspect case; and
3. For each leptospirosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-351. Listeriosis

Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a listeriosis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported listeriosis case or suspect case;
3. For each listeriosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
4. Ensure that an isolate or a specimen, as available, from each listeriosis case is submitted to the Arizona State Laboratory.

R9-6-352. Lyme Disease

Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported Lyme disease case or suspect case; and
2. For each Lyme disease case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-353. Lymphocytic Choriomeningitis

Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a lymphocytic choriomeningitis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported lymphocytic choriomeningitis case or suspect case; and
3. For each lymphocytic choriomeningitis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-354. Malaria

A. Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported malaria case or suspect case; and
2. For each malaria case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

B. Environmental control measures: In cooperation with the Department, a local health agency or another local agency responsible for vector control within a jurisdiction shall conduct an assessment of the environment surrounding each malaria case or suspect case and implement vector control measures as necessary.

R9-6-355. Measles (Rubeola)

A. Case control measures:

1. An administrator of a school or child care establishment, either personally or through a representative, shall:
 - a. Exclude a measles case from the school or child care establishment and from school- or child-care-establishment-sponsored events from the onset of illness through the fourth calendar day after the rash appears; and
 - b. Exclude a measles suspect case from the school or child care establishment and from school- or child-care-establishment-sponsored events until the local health agency has determined that the suspect case is unlikely to infect other individuals.

2. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and institute airborne precautions for a measles case from onset of illness through the fourth calendar day after the rash appears.
3. An administrator of a health care institution, either personally or through a representative, shall exclude a measles:
 - a. Case from working at the health care institution from the onset of illness through the fourth calendar day after the rash appears; and
 - b. Suspect case from working at the health care institution until the local health agency has determined that the suspect case may return to work.
4. A local health agency shall:
 - a. Upon receiving a report under R9-6-202 or R9-6-203 of a measles case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
 - b. Conduct an epidemiologic investigation of each reported measles case or suspect case;
 - c. For each measles case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
 - d. Ensure that one or more specimens from each measles case or suspect case, as required by the Department, are submitted to the Arizona State Laboratory.
5. An administrator of a correctional facility or shelter, either personally or through a representative, shall comply with the measles control measures recommended by a local health agency or the Department.

B. Contact control measures:

1. When a measles case has been at a school or child care establishment, the administrator of the school or child care establishment, either personally or through a representative, shall:
 - a. Consult with the local health agency to determine who shall be excluded and how long each individual shall be excluded from the school or child care establishment, and
 - b. Comply with the local health agency's recommendations for exclusion.
2. A local health agency shall:
 - a. Determine which measles contacts will be quarantined or excluded, according to R9-6-303, to prevent transmission; and
 - b. Provide or arrange for immunization of each non-immune measles contact within 72 hours after last exposure, if possible.
3. An administrator of a health care institution shall ensure that a paid or volunteer full-time or part-time worker at a health care institution does not participate in the direct care of a measles case or suspect case unless the worker is able to provide evidence of immunity to measles through one of the following:
 - a. A record of immunization against measles with two doses of live virus vaccine given on or after the first birthday and at least one month apart;
 - b. A statement signed by a physician, physician assistant, registered nurse practitioner, state health officer, or local health officer affirming serologic evidence of immunity to measles; or
 - c. Documentary evidence of birth before January 1, 1957.

R9-6-356. Melioidosis

Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a melioidosis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported melioidosis case or suspect case;
3. For each melioidosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
4. Ensure that an isolate or a specimen, as available, from each melioidosis case or suspect case is submitted to the Arizona State Laboratory.

R9-6-357. Meningococcal Invasive Disease

A. Case control measures:

1. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and institute droplet precautions for a meningococcal invasive disease case for 24 hours after the initiation of treatment.
2. A local health agency shall:
 - a. Upon receiving a report under R9-6-202 or R9-6-203 of a meningococcal invasive disease case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
 - b. Conduct an epidemiologic investigation of each reported meningococcal invasive disease case or suspect case;
 - c. For each meningococcal invasive disease case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and

- d. Ensure that an isolate or a specimen, as available, from each meningococcal invasive disease case is submitted to the Arizona State Laboratory.
- B. Contact control measures: A local health agency shall evaluate the level of risk of transmission from each contact's exposure to a meningococcal invasive disease case and, if indicated, provide or arrange for each contact to receive prophylaxis.

R9-6-358. Methicillin-resistant *Staphylococcus aureus* (MRSA)

- A. Case control measures:
 - 1. A diagnosing health care provider or an administrator of a health care institution transferring a known methicillin-resistant *Staphylococcus aureus* case with active infection to another health care provider or health care institution or to a correctional facility shall, either personally or through a representative, ensure that the receiving health care provider, health care institution, or correctional facility is informed that the patient is a known methicillin-resistant *Staphylococcus aureus* case.
 - 2. If a known methicillin-resistant *Staphylococcus aureus* case with active infection is being transferred from a correctional facility to another correctional facility or to a health care institution, an administrator of the correctional facility, either personally or through a representative, shall ensure that the receiving correctional facility or health care institution is informed that the individual is a known methicillin-resistant *Staphylococcus aureus* case.
- B. Outbreak control measures:
 - 1. A local health agency, in consultation with the Department, shall:
 - a. Conduct an epidemiologic investigation of each reported outbreak of methicillin-resistant *Staphylococcus aureus* in a health care institution or correctional facility; and
 - b. For each outbreak of methicillin-resistant *Staphylococcus aureus* in a health care institution or correctional facility, submit to the Department the information required under R9-6-206(E).
 - 2. When an outbreak of methicillin-resistant *Staphylococcus aureus* occurs in a health care institution or correctional facility, the administrator of the health care institution or correctional facility, either personally or through a representative, shall comply with the control measures recommended by a local health agency or the Department.

R9-6-359. Mumps

- A. Case control measures:
 - 1. An administrator of a school or child care establishment, either personally or through a representative, shall:
 - a. Exclude a mumps case from the school or child care establishment for five calendar days after the onset of glandular swelling; and
 - b. Exclude a mumps suspect case from the school or child care establishment and from school- or child-care-establishment-sponsored events until evaluated and determined to be noninfectious by a physician, physician assistant, registered nurse practitioner, or local health agency.
 - 2. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and institute droplet precautions with a mumps case for five calendar days after the onset of glandular swelling.
 - 3. An administrator of a health care institution, either personally or through a representative, shall exclude a mumps:
 - a. Case from working at the health care institution for five calendar days after the onset of glandular swelling; and
 - b. Suspect case from working at the health care institution until evaluated and determined to be noninfectious by a physician, physician assistant, registered nurse practitioner, or local health agency.
 - 4. A local health agency shall:
 - a. Upon receiving a report under R9-6-202 or R9-6-203 of a mumps case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
 - b. Conduct an epidemiologic investigation of each reported mumps case or suspect case;
 - c. For each mumps case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
 - d. Ensure that one or more specimens from each mumps case or suspect case, as required by the Department, are submitted to the Arizona State Laboratory.
 - 5. An administrator of a correctional facility or shelter, either personally or through a representative, shall comply with the mumps control measures recommended by a local health agency or the Department.
- B. Contact control measures:
 - 1. When a mumps case has been at a school or child care establishment, the administrator of the school or child care establishment, either personally or through a representative, shall:
 - a. Consult with the local health agency to determine who shall be excluded and how long each individual shall be excluded from the school or child care establishment, and
 - b. Comply with the local health agency's recommendations for exclusion.
 - 2. An administrator of a health care institution shall ensure that a paid or volunteer full-time or part-time worker at a health care institution does not participate in the direct care of a mumps case or suspect case unless the worker is able to provide evidence of immunity to mumps through one of the following:

- a. A record of immunization against mumps with two doses of live virus vaccine given on or after the first birthday and at least one month apart; or
 - b. A statement signed by a physician, physician assistant, registered nurse practitioner, state health officer, or local health officer affirming serologic evidence of immunity to mumps.
3. A local health agency shall determine which mumps contacts will be:
- a. Quarantined or excluded, according to R9-6-303, to prevent transmission; and
 - b. Advised to obtain an immunization against mumps.

R9-6-360. Norovirus

- A. Outbreak control measures:** A local health agency shall:
- 1. Conduct an epidemiologic investigation of each reported norovirus outbreak;
 - 2. Submit to the Department the information required under R9-6-206(E); and
 - 3. Exclude each case that is part of a norovirus outbreak from working as a food handler, caring for patients or residents in a health care institution, or caring for children in or attending a child care establishment until:
 - a. Diarrhea has resolved, or
 - b. The local health agency has determined that the case or suspect case is unlikely to infect other individuals.
- B. Environmental control measures:** A local health agency shall conduct a sanitary inspection or ensure that a sanitary inspection is conducted of each facility or location regulated under 9 A.A.C. 8 that is associated with a norovirus outbreak.

R9-6-361. Novel Coronavirus (e.g., SARS or MERS)

- A. Case control measures:**
- 1. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and institute both airborne precautions and contact precautions for a novel coronavirus case or suspect case, including a case or suspect case of severe acute respiratory syndrome or Middle East respiratory syndrome, until evaluated and determined to be noninfectious by a physician, physician assistant, or registered nurse practitioner.
 - 2. A local health agency shall:
 - a. Upon receiving a report under R9-6-202 of a novel coronavirus case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
 - b. In consultation with the Department, ensure that isolation and both airborne precautions and contact precautions have been instituted for a novel coronavirus case or suspect case to prevent transmission;
 - c. Conduct an epidemiologic investigation of each reported novel coronavirus case or suspect case; and
 - d. For each novel coronavirus case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).
- B. Contact control measures:** A local health agency, in consultation with the Department, shall determine which novel coronavirus contacts will be quarantined or excluded, according to R9-6-303, to prevent transmission.

R9-6-362. Pediculosis (Lice Infestation)

- A. Case control measures:**
- 1. An administrator of a school or child care establishment, either personally or through a representative, shall exclude a pediculosis case from the school or child care establishment until the case is treated with a pediculocide.
 - 2. An administrator of a shelter shall ensure that a pediculosis case is treated with a pediculocide and that the case's clothing and personal articles are disinfested.
- B. Contact control measures:** An administrator of a school or child care establishment that excludes a pediculosis case from the school or child care establishment, either personally or through a representative, shall ensure that a parent or guardian of a child who is a contact is notified that a pediculosis case was identified at the school or child care establishment.

R9-6-363. Pertussis (Whooping Cough)

- A. Case control measures:**
- 1. An administrator of a school or child care establishment, either personally or through a representative, shall:
 - a. Exclude a pertussis case from the school or child care establishment for 21 calendar days after the date of onset of cough or for five calendar days after the date of initiation of antibiotic treatment for pertussis; and
 - b. Exclude a pertussis suspect case from the school or child care establishment until evaluated and determined to be noninfectious by a physician, physician assistant, registered nurse practitioner, or local health agency.
 - 2. An administrator of a health care institution, either personally or through a representative, shall:
 - a. Exclude a pertussis case from working at the health care institution for 21 calendar days after the date of onset of cough or for five calendar days after the date of initiation of antibiotic treatment for pertussis; and

- b. Exclude a pertussis suspect case from working at the health care institution until evaluated and determined to be noninfectious by a physician, physician assistant, registered nurse practitioner, or local health agency.
 - 3. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and initiate droplet precautions for a pertussis case for five calendar days after the date of initiation of antibiotic treatment for pertussis.
 - 4. A local health agency shall:
 - a. Upon receiving a report under R9-6-202 or R9-6-203 of a pertussis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
 - b. Conduct an epidemiologic investigation of each reported pertussis case or suspect case; and
 - c. For each pertussis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).
 - 5. An administrator of a correctional facility or shelter, either personally or through a representative, shall comply with the pertussis control measures recommended by a local health agency or the Department.
- B. Contact control measures:**
 - 1. When a pertussis case has been at a school or child care establishment, the administrator of the school or child care establishment, either personally or through a representative, shall:
 - a. Consult with the local health agency to determine who shall be excluded and how long each individual shall be excluded from the school or child care establishment, and
 - b. Comply with the local health agency's recommendations for exclusion.
 - 2. A local health agency shall identify contacts of a pertussis case and shall:
 - a. Determine which pertussis contacts will be quarantined or excluded, according to R9-6-303, to prevent transmission; and
 - b. If indicated, provide or arrange for a pertussis contact to receive antibiotic prophylaxis.

R9-6-364. Plague

- A. Case control measures:**
 - 1. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and institute droplet precautions for a pneumonic plague case or suspect case until 72 hours of antibiotic therapy have been completed with favorable clinical response.
 - 2. An individual handling the body of a deceased plague case shall use droplet precautions.
 - 3. A local health agency shall:
 - a. Upon receiving a report under R9-6-202 of a plague case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
 - b. Conduct an epidemiologic investigation of each reported plague case or suspect case;
 - c. For each plague case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
 - d. Ensure that an isolate or a specimen, as available, from each plague case or suspect case is submitted to the Arizona State Laboratory.
- B. Contact control measures:** A local health agency shall provide follow-up to pneumonic plague contacts for seven calendar days after last exposure to a pneumonic plague case.

R9-6-365. Poliomyelitis (Paralytic or Non-paralytic)

Case control measures: A local health agency shall:

- 1. Upon receiving a report under R9-6-202 of a poliomyelitis case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
- 2. Conduct an epidemiologic investigation of each reported poliomyelitis case or suspect case;
- 3. For each poliomyelitis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
- 4. Ensure that one or more specimens from each poliomyelitis case or suspect case, as required by the Department, are submitted to the Arizona State Laboratory.

R9-6-366. Psittacosis (Ornithosis)

A. Case control measures: A local health agency shall:

- 1. Conduct an epidemiologic investigation of each reported psittacosis case or suspect case; and
- 2. For each psittacosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

B. Environmental control measures: A local health agency shall:

- 1. If a bird infected with *Chlamydia psittaci* or *Chlamydophila psittaci* is located in a private residence:

- a. Provide health education for the bird's owner about psittacosis and the risks of becoming infected with psittacosis, and
- b. Advise the bird's owner to obtain treatment for the bird; and
- 2. If a bird infected with *Chlamydia psittaci* or *Chlamydophila psittaci* is located in a setting other than a private residence:
 - a. Provide health education for the bird's owner about psittacosis and the risks of becoming infected with psittacosis,
 - b. Ensure that the bird is treated or destroyed and any contaminated structures are disinfected, and
 - c. Require the bird's owner to isolate the bird from contact with members of the public and from other birds until treatment of the bird is completed or the bird is destroyed.

R9-6-367. Q Fever

Case control measures: A local health agency shall:

- 1. Upon receiving a report under R9-6-202 of a Q fever case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
- 2. Conduct an epidemiologic investigation of each reported Q fever case or suspect case; and
- 3. For each Q fever case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-368. Rabies in a Human

A. Case control measures: A local health agency shall:

- 1. Upon receiving a report under R9-6-202 of a human rabies case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
- 2. Conduct an epidemiologic investigation of each reported human rabies case or suspect case;
- 3. For each human rabies case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
- 4. Ensure that a specimen from each human rabies case or suspect case, as required by the Department, is submitted to the Arizona State Laboratory.

B. Contact control measures: A local health agency shall evaluate the level of risk of transmission from each contact's exposure to a human rabies case and, if indicated, provide or arrange for each contact to receive prophylaxis.

R9-6-369. Relapsing Fever (Borreliosis)

Case control measures: A local health agency shall:

- 1. Upon receiving a report under R9-6-202 of a borreliosis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
- 2. Conduct an epidemiologic investigation of each reported borreliosis case or suspect case; and
- 3. For each borreliosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-370. Respiratory Disease in a Health Care Institution or Correctional Facility

Outbreak control measures:

- 1. A local health agency shall:
 - a. Conduct an epidemiologic investigation of each reported outbreak of respiratory disease in a health care institution or correctional facility; and
 - b. For each outbreak of respiratory disease in a health care institution or correctional facility, submit to the Department the information required under R9-6-206(E).
- 2. When an outbreak of respiratory disease occurs in a health care institution or correctional facility, the administrator of the health care institution or correctional facility, either personally or through a representative, shall comply with the control measures recommended by a local health agency.

R9-6-371. Rubella (German Measles)

A. Case control measures:

- 1. An administrator of a school or child care establishment, either personally or through a representative, shall:
 - a. Exclude a rubella case from the school or child care establishment and from school- or child-care-establishment-sponsored events from the onset of illness through the seventh calendar day after the rash appears; and
 - b. Exclude a rubella suspect case from the school or child care establishment and from school- or child-care-establishment-sponsored events until evaluated and determined to be noninfectious by a physician, physician assistant, registered nurse practitioner, or local health agency.

2. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative and in consultation with the local health agency, shall isolate and institute droplet precautions for a rubella case through the seventh calendar day after the rash appears.
3. An administrator of a health care institution, either personally or through a representative, shall exclude a rubella:
 - a. Case from working at the health care institution from the onset of illness through the seventh calendar day after the rash appears; and
 - b. Suspect case from working at the health care institution until evaluated and determined to be noninfectious by a physician, physician assistant, registered nurse practitioner, or local health agency.
4. A local health agency shall:
 - a. Upon receiving a report under R9-6-202 or R9-6-203 of a rubella case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
 - b. Conduct an epidemiologic investigation of each reported rubella case or suspect case;
 - c. For each rubella case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
 - d. Ensure that one or more specimens from each rubella case or suspect case, as required by the Department, are submitted to the Arizona State Laboratory.
5. An administrator of a correctional facility or shelter, either personally or through a representative, shall comply with the rubella control measures recommended by a local health agency or the Department.

B. Contact control measures:

1. An administrator of a health care institution shall ensure that a paid or volunteer full-time or part-time worker at a health care institution does not participate in the direct care of a rubella case or suspect case or of a patient who is or may be pregnant unless the worker first provides evidence of immunity to rubella consisting of:
 - a. A record of immunization against rubella given on or after the first birthday; or
 - b. A statement signed by a physician, physician assistant, registered nurse practitioner, state health officer, or local health officer affirming serologic evidence of immunity to rubella.
2. When a rubella case has been at a school or child care establishment, the administrator of the school or child care establishment, either personally or through a representative, shall:
 - a. Consult with the local health agency to determine who shall be excluded and how long each individual shall be excluded from the school or child care establishment, and
 - b. Comply with the local health agency's recommendations for exclusion.
3. A local health agency shall:
 - a. Determine which rubella contacts will be quarantined or excluded, according to R9-6-303, to prevent transmission; and
 - b. Provide or arrange for immunization of each non-immune rubella contact within 72 hours after last exposure, if possible.

R9-6-372. Rubella Syndrome, Congenital

A. Case control measures:

1. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and implement contact precautions for an infant congenital rubella syndrome case until:
 - a. The infant congenital rubella syndrome case reaches one year of age; or
 - b. Two successive negative virus cultures, from specimens collected at least one month apart, are obtained from the infant congenital rubella syndrome case after the infant congenital rubella syndrome case reaches three months of age.
2. A local health agency shall:
 - a. Upon receiving a report under R9-6-202 of a congenital rubella syndrome case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
 - b. Conduct an epidemiologic investigation of each reported congenital rubella syndrome case or suspect case;
 - c. For each congenital rubella syndrome case, as specified in Table 2.4, the information required under R9-6-206(D); and
 - d. Ensure that one or more specimens from each congenital rubella syndrome case or suspect case, as required by the Department, are submitted to the Arizona State Laboratory.

- B. Contact control measures:** An administrator of a health care institution shall ensure that a paid or volunteer full-time or part-time worker at a health care institution who is known to be pregnant does not participate in the direct care of a congenital rubella syndrome case or suspect case unless the worker first provides evidence of immunity to rubella that complies with R9-6-371(B)(1).

R9-6-373. Salmonellosis

- A. Case control measures:** A local health agency shall:

1. Upon receiving a report under R9-6-202 or R9-6-203 of a salmonellosis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
 2. Exclude a salmonellosis case or suspect case with diarrhea from:
 - a. Working as a food handler, caring for children in or attending a child care establishment, or caring for patients or residents in a health care institution until:
 - i. Diarrhea has resolved,
 - ii. A stool specimen negative for *Salmonella* spp. is obtained from the salmonellosis case or suspect case, or
 - iii. The local health agency has determined that the case or suspect case is unlikely to infect other individuals; and
 - b. Using an aquatic venue until diarrhea has resolved;
 3. Conduct an epidemiologic investigation of each reported salmonellosis case or suspect case; and
 4. For each salmonellosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).
- B. Environmental control measures: A local health agency shall:**
1. If an animal infected with *Salmonella* spp. is located in a private residence, provide health education for the animal's owner about salmonellosis and the risks of becoming infected with *Salmonella* spp.; and
 2. If an animal infected with *Salmonella* spp. is located in a setting other than a private residence:
 - a. Provide health education for the animal's owner about salmonellosis and the risks of becoming infected with *Salmonella* spp., and
 - b. Require the animal's owner to provide information to individuals with whom the animal may come into contact about salmonellosis and methods to reduce the risk of transmission.

R9-6-374. Scabies

- A. Case control measures:**
1. An administrator of a school or child care establishment, either personally or through a representative, shall exclude a scabies case from the school or child care establishment until treatment for scabies is completed.
 2. An administrator of a health care institution or shelter, either personally or through a representative, shall exclude a scabies case from participating in the direct care of a patient or resident until treatment for scabies is completed.
 3. An administrator of a shelter, either personally or through a representative, shall ensure that a scabies case receives treatment for scabies and that the case's clothing and personal articles are disinfested.
 4. An administrator of a correctional facility, either personally or through a representative, shall ensure that a scabies case receives treatment for scabies and that the case's clothing and personal articles are disinfested.
- B. Contact control measures: An administrator of a school, child care establishment, health care institution, or shelter, either personally or through a representative, shall advise a scabies contact with symptoms of scabies to obtain examination and, if necessary, treatment.**
- C. Outbreak control measures: A local health agency shall:**
1. Provide health education regarding prevention, control, and treatment of scabies to individuals affected by a scabies outbreak;
 2. When a scabies outbreak occurs in a health care institution, notify the licensing agency of the outbreak; and
 3. For each scabies outbreak, submit to the Department the information required under R9-6-202(D).

R9-6-375. Shigellosis

Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 or R9-6-203 of a shigellosis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Exclude a shigellosis case or suspect case with diarrhea from:
 - a. Working as a food handler, caring for children in or attending a child care establishment, or caring for patients or residents in a health care institution until:
 - i. Diarrhea has resolved,
 - ii. A stool specimen negative for *Shigella* spp. is obtained from the shigellosis case or suspect case, or
 - iii. The local health agency has determined that the case or suspect case is unlikely to infect other individuals; and
 - b. Using an aquatic venue for one week after diarrhea has resolved;
3. Conduct an epidemiologic investigation of each reported shigellosis case or suspect case; and
4. For each shigellosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-376. Smallpox

A. Case control measures:

1. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and institute both airborne precautions and contact precautions for a smallpox case or suspect

case, until evaluated and determined to be noninfectious by a physician, physician assistant, or registered nurse practitioner.

2. A local health agency shall:
 - a. Upon receiving a report under R9-6-202 of a smallpox case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
 - b. In consultation with the Department:
 - i. Ensure that isolation and both airborne precautions and contact precautions have been instituted for a smallpox case or suspect case to prevent transmission, and
 - ii. Conduct an epidemiologic investigation of each reported smallpox case or suspect case;
 - c. For each smallpox case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
 - d. Ensure that a specimen from each smallpox case or suspect case, as required by the Department, is submitted to the Arizona State Laboratory.
- B. Contact control measures: A local health agency, in consultation with the Department, shall:
 1. Quarantine or exclude a smallpox contact as necessary, according to R9-6-303, to prevent transmission; and
 2. Monitor the contact for smallpox symptoms, including fever, each day for 21 calendar days after last exposure.

R9-6-377. Spotted Fever Rickettsiosis (e.g., Rocky Mountain Spotted Fever)

- A. Case control measures: A local health agency shall:
 1. Upon receiving a report under R9-6-202 of a spotted fever rickettsiosis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
 2. Ensure that a spotted fever rickettsiosis case or, if the case is a child or incapacitated adult, the parent or guardian of the case receives health education about reducing the risks of becoming reinfected with or of having others become infected with spotted fever rickettsiosis;
 3. Conduct an epidemiologic investigation of each reported spotted fever rickettsiosis case or suspect case; and
 4. For each spotted fever rickettsiosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).
- B. Environmental control measures: In cooperation with the Department, a local health agency or another local agency responsible for vector control within a jurisdiction shall conduct an assessment of the environment surrounding each spotted fever rickettsiosis case or suspect case and implement vector control measures as necessary.

R9-6-378. Streptococcal Group A Infection

- A. Streptococcal group A infection, invasive or non-invasive:

Case control measures: An administrator of a school, child care establishment, or health care institution or a person in charge of a food establishment, either personally or through a representative, shall exclude a streptococcal group A infection case with streptococcal lesions or streptococcal sore throat from working as a food handler, attending or working in a school, caring for children in or attending a child care establishment, or caring for patients or residents in a health care institution for 24 hours after the initiation of treatment for streptococcal group A infection.
- B. Invasive streptococcal group A infection:

Outbreak control measures: A local health agency shall:

 1. Conduct an epidemiologic investigation of each reported outbreak of streptococcal group A invasive infection;
 2. For each streptococcal group A invasive infection case involved in an outbreak, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
 3. For each outbreak of streptococcal group A invasive infection, submit to the Department the information required under R9-6-206(E).

R9-6-379. Streptococcal Group B Invasive Infection in an Infant Younger Than 90 Days of Age

- Case control measures: A local health agency shall:
1. Confirm the diagnosis of streptococcal group B invasive infection for each reported case or suspect case of streptococcal group B invasive infection in an infant younger than 90 days of age; and
 2. For each case of streptococcal group B infection in an infant younger than 90 days of age, submit to the Department the information required under R9-6-202(C).

R9-6-380. *Streptococcus pneumoniae* Invasive Infection

- Outbreak control measures: A local health agency shall:
1. Conduct an epidemiologic investigation of each reported outbreak of *Streptococcus pneumoniae* invasive infection; and

2. For each outbreak of *Streptococcus pneumoniae* invasive infection, submit to the Department the information required under R9-6-206(E).

R9-6-381. Syphilis

A. Case control measures:

1. A syphilis case shall obtain serologic testing for syphilis three months, six months, and one year after initiating treatment, unless more frequent or longer testing is recommended by a local health agency.
2. A health care provider for a pregnant syphilis case shall order serologic testing for syphilis at 28 to 32 weeks gestation and at delivery.
3. A local health agency shall:
 - a. Conduct an epidemiologic investigation, including a review of medical records, of each reported syphilis case or suspect case, confirming the stage of the disease;
 - b. For each syphilis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D);
 - c. If the syphilis case is pregnant, ensure that the syphilis case obtains the serologic testing for syphilis required in subsection (A)(1) and (A)(2); and
 - d. Comply with the requirements specified in R9-6-1103 concerning treatment and health education for a syphilis case.
4. The operator of a blood bank, blood center, or plasma center shall notify a donor of a test result with significant evidence suggestive of syphilis, as required under A.R.S. § 32-1483 and 21 CFR 630.6.

B. Contact control measures: When a syphilis case has named a contact, a local health agency shall comply with the requirements specified in R9-6-1103 concerning notification, testing, treatment, and health education for the contact.

C. Outbreak control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported syphilis outbreak; and
2. For each syphilis outbreak, submit to the Department the information required under R9-6-206(E).

R9-6-382. Taeniasis

Case control measures: A local health agency shall:

1. Exclude a taeniasis case with *Taenia* spp. from working as a food handler, caring for children in or attending a child care establishment, or caring for patients or residents in a health care institution until free of infestation;
2. Conduct an epidemiologic investigation of each reported taeniasis case; and
3. For each taeniasis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-383. Tetanus

Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported tetanus case or suspect case; and
2. For each tetanus case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-384. Toxic Shock Syndrome

Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported toxic shock syndrome case or suspect case; and
2. For each toxic shock syndrome case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-385. Trichinosis

Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a trichinosis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported trichinosis case or suspect case; and
3. For each trichinosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-386. Tuberculosis

A. Case control measures:

1. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and institute airborne precautions for:

- a. An individual with infectious active tuberculosis until:
 - i. At least three successive sputum smears collected at least eight hours apart, at least one of which is taken first thing in the morning as soon as possible after the individual awakens from sleep, are negative for acid-fast bacilli;
 - ii. Anti-tuberculosis treatment is initiated with multiple antibiotics; and
 - iii. Clinical signs and symptoms of active tuberculosis are improved;
 - b. A suspect case of infectious active tuberculosis until:
 - i. At least two successive tests for tuberculosis, using a product and methodology approved by the U.S. Food and Drug Administration for use when making decisions whether to discontinue isolation and airborne precautions, for the suspect case are negative; or
 - ii. At least three successive sputum smears collected from the suspect case as specified in subsection (A)(1)(a)(i) are negative for acid-fast bacilli, anti-tuberculosis treatment of the suspect case is initiated with multiple antibiotics, and clinical signs and symptoms of active tuberculosis are improved; and
 - c. A case or suspect case of multi-drug resistant active tuberculosis until a tuberculosis control officer has approved the release of the case or suspect case.
2. An administrator of a health care institution, either personally or through a representative, shall notify a local health agency at least one working day before discharging a tuberculosis case or suspect case.
 3. A local health agency shall:
 - a. Upon receiving a report under R9-6-202 of a tuberculosis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
 - b. Exclude an individual with infectious active tuberculosis or a suspect case from working, unless the individual's work setting has been approved by a tuberculosis control officer, until the individual with infectious active tuberculosis or suspect case is released from airborne precautions according to the applicable criteria in subsection (A)(1);
 - c. Conduct an epidemiologic investigation of each reported tuberculosis case, suspect case, or latent infection in a child five years of age or younger;
 - d. For each tuberculosis case or suspect case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D);
 - e. Ensure that an isolate or a specimen, as available, from each tuberculosis case is submitted to the Arizona State Laboratory; and
 - f. Comply with the requirements specified in R9-6-1202.
- B. Contact control measures:**
1. A contact of an individual with infectious active tuberculosis shall allow a local health agency to evaluate the contact's tuberculosis status.
 2. A local health agency shall comply with the tuberculosis contact control measures specified in R9-6-1202.
- C. An individual is not a tuberculosis case if the individual has a positive result from an approved test for tuberculosis but does not have clinical signs or symptoms of disease.**

R9-6-387. Tularemia

Case control measures:

1. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate a pneumonic tularemia case until 72 hours of antibiotic therapy have been completed with favorable clinical response.
2. A local health agency shall:
 - a. Upon receiving a report under R9-6-202 of a tularemia case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
 - b. Conduct an epidemiologic investigation of each reported tularemia case or suspect case;
 - c. For each tularemia case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
 - d. Ensure that an isolate or a specimen, as available, from each tularemia case or suspect case is submitted to the Arizona State Laboratory.

R9-6-388. Typhoid Fever

A. Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a typhoid fever case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported typhoid fever case or suspect case;
3. For each typhoid fever case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D);

4. Exclude a typhoid fever case or suspect case from working as a food handler, caring for children in or attending a child care establishment, or caring for patients or residents in a health care institution until:
 - a. At least one month after the date of onset of illness; and
 - b. After two successive stool specimens, collected from the typhoid fever case at least 24 hours apart and at least 48 hours after cessation of antibiotic therapy, are negative for *Salmonella typhi*;
 5. If a stool specimen from a typhoid fever case who has received antibiotic therapy is positive for *Salmonella typhi*, enforce the exclusions specified in subsection (A)(4) until two successive stool specimens, collected from the typhoid fever case at least one month apart and 12 or fewer months after the date of onset of illness, are negative for *Salmonella typhi*;
 6. If a positive stool specimen, collected at least 12 months after onset of illness, is obtained from a typhoid fever case who has received antibiotic therapy, redesignate the case as a carrier; and
 7. Exclude a typhoid fever carrier from working as a food handler, caring for children in or attending a child care establishment, or caring for patients or residents in a health care institution until three successive stool specimens, collected from the typhoid fever carrier at least one month apart, are negative for *Salmonella typhi*.
- B.** Contact control measures: A local health agency shall exclude a typhoid fever contact from working as a food handler, caring for children in or attending a child care establishment, or caring for patients or residents in a health care institution until two successive stool specimens, collected from the typhoid fever contact at least 24 hours apart, are negative for *Salmonella typhi*.

R9-6-389. Typhus Fever

Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a typhus fever case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported typhus fever case or suspect case; and
3. For each typhus fever case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-390. Vaccinia-related Adverse Event

Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a case or suspect case of a vaccinia-related adverse event, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Conduct an epidemiologic investigation of each reported case or suspect case of a vaccinia-related adverse event; and
3. For each case of a vaccinia-related adverse event, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-391. Vancomycin-Resistant or Vancomycin-Intermediate *Staphylococcus aureus*

Case control measures:

1. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and implement contact precautions for a case or suspect case of vancomycin-resistant or vancomycin-intermediate *Staphylococcus aureus*.
2. A diagnosing health care provider or an administrator of a health care institution transferring a known case with active infection or a known carrier of vancomycin-resistant or vancomycin-intermediate *Staphylococcus aureus* to another health care provider or health care institution shall, either personally or through a representative, comply with R9-6-305.
3. A local health agency, in consultation with the Department, shall:
 - a. Upon receiving a report under R9-6-202 of a case or suspect case of vancomycin-resistant or vancomycin-intermediate *Staphylococcus aureus*, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
 - b. Ensure that a case or suspect case of vancomycin-resistant or vancomycin-intermediate *Staphylococcus aureus* is isolated as necessary to prevent transmission;
 - c. Conduct an epidemiologic investigation of each reported case or suspect case of vancomycin-resistant or vancomycin-intermediate *Staphylococcus aureus*;
 - d. For each case of vancomycin-resistant or vancomycin-intermediate *Staphylococcus aureus*, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
 - e. Ensure that an isolate or a specimen, as available, from each case of vancomycin-resistant or vancomycin-intermediate *Staphylococcus aureus* is submitted to the Arizona State Laboratory.

R9-6-392. Varicella (Chickenpox)

A. Case control measures:

1. An administrator of a school or child care establishment, either personally or through a representative, shall exclude a varicella case from the school or child care establishment and from school- or child-care-establishment-sponsored events until lesions are dry and crusted.
2. An administrator of a health care institution, either personally or through a representative, shall isolate and implement airborne precautions for a varicella case until the case is no longer infectious.
3. A local health agency shall:
 - a. Conduct an epidemiologic investigation of each reported case of death due to primary varicella infection; and
 - b. For each reported case of death due to varicella infection, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

B. Contact control measures:

1. When a varicella case has been at a school or child care establishment, the administrator of the school or child care establishment, either personally or through a representative, shall:
 - a. Consult with the local health agency to determine who shall be excluded and how long each individual shall be excluded from the school or child care establishment, and
 - b. Comply with the local health agency's recommendations for exclusion.
2. A local health agency shall determine which contacts of a varicella case will be:
 - a. Excluded from a school or child care establishment, and
 - b. Advised to obtain an immunization against varicella.

R9-6-393. *Vibrio* Infection

Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a *Vibrio* infection case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Exclude a *Vibrio* infection case or suspect case with diarrhea from:
 - a. Working as a food handler, caring for patients or residents in a health care institution, or caring for children in or attending a child care establishment until:
 - i. Diarrhea has resolved, or
 - ii. The local health agency has determined that the case or suspect case is unlikely to infect other individuals; and
 - b. Using an aquatic venue until diarrhea has resolved;
3. Conduct an epidemiologic investigation of each reported *Vibrio* infection case or suspect case; and
4. For each *Vibrio* infection case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D).

R9-6-394. *Viral Hemorrhagic Fever*

A. Case control measures:

1. A diagnosing health care provider or an administrator of a health care institution, either personally or through a representative, shall isolate and implement both droplet precautions and contact precautions for a viral hemorrhagic fever case or suspect case for the duration of the illness.
2. A local health agency shall:
 - a. Upon receiving a report under R9-6-202 of a viral hemorrhagic fever case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
 - b. Conduct an epidemiologic investigation of each reported viral hemorrhagic fever case or suspect case;
 - c. For each viral hemorrhagic fever case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
 - d. Ensure that one or more specimens from each viral hemorrhagic fever case or suspect case are submitted to the Arizona State Laboratory.

B. Contact control measures: A local health agency, in consultation with the Department, shall quarantine a viral hemorrhagic fever contact as necessary to prevent transmission.

R9-6-395. *West Nile Virus* Infection

A. Case control measures: A local health agency shall:

1. Conduct an epidemiologic investigation of each reported West Nile virus infection case or suspect case;
2. For each case of West Nile virus infection, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
3. Ensure that each West Nile virus infection case is provided with health education that includes measures to:
 - a. Avoid mosquito bites, and
 - b. Reduce mosquito breeding sites.

- B.** Environmental control measures: In cooperation with the Department, a local health agency or another local agency responsible for vector control within a jurisdiction shall conduct an assessment of the environment surrounding each West Nile virus infection case or suspect case and implement vector control measures as necessary.

R9-6-396. Yellow Fever

- A.** Case control measures: A local health agency shall:
1. Upon receiving a report under R9-6-202 of a yellow fever case or suspect case, notify the Department within 24 hours after receiving the report and provide to the Department the information contained in the report;
 2. Conduct an epidemiologic investigation of each reported yellow fever case or suspect case;
 3. For each yellow fever case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D);
 4. Ensure that each yellow fever case is provided with health education that includes measures to:
 - a. Avoid mosquito bites, and
 - b. Reduce mosquito breeding sites; and
 5. Ensure that an isolate or a specimen, as available, from each yellow fever case or suspect case is submitted to the Arizona State Laboratory.
- B.** Environmental control measures: In cooperation with the Department, a local health agency or another local agency responsible for vector control within a jurisdiction shall conduct an assessment of the environment surrounding each yellow fever case or suspect case and implement vector control measures as necessary.

R9-6-397. Yersiniosis (Enteropathogenic *Yersinia*)

Case control measures: A local health agency shall:

1. Upon receiving a report under R9-6-202 of a yersiniosis case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
2. Exclude a yersiniosis case or suspect case with diarrhea from:
 - a. Working as a food handler, caring for patients or residents in a health care institution, or caring for children in or attending a child care establishment until:
 - i. Diarrhea has resolved,
 - ii. A stool specimen negative for enteropathogenic *Yersinia* is obtained from the case or suspect case, or
 - iii. The local health agency has determined that the case or suspect case is unlikely to infect other individuals; and
 - b. Using an aquatic venue for two weeks after diarrhea has resolved;
3. Conduct an epidemiologic investigation of each reported yersiniosis case or suspect case;
4. For each yersiniosis case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D); and
5. Ensure that an isolate or a specimen, as available, from each yersiniosis case is submitted to the Arizona State Laboratory.

R9-6-398. Zika Virus Infection

- A.** Case control measures: A local health agency shall:
1. Upon receiving a report under R9-6-202 of a Zika virus infection case or suspect case, notify the Department within one working day after receiving the report and provide to the Department the information contained in the report;
 2. Conduct an epidemiologic investigation of each reported Zika virus infection case or suspect case;
 3. For each Zika virus infection case, submit to the Department, as specified in Table 2.4, the information required under R9-6-206(D);
 4. Ensure that one or more specimens from each Zika virus infection case or suspect case, as required by the Department, are submitted to the Arizona State Laboratory; and
 5. Provide to the Zika virus infection case or ensure that another person provides to the Zika virus infection case health education that includes measures to:
 - a. Avoid mosquito bites,
 - b. Reduce mosquito breeding sites, and
 - c. Reduce the risk of sexual or congenital transmission of Zika virus.
- B.** Environmental control measures: In cooperation with the Department, a local health agency or another local agency responsible for vector control within a jurisdiction shall conduct an assessment of the environment surrounding each Zika virus infection case or suspect case and implement vector control measures as necessary.

Statutory Authority for the Rules in 9 A.A.C. 6, Article 3

36-136. Powers and duties of director; compensation of personnel; rules; definitions

A. The director shall:

1. Be the executive officer of the department of health services and the state registrar of vital statistics but shall not receive compensation for services as registrar.
2. Perform all duties necessary to carry out the functions and responsibilities of the department.
3. Prescribe the organization of the department. The director shall appoint or remove personnel as necessary for the efficient work of the department and shall prescribe the duties of all personnel. The director may abolish any office or position in the department that the director believes is unnecessary.
4. Administer and enforce the laws relating to health and sanitation and the rules of the department.
5. Provide for the examination of any premises if the director has reasonable cause to believe that on the premises there exists a violation of any health law or rule of this state.
6. Exercise general supervision over all matters relating to sanitation and health throughout this state. When in the opinion of the director it is necessary or advisable, a sanitary survey of the whole or of any part of this state shall be made. The director may enter, examine and survey any source and means of water supply, sewage disposal plant, sewerage system, prison, public or private place of detention, asylum, hospital, school, public building, private institution, factory, workshop, tenement, public washroom, public restroom, public toilet and toilet facility, public eating room and restaurant, dairy, milk plant or food manufacturing or processing plant, and any premises in which the director has reason to believe there exists a violation of any health law or rule of this state that the director has the duty to administer.
7. Prepare sanitary and public health rules.
8. Perform other duties prescribed by law.

B. If the director has reasonable cause to believe that there exists a violation of any health law or rule of this state, the director may inspect any person or property in transportation through this state, and any car, boat, train, trailer, airplane or other vehicle in which that person or property is transported, and may enforce detention or disinfection as reasonably necessary for the public health if there exists a violation of any health law or rule.

C. The director, after consultation with the department of administration, may take all necessary steps to enhance the highest and best use of the state hospital property, including contracting with third parties to provide services, entering into short-term lease agreements with third parties to occupy or renovate existing buildings and entering into long-term lease agreements to develop the land and buildings. The director shall deposit any monies collected from contracts and lease agreements entered into pursuant to this subsection in the Arizona state hospital charitable trust fund established by section 36-218. At least thirty days before issuing a request for proposals pursuant to this subsection, the department of health services shall hold a public hearing to receive community and provider input regarding the highest and best use of the state hospital property related to the request for proposals. The department shall report to the joint committee on capital review on the terms, conditions and purpose of any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, and the fiscal impact on the department and any revenues generated by the agreement. Any lease or sublease agreement entered into pursuant to this subsection relating to state hospital lands or buildings or the disposition of real property pursuant to this subsection, including state hospital lands or buildings, must be reviewed by the joint committee on capital review.

D. The director may deputize, in writing, any qualified officer or employee in the department to do or perform on the director's behalf any act the director is by law empowered to do or charged with the responsibility of doing.

E. The director may delegate to a local health department, county environmental department or public health services district any functions, powers or duties that the director believes can be competently, efficiently and properly performed by the local health department, county environmental department or public health services district if:

1. The director or superintendent of the local health agency, environmental agency or public health services district is willing to accept the delegation and agrees to perform or exercise the functions, powers and duties conferred in accordance with the standards of performance established by the director of the department of health services.

2. Monies appropriated or otherwise made available to the department for distribution to or division among counties or public health services districts for local health work may be allocated or reallocated in a manner designed to ensure the accomplishment of recognized local public health activities and delegated functions, powers and duties in accordance with applicable standards of performance. If in the director's opinion there is cause, the director may terminate all or a part of any delegation and may reallocate all or a part of any funds that may have been conditioned on the further performance of the functions, powers or duties conferred.

F. The compensation of all personnel shall be as determined pursuant to section 38-611.

G. The director may make and amend rules necessary for the proper administration and enforcement of the laws relating to the public health.

H. Notwithstanding subsection I, paragraph 1 of this section, the director may define and prescribe emergency measures for detecting, reporting, preventing and controlling communicable or infectious diseases or conditions if the director has reasonable cause to believe that a serious threat to public health and welfare exists. Emergency measures are effective for not longer than eighteen months.

I. The director, by rule, shall:

1. Define and prescribe reasonably necessary measures for detecting, reporting, preventing and controlling communicable and preventable diseases. The rules shall declare certain diseases reportable. The rules shall prescribe measures, including isolation or quarantine, that are reasonably required to prevent the occurrence of, or to seek early detection and alleviation of, disability, insofar as possible, from communicable or preventable diseases. The rules shall include reasonably necessary measures to control animal diseases transmittable to humans.

2. Define and prescribe reasonably necessary measures, in addition to those prescribed by law, regarding the preparation, embalming, cremation, interment, disinterment and transportation of dead human bodies and the conduct of funerals, relating to and restricted to communicable diseases and regarding the removal, transportation, cremation, interment or disinterment of any dead human body.

3. Define and prescribe reasonably necessary procedures that are not inconsistent with law in regard to the use and accessibility of vital records, delayed birth registration and the completion, change and amendment of vital records.

4. Except as relating to the beneficial use of wildlife meat by public institutions and charitable organizations pursuant to title 17, prescribe reasonably necessary measures to ensure that all food or drink, including meat and meat products and milk and milk products sold at the retail level, provided for human consumption is free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe reasonably necessary measures governing the production, processing, labeling, storing, handling, serving and transportation of these products. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained in any warehouse, restaurant or other premises, except a meat packing plant, slaughterhouse, wholesale meat processing plant, dairy product manufacturing plant or trade product manufacturing plant. The rules shall prescribe minimum standards for any truck or other vehicle in which food or drink is produced, processed, stored, handled, served or transported. The rules shall provide for the inspection and licensing of premises and vehicles so used, and for abatement as public nuisances of any premises or vehicles that do not comply with the rules and minimum standards. The rules shall provide an exemption relating to food or drink that is:

(a) Served at a noncommercial social event such as a potluck.

(b) Prepared at a cooking school that is conducted in an owner-occupied home.

(c) Not potentially hazardous and prepared in a kitchen of a private home for occasional sale or distribution for noncommercial purposes.

(d) Prepared or served at an employee-conducted function that lasts less than four hours and is not regularly scheduled, such as an employee recognition, an employee fundraising or an employee social event.

(e) Offered at a child care facility and limited to commercially prepackaged food that is not potentially hazardous and whole fruits and vegetables that are washed and cut on-site for immediate consumption.

(f) Offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous.

(g) A cottage food product that is not potentially hazardous or a time or temperature control for safety food and that is prepared in a kitchen of a private home for commercial purposes, including fruit jams and jellies, dry mixes made with ingredients from approved sources, honey, dry pasta and roasted nuts. Cottage food products must be packaged at home with an attached label that clearly states the name and registration number of the food preparer, lists all the ingredients in the product and the product's production date and includes the following statement: "This product was produced in a home kitchen that may process common food allergens and is not subject to public health inspection." If the product was made in a facility for individuals with developmental disabilities, the label must also disclose that fact. The person preparing the food or supervising the food preparation must complete a food handler training course from an accredited program and maintain active certification. The food preparer must register with an online registry established by the department pursuant to paragraph 13 of this subsection. The food preparer must display the preparer's certificate of registration when operating as a temporary food establishment. For the purposes of this subdivision, "not potentially hazardous" means cottage food products that meet the requirements of the food code published by the United States food and drug administration, as modified and incorporated by reference by the department by rule.

(h) A whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption.

(i) Produce in a packing or holding facility that is subject to the United States food and drug administration produce safety rule (21 Code of Federal Regulations part 112) as administered by the Arizona department of agriculture pursuant to title 3, chapter 3, article 4.1. For the purposes of this subdivision, "holding", "packing" and "produce" have the same meanings prescribed in section 3-525.

(j) Spirituous liquor produced on the premises licensed by the department of liquor licenses and control. This exemption includes both of the following:

(i) The area in which production and manufacturing of spirituous liquor occurs, as defined in an active basic permit on file with the United States alcohol and tobacco tax and trade bureau.

(ii) The area licensed by the department of liquor licenses and control as a microbrewery, farm winery or craft distiller that is open to the public and serves spirituous liquor and commercially prepackaged food, crackers or pretzels for consumption on the premises. A producer of spirituous liquor may not provide, allow or expose for common use any cup, glass or other receptacle used for drinking purposes. For the purposes of this item, "common use" means the use of a drinking receptacle for drinking purposes by or for more than one person without the receptacle being thoroughly cleansed and sanitized between consecutive uses by methods prescribed by or acceptable to the department.

5. Prescribe reasonably necessary measures to ensure that all meat and meat products for human consumption handled at the retail level are delivered in a manner and from sources approved by the Arizona department of agriculture and are free from unwholesome, poisonous or other foreign substances and filth, insects or disease-causing organisms. The rules shall prescribe standards for sanitary facilities to be used in identity, storage, handling and sale of all meat and meat products sold at the retail level.

6. Prescribe reasonably necessary measures regarding production, processing, labeling, handling, serving and transportation of bottled water to ensure that all bottled drinking water distributed for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions that shall be maintained at any source of water, bottling plant and truck or vehicle in which bottled water is produced, processed, stored or transported and shall provide for inspection and certification of bottled drinking water sources, plants, processes and transportation and for abatement as a public nuisance of any water supply, label, premises, equipment, process or vehicle that does not comply with the minimum standards. The rules shall prescribe minimum standards for bacteriological, physical and chemical quality for bottled water and for the submission of samples at intervals prescribed in the standards.

7. Define and prescribe reasonably necessary measures governing ice production, handling, storing and distribution to ensure that all ice sold or distributed for human consumption or for preserving or storing food for human consumption is free from unwholesome, poisonous, deleterious or other foreign substances and filth or disease-causing organisms. The rules shall prescribe minimum standards for the sanitary facilities and conditions and the quality of ice that shall be maintained at any ice plant, storage and truck or vehicle in which ice is produced, stored, handled or transported and shall provide for inspection and licensing of the premises and vehicles, and for abatement as public nuisances of ice, premises, equipment, processes or vehicles that do not comply with the minimum standards.

8. Define and prescribe reasonably necessary measures concerning sewage and excreta disposal, garbage and trash collection, storage and disposal, and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels. The rules shall prescribe minimum standards for preparing food in community kitchens, adequacy of excreta disposal, garbage and trash collection, storage and disposal and water supply for recreational and summer camps, campgrounds, motels, tourist courts, trailer coach parks and hotels and shall provide for inspection of these premises and for abatement as public nuisances of any premises or facilities that do not comply with the rules. Primitive camp and picnic grounds offered by this state or a political subdivision of this state are exempt from rules adopted pursuant to this paragraph but are subject to approval by a county health department under sanitary regulations adopted pursuant to section 36-183.02. Rules adopted pursuant to this paragraph do not apply to two or fewer recreational vehicles as defined in section 33-2102 that are not park models or park trailers, that are parked on owner-occupied residential property for less than sixty days and for which no rent or other compensation is paid. For the purposes of this paragraph, "primitive camp and picnic grounds" means camp and picnic grounds that are remote in nature and without accessibility to public infrastructure such as water, electricity and sewer.

9. Define and prescribe reasonably necessary measures concerning the sewage and excreta disposal, garbage and trash collection, storage and disposal, water supply and food preparation of all public schools. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained in any public school and shall provide for inspection of these premises and facilities and for abatement as public nuisances of any premises that do not comply with the minimum standards.

10. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious health conditions at these places. The rules shall prescribe minimum standards for sanitary conditions that shall be maintained at any public or semipublic swimming pool or bathing place and shall provide for inspection of these premises and for abatement as public nuisances of any premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of environmental quality and shall be consistent with the rules adopted by the director of the department of environmental quality pursuant to section 49-104, subsection B, paragraph 12.

11. Prescribe reasonably necessary measures to keep confidential information relating to diagnostic findings and treatment of patients, as well as information relating to contacts, suspects and associates of communicable disease patients. In no event shall confidential information be made available for political or commercial purposes.

12. Prescribe reasonably necessary measures regarding human immunodeficiency virus testing as a means to control the transmission of that virus, including the designation of anonymous test sites as dictated by current epidemiologic and scientific evidence.

13. Establish an online registry of food preparers that are authorized to prepare cottage food products for commercial purposes pursuant to paragraph 4 of this subsection. A registered food preparer shall renew the registration every three years and shall provide to the department updated registration information within thirty days after any change.

14. Prescribe an exclusion for fetal demise cases from the standardized survey known as "the hospital consumer assessment of healthcare providers and systems".

J. The rules adopted under the authority conferred by this section shall be observed throughout the state and shall be enforced by each local board of health or public health services district, but this section does not limit the right of any local board of health or county board of supervisors to adopt ordinances and rules as authorized by law within its jurisdiction, provided that the ordinances and rules do not conflict with state law and are equal to or more restrictive than the rules of the director.

K. The powers and duties prescribed by this section do not apply in instances in which regulatory powers and duties relating to public health are vested by the legislature in any other state board, commission, agency or instrumentality, except that with regard to the regulation of meat and meat products, the department of health services and the Arizona department of agriculture within the area delegated to each shall adopt rules that are not in conflict.

L. The director, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section.

M. After consultation with the state superintendent of public instruction, the director shall prescribe the criteria the department shall use in deciding whether or not to notify a local school district that a pupil in the district has tested positive

for the human immunodeficiency virus antibody. The director shall prescribe the procedure by which the department shall notify a school district if, pursuant to these criteria, the department determines that notification is warranted in a particular situation. This procedure shall include a requirement that before notification the department shall determine to its satisfaction that the district has an appropriate policy relating to nondiscrimination of the infected pupil and confidentiality of test results and that proper educational counseling has been or will be provided to staff and pupils.

N. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (f) of this section, food and drink are exempt from the rules prescribed in subsection I of this section if offered at locations that sell only commercially prepackaged food or drink that is not potentially hazardous, without a limitation on its display area.

O. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (h) of this section, a whole fruit or vegetable grown in a public school garden that is washed and cut on-site for immediate consumption is exempt from the rules prescribed in subsection I of this section.

P. Until the department adopts an exclusion by rule as required by subsection I, paragraph 14 of this section, the standardized survey known as "the hospital consumer assessment of healthcare providers and systems" may not include patients who experience a fetal demise.

Q. Until the department adopts exemptions by rule as required by subsection I, paragraph 4, subdivision (j) of this section, spirituous liquor and commercially prepackaged food, crackers or pretzels that meet the requirements of subsection I, paragraph 4, subdivision (j) of this section are exempt from the rules prescribed in subsection I of this section.

R. For the purposes of this section:

1. "Cottage food product":

(a) Means a food that is not potentially hazardous or a time or temperature control for safety food as defined by the department in rule and that is prepared in a home kitchen by an individual who is registered with the department.

(b) Does not include foods that require refrigeration, perishable baked goods, salsas, sauces, fermented and pickled foods, meat, fish and shellfish products, beverages, acidified food products, nut butters or other reduced-oxygen packaged products.

2. "Fetal demise" means a fetal death that occurs or is confirmed in a licensed hospital. Fetal demise does not include an abortion as defined in section 36-2151.

36-788. Isolation and quarantine during a state of emergency or state of war emergency

A. During a state of emergency or state of war emergency as declared pursuant to section 36-787, the department or local health authority must initiate an investigation if that agency has reasonable cause to believe that a highly contagious and fatal disease exists within its jurisdiction. Subject to the provisions of this article, persons who have contracted the disease or who have been exposed to the disease may be subject to isolation and quarantine if the director determines that quarantine is the least restrictive means by which the public can be protected from transmission of the disease, due to the nature of the disease and available preventive measures, or refusal by an individual to accept less restrictive measures to prevent disease transmission. Diseases for which isolation and quarantine may be ordered do not include acquired immune deficiency syndrome or other infection caused by the human immunodeficiency virus.

B. The department or local health authority may, during the state of emergency or state of war emergency declared by the governor, do the following:

1. Establish and maintain places of isolation and quarantine, which may include the residence of the person quarantined.

2. Require isolation or quarantine of any person by the least restrictive means necessary to protect the public health. The department or local health authority shall use all reasonable means to prevent the transmission of disease among the isolated or quarantined persons.

C. The department, a county health department or a public health services district shall ensure, to the extent possible, that the premises in which a person is isolated or quarantined is maintained in a safe and hygienic manner and is designed to minimize the likelihood of further transmission of disease or other harm to a person subject to isolation or quarantine. Adequate food, clothing, medication and other necessities, competent medical care and means of communicating with those in and outside these settings shall be made available.

D. A person subject to isolation or quarantine shall comply with the department's or local health authority's rules and orders, shall not go beyond the isolation or quarantine premises and shall not come in contact with any person not subject to isolation or quarantine other than a physician or other health care provider, department or local health authority or person authorized to enter an isolation or quarantine premises by the department or local health authority.

E. Other than a person authorized by the department or local health authority, a person shall not enter an isolation or quarantine premises. If, by reason of an unauthorized entry into an isolation or quarantine premises, the person poses a danger to public health, the department, or local health authority may place the person in isolation or quarantine pursuant to this section or section 36-789.

F. The department, or local health authority must terminate isolation or quarantine of a person if it determines that the isolation or quarantine is no longer necessary to protect the public health.

36-789. Due process for isolation and quarantine during a state of emergency or state of war emergency

A. The department, or local health authority may isolate or quarantine a person or group of persons through a written directive without first obtaining a written order from the court if any delay in the isolation or quarantine of the person would pose an immediate and serious threat to the public health. The directive shall:

1. Specify the identity of the person or persons subject to isolation or quarantine, the premises subject to isolation or quarantine, the date and time at which isolation or quarantine commences, the suspected highly contagious and fatal disease, if known, and that a state of emergency has been declared by the governor.

2. Be given to the person or persons to be isolated or quarantined. If the directive applies to groups of persons and it is impractical to provide individual copies, it may be posted in a conspicuous place in the isolation or quarantine premises.

B. Within ten days after issuing the written directive, or when any delay in the isolation or quarantine of a person or group of persons will not pose an immediate and serious threat to the public health, the department or local health authority shall file a petition for a court order authorizing the initial or continued isolation or quarantine of a person or group of persons. The petition shall specify the following:

1. The identity of the person or group of persons subject to isolation or quarantine.

2. The premises subject to isolation or quarantine.

3. The date and time at which isolation or quarantine commences.

4. The suspected contagious disease, if known.

5. A statement of compliance with the conditions and principles for isolation and quarantine.

6. A statement of the basis on which isolation or quarantine is justified pursuant to this article.

C. The petition must be accompanied by the sworn affidavit of the department or local health authority attesting to the facts asserted in the petition, together with any further information that may be relevant and material to the court's consideration.

D. Notice to a person or group of persons identified in a petition filed pursuant to subsection B of this section must be completed within twenty-four hours after filing the petition and in accordance with the rules of civil procedure.

E. A hearing must be held on a petition filed pursuant to this section within five days after filing of the petition. In extraordinary circumstances and for good cause shown, the department or local health authority may apply to continue the hearing date on a petition for not more than ten days. If the court grants a continuance it must give due regard to the rights of the affected persons, the protection of the public's health, the severity of the emergency and the availability of necessary witnesses and evidence.

F. The court shall grant the petition if, by a preponderance of the evidence, isolation or quarantine is shown to be reasonably necessary to protect the public health.

G. A court order authorizing isolation or quarantine may do so for a period not to exceed thirty days. The order must:

1. Identify the isolated or quarantined person or group of persons by name or shared or similar characteristics or circumstances.

2. Specify factual findings warranting isolation or quarantine pursuant to this article, including any conditions necessary to ensure that isolation or quarantine is carried out within the stated purposes and restrictions of this article.

3. Be served on an affected person or group of persons in accordance with the rules of civil procedure.

H. Before an isolation or quarantine order expires, the department or local health authority may move to continue the isolation or quarantine for an additional period not to exceed thirty days. The court shall grant the motion if, by a preponderance of the evidence, isolation or quarantine is shown to be reasonably necessary to protect the public health.

I. A person or group of persons isolated or quarantined pursuant to this section may apply to the court for an order to show cause why the person or group of persons should not be released. The court must rule on the application to show cause within forty-eight hours after it is filed. If the court grants the application, the court must schedule a hearing on the order to show cause within twenty-four hours after it issues the order to show cause. The issuance of an order to show cause does not stay or enjoin an isolation or quarantine order.

J. A person isolated or quarantined pursuant to this section may request a court hearing regarding the person's treatment and the conditions of the quarantine or isolation.

K. On receiving a request for a hearing pursuant to subsection J of this section, the court must set a date for a hearing. The hearing must take place within ten days after the court receives the request. The request for a hearing does not alter the order of isolation or quarantine. If the court finds that the isolation or quarantine of the person or group of persons does not comply with the requirements of this section or section 36-788, the court may provide remedies appropriate to the circumstances of the state of emergency, the rights of the individual and in keeping with the provisions of this article.

L. A record of the proceedings pursuant to this section shall be made and retained. If, because of a state of emergency or state of war emergency declared pursuant to section 36-787, parties cannot personally appear before the court, the proceedings may be conducted by the authorized representatives of the parties and held by any means that allows all parties to fully participate.

M. The court shall appoint counsel at state expense to represent a person or group of persons who is subject to isolation or quarantine pursuant to this article and who is not otherwise represented by counsel. Representation by appointed counsel continues throughout the duration of the isolation or quarantine of the person or group of persons. The department or local health authority must provide adequate means of communication between the isolated or quarantined persons and their counsel.

N. In any proceedings brought pursuant to this section, to promote the fair and efficient operation of justice and having given due regard to the rights of the affected persons, the protection of the public's health, the severity of the emergency and the availability of necessary witnesses and evidence, the court may order the consolidation of individual claims into groups of claims if:

1. The number of persons involved or to be affected is so large as to render individual participation impractical.
2. There are questions of law or fact common to the individual claims or rights to be determined.
3. The group claims or rights to be determined are typical of the affected person's claims or rights.
4. The entire group will be adequately represented in the consolidation.

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

Title 9, Chapter 22, Article 10 (First and Third Party Liability and Recoveries)



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: February 7, 2023

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: January 3, 2023

SUBJECT: **ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM**
Title 9, Chapter 22 (Administration), Article 10 (First and Third Party Liability and Recoveries)

Summary

This Five-Year Review Report (5YRR) from the Arizona Health Care Cost Containment System (AHCCCS or Administration) relates to rules in Title 9, Chapter 22, Article 10, First and Third Party Liability and Recoveries.

By law, Medicaid is the payer of last resort, except as otherwise provided. When AHCCCS pays a claim and discovers the existence of a liable third party, it must attempt to recover the money from the liable third party. The rules in Title, 9, Chapter 22, Article 10 support the operations and practices of the Administration's first and third party liability recovery programs.

Proposed Action

Following the approval of the 5YRR in 2018, the Administration anticipated requesting approval for an expedited rulemaking from the Governor's Office. However, the federal government updated the federal regulations governing State Medicaid Agencies' ability to apply third party liens in the Bipartisan Budget Act of 2018 (BBA). In addition, the Center for Medicare and Medicaid Services (CMS) made it clear they would be issuing guidance at the end of 2019 about how to interpret the updated regulations. Once AHCCCS analyzed the impact of

the statute, regulation, and guidance on existing rules, the COVID-19 Public Health Emergency (PHE) began and non-essential (those not tied to session law or budget bills) rulemakings were put on hold. Beginning in early 2022, AHCCCS began the PHE unwinding process, which allowed the Administration to begin initiating non-essential rulemakings. Therefore, the prior course of action, also identified below, is carried over into this report and will be completed in a rulemaking following GRRC approval of this report.

1. Has the agency analyzed whether the rules are authorized by statute?

The Administration cites both general and specific statutory authority for these rules.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Administration states that the rules in Title 9, Chapter 22, Article 10 support the operations and practices of the agency's first and third party liability recovery programs. The Administration indicates that the proposed course of action in the prior 5YRR was not enacted. Therefore, there is no economic impact to review. The Administration proposes revisions to clarify existing practices which are consistent with federal law. Stakeholders include the Administration, contractors, and providers

3. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?

The Administration states that the suggested changes to the rules are minimal and therefore will not change the cost-benefit analysis for this rule. They state that as it stands, the quantifiable benefits of this rule (i.e. recovery of costs of services through third party liens) outweigh the cost to individuals. The Administration indicates that the rule imposes the least burden and compliance costs because it allows the agency to do the requisite paperwork and does not put that burden on the member or their family, while allowing them to receive care. Additionally, any costs or burdens from this rule are necessary to achieve the underlying regulatory objective because it is imperative for the State to recover these costs, when possible, in order for AHCCCS to maximize the opportunity for recovery of payments.

4. Has the agency received any written criticisms of the rules over the last five years?

The Administration indicates that they have not received any written criticisms of the rules in the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Administration indicates the rules are generally clear, concise and understandable with the following exceptions:

- R9-22-1001: The current definition of third-party liability is not sufficiently clear and distinguishable from the definition of third party in the rule. To create consistency with AHCCCS Contractor Operations Manual (ACOM) Policy 434, and clarify the meaning, revision of the definition is recommended to state: “The legal obligation of third parties (e.g. certain individuals, entities, insurers, or programs) to pay part or all of the expenditures for medical assistance furnished under a Medicaid state plan.”
- R9-22-1003: should be updated to read that the Administration must pay the difference between capped fee-for-service and a contracted amount when a member is enrolled with a contractor.
- R9-22-1005: should be updated to state that when first or third party liability is found after reimbursement occurs, the Administration or contractor will require the provider or non-contracting provider to bill the appropriate party and resubmit their claim for an adjustment to the Administration or contractor.
- R9-22-1006: should be updated by striking item 10, adoption related payments

6. Has the agency analyzed the rules’ consistency with other rules and statutes?

The Administration indicates the rules are consistent with other rules and statutes.

7. Has the agency analyzed the rules’ effectiveness in achieving its objectives?

The Administration states the rules are effective in achieving their objective.

8. Has the agency analyzed the current enforcement status of the rules?

The Administration states that the rules are enforced as written.

9. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?

The Administration indicates none of the rules reviewed are more stringent than a corresponding federal law.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

The Administration states the rules do not require the issuance of a regulatory permit, license, or agency authorization.

11. Conclusion

As mentioned above, the Administration indicates that the rules are generally clear, concise, and understandable; effective in achieving their objective; consistent with other rules and statutes; and enforced as they are written.

The Administration is ready to initiate a rulemaking to implement the changes identified above in the 5YRR and will request approval from the Governor's Office for an expedited rulemaking within 180 days following GRRC's approval of this report.

For these reasons, Council staff believe the Administration has submitted an adequate report and recommends approval.

November 28, 2022

VIA EMAIL: grrc@azdoa.gov

Nicole Sornsins, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: AHCCCS Title 9, Chapter 22, Article 10;

Dear Ms. Sornsins:

Please find enclosed AHCCCS's Five-Year Review Report for Title 9, Chapter 22, Article 10 due on November 28, 2022.

AHCCCS hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Stephanie Elzenga at 602-417-4232 or stephanie.elzenga@azahcccs.gov.

Sincerely,



Kasey Rogg
Assistant Director

Attachments

Arizona Health Care Cost Containment System

(AHCCCS)

Five-Year-Review Report

Title 9. Chapter 22, Article 10

November 2022

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 36-2901 and 36-2903 (F)

Specific Statutory Authority: A.R.S. §§ 36-2903.01 (K) and 36-2915.

2. The objective of each rule:

Rule	Objective
R9-22-1001	Provides definitions related to First and Third Party Liability (TPL) provisions.
R9-22-1002	Provides general provisions stating when AHCCCS is the payor of last resort vs. when it is not.
R9-22-1003	Provides the requirement to cost avoid where TPL insurance has responsibility to pay. This section is applicable to AHCCCS Fee-For-Service (FFS) claims, Contractor to provider claims, and Contractor to non-contracting provider claims.
R9-22-1004	Provides the requirement that a member must cooperate in identifying and providing TPL information.
R9-22-1005	Provides the requirement that the AHCCCS Administration and its contractors, providers, and non-contracting providers must attempt to collect payment from TPL sources.
R9-22-1006	Provides requirements regarding the type of TPL sources that must be monitored and pursued as required by statute.
R9-22-1007	Provides hospital, provider and non-contracting provider requirements to notify AHCCCS of a possible TPL source.
R9-22-1008	Provides the type of member information and possible TPL source liable for damages that must be reported to AHCCCS in writing by a hospital, provider or non-contracting provider.
R9-22-1009	Provides the type of TPL health insurance information that must be provided to AHCCCS by a provider or non-contracting provider.

3. Are the rules effective in achieving their objectives? Yes X No

4. Are the rules consistent with other rules and statutes? Yes X No

5. **Are the rules enforced as written?** Yes X No

6. **Are the rules clear, concise, and understandable?** Yes No X

Rule	Explanation
R9-22-1001	The current definition of third-party liability is not sufficiently clear and distinguishable from the definition of third party in the rule. To create consistency with AHCCCS Contractor Operations Manual (ACOM) Policy 434, and clarify the meaning, revision of the definition is recommended to state: “The legal obligation of third parties (e.g. certain individuals, entities, insurers, or programs) to pay part or all of the expenditures for medical assistance furnished under a Medicaid state plan.”
R9-22-1003	R9-22-1003 should be updated to read that the Administration must pay the difference between capped fee-for-service and a contracted amount when a member is enrolled with a contractor.
R9-22-1005	R9-22-1005 should be updated to state that when first or third party liability is found after reimbursement occurs, the Administration or contractor will require the provider or non-contracting provider to bill the appropriate party and resubmit their claim for an adjustment to the Administration or contractor.
R9-22-1006	R9-22-1006 should be updated by striking item 10, adoption related payments.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No X

8. **Economic, small business, and consumer impact comparison:**

The rules in Title, 9, Chapter 22, Article 10 support the operations and practices of the agency’s first and third party liability recovery programs. By law, Medicaid is the payer of last resort, except as otherwise provided by law. When AHCCCS pays a claim and discovers the existence of a liable third party, it must attempt to recover the money from the liable third party.

The revisions in A.A.C. R9-22-1002 clarify the existing practice which is consistent with federal law. The small businesses, consumers, members, and providers are anticipated to experience nominal impact by the changes to the rule language since the outcome is expected to be budget neutral. The revisions in A.A.C. R9-22-1003 clarify the sequence of payment to providers by contractors and the Administration for claims for E.P.S.D.T. services, prenatal care, and those involving an absent parent.

It is anticipated that the private sector, including small businesses or political subdivisions, will be nominally impacted since the proposed rule language streamlines and clarifies the existing rules, including rules delineating the reimbursement process of certain third party liability claims. The Administration, contractors, and providers

will benefit because the changes provide clarification of when and how reimbursement must be made by AHCCCS, consistent with federal law.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes ___ No X

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

Following the 5YRR approval for these articles, the federal government updated the federal regulations governing State Medicaid Agencies' ability to apply third party liens in the Bipartisan Budget Act of 2018 (BBA). In addition, the Center for Medicare and Medicaid Services (CMS) made it clear they would be issuing guidance about how to interpret the updated regulations, which didn't come out until the end of 2019. Once AHCCCS had analyzed the impact of the statute, regulation, and guidance on existing rules, in the first quarter of 2020, the COVID-19 Public Health Emergency (PHE) had begun and non-essential (those not tied to session law or budget bills) rulemakings were put on hold. Beginning in early 2022, AHCCCS began the PHE unwinding process, which allowed us to begin initiating non-essential rulemakings. As a result, two expedited rulemakings were able to be completed and were immediately followed by several essential rulemakings. Therefore, the prior course of action is carried over into this report and will be completed in a rulemaking following GRRC approval of this report.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The suggested changes to the rule are minimal and therefore will not change the cost-benefit analysis for this rule. As it stands, the quantifiable benefits of this rule (i.e. recovery of costs of services through third party liens) outweigh those costs to individuals. This rule imposes the least burden and compliance costs because it allows the agency to do the requisite paperwork and does not put that burden on the member or their family, while allowing them to still receive care. Additionally, any costs or burden from this rule are necessary to achieve the underlying regulatory objective because it is imperative for the State to recovery these costs, when possible, in order for AHCCCS to maximize the opportunity for recovery of payments.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No X

42 CFR Part 433.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

The rules do not require the issuance of a regulatory permit, license, or agency authorization.

14. Proposed course of action

AHCCCS is ready to initiate a rulemaking to allow for implementation of the 5YRR course of action, once approved by GRRC, and will present it to the agency's policy advisor following the appointment of the agency's new Director. AHCCCS will then request approval from the Governor's Office for an expedited or regulatory rulemaking within 120 days following GRRC's approval of this 5YRR.

89-2). Section repealed by final rulemaking at 5 A.A.R. 4061, effective October 8, 1999 (Supp. 99-4). New Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 4484, effective January 6, 2007 (Supp. 06-4).

R9-22-905. Repealed

Historical Note

Adopted effective August 29, 1985 (Supp. 85-4). Former Section R9-22-905 renumbered without change as Section R9-22-908, former Section R9-22-907 renumbered and amended as Section R9-22-905 effective October 1, 1986 (Supp. 86-5). Amended effective May 30, 1989 (Supp. 89-2). Section repealed by final rulemaking at 5 A.A.R. 4061, effective October 8, 1999 (Supp. 99-4). New Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 4484, effective January 6, 2007 (Supp. 06-4).

R9-22-906. Repealed

Historical Note

Adopted effective August 29, 1985 (Supp. 85-4). Amended effective October 1, 1986 (Supp. 86-5). Amended effective October 1, 1987 (Supp. 87-4). Amended effective May 30, 1989 (Supp. 89-2). Amended effective September 22, 1997 (Supp. 97-3). Section repealed by final rulemaking at 5 A.A.R. 4061, effective October 8, 1999 (Supp. 99-4). New Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 4484, effective January 6, 2007 (Supp. 06-4).

R9-22-907. Repealed

Historical Note

Adopted effective August 29, 1985 (Supp. 85-4). Former Section R9-22-907 renumbered and amended as Section R9-22-905, former Section R9-22-908 renumbered and amended as Section R9-22-907 effective October 1, 1986 (Supp. 86-5). Amended effective May 30, 1989 (Supp. 89-2). Section repealed by final rulemaking at 5 A.A.R. 4061, effective October 8, 1999 (Supp. 99-4). New Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 4484, effective January 6, 2007 (Supp. 06-4).

R9-22-908. Repealed

Historical Note

Adopted effective August 29, 1985 (Supp. 85-4). Former Section R9-22-908 renumbered and amended as Section R9-22-907, former Section R9-22-905 renumbered without change as Section R9-22-908 effective October 1, 1986 (Supp. 86-5). Former R9-22-908 repealed effective May 30, 1989 (Supp. 89-2). New Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 4484, effective January 6, 2007 (Supp. 06-4).

R9-22-909. Repealed

Historical Note

New Section made by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed by final rulemaking at 12 A.A.R. 4484, effective January 6, 2007 (Supp. 06-4).

ARTICLE 10. FIRST- AND THIRD-PARTY LIABILITY AND RECOVERIES

R9-22-1001. Definitions

In addition to the definitions in A.R.S. §§ 36-2901, 36-2923 and 9 A.A.C. 22, Article 1, the following definitions apply to this Article:

“Absent parent” means an individual who is absent from the home and is legally responsible for providing financial and/or medical support for a dependent child.

“Cost avoid” means to deny a claim and return the claim to the provider for a determination of the amount of first- or third-party liability.

“First-party liability” means the obligation of any insurance plan or other coverage obtained directly or indirectly by a member that provides benefits directly to the member to pay all or part of the expenses for medical services incurred by AHCCCS or a member.

“Third-party” means a person, entity, or program that is, or may be, liable to pay all or part of the medical cost of injury, disease, or disability of an applicant or member.

“Third-party liability” means any individual, entity, or program that is or may be liable to pay all or part of the expenditures for medical assistance furnished to a member under a state plan.

Historical Note

Former Section R9-22-712 renumbered and amended as Section R9-22-1001 effective October 1, 1985 (Supp. 85-5). Amended subsections (E) through (H) effective October 1, 1986 (Supp. 86-5). Amended subsections (B), (C), (E), and (F) effective December 22, 1987 (Supp. 87-4). Section repealed; new Section adopted effective November 7, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 10 A.A.R. 1146, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 15 A.A.R. 179, effective March 7, 2009 (Supp. 09-1). Amended by final rulemaking at 21 A.A.R. 1237, effective July 7, 2015 (Supp. 15-3).

R9-22-1002. General Provisions

AHCCCS is the payor of last resort unless specifically prohibited by applicable state or federal law. AHCCCS is not the payor of last resort when the following entities are the third-party:

1. Indian Health Services (IHS/638), contract health,
2. Title IV-E,
3. Arizona Early Intervention Program (AZEIP),
4. Local educational agencies providing services under the Individuals with Disabilities Education Act under 34 CFR Part 300,
5. Entities and contractors of entities providing services under grants awarded as part of the HIV Health Care Services Program under 42 USC 300ff et seq., and
6. The Arizona Refugee Resettlement Program operated under 45 CFR Part 400, Subpart (G).

Historical Note

Section R9-22-529 adopted effective October 1, 1985, then renumbered as Section R9-22-1002 effective October 1, 1985 (Supp. 85-5). Amended subsections (C) and (D) effective October 1, 1986 (Supp. 86-5). Amended

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effective December 22, 1987 (Supp. 87-4). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Section repealed; new Section adopted effective November 7, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 10 A.A.R. 1146, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 15 A.A.R. 179, effective March 7, 2009 (Supp. 09-1). Amended by final rulemaking at 21 A.A.R. 1237, effective July 7, 2015 (Supp. 15-3).

R9-22-1003. Cost Avoidance

- A.** The Administration's reimbursement responsibility.
1. The Administration shall pay no more than the difference between the Capped Fee-For-Service schedule and the amount of the third-party liability, unless Medicare is the third-party.
 2. If Medicare is the third-party that is liable, the Administration shall pay the Medicare copayment, coinsurance, and deductible regardless of the Capped Fee-For-Service Schedule, as described under 9 A.A.C. 29, Article 3.
- B.** The Contractor's reimbursement responsibility.
1. If the contract between the contractor and the provider does not state otherwise, a contractor shall pay no more than the difference between the contracted rate and the amount of the third-party liability.
 2. If the provider does not have a contract with the contractor, a contractor shall pay no more than the difference between the Capped Fee-For-Service rate and the amount of the third-party liability.
- C.** The following parties shall take reasonable measures to identify potentially legally liable first- or third-party sources:
1. AHCCCS, the Administration, or a contractor;
 2. A provider;
 3. A noncontracting provider; and
 4. A member.
- D.** Except as specified under subsection (E), the Administration or a contractor shall cost avoid a claim for AHCCCS covered services under Article 2 if the Administration or a contractor has established the probable existence of a liable party at the time the claim is filed. Establishing liability takes place when the Administration or the contractor receives confirmation that another party is legally responsible for payment of a health care service under Article 2.
- E.** The Administration or contractor shall pay the full amount of the claim according to the Capped-Fee-For-Service Schedule or the contracted rate as described under subsection (B), and then seek reimbursement from any liable parties if the claim is for:
1. Prenatal care for pregnant women,
 2. Preventive pediatric services, including E.P.S.D.T. and administration of vaccines to children under the Vaccines for Children (VFC) program; or
 3. Services covered by third-party liability that is derived from an absent parent whose obligation to pay support is being enforced by the Division of Child Support Enforcement.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1146, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 10 A.A.R. 3012, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 15 A.A.R. 179, effective March 7, 2009 (Supp. 09-1). Amended by final rulemaking at 21 A.A.R. 1237, effective July 7, 2015 (Supp. 15-3).

R9-22-1004. Member Participation

A member shall cooperate in identifying potentially legally liable first- or third-parties and timely assist the Administration and a contractor, provider, or noncontracting provider in pursuing any first- or third-party who may be liable to pay for covered services.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1146, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 15 A.A.R. 179, effective March 7, 2009 (Supp. 09-1).

R9-22-1005. Collections

- A.** Parties that notify AHCCCS. A provider or noncontracting provider shall cooperate with AHCCCS by identifying all potential sources of first- or third-party liability and notify AHCCCS of these sources.
- B.** Parties that pursue collection or reimbursement. AHCCCS, a provider, or noncontracting provider shall pursue collection or reimbursement from all potential sources of first- or third-party liability.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1146, effective May 1, 2004 (Supp. 04-1).

R9-22-1006. AHCCCS Monitoring Responsibilities

AHCCCS shall monitor first- or third-party liability payments to a provider or noncontracting provider, which include but are not limited to payments by or for:

1. Private health insurance;
2. Employment-related disability and health insurance;
3. Long-term care insurance;
4. Other federal programs not excluded by statute from recovery;
5. Court ordered or non-court ordered medical support from an absent parent;
6. State worker's compensation;
7. Automobile insurance, including underinsured and uninsured motorists insurance;
8. Court judgment or settlement from a liability insurer including settlement proceeds placed in a trust;
9. First-party probate estate recovery;
10. Adoption-related payment; or
11. A tortfeasor.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1146, effective May 1, 2004 (Supp. 04-1).

R9-22-1007. Notification for Perfection, Recording, and Assignment of AHCCCS Liens

- A.** Hospital requirements. A hospital providing medical services to a member for an injury or condition resulting from circumstances reflecting the probable liability of a first- or third-party shall within 30 days after a member's discharge:
1. Notify AHCCCS via facsimile or mail under R9-22-1008, or
 2. Mail AHCCCS a copy of the lien the hospital proposes to record or has recorded under A.R.S. § 33-932.
- B.** Provider and noncontracting provider requirements. A provider or noncontracting provider, other than a hospital, rendering medical services to a member for an injury or condition resulting from circumstances reflecting the probable liability of a first- or third-party shall notify AHCCCS via facsimile or mail under R9-22-1008 within 30 days after providing the service.

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New Section made by final rulemaking at 10 A.A.R. 1146, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 15 A.A.R. 179, effective March 7, 2009 (Supp. 09-1).

R9-22-1008. Notification Information for Liens

- A.** Except as provided in subsection (B), a hospital, provider, and noncontracting provider identified in R9-22-1007 shall provide the following information to AHCCCS in writing:
1. Name of the hospital, provider or noncontracting provider;
 2. Address of the hospital, provider or noncontracting provider;
 3. Name of member;
 4. Member's Social Security Number or AHCCCS identification number;
 5. Address of member;
 6. Date of member's admission or date service is provided;
 7. Amount estimated to be due for care of member;
 8. Date of discharge, if member has been discharged;
 9. Name of county in which injuries were sustained; and
 10. Name and address of all persons, firms, and corporations and their insurance carriers identified by the member or legal representative as being liable for damages.
- B.** If the date of discharge is not known at the time the information in subsection (A) is provided, a party identified in subsection (A) shall notify AHCCCS of the date of discharge within 30 days after the member has been discharged.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1146, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 15 A.A.R. 179, effective March 7, 2009 (Supp. 09-1).

R9-22-1009. Notification of Health Insurance Information

A provider or noncontracting provider shall notify AHCCCS, in writing, of the following health insurance information within 10 days of receipt of the health insurance information:

1. Name of member,
2. Member's Social Security Number or AHCCCS identification number,
3. Insurance carrier name,
4. Insurance carrier address,
5. Policy number or insurance holder's Social Security Number,
6. Policy begin and end dates, and
7. Insurance holder's name.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1146, effective May 1, 2004 (Supp. 04-1).

ARTICLE 11. CIVIL MONETARY PENALTIES AND ASSESSMENTS**R9-22-1101. Basis for Civil Monetary Penalties and Assessments for Fraudulent Claims; Definitions**

- A.** Scope. This Article applies to prohibited acts as described under A.R.S. § 36-2918(A), and submissions of encounters to the Administration. The Administration considers a person who aids and abets a prohibited act affecting any of the AHCCCS programs or Health Care Group to be engaging in a prohibited act under A.R.S. § 36-2918(A).
- B.** Purpose. This Article describes the circumstances AHCCCS considers and the process that AHCCCS uses to determine the amount of a penalty, assessment, or penalty and assessment as required under A.R.S. § 36-2918. This Article includes the

process and time-frames used by a person to request a State Fair Hearing.

- C.** Definitions. The following definitions apply to this Article:
1. "Assessment" means a monetary amount that does not exceed twice the dollar amount claimed by the person for each service.
 2. "Claim" means a request for payment submitted by a person for payment for a service or line item of service, including a submission of an encounter.
 3. "Day" means calendar day unless otherwise specified.
 4. "File" means the date that AHCCCS receives a written acceptance, request for compromise, request for a counter proposal, or a request for a State Fair Hearing as established by a date stamp on the written document or other record of receipt.
 5. "Penalty" means a monetary amount, based on the number of items of service claimed or reported, that does not exceed \$2,000 times the number of line items of service.
 6. "Person" means an individual or entity as described under A.R.S. § 1-215.
 7. "Reason to know" or "had reason to know" means that a person, acts in deliberate ignorance of the truth or falsity of, or with reckless disregard of the truth or falsity of information. No proof of specific intent to defraud is required.

Historical Note

Adopted effective October 1, 1986 (Supp. 86-5). Amended subsection A. effective May 30, 1989 (Supp. 89-2). Amended effective September 29, 1992 (Supp. 92-3). Amended effective June 9, 1998 (Supp. 98-2). Amended by final rulemaking at 10 A.A.R. 3056, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 17 A.A.R. 2615, effective February 4, 2012 (Supp. 11-4).

R9-22-1102. Determining the Amount of a Penalty and an Assessment

- A.** AHCCCS shall determine the amount of a penalty and assessment according to A.R.S. § 36-2918(B) and (C), R9-22-1104, and R9-22-1105.
- B.** AHCCCS shall include in the amount of the penalty and assessment the cost incurred by AHCCCS for conducting the following:
1. An investigation,
 2. Audit, or
 3. Inquiry.

Historical Note

Adopted effective October 1, 1986 (Supp. 86-5). Amended effective December 13, 1993 (Supp. 93-4). Amended effective June 9, 1998 (Supp. 98-2). Section repealed; new Section made by final rulemaking at 10 A.A.R. 3056, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 17 A.A.R. 2615, effective February 4, 2012 (Supp. 11-4).

R9-22-1103. Repealed**Historical Note**

Adopted effective October 1, 1986 (Supp. 86-5). Amended effective December 13, 1993 (Supp. 93-4). Amended effective June 9, 1998 (Supp. 98-2). Section repealed; new Section made by final rulemaking at 10 A.A.R. 3056, effective September 11, 2004 (Supp. 04-3). Section repealed by final rulemaking at 17 A.A.R. 2615, effective February 4, 2012 (Supp. 11-4).

R9-22-1104. Mitigating Circumstances

36-2901. Definitions

In this article, unless the context otherwise requires:

1. "Administration" means the Arizona health care cost containment system administration.
2. "Administrator" means the administrator of the Arizona health care cost containment system.
3. "Contractor" means a person or entity that has a prepaid capitated contract with the administration pursuant to section 36-2904 or chapter 34 of this title to provide health care to members under this article or persons under chapter 34 of this title either directly or through subcontracts with providers.
4. "Department" means the department of economic security.
5. "Director" means the director of the Arizona health care cost containment system administration.
6. "Eligible person" means any person who is:
 - (a) Any of the following:
 - (i) Defined as mandatorily or optionally eligible pursuant to title XIX of the social security act as authorized by the state plan.
 - (ii) Defined in title XIX of the social security act as an eligible pregnant woman with a family income that does not exceed one hundred fifty percent of the federal poverty guidelines, as a child under the age of six years and whose family income does not exceed one hundred thirty-three percent of the federal poverty guidelines or as children who have not attained nineteen years of age and whose family income does not exceed one hundred thirty-three percent of the federal poverty guidelines.
 - (iii) Under twenty-six years of age and who was in the custody of the department of child safety pursuant to title 8, chapter 4 when the person became eighteen years of age.
 - (iv) Defined as eligible pursuant to section 36-2901.01.
 - (v) Defined as eligible pursuant to section 36-2901.04.
 - (vi) Defined as eligible pursuant to section 36-2901.07.
 - (b) A full-time officer or employee of this state or of a city, town or school district of this state or other person who is eligible for hospitalization and medical care under title 38, chapter 4, article 4.

(c) A full-time officer or employee of any county in this state or other persons authorized by the county to participate in county medical care and hospitalization programs if the county in which such officer or employee is employed has authorized participation in the system by resolution of the county board of supervisors.

(d) An employee of a business within this state.

(e) A dependent of an officer or employee who is participating in the system.

(f) Not enrolled in the Arizona long-term care system pursuant to article 2 of this chapter.

(g) Defined as eligible pursuant to section 1902(a)(10)(A)(ii)(XV) and (XVI) of title XIX of the social security act and who meets the income requirements of section 36-2929.

7. "Graduate medical education" means a program, including an approved fellowship, that prepares a physician for the independent practice of medicine by providing didactic and clinical education in a medical discipline to a medical student who has completed a recognized undergraduate medical education program.

8. "Malice" means evil intent and outrageous, oppressive or intolerable conduct that creates a substantial risk of tremendous harm to others.

9. "Member" means an eligible person who enrolls in the system.

10. "Modified adjusted gross income" has the same meaning prescribed in 42 United States Code section 1396a(e)(14).

11. "Noncontracting provider" means a person who provides health care to members pursuant to this article but not pursuant to a subcontract with a contractor.

12. "Physician" means a person licensed pursuant to title 32, chapter 13 or 17.

13. "Prepaid capitated" means a mode of payment by which a health care contractor directly delivers health care services for the duration of a contract to a maximum specified number of members based on a fixed rate per member notwithstanding:

(a) The actual number of members who receive care from the contractor.

(b) The amount of health care services provided to any member.

14. "Primary care physician" means a physician who is a family practitioner, general practitioner, pediatrician, general internist, or obstetrician or gynecologist.

15. "Primary care practitioner" means a nurse practitioner certified pursuant to title 32, chapter 15 or a physician assistant certified pursuant to title 32, chapter 25. This paragraph does not

expand the scope of practice for nurse practitioners as defined pursuant to title 32, chapter 15, or for physician assistants as defined pursuant to title 32, chapter 25.

16. "Regional behavioral health authority" has the same meaning prescribed in section 36-3401.

17. "Section 1115 waiver" means the research and demonstration waiver granted by the United States department of health and human services.

18. "Special health care district" means a special health care district organized pursuant to title 48, chapter 31.

19. "State plan" has the same meaning prescribed in section 36-2931.

20. "System" means the Arizona health care cost containment system established by this article.

36-2903. Arizona health care cost containment system; administrator; powers and duties of director and administrator; exemption from attorney general representation; definition

A. The Arizona health care cost containment system is established consisting of contracts with contractors for the provision of hospitalization and medical care coverage to members. Except as specifically required by federal law and by section 36-2909, the system is only responsible for providing care on or after the date that the person has been determined eligible for the system, and is only responsible for reimbursing the cost of care rendered on or after the date that the person was determined eligible for the system.

B. An agreement may be entered into with an independent contractor, subject to title 41, chapter 23, to serve as the statewide administrator of the system. The administrator has full operational responsibility, subject to supervision by the director, for the system, which may include any or all of the following:

1. Development of county-by-county implementation and operation plans for the system that include reasonable access to hospitalization and medical care services for members.
2. Contract administration and oversight of contractors, including certification instead of licensure for title XVIII and title XIX purposes.
3. Provision of technical assistance services to contractors and potential contractors.
4. Development of a complete system of accounts and controls for the system including provisions designed to ensure that covered health and medical services provided through the system are not used unnecessarily or unreasonably including but not limited to inpatient behavioral health services provided in a hospital. Periodically the administrator shall compare the scope, utilization rates, utilization control methods and unit prices of major health and medical services provided in this state in comparison with other states' health care services to identify any unnecessary or unreasonable utilization within the system. The administrator shall periodically assess the cost effectiveness and health implications of alternate approaches to the provision of covered health and medical services through the system in order to reduce unnecessary or unreasonable utilization.
5. Establishment of peer review and utilization review functions for all contractors.
6. Assistance in the formation of medical care consortiums to provide covered health and medical services under the system for a county.
7. Development and management of a contractor payment system.
8. Establishment and management of a comprehensive system for assuring the quality of care delivered by the system.
9. Establishment and management of a system to prevent fraud by members, subcontracted providers of care, contractors and noncontracting providers.

10. Coordination of benefits provided under this article to any member. The administrator may require that contractors and noncontracting providers are responsible for the coordination of benefits for services provided under this article. Requirements for coordination of benefits by noncontracting providers under this section are limited to coordination with standard health insurance and disability insurance policies and similar programs for health coverage.

11. Development of a health education and information program.

12. Development and management of an enrollment system.

13. Establishment and maintenance of a claims resolution procedure to ensure that ninety per cent of the clean claims shall be paid within thirty days of receipt and ninety-nine per cent of the remaining clean claims shall be paid within ninety days of receipt. For the purposes of this paragraph, "clean claims" has the same meaning prescribed in section 36-2904, subsection G.

14. Establishment of standards for the coordination of medical care and patient transfers pursuant to section 36-2909, subsection B.

15. Establishment of a system to implement medical child support requirements, as required by federal law. The administration may enter into an intergovernmental agreement with the department of economic security to implement this paragraph.

16. Establishment of an employee recognition fund.

17. Establishment of an eligibility process to determine whether a medicare low income subsidy is available to persons who want to apply for a subsidy as authorized by title XVIII.

C. If an agreement is not entered into with an independent contractor to serve as statewide administrator of the system pursuant to subsection B of this section, the director shall ensure that the operational responsibilities set forth in subsection B of this section are fulfilled by the administration and other contractors as necessary.

D. If the director determines that the administrator will fulfill some but not all of the responsibilities set forth in subsection B of this section, the director shall ensure that the remaining responsibilities are fulfilled by the administration and other contractors as necessary.

E. The administrator or any direct or indirect subsidiary of the administrator is not eligible to serve as a contractor.

F. Except for reinsurance obtained by contractors, the administrator shall coordinate benefits provided under this article to any eligible person who is covered by workers' compensation, disability insurance, a hospital and medical service corporation, a health care services organization, an accountable health plan or any other health or medical or disability insurance plan including coverage made available to persons defined as eligible by section 36-2901, paragraph 6, subdivisions (b), (c), (d) and (e), or who receives payments for accident-related injuries, so that any costs for hospitalization and medical care paid by the system are recovered

from any other available third party payors. The administrator may require that contractors and noncontracting providers are responsible for the coordination of benefits for services provided under this article. Requirements for coordination of benefits by noncontracting providers under this section are limited to coordination with standard health insurance and disability insurance policies and similar programs for health coverage. The system shall act as payor of last resort for persons eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2974 or section 36-2981, paragraph 6 unless specifically prohibited by federal law. By operation of law, eligible persons assign to the system and a county rights to all types of medical benefits to which the person is entitled, including first party medical benefits under automobile insurance policies based on the order of priorities established pursuant to section 36-2915. The state has a right to subrogation against any other person or firm to enforce the assignment of medical benefits. The provisions of this subsection are controlling over the provisions of any insurance policy that provides benefits to an eligible person if the policy is inconsistent with the provisions of this subsection.

G. Notwithstanding subsection E of this section, the administrator may subcontract distinct administrative functions to one or more persons who may be contractors within the system.

H. The director shall require as a condition of a contract with any contractor that all records relating to contract compliance are available for inspection by the administrator and the director subject to subsection I of this section and that such records be maintained by the contractor for five years. The director shall also require that these records be made available by a contractor on request of the secretary of the United States department of health and human services, or its successor agency.

I. Subject to existing law relating to privilege and protection, the director shall prescribe by rule the types of information that are confidential and circumstances under which such information may be used or released, including requirements for physician-patient confidentiality. Notwithstanding any other provision of law, such rules shall be designed to provide for the exchange of necessary information among the counties, the administration and the department of economic security for the purposes of eligibility determination under this article. Notwithstanding any law to the contrary, a member's medical record shall be released without the member's consent in situations or suspected cases of fraud or abuse relating to the system to an officer of the state's certified Arizona health care cost containment system fraud control unit who has submitted a written request for the medical record.

J. The director shall prescribe rules that specify methods for:

1. The transition of members between system contractors and noncontracting providers.
2. The transfer of members and persons who have been determined eligible from hospitals that do not have contracts to care for such persons.

K. The director shall adopt rules that set forth procedures and standards for use by the system in requesting county long-term care for members or persons determined eligible.

L. To the extent that services are furnished pursuant to this article, and unless otherwise required pursuant to this chapter, a contractor is not subject to title 20.

M. As a condition of the contract with any contractor, the director shall require contract terms as necessary in the judgment of the director to ensure adequate performance and compliance with all applicable federal laws by the contractor of the provisions of each contract executed pursuant to this chapter. Contract provisions required by the director shall include at a minimum the maintenance of deposits, performance bonds, financial reserves or other financial security. The director may waive requirements for the posting of bonds or security for contractors that have posted other security, equal to or greater than that required by the system, with a state agency for the performance of health service contracts if funds would be available from such security for the system on default by the contractor. The director may also adopt rules for the withholding or forfeiture of payments to be made to a contractor by the system for the failure of the contractor to comply with a provision of the contractor's contract with the system or with the adopted rules. The director may also require contract terms allowing the administration to operate a contractor directly under circumstances specified in the contract. The administration shall operate the contractor only as long as it is necessary to assure delivery of uninterrupted care to members enrolled with the contractor and accomplish the orderly transition of those members to other system contractors, or until the contractor reorganizes or otherwise corrects the contract performance failure. The administration shall not operate a contractor unless, before that action, the administration delivers notice to the contractor and provides an opportunity for a hearing in accordance with procedures established by the director. Notwithstanding the provisions of a contract, if the administration finds that the public health, safety or welfare requires emergency action, it may operate as the contractor on notice to the contractor and pending an administrative hearing, which it shall promptly institute.

N. The administration for the sole purpose of matters concerning and directly related to the Arizona health care cost containment system and the Arizona long-term care system is exempt from section 41-192.

O. Notwithstanding subsection F of this section, if the administration determines that according to federal guidelines it is more cost-effective for a person defined as eligible under section 36-2901, paragraph 6, subdivision (a) to be enrolled in a group health insurance plan in which the person is entitled to be enrolled, the administration may pay all of that person's premiums, deductibles, coinsurance and other cost sharing obligations for services covered under section 36-2907. The person shall apply for enrollment in the group health insurance plan as a condition of eligibility under section 36-2901, paragraph 6, subdivision (a).

P. The total amount of state monies that may be spent in any fiscal year by the administration for health care shall not exceed the amount appropriated or authorized by section 35-173 for all health care purposes. This article does not impose a duty on an officer, agent or employee of this state to discharge a responsibility or to create any right in a person or group if the discharge or right would require an expenditure of state monies in excess of the expenditure authorized by legislative appropriation for that specific purpose.

Q. Notwithstanding section 36-470, a contractor or program contractor may receive laboratory tests from a laboratory or hospital-based laboratory for a system member enrolled with the contractor or program contractor subject to all of the following requirements:

1. The contractor or program contractor shall provide a written request to the laboratory in a format mutually agreed to by the laboratory and the requesting health plan or program contractor. The request shall include the member's name, the member's plan identification number, the specific test results that are being requested and the time periods and the quality improvement activity that prompted the request.

2. The laboratory data may be provided in written or electronic format based on the agreement between the laboratory and the contractor or program contractor. If there is no contract between the laboratory and the contractor or program contractor, the laboratory shall provide the requested data in a format agreed to by the noncontracted laboratory.

3. The laboratory test results provided to the member's contractor or program contractor shall only be used for quality improvement activities authorized by the administration and health care outcome studies required by the administration. The contractors and program contractors shall maintain strict confidentiality about the test results and identity of the member as specified in contractual arrangements with the administration and pursuant to state and federal law.

4. The administration, after collaboration with the department of health services regarding quality improvement activities, may prohibit the contractors and program contractors from receiving certain test results if the administration determines that a serious potential exists that the results may be used for purposes other than those intended for the quality improvement activities. The department of health services shall consult with the clinical laboratory licensure advisory committee established by section 36-465 before providing recommendations to the administration on certain test results and quality improvement activities.

5. The administration shall provide contracted laboratories and the department of health services with an annual report listing the quality improvement activities that will require laboratory data. The report shall be updated and distributed to the contracting laboratories and the department of health services when laboratory data is needed for new quality improvement activities.

6. A laboratory that complies with a request from the contractor or program contractor for laboratory results pursuant to this section is not subject to civil liability for providing the data to the contractor or program contractor. The administration, the contractor or a program contractor that uses data for reasons other than quality improvement activities is subject to civil liability for this improper use.

R. For the purposes of this section, "quality improvement activities" means those requirements, including health care outcome studies specified in federal law or required by the centers for medicare and medicaid services or the administration, to improve health care outcomes.

36-2903.01. Additional powers and duties; report; definition

A. The director of the Arizona health care cost containment system administration may adopt rules that provide that the system may withhold or forfeit payments to be made to a noncontracting provider by the system if the noncontracting provider fails to comply with this article, the provider agreement or rules that are adopted pursuant to this article and that relate to the specific services rendered for which a claim for payment is made.

B. The director shall:

1. Prescribe uniform forms to be used by all contractors. The rules shall require a written and signed application by the applicant or an applicant's authorized representative, or, if the person is incompetent or incapacitated, a family member or a person acting responsibly for the applicant may obtain a signature or a reasonable facsimile and file the application as prescribed by the administration.

2. Enter into an interagency agreement with the department to establish a streamlined eligibility process to determine the eligibility of all persons defined pursuant to section 36-2901, paragraph 6, subdivision (a). At the administration's option, the interagency agreement may allow the administration to determine the eligibility of certain persons, including those defined pursuant to section 36-2901, paragraph 6, subdivision (a).

3. Enter into an intergovernmental agreement with the department to:

(a) Establish an expedited eligibility and enrollment process for all persons who are hospitalized at the time of application.

(b) Establish performance measures and incentives for the department.

(c) Establish the process for management evaluation reviews that the administration shall perform to evaluate the eligibility determination functions performed by the department.

(d) Establish eligibility quality control reviews by the administration.

(e) Require the department to adopt rules, consistent with the rules adopted by the administration for a hearing process, that applicants or members may use for appeals of eligibility determinations or redeterminations.

(f) Establish the department's responsibility to place sufficient eligibility workers at federally qualified health centers to screen for eligibility and at hospital sites and level one trauma centers to ensure that persons seeking hospital services are screened on a timely basis for eligibility for the system, including a process to ensure that applications for the system can be accepted on a twenty-four hour basis, seven days a week.

(g) Withhold payments based on the allowable sanctions for errors in eligibility determinations or redeterminations or failure to meet performance measures required by the intergovernmental agreement.

(h) Recoup from the department all federal fiscal sanctions that result from the department's inaccurate eligibility determinations. The director may offset all or part of a sanction if the department submits a corrective action plan and a strategy to remedy the error.

4. By rule establish a procedure and time frames for the intake of grievances and requests for hearings, for the continuation of benefits and services during the appeal process and for a grievance process at the contractor level. Notwithstanding sections 41-1092.02, 41-1092.03 and 41-1092.05, the administration shall develop rules to establish the procedure and time frame for the informal resolution of grievances and appeals. A grievance that is not related to a claim for payment of system covered services shall be filed in writing with and received by the administration or the prepaid capitated provider or program contractor not later than sixty days after the date of the adverse action, decision or policy implementation being grieved. A grievance that is related to a claim for payment of system covered services must be filed in writing and received by the administration or the prepaid capitated provider or program contractor within twelve months after the date of service, within twelve months after the date that eligibility is posted or within sixty days after the date of the denial of a timely claim submission, whichever is later. A grievance for the denial of a claim for reimbursement of services may contest the validity of any adverse action, decision, policy implementation or rule that related to or resulted in the full or partial denial of the claim. A policy implementation may be subject to a grievance procedure, but it may not be appealed for a hearing. The administration is not required to participate in a mandatory settlement conference if it is not a real party in interest. In any proceeding before the administration, including a grievance or hearing, persons may represent themselves or be represented by a duly authorized agent who is not charging a fee. A legal entity may be represented by an officer, partner or employee who is specifically authorized by the legal entity to represent it in the particular proceeding.

5. Apply for and accept federal funds available under title XIX of the social security act (P.L. 89-97; 79 Stat. 344; 42 United States Code section 1396 (1980)) in support of the system. The application made by the director pursuant to this paragraph shall be designed to qualify for federal funding primarily on a prepaid capitated basis. Such funds may be used only for the support of persons defined as eligible pursuant to title XIX of the social security act or the approved section 1115 waiver.

6. At least thirty days before the implementation of a policy or a change to an existing policy relating to reimbursement, provide notice to interested parties. Parties interested in receiving notification of policy changes shall submit a written request for notification to the administration.

7. In addition to the cost sharing requirements specified in subsection D, paragraph 4 of this section:

(a) Charge monthly premiums up to the maximum amount allowed by federal law to all populations of eligible persons who may be charged.

(b) Implement this paragraph to the extent permitted under the federal deficit reduction act of 2005 and other federal laws, subject to the approval of federal waiver authority and to the extent that any changes in the cost sharing requirements under this paragraph would permit this state to receive any enhanced federal matching rate.

C. The director is authorized to apply for any federal funds available for the support of programs to investigate and prosecute violations arising from the administration and operation of the system. Available state funds appropriated for the administration and operation of the system may be used as matching funds to secure federal funds pursuant to this subsection.

D. The director may adopt rules or procedures to do the following:

1. Authorize advance payments based on estimated liability to a contractor or a noncontracting provider after the contractor or noncontracting provider has submitted a claim for services and before the claim is ultimately resolved. The rules shall specify that any advance payment shall be conditioned on the execution before payment of a contract with the contractor or noncontracting provider that requires the administration to retain a specified percentage, which shall be at least twenty percent, of the claimed amount as security and that requires repayment to the administration if the administration makes any overpayment.

2. Defer liability, in whole or in part, of contractors for care provided to members who are hospitalized on the date of enrollment or under other circumstances. Payment shall be on a capped fee-for-service basis for services other than hospital services and at the rate established pursuant to subsection G of this section for hospital services or at the rate paid by the health plan, whichever is less.

3. Deputize, in writing, any qualified officer or employee in the administration to perform any act that the director by law is empowered to do or charged with the responsibility of doing, including the authority to issue final administrative decisions pursuant to section 41-1092.08.

4. Notwithstanding any other law, require persons eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2931 and section 36-2981, paragraph 6 to be financially responsible for any cost sharing requirements established in a state plan or a section 1115 waiver and approved by the centers for medicare and medicaid services. Cost sharing requirements may include copayments, coinsurance, deductibles, enrollment fees and monthly premiums for enrolled members, including households with children enrolled in the Arizona long-term care system.

E. The director shall adopt rules that further specify the medical care and hospital services that are covered by the system pursuant to section 36-2907.

F. In addition to the rules otherwise specified in this article, the director may adopt necessary rules pursuant to title 41, chapter 6 to carry out this article. Rules adopted by the director pursuant to this subsection shall consider the differences between rural and urban conditions on the delivery of hospitalization and medical care.

G. For inpatient hospital admissions and outpatient hospital services on and after March 1, 1993, the administration shall adopt rules for the reimbursement of hospitals according to the following procedures:

1. For inpatient hospital stays from March 1, 1993 through September 30, 2014, the administration shall use a prospective tiered per diem methodology, using hospital peer groups if analysis shows that cost differences can be attributed to independently definable features that hospitals within a peer group share. In peer grouping the administration may consider such factors as length of stay differences and labor market variations. If there are no cost differences, the administration shall implement a stop loss-stop gain or similar mechanism. Any stop loss-stop gain or similar mechanism shall ensure that the tiered per diem rates assigned to a hospital do not represent less than ninety percent of its 1990 base year costs or more than one hundred ten percent of its 1990 base year costs, adjusted by an audit factor, during the period of March 1, 1993 through September 30, 1994. The tiered per diem rates set for hospitals shall represent no less than eighty-seven and one-half percent or more than one hundred twelve and one-half percent of its 1990 base year costs, adjusted by an audit factor, from October 1, 1994 through September 30, 1995 and no less than eighty-five percent or more than one hundred fifteen percent of its 1990 base year costs, adjusted by an audit factor, from October 1, 1995 through September 30, 1996. For the periods after September 30, 1996 no stop loss-stop gain or similar mechanisms shall be in effect. An adjustment in the stop loss-stop gain percentage may be made to ensure that total payments do not increase as a result of this provision. If peer groups are used, the administration shall establish initial peer group designations for each hospital before implementation of the per diem system. The administration may also use a negotiated rate methodology. The tiered per diem methodology may include separate consideration for specialty hospitals that limit their provision of services to specific patient populations, such as rehabilitative patients or children. The initial per diem rates shall be based on hospital claims and encounter data for dates of service November 1, 1990 through October 31, 1991 and processed through May of 1992. The administration may also establish a separate reimbursement methodology for claims with extraordinarily high costs per day that exceed thresholds established by the administration.

2. For rates effective on October 1, 1994, and annually through September 30, 2011, the administration shall adjust tiered per diem payments for inpatient hospital care by the data resources incorporated market basket index for prospective payment system hospitals. For rates effective beginning on October 1, 1999, the administration shall adjust payments to reflect changes in length of stay for the maternity and nursery tiers.

3. Through June 30, 2004, for outpatient hospital services, the administration shall reimburse a hospital by applying a hospital specific outpatient cost-to-charge ratio to the covered charges. Beginning on July 1, 2004 through June 30, 2005, the administration shall reimburse a hospital by applying a hospital specific outpatient cost-to-charge ratio to covered charges. If the hospital increases its charges for outpatient services filed with the Arizona department of health services pursuant to chapter 4, article 3 of this title, by more than 4.7 percent for dates of service effective on or after July 1, 2004, the hospital specific cost-to-charge ratio will be reduced by the amount that it exceeds 4.7 percent. If charges exceed 4.7 percent, the effective date of the increased charges will be the effective date of the adjusted Arizona health care cost containment

system cost-to-charge ratio. The administration shall develop the methodology for a capped fee-for-service schedule and a statewide cost-to-charge ratio. Any covered outpatient service not included in the capped fee-for-service schedule shall be reimbursed by applying the statewide cost-to-charge ratio that is based on the services not included in the capped fee-for-service schedule. Beginning on July 1, 2005, the administration shall reimburse clean claims with dates of service on or after July 1, 2005, based on the capped fee-for-service schedule or the statewide cost-to-charge ratio established pursuant to this paragraph. The administration may make additional adjustments to the outpatient hospital rates established pursuant to this section based on other factors, including the number of beds in the hospital, specialty services available to patients and the geographic location of the hospital.

4. Except if submitted under an electronic claims submission system, a hospital bill is considered received for purposes of this paragraph on initial receipt of the legible, error-free claim form by the administration if the claim includes the following error-free documentation in legible form:

- (a) An admission face sheet.
- (b) An itemized statement.
- (c) An admission history and physical.
- (d) A discharge summary or an interim summary if the claim is split.
- (e) An emergency record, if admission was through the emergency room.
- (f) Operative reports, if applicable.
- (g) A labor and delivery room report, if applicable.

Payment received by a hospital from the administration pursuant to this subsection or from a contractor either by contract or pursuant to section 36-2904, subsection I is considered payment by the administration or the contractor of the administration's or contractor's liability for the hospital bill. A hospital may collect any unpaid portion of its bill from other third-party payors or in situations covered by title 33, chapter 7, article 3.

5. For services rendered on and after October 1, 1997, the administration shall pay a hospital's rate established according to this section subject to the following:

- (a) If the hospital's bill is paid within thirty days of the date the bill was received, the administration shall pay ninety-nine percent of the rate.
- (b) If the hospital's bill is paid after thirty days but within sixty days of the date the bill was received, the administration shall pay one hundred percent of the rate.
- (c) If the hospital's bill is paid any time after sixty days of the date the bill was received, the administration shall pay one hundred percent of the rate plus a fee of one percent per month for

each month or portion of a month following the sixtieth day of receipt of the bill until the date of payment.

6. In developing the reimbursement methodology, if a review of the reports filed by a hospital pursuant to section 36-125.04 indicates that further investigation is considered necessary to verify the accuracy of the information in the reports, the administration may examine the hospital's records and accounts related to the reporting requirements of section 36-125.04. The administration shall bear the cost incurred in connection with this examination unless the administration finds that the records examined are significantly deficient or incorrect, in which case the administration may charge the cost of the investigation to the hospital examined.

7. Except for privileged medical information, the administration shall make available for public inspection the cost and charge data and the calculations used by the administration to determine payments under the tiered per diem system, provided that individual hospitals are not identified by name. The administration shall make the data and calculations available for public inspection during regular business hours and shall provide copies of the data and calculations to individuals requesting such copies within thirty days of receipt of a written request. The administration may charge a reasonable fee for the provision of the data or information.

8. The prospective tiered per diem payment methodology for inpatient hospital services shall include a mechanism for the prospective payment of inpatient hospital capital related costs. The capital payment shall include hospital specific and statewide average amounts. For tiered per diem rates beginning on October 1, 1999, the capital related cost component is frozen at the blended rate of forty percent of the hospital specific capital cost and sixty percent of the statewide average capital cost in effect as of January 1, 1999 and as further adjusted by the calculation of tier rates for maternity and nursery as prescribed by law. Through September 30, 2011, the administration shall adjust the capital related cost component by the data resources incorporated market basket index for prospective payment system hospitals.

9. For graduate medical education programs:

(a) Beginning September 30, 1997, the administration shall establish a separate graduate medical education program to reimburse hospitals that had graduate medical education programs that were approved by the administration as of October 1, 1999. The administration shall separately account for monies for the graduate medical education program based on the total reimbursement for graduate medical education reimbursed to hospitals by the system in federal fiscal year 1995-1996 pursuant to the tiered per diem methodology specified in this section. The graduate medical education program reimbursement shall be adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement. Subject to legislative appropriation, on an annual basis, each qualified hospital shall receive a single payment from the graduate medical education program that is equal to the same percentage of graduate medical education reimbursement that was paid by the system in federal fiscal year 1995-1996. Any reimbursement for graduate medical education made by the administration shall not be subject to future settlements or appeals by the hospitals to the administration. The monies available under this subdivision shall not exceed the fiscal year 2005-2006 appropriation adjusted annually by the increase or decrease in the index published by

the global insight hospital market basket index for prospective hospital reimbursement, except for monies distributed for expansions pursuant to subdivision (b) of this paragraph.

(b) The monies available for graduate medical education programs pursuant to this subdivision shall not exceed the fiscal year 2006-2007 appropriation adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement. Graduate medical education programs eligible for such reimbursement are not precluded from receiving reimbursement for funding under subdivision (c) of this paragraph. Beginning July 1, 2006, the administration shall distribute any monies appropriated for graduate medical education above the amount prescribed in subdivision (a) of this paragraph in the following order or priority:

(i) For the direct costs to support the expansion of graduate medical education programs established before July 1, 2006 at hospitals that do not receive payments pursuant to subdivision (a) of this paragraph. These programs must be approved by the administration.

(ii) For the direct costs to support the expansion of graduate medical education programs established on or before October 1, 1999. These programs must be approved by the administration.

(c) The administration shall distribute to hospitals any monies appropriated for graduate medical education above the amount prescribed in subdivisions (a) and (b) of this paragraph for the following purposes:

(i) For the direct costs of graduate medical education programs established or expanded on or after July 1, 2006. These programs must be approved by the administration.

(ii) For a portion of additional indirect graduate medical education costs for programs that are located in a county with a population of less than five hundred thousand persons at the time the residency position was created or for a residency position that includes a rotation in a county with a population of less than five hundred thousand persons at the time the residency position was established. These programs must be approved by the administration.

(d) The administration shall develop, by rule, the formula by which the monies are distributed.

(e) Each graduate medical education program that receives funding pursuant to subdivision (b) or (c) of this paragraph shall identify and report to the administration the number of new residency positions created by the funding provided in this paragraph, including positions in rural areas. The program shall also report information related to the number of funded residency positions that resulted in physicians locating their practices in this state. The administration shall report to the joint legislative budget committee by February 1 of each year on the number of new residency positions as reported by the graduate medical education programs.

(f) Local, county and tribal governments and any university under the jurisdiction of the Arizona board of regents may provide monies in addition to any state general fund monies appropriated for graduate medical education in order to qualify for additional matching federal monies for

providers, programs or positions in a specific locality and costs incurred pursuant to a specific contract between the administration and providers or other entities to provide graduate medical education services as an administrative activity. Payments by the administration pursuant to this subdivision may be limited to those providers designated by the funding entity and may be based on any methodology deemed appropriate by the administration, including replacing any payments that might otherwise have been paid pursuant to subdivision (a), (b) or (c) of this paragraph had sufficient state general fund monies or other monies been appropriated to fully fund those payments. These programs, positions, payment methodologies and administrative graduate medical education services must be approved by the administration and the centers for medicare and medicaid services. The administration shall report to the president of the senate, the speaker of the house of representatives and the director of the joint legislative budget committee on or before July 1 of each year on the amount of money contributed and number of residency positions funded by local, county and tribal governments, including the amount of federal matching monies used.

(g) Any funds appropriated but not allocated by the administration for subdivision (b) or (c) of this paragraph may be reallocated if funding for either subdivision is insufficient to cover appropriate graduate medical education costs.

10. Notwithstanding section 41-1005, subsection A, paragraph 9, the administration shall adopt rules pursuant to title 41, chapter 6 establishing the methodology for determining the prospective tiered per diem payments that are in effect through September 30, 2014.

11. For inpatient hospital services rendered on or after October 1, 2011, the prospective tiered per diem payment rates are permanently reset to the amounts payable for those services as of October 1, 2011 pursuant to this subsection.

12. The administration shall adopt a diagnosis-related group based hospital reimbursement methodology consistent with title XIX of the social security act for inpatient dates of service on and after October 1, 2014. The administration may make additional adjustments to the inpatient hospital rates established pursuant to this section for hospitals that are publicly operated or based on other factors, including the number of beds in the hospital, the specialty services available to patients, the geographic location and diagnosis-related group codes that are made publicly available by the hospital pursuant to section 36-437. The administration may also provide additional reimbursement for extraordinarily high cost cases that exceed a threshold above the standard payment. The administration may also establish a separate payment methodology for specific services or hospitals serving unique populations.

H. The director may adopt rules that specify enrollment procedures, including notice to contractors of enrollment. The rules may provide for varying time limits for enrollment in different situations. The administration shall specify in contract when a person who has been determined eligible will be enrolled with that contractor and the date on which the contractor will be financially responsible for health and medical services to the person.

I. The administration may make direct payments to hospitals for hospitalization and medical care provided to a member in accordance with this article and rules. The director may adopt rules to

establish the procedures by which the administration shall pay hospitals pursuant to this subsection if a contractor fails to make timely payment to a hospital. Such payment shall be at a level determined pursuant to section 36-2904, subsection H or I. The director may withhold payment due to a contractor in the amount of any payment made directly to a hospital by the administration on behalf of a contractor pursuant to this subsection.

J. The director shall establish a special unit within the administration for the purpose of monitoring the third-party payment collections required by contractors and noncontracting providers pursuant to section 36-2903, subsection B, paragraph 10 and subsection F and section 36-2915, subsection E. The director shall determine by rule:

1. The type of third-party payments to be monitored pursuant to this subsection.
2. The percentage of third-party payments that is collected by a contractor or noncontracting provider and that the contractor or noncontracting provider may keep and the percentage of such payments that the contractor or noncontracting provider may be required to pay to the administration. Contractors and noncontracting providers must pay to the administration one hundred percent of all third-party payments that are collected and that duplicate administration fee-for-service payments. A contractor that contracts with the administration pursuant to section 36-2904, subsection A may be entitled to retain a percentage of third-party payments if the payments collected and retained by a contractor are reflected in reduced capitation rates. A contractor may be required to pay the administration a percentage of third-party payments that are collected by a contractor and that are not reflected in reduced capitation rates.

K. The administration shall establish procedures to apply to the following if a provider that has a contract with a contractor or noncontracting provider seeks to collect from an individual or financially responsible relative or representative a claim that exceeds the amount that is reimbursed or should be reimbursed by the system:

1. On written notice from the administration or oral or written notice from a member that a claim for covered services may be in violation of this section, the provider that has a contract with a contractor or noncontracting provider shall investigate the inquiry and verify whether the person was eligible for services at the time that covered services were provided. If the claim was paid or should have been paid by the system, the provider that has a contract with a contractor or noncontracting provider shall not continue billing the member.
2. If the claim was paid or should have been paid by the system and the disputed claim has been referred for collection to a collection agency or referred to a credit reporting bureau, the provider that has a contract with a contractor or noncontracting provider shall:
 - (a) Notify the collection agency and request that all attempts to collect this specific charge be terminated immediately.
 - (b) Advise all credit reporting bureaus that the reported delinquency was in error and request that the affected credit report be corrected to remove any notation about this specific delinquency.

(c) Notify the administration and the member that the request for payment was in error and that the collection agency and credit reporting bureaus have been notified.

3. If the administration determines that a provider that has a contract with a contractor or noncontracting provider has billed a member for charges that were paid or should have been paid by the administration, the administration shall send written notification by certified mail or other service with proof of delivery to the provider that has a contract with a contractor or noncontracting provider stating that this billing is in violation of federal and state law. If, twenty-one days or more after receiving the notification, a provider that has a contract with a contractor or noncontracting provider knowingly continues billing a member for charges that were paid or should have been paid by the system, the administration may assess a civil penalty in an amount equal to three times the amount of the billing and reduce payment to the provider that has a contract with a contractor or noncontracting provider accordingly. Receipt of delivery signed by the addressee or the addressee's employee is prima facie evidence of knowledge. Civil penalties collected pursuant to this subsection shall be deposited in the state general fund. Section 36-2918, subsections C, D and F, relating to the imposition, collection and enforcement of civil penalties, apply to civil penalties imposed pursuant to this paragraph.

L. The administration may conduct postpayment review of all claims paid by the administration and may recoup any monies erroneously paid. The director may adopt rules that specify procedures for conducting postpayment review. A contractor may conduct a postpayment review of all claims paid by the contractor and may recoup monies that are erroneously paid.

M. Subject to title 41, chapter 4, article 4, the director or the director's designee may employ and supervise personnel necessary to assist the director in performing the functions of the administration.

N. The administration may contract with contractors for obstetrical care who are eligible to provide services under title XIX of the social security act.

O. Notwithstanding any other law, on federal approval the administration may make disproportionate share payments to private hospitals, county operated hospitals, including hospitals owned or leased by a special health care district, and state operated institutions for mental disease beginning October 1, 1991 in accordance with federal law and subject to legislative appropriation. If at any time the administration receives written notification from federal authorities of any change or difference in the actual or estimated amount of federal funds available for disproportionate share payments from the amount reflected in the legislative appropriation for such purposes, the administration shall provide written notification of such change or difference to the president and the minority leader of the senate, the speaker and the minority leader of the house of representatives, the director of the joint legislative budget committee, the legislative committee of reference and any hospital trade association within this state, within three working days not including weekends after receipt of the notice of the change or difference. In calculating disproportionate share payments as prescribed in this section, the administration may use either a methodology based on claims and encounter data that is submitted to the administration from contractors or a methodology based on data that is reported to the administration by private hospitals and state operated institutions for mental disease. The

selected methodology applies to all private hospitals and state operated institutions for mental disease qualifying for disproportionate share payments.

P. Disproportionate share payments made pursuant to subsection O of this section include amounts for disproportionate share hospitals designated by political subdivisions of this state, tribal governments and universities under the jurisdiction of the Arizona board of regents. Subject to the approval of the centers for medicare and medicaid services, any amount of federal funding allotted to this state pursuant to section 1923(f) of the social security act and not otherwise spent under subsection O of this section shall be made available for distribution pursuant to this subsection. Political subdivisions of this state, tribal governments and universities under the jurisdiction of the Arizona board of regents may designate hospitals eligible to receive disproportionate share payments in an amount up to the limit prescribed in section 1923(g) of the social security act if those political subdivisions, tribal governments or universities provide sufficient monies to qualify for the matching federal monies for the disproportionate share payments.

Q. Notwithstanding any law to the contrary, the administration may receive confidential adoption information to determine whether an adopted child should be terminated from the system.

R. The adoption agency or the adoption attorney shall notify the administration within thirty days after an eligible person receiving services has placed that person's child for adoption.

S. If the administration implements an electronic claims submission system, it may adopt procedures pursuant to subsection G of this section requiring documentation different than prescribed under subsection G, paragraph 4 of this section.

T. In addition to any requirements adopted pursuant to subsection D, paragraph 4 of this section, notwithstanding any other law, subject to approval by the centers for medicare and medicaid services, beginning July 1, 2011, members eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2931 and section 36-2981, paragraph 6 shall pay the following:

1. A monthly premium of fifteen dollars, except that the total monthly premium for an entire household shall not exceed sixty dollars.
2. A copayment of five dollars for each physician office visit.
3. A copayment of ten dollars for each urgent care visit.
4. A copayment of thirty dollars for each emergency department visit.

U. Subject to the approval of the centers for medicare and medicaid services, political subdivisions of this state, tribal governments and any university under the jurisdiction of the Arizona board of regents may provide to the Arizona health care cost containment system administration monies in addition to any state general fund monies appropriated for critical access hospitals in order to qualify for additional federal monies. Any amount of federal monies

received by this state pursuant to this subsection shall be distributed as supplemental payments to critical access hospitals.

V. For the purposes of this section, "disproportionate share payment" means a payment to a hospital that serves a disproportionate share of low-income patients as described by 42 United States Code section 1396r-4.

36-2915. Lien of administration on damages recovered by injured person; perfection, recording, assignment and notice of lien

A. The administration is entitled to a lien for the charges for hospital or medical care and treatment of an injured person for which the administration or a contractor is responsible, on any and all claims of liability or indemnity for damages accruing to the person to whom hospital or medical service is rendered, or to the legal representative of such person, on account of injuries giving rise to such claims and which necessitated such hospital or medical care and treatment. The member or the member's legal representative must provide written notice to the administration within twenty calendar days after the commencement of a civil action or other proceeding to establish the liability of any third party or to collect monies payable from accident insurance, liability insurance, workers' compensation, health insurance, medical payment insurance, underinsured coverage, uninsured coverage or any other first or third party source.

B. In order to perfect a lien granted by this section, the director or the director's authorized representative, before or within sixty days from the date of notification to the administration of the hospital discharge or rendering of medical care and treatment, shall record in the office of the recorder of the county in which the injuries were incurred a verified statement in writing setting forth the name and address of the patient as they appear on the records of the administration, the name and address of the administration, the dates of admission to and discharge of the patient from the hospital or the dates on which medical care and treatment were provided to the patient, the amount estimated to be due for hospital or medical care and treatment, and, to the best of the director's knowledge, the names and addresses of all persons, firms or corporations and their insurance carriers alleged by the injured person or that person's legal representative to be liable for damages arising from the injuries for which he was hospitalized or for which medical care and treatment were provided. However, the director or the director's authorized representative is not required to include the address of the patient in the verified statement if the administration's records indicate that the patient's injuries may have resulted from an offense against the patient as defined in section 13-105. The director or the director's authorized representative, within five days after recording the lien, shall mail a copy of the lien, postage prepaid, to the patient and to each person, firm or corporation, including insurance carriers, alleged to be liable for liability or indemnity damages, at the address given in the statement. The recording of the lien is notice of the lien to all persons, firms or corporations, including insurance carriers, liable for liability or indemnity damages, whether or not they are named in the lien.

C. The recorder shall endorse on a lien recorded as provided by this section the date and hour of receipt and such facts as are necessary to indicate that it has been recorded.

D. The lien may be assigned in whole or in part to a contractor that is responsible for hospital or medical services.

E. The director shall establish by rule procedures for a contractor and a noncontracting provider to notify the administration concerning the delivery of hospital or medical services to a person who may have claims for damages.

F. Notwithstanding any other law, a lien or claim provided for by this article has priority over a lien of the department pursuant to section 36-596.01, a lien of the counties pursuant to section 11-291, a health care provider lien pursuant to title 33, chapter 7, article 3 and a claim against a third party payor. A lien of the department of economic security pursuant to section 36-596.01, a lien of a special health care district pursuant to section 48-5541.01, subsection N and a lien of the counties pursuant to section 11-291 has priority over a health care provider lien pursuant to title 33, chapter 7, article 3 and a claim against a third party payor.

G. A lien authorized pursuant to this chapter may be amended to reflect current charges. However, if the administration is given notice of an impending settlement of the member's claim at least fifteen working days before the final settlement of that claim, the lien may not be amended after the time of final settlement.

H. A public entity shall compromise a claim it has pursuant to this section or section 11-291, 12-962, 36-596, 36-596.01, 36-2903, 36-2935 or 36-2956 if, after considering the factors listed in subsection I of this section, the compromise provides a settlement of the claim that is fair and equitable.

I. In determining the extent of the compromise of the claim required by subsection H of this section, the public entity shall consider the following factors:

1. The nature and extent of the patient's injury or illness.
2. The sufficiency of insurance or other sources of indemnity available to the patient.
3. Any other factor relevant for a fair and equitable settlement under the circumstances of a particular case.

J. Notwithstanding any other law, for the purpose of recovering monies from third party payors as provided by this section, a lien that includes a cover sheet pursuant to subsection K of this section and that is filed by an entity under contract with the administration, a health plan or a program contractor, or the authorized representatives of these entities, is considered filed by the state for the purposes of payment of county recorder fees pursuant to section 11-475, subsection A, paragraph 2.

K. A health plan, a program contractor, an entity under contract with the administration or an authorized representative of the health plan, program contractor or entity shall include a cover sheet, as prescribed by the administration, when filing a lien on behalf of the administration pursuant to this section. The cover sheet shall be signed by the director on the administration's letterhead with the statutory authority of the health plan, program contractor, entity or authorized representative of the health plan, program contractor or entity to file a lien on behalf of the administration.

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

Title 9, Chapter 28, Article 9 (First and Third Party Liability and Recoveries)



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: February 7, 2023

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: January 3, 2023

SUBJECT: ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
Title 9, Chapter 28 (Long Term Care System), Article 9 (First and Third Party Liability and Recoveries)

Summary

This Five-Year Review Report (5YRR) from the Arizona Health Care Cost Containment System (AHCCCS or Administration) relates to rules in Title 9, Chapter 28, Article 19, First and Third Party Liability and Recoveries.

The Arizona Long Term Care System (ALTCS) program is authorized by Title XIX of the Social Security Act. This program is a federal- and state-funded program for individuals who are aged 65 and over, blind, or disabled and who need ongoing nursing facility level of care. The rules in Title 9, Chapter 28, Article 9 support the operations and practices of the third party liability recovery programs for members enrolled in ALTCS and support the operations and practices of the estate recovery program for members enrolled in ALTCS and meet estate recovery criteria.

Proposed Action

Following the approval of the 5YRR in 2018, the Administration anticipated requesting approval for an expedited rulemaking from the Governor's Office. However, the federal government updated the federal regulations governing State Medicaid Agencies' ability to apply third party liens in the Bipartisan Budget Act of 2018 (BBA). In addition, the Center for

Medicare and Medicaid Services (CMS) made it clear they would be issuing guidance at the end of 2019 about how to interpret the updated regulations. Once AHCCCS analyzed the impact of the statute, regulation, and guidance on existing rules, the COVID-19 Public Health Emergency (PHE) began and non-essential (those not tied to session law or budget bills) rulemakings were put on hold. Beginning in early 2022, AHCCCS began the PHE unwinding process, which allowed the Administration to begin initiating non-essential rulemakings. Therefore, the prior course of action, also identified below, is carried over into this report and will be completed in a rulemaking following GRRC approval of this report.

1. Has the agency analyzed whether the rules are authorized by statute?

The Administration cites both general and specific statutory authority for these rules.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Administration states that the rules in Title 9, Chapter 28, Article 9 support the operations and practices of the third party liability recovery programs for members enrolled in the Arizona Long Term Care System (ALTCS). Further, they state that the rules in this Article also support the operations and practices of the estate recovery program, which applies to the estates of members who were enrolled in ALTCS and meet estate recovery criteria. The Administration indicates that the proposed course of action in the prior 5YRR was not enacted. Therefore, there is no economic impact to review. The Administration proposes revisions to clarify existing practices. Stakeholders include the Administration, members, contractors, and providers.

3. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?

The Administration states that the suggested changes to the rules are minimal and therefore will not change the cost-benefit analysis for this rule. They state that as it stands, the quantifiable benefits of this rule (i.e. recovery of costs of services through third party liens and estate recovery) outweigh the cost to individuals. The Administration indicates that the rule imposes the least burden and compliance costs because it allows the agency to do the requisite paperwork and does not put that burden on the member or their family, while allowing them to continue to receive care during that time. Additionally, any costs or burdens from this rule are necessary to achieve the underlying regulatory objective because it is imperative for the State to recover these costs, when possible, in order for AHCCCS to maximize the opportunity for recovery of payments

4. Has the agency received any written criticisms of the rules over the last five years?

The Administration indicates that they have not received any written criticisms of the rules in the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Administration indicates the rules are generally clear, concise and understandable with the following exceptions:

- R9-28-910: “Medicare Parts A and B premium payments, coinsurance, and deductibles paid by AHCCCS” should be deleted
- R9-28-911: Delete the reference to “Az Dept. of Revenue or County Assessor’s Office,” because the Administration could consider a property that is out of state and the Department of Revenue or County Assessor would not have this information
- R9-28-912: This rule should be amended to add a compromise factor reading: “Any other factors relevant for a fair and equitable determination under the circumstances of a particular case,” which is the only factor not in rule that is contained in the State Plan.

6. Has the agency analyzed the rules’ consistency with other rules and statutes?

The Administration indicates the rules are consistent with other rules and statutes.

7. Has the agency analyzed the rules’ effectiveness in achieving its objectives?

The Administration states the rules are effective in achieving their objective.

8. Has the agency analyzed the current enforcement status of the rules?

The Administration states that the rules are enforced as written.

9. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?

The Administration indicates none of the rules reviewed are more stringent than a corresponding federal law.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

The Administration states the rules do not require the issuance of a regulatory permit, license, or agency authorization.

11. Conclusion

As mentioned above, the Administration indicates that the rules are generally clear, concise, understandable; effective in achieving their objective; consistent with other rules and statutes; and enforced as they are written.

The Administration is ready to initiate a rulemaking to implement the changes identified above in the 5YRR and will request approval from the Governor’s Office for an expedited rulemaking within 120 days following GRRC’s approval of this report.

For these reasons, Council staff believe the Administration has submitted an adequate report and recommends approval.

November 28, 2022

VIA EMAIL: grrc@azdoa.gov

Nicole Sornsins, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: AHCCCS Title 9, Chapter 28, Article 9;

Dear Ms. Sornsins:

Please find enclosed AHCCCS's Five-Year Review Report for Title 9, Chapter 28, Article 9 due on November 28, 2022.

AHCCCS hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Stephanie Elzenga at 602-417-4232 or stephanie.elzenga@azahcccs.gov.

Sincerely,



Kasey Rogg
Assistant Director

Attachments

**Arizona Health Care Cost Containment System
(AHCCCS)
Five-Year-Review Report
Title 9, Chapter 28, Article 9
November 2022**

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 36-2932

Specific Statutory Authority: A.R.S. § 36-2915, 36-2916, 36-2935, 36-2956

2. The objective of each rule:

Rule	Objective
R9-28-901	This rule provides definitions related to third party liability requirements.
R9-28-902	This rule cross-references Chapter 22, which provides general provisions related to third party liability.
R9-28-903	This rule cross-references Chapter 22, which provides cost avoidance provisions related to third party liability.
R9-28-904	This rule cross-references Chapter 22, which provides member participation provisions related to third party liability.
R9-28-905	This rule cross-references Chapter 22, which provides collection provisions related to third party liability.
R9-28-906	This rule cross-references Chapter 22, which provides AHCCCS monitoring responsibility provisions related to third party liability.
R9-28-907	This rule cross-references Chapter 22, which provides notification for perfection, recording, and assignment of AHCCCS lien provisions related to third party liability.
R9-28-908	This rule cross-references Chapter 22, which provides notification information for lien provisions related to third party liability.
R9-28-909	This rule cross-references Chapter 22, which provides notification of health insurance information provisions related to third party liability.
R9-28-910	This rule provides what benefits may be recovered as a result of a lien related to third party liability.
R9-28-911	This rule provides recovery provisions and situations in which a lien will not be recovered.
R9-28-912	This rule provides for situations in which AHCCCS will seek to recover only a partial amount of a lien.

3. **Are the rules effective in achieving their objectives?** Yes X No

4. **Are the rules consistent with other rules and statutes?** Yes X No

5. **Are the rules enforced as written?** Yes X No

6. **Are the rules clear, concise, and understandable?** Yes X No X

Rule	Change
R9-28-910	“Medicare Parts A and B premium payments, coinsurance, and deductibles paid by AHCCCS” will be deleted.
R9-28-911	Delete the reference to “Az Dept. of Revenue or County Assessor’s Office,” because the Administration could consider a property that is out of state as well and the Department of Revenue or County Assessor would not have this information.
R9-28-912	This rule should be amended to add a compromise factor reading: “Any other factors relevant for a fair and equitable determination under the circumstances of a particular case,” which is the only factor not in rule that is contained in the State Plan.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes No X

8. **Economic, small business, and consumer impact comparison:**

The rules in Title 9, Chapter 28, Article 9 support the operations and practices of the third party liability recovery programs for members enrolled in the Arizona Long Term Care System (ALTCS). The rules in this Article also support the operations and practices of the estate recovery program, which applies to the estates of members who were enrolled in ALTCS and meet estate recovery criteria.

The ALTCS program is authorized by Title XIX of the Social Security Act. This program is a federal- and state-funded program for aged (65 and over), blind, or disabled individuals who need ongoing services at a nursing facility level of care. However, program participants do not have to reside in a nursing home. Many ALTCS participants live in their own homes or in an assisted living facility where they receive home and community based (HCBS) services. ALTCS participants also receive covered acute care services, including doctor's office visits, hospitalization, prescriptions, lab work, and behavioral health services.

Currently, the AHCCCS Administration has a Third Party Liability (TPL) department that recovers funds from first or third parties where medical services have been provided to members in the AHCCCS program. The TPL department also manages the estate recovery program. AHCCCS recovers the following types of AHCCCS

payments depending upon the type of recovery program: capitation payments; reinsurance payments; and fee-for-service payments.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes ___ No X

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

Following the 5YRR approval for these articles, the federal government updated the federal regulations governing State Medicaid Agencies' ability to apply third party liens in the Bipartisan Budget Act of 2018 (BBA). In addition, the Center for Medicare and Medicaid Services (CMS) made it clear they would be issuing guidance about how to interpret the updated regulations, which didn't come out until the end of 2019. Once AHCCCS had analyzed the impact of the statute, regulation, and guidance on existing rules, in the first quarter of 2020, the COVID-19 Public Health Emergency (PHE) had begun and non-essential (those not tied to session law or budget bills) rulemakings were put on hold. Beginning in early 2022, AHCCCS began the PHE unwinding process, which allowed us to begin initiating non-essential rulemakings. As a result, two expedited rulemakings were able to be completed and were immediately followed by several essential rulemakings. Therefore, the prior course of action is carried over into this report and will be completed in a rulemaking following GRRC approval of this report.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The suggested changes to the rule are minimal and therefore will not change the cost-benefit analysis for this rule. As it stands, the quantifiable benefits of this rule (i.e. recovery of costs of services through third party liens and estate recovery) outweigh those costs to individuals. This rule imposes the least burden and compliance costs because it allows the agency to do the requisite paperwork and does not put that burden on the member or their family, while allowing them to continue to receive care during that time. Additionally, any costs or burden from this rule are necessary to achieve the underlying regulatory objective because it is imperative for the State to recover these costs, when possible, in order for AHCCCS to maximize the opportunity for recovery of payments.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No X

Section 1917 of the Social Security Act, Medicare Improvements for Patients and Providers Act (MIPPA), 42 CFR 433.138, and 42 CFR 433.36.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. §**

41-1037 or explain why the agency believes an exception applies:

These rules do not require the issuance of a regulatory permit, license, or agency authorization.

14. Proposed course of action

AHCCCS is ready to initiate a rulemaking to allow for implementation of the 5YRR course of action, once approved by GRRC, and will present it to the agency's policy advisor following the appointment of the agency's new Director. AHCCCS will then request approval from the Governor's Office for an expedited or regulatory rulemaking within 120 days following GRRC's approval of this 5YRR.

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1. A physician's written statement that describes the member's physical condition and service needs for the previous two years before the member's death;
2. Verification that the child actually lived in the member's home;
3. A written statement from the child providing the services that describes and attests to the services provided;
4. A written statement, if any, made by the member prior to death regarding the services received; and
5. A written statement from physician, friend, or relative as witness to the care provided.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

R9-28-807. TEFRA Liens – Release

AHCCCS shall issue a release of a TEFRA lien within 30 days of:

1. Satisfaction of the lien;
2. Notice that the member has been discharged from the nursing facility, ICF/MR, or other medical institution, defined under 42 CFR 435.1010, and the member has returned home and is physically residing in the home with the intention of remaining in the home. Discharge to an alternative HCBS setting defined at R9-28-101 does not constitute a return to the home; or
3. Notice of the member's death, if a lien has been filed on a life estate.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

ARTICLE 9. FIRST- AND THIRD-PARTY LIABILITY AND RECOVERIES**R9-28-901. Definitions**

In addition to the definitions in A.R.S. §§ 36-2901 and 36-2931, 9 A.A.C. 22, Article 1, and 9 A.A.C. 28, Article 1, the following definitions apply to this Article:

"Estate" has the meaning in A.R.S. § 14-1201.

"Member" means a person eligible for AHCCCS-covered services under A.R.S. Title 36, Chapter 29, Article 2.

"Recover" means that AHCCCS takes action to collect from a claim.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective November 7, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 10 A.A.R. 3013, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

R9-28-902. General Provisions

The provisions in A.A.C. R9-22-1002 apply to this Section.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1992, Ch. 301, § 61, effective July 1, 1993 (Supp. 93-3). Amended effective November 7, 1997 (Supp. 97-4). Amended by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1).

R9-28-903. Cost Avoidance

The provisions in A.A.C. R9-22-1003 apply to this Section.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1).

R9-28-904. Member Participation

The provisions in A.A.C. R9-22-1004 apply to this Section.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1).

R9-28-905. Collections

The provisions in A.A.C. R9-22-1005 apply to this Section.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1).

R9-28-906. AHCCCS Monitoring Responsibilities

The provisions in A.A.C. R9-22-1006 apply to this Section.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective November 7, 1997 (Supp. 97-4). Section repealed; new Section made by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1).

R9-28-907. Notification for Perfection, Recording, and Assignment of AHCCCS Liens

The provisions in A.A.C. R9-22-1007 apply to this Section.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1).

R9-28-908. Notification Information for Liens

The provisions in A.A.C. R9-22-1008 apply to this Section.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1).

R9-28-909. Notification of Health Insurance Information

The provisions in A.A.C. R9-22-1009 apply to this Section.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1).

R9-28-910. Recoveries

AHCCCS shall recover funds paid before or after the death of a member for ALTCS benefits including: capitation payments, Medicare Parts A and B premium payments, coinsurance and deductibles paid by AHCCCS, fee-for-service payments, and reinsurance payments from:

1. The estate of a member who was 55 years of age or older when the member received benefits; or
2. The estate or the property of a member under A.R.S. §§ 36-2935, 36-2956, and 42 U.S.C. 1396p.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

R9-28-911. Estate Recovery and Undue Hardship

A. Any recovery of a claim by AHCCCS against a member's estate shall be made only after the death of the member's surviving spouse and only at a time:

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1. When there exists no surviving minor child under age 21; and
 2. When there exists no surviving child who receives benefits under either Title II or Title XVI of the Social Security Act because the child is blind or disabled as defined in 42 U.S.C. 1382c.
- B.** Undue hardship exemption request. A member's representative may request an undue hardship exemption. If the member's representative wishes to request an undue hardship exemption, the member's representative shall submit the request within 30 days from the receipt of the notification of the AHCCCS claim against the estate. The member's representative shall submit a written statement to AHCCCS describing the factual basis for a claim that the property should be exempt from estate recovery as provided under this Section. AHCCCS shall respond to the member or member's representative in writing within 30 days of receiving an undue hardship exemption request, unless the parties mutually agree to a longer period of time.
- C.** AHCCCS shall waive a claim against a member's estate because of undue hardship if any of the following situations exist:
1. The estate consists only of real property that is listed as residential property by the Arizona Department of Revenue or County Assessor's Office, and the heir or devisee:
 - a. Owns a business that is located at the residential property and:
 - i. The business was in operation at the residential property for at least 12 months preceding the death of the member,
 - ii. The business provides more than 50 percent of the heir's or devisee's livelihood, and
 - iii. The recovery of the property would result in the heir or devisee losing the heir's or devisee's means of livelihood; or
 - b. Currently resides in the residence and:
 - i. Resided there at the time of the member's death,
 - ii. Made the residence his or her primary residence for the 12 months immediately before the death of the member, and
 - iii. Owns no other residence; or
 2. The estate consists only of personal property and:
 - a. The heir's or devisee's gross annual income for the household size is less than 100 percent of the Federal Poverty Level (FPL). New sources of income such as employment or Social Security that may not have yet been received are included in determining the household's annual gross income; and
 - b. The heir or devisee does not own a home, land, or other real property.
- D.** When the estate consists of both personal property and real property that qualify for the undue hardship exemption criteria under subsections (B) and (C), AHCCCS shall not grant an undue hardship waiver; however, AHCCCS shall adjust its claim to the value of the personal property.
- E.** AHCCCS shall exempt the following income, resources, and property of Native Americans (NA) and Alaska Natives (AN) from estate recovery:
1. Income and resources from tribal land and other resources currently held in trust and judgment funds from the Indian Claims Commission or U.S. Claims Court;
 2. Ownership interest in trust or non-trust property;
 3. Ownership interests left as a remainder in an estate in rents, leases, royalties, or usage rights related to natural resources;
 4. Any other ownership interests or rights in a property that has unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or a traditional life style according to applicable Tribal law or custom; and
 5. Income left as a remainder in an estate derived from any property listed in subsection (E)(1) through (4), that was either collected by a NA, or by a Tribe or Tribal organization and distributed to a NA.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 10 A.A.R. 3013, effective September 11, 2004 (Supp. 04-3). Amended by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

R9-28-912. Partial Recovery

AHCCCS shall use the following factors in determining whether to seek a partial recovery of funds when an heir or devisee does not meet the requirements of R9-28-911 and requests a partial recovery:

1. Financial and medical hardship to the heir or devisee;
2. Income of the heir or devisee and whether the heir or devisee's household gross annual income is less than 100 percent of the FPL;
3. Resources of the heir or devisee;
4. Value and type of assets;
5. Amount of AHCCCS' claim against the estate; and
6. Whether other creditors have filed claims against the estate or have foreclosed on the property.

Historical Note

New Section made by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1).

R9-28-913. Repealed**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3013, effective September 11, 2004 (Supp. 04-3). Repealed by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

R9-28-914. Repealed**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3013, effective September 11, 2004 (Supp. 04-3). Repealed by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

R9-28-915. Repealed**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3013, effective September 11, 2004 (Supp. 04-3). Repealed by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

R9-28-916. Repealed**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3013, effective September 11, 2004 (Supp. 04-3). Repealed by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

R9-28-917. Repealed

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Historical Note

New Section made by final rulemaking at 10 A.A.R. 3013, effective September 11, 2004 (Supp. 04-3).
Repealed by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

R9-28-918. Repealed**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3013, effective September 11, 2004 (Supp. 04-3).
Repealed by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

R9-28-919. Repealed**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 3013, effective September 11, 2004 (Supp. 04-3).
Repealed by final rulemaking at 14 A.A.R. 3791, effective November 8, 2008 (Supp. 08-3).

ARTICLE 10. CIVIL MONETARY PENALTIES AND ASSESSMENTS**R9-28-1001. Basis for Civil Monetary Penalties and Assessments for Fraudulent Claims**

AHCCCS shall use the provisions in 9 A.A.C. 22, Article 11 for the determination and collection of penalties, assessments, and penalties and assessments.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Amended effective June 9, 1998 (Supp. 98-2).
Amended by final rulemaking at 10 A.A.R. 3065, effective September 11, 2004 (Supp. 04-3).

R9-28-1002. Repealed**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective November 5, 1993 (Supp. 93-4). Repealed effective June 9, 1998 (Supp. 98-2).

R9-28-1003. Repealed**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective November 5, 1993 (Supp. 93-4). Repealed effective June 9, 1998 (Supp. 98-2).

R9-28-1004. Repealed**Historical Note**

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Repealed effective June 9, 1998 (Supp. 98-2).

ARTICLE 11. BEHAVIORAL HEALTH SERVICES**R9-28-1101. General Requirements**

General requirements. The following general requirements apply to behavioral health services provided under this Article, and Chapter 22 subject to all exclusions and limitations.

1. Definitions. The definitions in A.A.C. R9-22-1201 and R9-22-101 apply to this Article, in addition to the following definitions:
 - “Case manager” means an individual responsible for coordinating the physical health services or behavioral health services provided to a patient at the health care institution.

“Contractor” means an ALTCS contractor or as previously known as program contractor.

“Cost avoid” means the same as in A.A.C. R9-22-1201.

“Intergovernmental agreement” or “IGA” means an agreement for services or joint or cooperative action between the Administration and a tribal contractor.

“Qualified behavioral health service provider” means a behavioral health service provider that meets the requirements of R9-28-1106.

“Tribal contractor” means a tribal organization (The Tribe) or urban Indian organization defined in 25 U.S.C. 1603 and recognized by CMS as meeting the requirements of 42 U.S.C. 1396d(b), that provides or is accountable for providing the services or delivering the items described in the intergovernmental agreement.

2. Case management. A tribal contractor shall provide case management services to FFS American Indian members living on or off-reservation as delineated in the IGA.
3. Reimbursement. For FFS American Indians, the Administration is exclusively responsible for providing reimbursement for covered behavioral health services that are authorized by a tribal contractor or the Administration under the intergovernmental agreement as specified in this Article. A contractor is exclusively responsible for providing reimbursement for covered behavioral health services that are authorized by a contractor as specified in this Article.

Historical Note

Adopted under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1992, Ch. 301, § 61, effective November 1, 1992; received in the Office of the Secretary of State November 25, 1992 (Supp. 92-4). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 200, effective December 13, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4691, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 13 A.A.R. 1090, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 20 A.A.R. 3122, effective January 4, 2015 (Supp. 14-4).

R9-28-1102. ALTCS Contractor or Tribal Contractor Responsibilities

- A. ALTCS contractor. A contractor shall arrange for behavioral health services to all enrolled members, including American Indian members who are not enrolled with a tribal contractor.
- B. Tribal contractor. A tribal contractor shall provide behavioral health services to an American Indian member who is enrolled with a tribal contractor as prescribed in R9-28-1101. When a tribal contractor determines that an EPD American Indian member residing on a reservation needs behavioral health services under R9-28-415, the member shall receive services as authorized by the Administration or a tribal contractor under A.A.C. R9-22-1205 from any AHCCCS-registered provider.
- C. A program or tribal contractor shall cooperate when a transition of care occurs and ensure that medical records are transferred in accordance with A.R.S. §§ 36-2932, 36-509, and R9-28-514 when a member transitions from:
 1. A behavioral health provider to another behavioral health provider,
 2. A RBHA or TRBHA to a contractor,
 3. A contractor or tribal contractor to a RBHA or TRBHA, or

36-2915. Lien of administration on damages recovered by injured person; perfection, recording, assignment and notice of lien

A. The administration is entitled to a lien for the charges for hospital or medical care and treatment of an injured person for which the administration or a contractor is responsible, on any and all claims of liability or indemnity for damages accruing to the person to whom hospital or medical service is rendered, or to the legal representative of such person, on account of injuries giving rise to such claims and which necessitated such hospital or medical care and treatment. The member or the member's legal representative must provide written notice to the administration within twenty calendar days after the commencement of a civil action or other proceeding to establish the liability of any third party or to collect monies payable from accident insurance, liability insurance, workers' compensation, health insurance, medical payment insurance, underinsured coverage, uninsured coverage or any other first or third party source.

B. In order to perfect a lien granted by this section, the director or the director's authorized representative, before or within sixty days from the date of notification to the administration of the hospital discharge or rendering of medical care and treatment, shall record in the office of the recorder of the county in which the injuries were incurred a verified statement in writing setting forth the name and address of the patient as they appear on the records of the administration, the name and address of the administration, the dates of admission to and discharge of the patient from the hospital or the dates on which medical care and treatment were provided to the patient, the amount estimated to be due for hospital or medical care and treatment, and, to the best of the director's knowledge, the names and addresses of all persons, firms or corporations and their insurance carriers alleged by the injured person or that person's legal representative to be liable for damages arising from the injuries for which he was hospitalized or for which medical care and treatment were provided. However, the director or the director's authorized representative is not required to include the address of the patient in the verified statement if the administration's records indicate that the patient's injuries may have resulted from an offense against the patient as defined in section 13-105. The director or the director's authorized representative, within five days after recording the lien, shall mail a copy of the lien, postage prepaid, to the patient and to each person, firm or corporation, including insurance carriers, alleged to be liable for liability or indemnity damages, at the address given in the statement. The recording of the lien is notice of the lien to all persons, firms or corporations, including insurance carriers, liable for liability or indemnity damages, whether or not they are named in the lien.

C. The recorder shall endorse on a lien recorded as provided by this section the date and hour of receipt and such facts as are necessary to indicate that it has been recorded.

D. The lien may be assigned in whole or in part to a contractor that is responsible for hospital or medical services.

E. The director shall establish by rule procedures for a contractor and a noncontracting provider to notify the administration concerning the delivery of hospital or medical services to a person who may have claims for damages.

F. Notwithstanding any other law, a lien or claim provided for by this article has priority over a lien of the department pursuant to section 36-596.01, a lien of the counties pursuant to section 11-291, a health care provider lien pursuant to title 33, chapter 7, article 3 and a claim against a third party payor. A lien of the department of economic security pursuant to section 36-596.01, a lien of a special health care district pursuant to section 48-5541.01, subsection N and a lien of the counties pursuant to section 11-291 has priority over a health care provider lien pursuant to title 33, chapter 7, article 3 and a claim against a third party payor.

G. A lien authorized pursuant to this chapter may be amended to reflect current charges. However, if the administration is given notice of an impending settlement of the member's claim at least fifteen working days before the final settlement of that claim, the lien may not be amended after the time of final settlement.

H. A public entity shall compromise a claim it has pursuant to this section or section 11-291, 12-962, 36-596, 36-596.01, 36-2903, 36-2935 or 36-2956 if, after considering the factors listed in subsection I of this section, the compromise provides a settlement of the claim that is fair and equitable.

I. In determining the extent of the compromise of the claim required by subsection H of this section, the public entity shall consider the following factors:

1. The nature and extent of the patient's injury or illness.
2. The sufficiency of insurance or other sources of indemnity available to the patient.
3. Any other factor relevant for a fair and equitable settlement under the circumstances of a particular case.

J. Notwithstanding any other law, for the purpose of recovering monies from third party payors as provided by this section, a lien that includes a cover sheet pursuant to subsection K of this section and that is filed by an entity under contract with the administration, a health plan or a program contractor, or the authorized representatives of these entities, is considered filed by the state for the purposes of payment of county recorder fees pursuant to section 11-475, subsection A, paragraph 2.

K. A health plan, a program contractor, an entity under contract with the administration or an authorized representative of the health plan, program contractor or entity shall include a cover sheet, as prescribed by the administration, when filing a lien on behalf of the administration pursuant to this section. The cover sheet shall be signed by the director on the administration's letterhead with the statutory authority of the health plan, program contractor, entity or authorized representative of the health plan, program contractor or entity to file a lien on behalf of the administration.

36-2916. Release of claim by injured person ineffective as to system; action to enforce lien; release of lien

A. A release of a claim on which a lien is imposed pursuant to section 36-2915 is not valid or effective as against the lien unless the director joins in the release or executes a release of the lien.

B. If any amount has been or is to be collected by the injured person or his legal representative from or on account of the person, firm or corporation, including insurance carriers liable for liability or indemnity damages by reason of a judgment, settlement or compromise, the director may enforce the lien by action against the patient or the person, firm or corporation, including insurance carriers, liable for liability or indemnity damages. Such action shall be commenced and tried in the county in which the lien is filed, unless the court orders that the action be removed to another county for cause. If the director prevails in the action, the court may allow the administration its reasonable attorney fees and disbursements. Such an action shall be commenced within two years after the entry of the judgment or the making of the settlement or compromise.

C. Within thirty days after a lien established pursuant to section 36-2915 is satisfied, the director shall issue a release of the lien to the person, firm or corporation against which the lien was claimed. The release shall be a document which conforms to the requirements of section 11-480.

36-2932. Arizona long-term care system; powers and duties of the director; expenditure limitation

A. The Arizona long-term care system is established. The system includes the management and delivery of hospitalization, medical care, institutional services and home and community based services to members through the administration, the program contractors and providers pursuant to this article together with federal participation under title XIX of the social security act. The director in the performance of all duties shall consider the use of existing programs, rules and procedures in the counties and department where appropriate in meeting federal requirements.

B. The administration has full operational responsibility for the system, which shall include the following:

1. Contracting with and certification of program contractors in compliance with all applicable federal laws.
2. Approving the program contractors' comprehensive service delivery plans pursuant to section 36-2940.
3. Providing by rule for the ability of the director to review and approve or disapprove program contractors' requests for proposals for providers and provider subcontracts.
4. Providing technical assistance to the program contractors.
5. Developing a uniform accounting system to be implemented by program contractors and providers of institutional services and home and community based services.
6. Conducting quality control on eligibility determinations and preadmission screenings.
7. Establishing and managing a comprehensive system for assuring the quality of care delivered by the system as required by federal law.
8. Establishing an enrollment system.
9. Establishing a member case management tracking system.
10. Establishing and managing a method to prevent fraud by applicants, members, eligible persons, program contractors, providers and noncontracting providers as required by federal law.
11. Coordinating benefits as provided in section 36-2946.
12. Establishing standards for the coordination of services.
13. Establishing financial and performance audit requirements for program contractors, providers and noncontracting providers.

14. Prescribing remedies as required pursuant to 42 United States Code section 1396r. These remedies may include the appointment of temporary management by the director, acting in collaboration with the director of the department of health services, in order to continue operation of a nursing care institution providing services pursuant to this article.

15. Establishing a system to implement medical child support requirements, as required by federal law. The administration may enter into an intergovernmental agreement with the department of economic security to implement this paragraph.

16. Establishing requirements and guidelines for the review of trusts for the purposes of establishing eligibility for the system pursuant to section 36-2934.01 and posteligibility treatment of income pursuant to subsection L of this section.

17. Accepting the delegation of authority from the department of health services to enforce rules that prescribe minimum certification standards for adult foster care providers pursuant to section 36-410, subsection B. The administration may contract with another entity to perform the certification functions.

18. Assessing civil penalties for improper billing as prescribed in section 36-2903.01, subsection K.

C. For nursing care institutions and hospices that provide services pursuant to this article, the director shall contract periodically as deemed necessary and as required by federal law for a financial audit of the institutions and hospices that is certified by a certified public accountant in accordance with generally accepted auditing standards or conduct or contract for a financial audit or review of the institutions and hospices. The director shall notify the nursing care institution and hospice at least sixty days before beginning a periodic audit. The administration shall reimburse a nursing care institution or hospice for any additional expenses incurred for professional accounting services obtained in response to a specific request by the administration. On request, the director of the administration shall provide a copy of an audit performed pursuant to this subsection to the director of the department of health services or that person's designee.

D. Notwithstanding any other provision of this article, the administration may contract by an intergovernmental agreement with an Indian tribe, a tribal council or a tribal organization for the provision of long-term care services pursuant to section 36-2939, subsection A, paragraphs 1, 2, 3 and 4 and the home and community based services pursuant to section 36-2939, subsection B, paragraph 2 and subsection C, subject to the restrictions in section 36-2939, subsections D and E for eligible members.

E. The director shall require as a condition of a contract that all records relating to contract compliance are available for inspection by the administration subject to subsection F of this section and that these records are maintained for five years. The director shall also require that these records are available on request of the secretary of the United States department of health and human services or its successor agency.

F. Subject to applicable law relating to privilege and protection, the director shall adopt rules prescribing the types of information that are confidential and circumstances under which that information may be used or released, including requirements for physician-patient confidentiality. Notwithstanding any other law, these rules shall provide for the exchange of necessary information among the program contractors, the administration and the department for the purposes of eligibility determination under this article.

G. The director shall adopt rules to specify methods for the transition of members into, within and out of the system. The rules shall include provisions for the transfer of members, the transfer of medical records and the initiation and termination of services.

H. The director shall adopt rules that provide for withholding or forfeiting payments made to a program contractor if it fails to comply with a provision of its contract or with the director's rules.

I. The director shall:

1. Establish by rule the time frames and procedures for all grievances and requests for hearings consistent with section 36-2903.01, subsection B, paragraph 4.

2. Apply for and accept federal monies available under title XIX of the social security act in support of the system. In addition, the director may apply for and accept grants, contracts and private donations in support of the system.

3. Not less than thirty days before the administration implements a policy or a change to an existing policy relating to reimbursement, provide notice to interested parties. Parties interested in receiving notification of policy changes shall submit a written request for notification to the administration.

J. The director may apply for federal monies available for the support of programs to investigate and prosecute violations arising from the administration and operation of the system. Available state monies appropriated for the administration of the system may be used as matching monies to secure federal monies pursuant to this subsection.

K. The director shall adopt rules that establish requirements of state residency and qualified alien status as prescribed in section 36-2903.03. The administration shall enforce these requirements as part of the eligibility determination process. The rules shall also provide for the determination of the applicant's county of residence for the purpose of assignment of the appropriate program contractor.

L. The director shall adopt rules in accordance with the state plan regarding posteligibility treatment of income and resources that determine the portion of a member's income that shall be available for payment for services under this article. The rules shall provide that a portion of income may be retained for:

1. A personal needs allowance for members receiving institutional services of at least fifteen per cent of the maximum monthly supplemental security income payment for an individual or a personal needs allowance for members receiving home and community based services based on a reasonable assessment of need.

2. The maintenance needs of a spouse or family at home in accordance with federal law. The minimum resource allowance for the spouse or family at home is twelve thousand dollars adjusted annually by the same percentage as the percentage change in the consumer price index for all urban consumers (all items; United States city average) between September 1988 and the September before the calendar year involved.

3. Expenses incurred for noncovered medical or remedial care that are not subject to payment by a third party payor.

M. In addition to the rules otherwise specified in this article, the director may adopt necessary rules pursuant to title 41, chapter 6 to carry out this article. Rules adopted by the director pursuant to this subsection may consider the differences between rural and urban conditions on the delivery of services.

N. The director shall not adopt any rule or enter into or approve any contract or subcontract that does not conform to federal requirements or that may cause the system to lose any federal monies to which it is otherwise entitled.

O. The administration, program contractors and providers may establish and maintain review committees dealing with the delivery of care. Review committees and their staff are subject to the same requirements, protections, privileges and immunities prescribed pursuant to section 36-2917.

P. If the director determines that the financial viability of a nursing care institution or hospice is in question, the director may require a nursing care institution and a hospice providing services pursuant to this article to submit quarterly financial statements within thirty days after the end of its financial quarter unless the director grants an extension in writing before that date. Quarterly financial statements submitted to the department shall include the following:

1. A balance sheet detailing the institution's assets, liabilities and net worth.

2. A statement of income and expenses, including current personnel costs and full-time equivalent statistics.

Q. The director may require monthly financial statements if the director determines that the financial viability of a nursing care institution or hospice is in question. The director shall prescribe the requirements of these statements.

R. The total amount of state monies that may be spent in any fiscal year by the administration for long-term care shall not exceed the amount appropriated or authorized by section 35-173 for that purpose. This article shall not be construed to impose a duty on an officer, agent or employee of

this state to discharge a responsibility or to create any right in a person or group if the discharge or right would require an expenditure of state monies in excess of the expenditure authorized by legislative appropriation for that specific purpose.

36-2935. Estate recovery program; liens

- A. The director shall adopt rules in accordance with state and federal law to allow the administration to file a claim against a member's estate to recover paid assistance. The administration is also entitled to a lien on a member's property to recover paid assistance the member receives.
- B. A member's personal representative must notify the administration of the member's estate or property within three months after the member's death if the member was at least fifty-five years of age and the administration has not already filed a statement of claim in the estate proceedings.
- C. As nearly as is possible, the administration shall recover charges pursuant to the procedures prescribed in sections 36-2915 and 36-2916. If both the administration and a county have valid liens for paid assistance provided to the same member, or if both the administration and a special health care district have valid claims for paid assistance provided to the same member, the value of the property shall be divided between the administration, the special health care district and the county pro rata according to the amounts of their respective liens.
- D. The administration shall impose liens in a manner consistent with federal law.
- E. This section also applies to persons who are eligible pursuant to section 36-2901, paragraph 6, subdivision (a) and who receive medical assistance under article 1 of this chapter.

36-2956. Liens on damages for injuries; notification

A. The administration is entitled to a lien for the charges for hospital, medical or long-term care and treatment of an injured person for which the administration or a program contractor is responsible pursuant to this article, on any and all claims for damages accruing to the person to whom hospital or medical service is rendered, or to the legal representative of such person, on account of injuries giving rise to such claims and which necessitated such hospital or medical care and treatment. Recovery of charges pursuant to this section shall be in a manner as nearly as possible the same as the procedures prescribed in sections 36-2915 and 36-2916.

B. The member or the member's legal representative must provide written notice to the administration within twenty calendar days after the commencement of a civil action or other proceeding to establish the liability of any third party or to collect monies payable from accident insurance, liability insurance, workers' compensation, health insurance, medical payment insurance, underinsured coverage, uninsured coverage or any other first or third party source.

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
Title 9, Chapter 29 (Medicare Cost Sharing Program)



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: February 7, 2023

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: January 3, 2023

SUBJECT: ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
Title 9, Chapter 29 (Medicare Cost Sharing Program)

Summary

This Five-Year Review Report (5YRR) from the Arizona Health Care Cost Containment System (AHCCCS or Administration) relates to rules in Title 9, Chapter 29, Medicare Cost Sharing Program.

Medicare is a Federal health insurance program that is available to most U.S. citizens and legal residents who are 65 or over to individuals with certain disabilities. AHCCCS is the payor of last resort, which means that AHCCCS requires that other responsible parties, including Medicare, pay before it pays. In general, the Medicare program has primary responsibility for the cost of care for these individuals, and Medicaid (or AHCCCS) is responsible for paying for the cost of Medicare Part B premiums, and/or Medicare coinsurance, copayments, and deductibles depending on the extent of the individual's entitlement under the Medicaid program to "Medicare Cost Sharing".

Proposed Action

Following the approval of the 5YRR in 2018, the Administration received a 1115 Waiver to allow for operation of a community engagement program which would have impacted this chapter by the permutation of operationalizing the program. In early 2019, a number of other State Medicaid Agencies were sued following the implementation of their own community

engagement programs and AHCCCS's program was put on hold. Prior to the conclusion of those lawsuits, the COVID-19 Public Health Emergency (PHE) had begun and non-essential (those not tied to session law or budget bills) rulemakings were put on hold. Beginning in early 2022, AHCCCS began the PHE unwinding process, which allowed the Administration to begin initiating non-essential rulemakings. Therefore, the prior course of action, also identified below, is carried over into this report and will be completed in a rulemaking following GRRC approval of this report.

1. Has the agency analyzed whether the rules are authorized by statute?

The Administration cites both general and specific statutory authority for these rules.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The rules in Title 9, Chapter 29 relate to the Arizona Health Care Cost Containment System (AHCCCS) Medicare Cost Sharing Program. The Administration indicates that the proposed course of action in the prior 5YRR was not enacted. Therefore, there is no economic impact to review. The Administration proposes revisions to clarify existing practices. The Administration indicates that none of the proposed changes in the 5YRR would have any effect on the economic impact of this chapter. Stakeholders include the Administration, members, contractors, and providers.

3. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?

The Administration states that the proposed changes in the 5YRR are meant for clarifying purposes and do not impose any additional burden or costs to regulated persons. AHCCCS believes that the chapter currently provides the least burden and cost to regulated persons.

4. Has the agency received any written criticisms of the rules over the last five years?

The Administration indicates that they have not received any written criticisms of the rules in the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Administration indicates the rules are generally clear, concise, and understandable with the following exceptions:

R9-29-101, R9-29-201, R9-29-202, R9-29-204, R9-29-213: Administration or AHCCCS, should be replaced with "Administration or its designee" for accuracy and consistency.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

The Administration indicates the rules are generally consistent with other rules and statutes with the following exceptions:

R9-29-101: Remove reference to A.R.S. § 36-2971 and add three new definitions for clarity: "Administration", "Contractor", and "Director". The Administration states that these definitions are consistent with A.R.S. § 36-2971, however some of the other definitions in that statute are inconsistent with the rule, so for consistency, the Administration would prefer to add the three definitions above instead of referencing the statute.

R9-29-202: Cross references to R9-22-1406 should be updated since the relevant information in the rule was moved.

R9-29-206: Cross reference to R9-22-1402 should be updated since the relevant information in the rule was moved.

R9-29-209: Cross reference to Article 5 should be updated since the relevant information in the rule was moved.

R9-29-211: Update Subsection B.

R9-29-213: Cross reference to R9-22-1402 should be updated since the relevant information in the rule was moved.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Administration states the rules are effective in achieving their objective.

8. Has the agency analyzed the current enforcement status of the rules?

The Administration indicates the rules are generally enforced with the following exceptions:

R9-29-202: Cross references to R9-22-1406 should be updated since the relevant information in the rule was moved.

R9-29-206: Cross reference to R9-22-1402 should be updated since the relevant information in the rule was moved.

R9-29-209: Cross reference to Article 5 should be updated since the relevant information in the rule was moved.

R9-29-213: Cross reference to R9-22-1402 should be updated since the relevant information in the rule was moved.

9. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?

The Administration indicates none of the rules reviewed are more stringent than a corresponding federal law.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

The Administration states the rules do not require the issuance of a regulatory permit, license, or agency authorization.

11. Conclusion

As mentioned above, the Administration indicates that the rules are generally clear, concise, and understandable and effective in achieving their objective.

The Administration is ready to initiate a rulemaking to implement the changes identified above in the 5YRR and will request approval from the Governor's Office for an expedited rulemaking within 120 days following GRRC's approval of this report.

For these reasons, Council staff believe the Administration has submitted an adequate report and recommends approval.

November 28, 2022

VIA EMAIL: grrc@azdoa.gov

Nicole Sornsins, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: AHCCCS Title 9, Chapter 29;

Dear Ms. Sornsins:

Please find enclosed AHCCCS's Five-Year Review Report for Title 9, Chapter 29 due on November 28, 2022.

AHCCCS hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Stephanie Elzenga at 602-417-4232 or stephanie.elzenga@azahcccs.gov.

Sincerely,



Kasey Rogg
Assistant Director

Attachments

Arizona Health Care Cost Containment System

(AHCCCS)

5 YEAR REVIEW REPORT

A.A.C. Title 9, Chapter 29

November 2022

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 36-2972.

Specific Statutory Authority: A.R.S. §§ 36-2972, 36-2973, 36-2974, 36-2975, 36-2976.

2. The objective of each rule:

Rule	Objective
R9-29-101	Provides definitions for terms that apply throughout Chapter 29.
R9-29-201	Provides general eligibility information and confidentiality requirements.
R9-29-202	Provides the application process for eligibility determinations.
R9-29-203	Describes the rights a person assigns to the Administration when applying for services.
R9-29-204	Describes the requirements for a determination of eligibility.
R9-29-205	Provides a description of the income standards used to determine eligibility.
R9-29-206	Explains that R9-22-1402 apply to this Article for an institutionalized person.
R9-29-207	Provides which resources are considered when determining eligibility.
R9-29-208	Provides the timeline requirements for an eligibility determination.
R9-29-209	Provides the requirements of a notice of eligibility determination.
R9-29-210	Provides the eligibility effective dates.
R9-29-211	Provides the circumstances under which eligibility will be discontinued.
R9-29-212	Provides the timeline for renewal of eligibility.
R9-29-213	Provides the reporting requirements for eligible individuals.
R9-29-301	Provides a description of the benefits and services provided for those qualified for the QMB-only program.
R9-29-302	Provides a description of the benefits and services provided for those qualified for the Dual Eligible program.
R9-29-303	Provides a description of the benefits and services provided for those non-qualified Dual Eligible member.
R9-29-304	Provides a description of the benefits and services provided for those qualified for the SLMB and QI-1 program.
R9-29-501	Provides a cross-reference to the Grievance and Hearing requirements that apply to a contractor, member, or provider of the cost-sharing programs.

R9-29-601	Provides a cross-reference to the third-party liability and recovery requirements that apply to members of the cost-sharing programs.
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3. **Are the rules effective in achieving their objectives?** Yes X No

4. **Are the rules consistent with other rules and statutes?** Yes No X

Rule	Explanation
R9-29-101	Remove reference to A.R.S. § 36-2971 and add three new definitions for clarity: "Administration" means the Arizona health care cost containment system administration. "Contractor" means a person or entity that has a prepaid capitated contract with the administration pursuant to section 36-2904 to provide health care to members under this article either directly or through subcontracts with providers. "Director" means the director of the Arizona health care cost containment system administration. These definitions are consistent with those found in A.R.S. § 36-2971, however some of the other definitions found there do not have the same meaning in Ch. 29 so the Administration would prefer to add the three definition above instead of referring to another place they are located.
R9-29-202	Cross reference to R9-22-1406 in Subsection C should be changed to R9-22-302(2) since the relevant information in the rule was moved. Cross reference to R9-22-1406 in Subsections D & F should be changed to R9-22-302 since the relevant information in the rule was moved.
R9-29-206	Cross reference to R9-22-1402 should be changed to R9-22-310 since the relevant information in the rule was moved.
R9-29-209	Cross reference to Article 5 should be changed to Chapter 34 since the relevant information in the rule was moved.
R9-29-211	Update Subsection B to read: Notice. AHCCCS shall follow the discontinuance notice requirements under A.A.C. R9-22-312.
R9-29-213	Cross reference to R9-22-1402 should be changed to R9-22-310 since the relevant information in the rule was moved.

5. **Are the rules enforced as written?** Yes No X

Rule	Explanation
R9-29-202	Cross reference to R9-22-1406 in Subsection C should be changed to R9-22-302(2) since the relevant information in the rule was moved. Cross reference to R9-22-1406 in

	Subsections D & F should be changed to R9-22-302 since the relevant information in the rule was moved.
R9-29-206	Cross reference to R9-22-1402 should be changed to R9-22-310 since the relevant information in the rule was moved.
R9-29-209	Cross reference to Article 5 should be changed to Chapter 34 since the relevant information in the rule was moved.
R9-29-213	Cross reference to R9-22-1402 should be changed to R9-22-310 since the relevant information in the rule was moved.

6. **Are the rules clear, concise, and understandable?** Yes ___ No X

Rule	Explanation
R9-29-101	Administration or AHCCCS, should be replaced with “Administration or its designee” for accuracy and consistency.
R9-29-201	Administration or AHCCCS, should be replaced with “Administration or its designee” for accuracy and consistency.
R9-29-202	Administration or AHCCCS, should be replaced with “Administration or its designee” for accuracy and consistency.
R9-29-204	Administration or AHCCCS, should be replaced with “Administration or its designee” for accuracy and consistency.
R9-29-213	Administration or AHCCCS, should be replaced with “Administration or its designee” for accuracy and consistency.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes ___ No X

8. **Economic, small business, and consumer impact comparison:**

None of the changes proposed in this 5YRR have any effect on the economic impact of this chapter. Substantive and procedural rights of members are not affected, nor are any of the programs of the Administration. These proposed changes are merely clarifying; therefore the economic impact of this chapter remains the same as when the rules were promulgated.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes ___ No X

10. **Has the agency completed the course of action indicated in the agency’s previous five-year-review report?**

Following the 5YRR approval for this chapter, AHCCCS received an 1115 Waiver to allow for operation of a community engagement program in July 2018. Many months of work were put into what the requirements would look like and how they would impact existing eligibility regulations. This chapter would have been impacted by

the permutation of operationalizing the program; however, in early 2019, a number of other State Medicaid Agencies were sued following implementation of their own community engagement program. Knowing that CMS's interpretation of Arizona's 1115 Waiver would be impacted by the outcome of litigation, AHCCCS's program was put on hold. Prior to the conclusion of those lawsuits, and in the first quarter of 2020, the COVID-19 Public Health Emergency (PHE) had begun and non-essential (those not tied to session law or budget bills) rulemakings were put on hold. Beginning in early 2022, AHCCCS began the PHE unwinding process, which allowed us to begin initiating non-essential rulemakings. As a result, two expedited rulemakings were able to be completed and were immediately followed by several essential rulemakings. Therefore, the prior course of action is carried over into this report and will be completed in a rulemaking following GRRC approval of this report.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The changes that are proposed in this 5YRR are meant for clarifying purposes and do not impose any additional burdens or costs to regulated persons. AHCCCS believes the chapter currently provides the least burden and cost to regulated persons.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No X

The rules are not more stringent than 42 CFR 431.625; 42 CFR 435.1003; 42 CFR 435.212.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

The rules do not require the issuance of a regulatory permit, license, or agency authorization.

14. **Proposed course of action**

AHCCCS is ready to initiate a rulemaking to allow for implementation of the 5YRR course of action, once approved by GRRC, and will present it to the agency's policy advisor following the appointment of the agency's new Director. AHCCCS will then request approval from the Governor's Office for an expedited or regulatory rulemaking within 120 days following GRRC's approval of this 5YRR.

Arizona Health Care Cost Containment System – Medicare Cost Sharing Program

TITLE 9. HEALTH SERVICES

CHAPTER 29. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
MEDICARE COST SHARING PROGRAM

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ARTICLE 1. DEFINITIONS

R9-29-101. Location of Definitions

- A. Location of definitions. Definitions applicable to this Chapter are found in the following:

<u>Definition</u>	<u>Section or Citation</u>
“Federal poverty level” or “FPL”	A.R.S. § 36-2981
“Medicare Cost Sharing”	R9-29-101
“Non-QMB Dual”	R9-29-101
“QI-1”	R9-29-101
“QMB Dual”	R9-29-101
“QMB Only”	R9-29-101
“SLMB”	R9-29-101

- B. General definitions. In addition to definitions contained in A.R.S. § 36-2971, the words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:

“Medicare Cost Sharing” (MCS). The MCS Program is administered by the Administration and provides help to Medicare beneficiaries with costs related to Medicare services. MCS is also referred to as the “Medicare Savings Programs.”

“Non-QMB Dual” means a person who qualifies to receive both Medicare and Medicaid services, but does not qualify for the QMB program.

“QI-1” means a person who qualifies as a Medicare beneficiary and for cost sharing assistance with the person’s Part B premium known as Qualified Individual-1 (QI-1). This person does not qualify for QMB due to the person’s income exceeding the QMB and SLMB FPL level.

“QMB Dual” means a person determined eligible under Article 2 of this Chapter for Qualified Medicare Beneficiary (QMB) and eligible for Acute Care services provided for in 9 A.A.C. 22 or ALTCS services provided for in 9 A.A.C. 28. A QMB Dual person receives both Medicare and Medicaid services and cost sharing assistance. For the purpose of Article 2 of this Chapter, QMB includes members defined in A.R.S. § 36-2971(5).

“QMB Only” means a person who qualifies to receive Medicare services only and cost-sharing assistance known as Qualified Medicare Beneficiary program (QMB). For the purpose of Article 2 of this Chapter, QMB includes members defined in A.R.S. § 36-2971(5).

“SLMB” means a person who qualifies as a Medicare beneficiary and for cost sharing assistance with the person’s Part B premium known as Specified Low Income Medicare Beneficiary (SLMB). This person does not qualify for QMB due to the person’s income exceeding the QMB FPL level.

Historical Note

Adopted effective May 23, 1990 (Supp. 90-2). Amended effective June 16, 1992 (Supp. 92-2). Amended effective April 14, 1998 (Supp. 98-2). Amended by final rulemaking at 6 A.A.R. 3372, effective August 7, 2000 (Supp. 00-3). Amended by exempt rulemaking at 7 A.A.R. 4357,

effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Amended by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-102. Repealed

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Repealed by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

ARTICLE 2. ELIGIBILITY

R9-29-201. General

- A. Eligibility determination. AHCCCS shall determine eligibility for a QMB, SLMB, or QI-1 under this Article.
- B. Confidentiality. The Administration shall maintain the confidentiality of an applicant or member's records and limit the release of safeguarded information under A.A.C. R9-22-512.
- C. The Administration will accept applications for the QI-1 program subject to the availability of funds. If the Director determines that monies may be insufficient for the program, the Administration shall stop processing applications for the program. If the Administration stops processing an application because the monies are insufficient, the Administration shall place an applicant on a waiting list and notify the applicant. After the Administration has verified that funding is sufficient, it will resume processing applications.

Historical Note

Adopted effective May 23, 1990 (Supp. 90-2). Amended effective April 14, 1998 (Supp. 98-2). Amended by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Amended by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-202. Application Process

- A. The Administration shall provide the opportunity to apply without delay.
- B. To apply for the MCS Program, a person shall submit an application form prescribed by AHCCCS unless the person's application has been referred by the Social Security Administration as part of the Extra Help program described under A.A.C. R9-30-101.
- C. An application shall be submitted by a person listed in A.A.C. R9-22-1406(B) unless the person's application has been referred by the Social Security Administration as part of the Extra Help program described under A.A.C. R9-30-101.
- D. The date of application is the date a signed application is received as described under A.A.C. R9-22-1406 or the date of an application referred by the Social Security Administration as part of the Extra Help program described under A.A.C. R9-30-101.
- E. Applicant's representative. AHCCCS shall allow a person of an applicant's choice to accompany, assist, and represent the applicant in the application process or assistance can be provided by AHCCCS. If requested, AHCCCS shall help a person complete an application.
- F. AHCCCS shall determine whether an application is complete under A.A.C. R9-22-1406.

Historical Note

Adopted effective May 23, 1990 (Supp. 90-2). Amended effective June 16, 1992 (Supp. 92-2). Section repealed; new Section adopted effective April 14, 1998 (Supp. 98-2). Section repealed; new Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4).

03-4). Amended by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-203. Assignment of Rights

A person determined eligible for QMB benefits assigns rights to medical benefits to which the person is entitled to AHCCCS, under A.R.S. §§ 36-2903 and 36-2972.

Historical Note

Adopted effective May 23, 1990 (Supp. 90-2). Section repealed; new Section adopted effective April 14, 1998 (Supp. 98-2). Section repealed; new Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-203 repealed; new Section R9-29-203 renumbered from R9-29-207 and amended by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-204. Eligibility Requirements

To be eligible for MCS a person shall:

1. Provide information necessary to establish paternity and enforce medical support obligations, when requested by AHCCCS for the QMB program,
2. Furnish a SSN or apply for a SSN,
3. Be a United States citizen or a qualified alien under A.R.S. § 36-2903.03,
4. Be a resident of Arizona,
5. Apply for potential benefits that may be available to the person, if requested by AHCCCS,
6. Provide verification, or authorize the release of verification, for all information necessary to complete the determination of eligibility, and
7. Receive Medicare Part A benefits or be determined conditionally entitled to Medicare Part A benefits by the Social Security Administration.

Historical Note

Adopted effective May 23, 1990 (Supp. 90-2). Repealed effective April 14, 1998 (Supp. 98-2). New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). R9-29-204 repealed; new Section R9-29-204 made by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-205. Income Standards

- A. To be eligible, a person's income shall meet the following federal poverty levels (FPL), adjusted annually:
 1. QMB. Income is equal to or less than 100 percent of the FPL.
 2. SLMB. Income is greater than 100 percent but equal to or less than 120 percent of the FPL.
 3. QI-1. Income is at least 120 percent but equal to or less than 135 percent of the FPL.
- B. AHCCCS shall calculate income under A.A.C. R9-22-1503.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-205 repealed; new Section R9-29-205 renumbered from R9-29-213 and amended by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-206. Institutionalized Person

The provisions in A.A.C. R9-22-1402 apply to this Article for an institutionalized person.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-206 repealed; new Section R9-29-206 renumbered from

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R9-29-215 by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-207. Resources

Resources such as, cash, financial accounts, real property, vehicles, trusts, and life insurance are not considered in determining a person's QMB, SLMB or QI-1 eligibility.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-207 renumbered to R9-29-203; new Section R9-29-207 made by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-208. Eligibility Determination

- A. AHCCCS shall make an eligibility determination within 45 days of the date of application, except when:
1. The agency cannot reach a decision because the applicant delays or fails to take a required action, or
 2. When there is an administrative or other emergency beyond the agency's control.
- B. AHCCCS shall not use the time to determine eligibility as a waiting period before determining eligibility; or as a reason for denying eligibility when a determination has not been made within the time standards.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-208 repealed; new Section R9-29-208 renumbered from R9-29-219 and amended by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-209. Notice of Eligibility Determination

- A. Notice. AHCCCS shall send an applicant written notice of the eligibility decision. The notice shall include a statement of the action and an explanation of the person's hearing rights specified in Article 5.
- B. Approval. If AHCCCS determines that the applicant is eligible, the notice shall contain the effective date of eligibility.
- C. Denial. If AHCCCS determines that the applicant is not eligible, the notice shall contain:
1. The effective date of the decision;
 2. A statement detailing the reason for the decision, including specific financial calculations and the financial eligibility standard if applicable; and
 3. The legal authority supporting the decision.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-209 repealed; new Section R9-29-209 renumbered from R9-29-220 by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-210. Effective Date of Eligibility

- A. QMB. The effective date of eligibility is the first day of the month following the month in which AHCCCS makes the eligibility decision.
- B. SLMB. Eligibility is effective on the first day of the month that all eligibility requirements are met, including the prior quarter period.
- C. QI-1. Eligibility is effective on the first day of the month that all eligibility requirements are met, including the prior quarter period and no earlier than the first day of the current calendar year. QI-1 members are entitled to receive cost sharing assistance through the end of the calendar year in which they qualified for the program.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-210 repealed; new Section R9-29-210 renumbered from R9-29-221 and amended by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4). Amended by final rulemaking at 19 A.A.R. 3323, November 30, 2014 (Supp. 13-4).

R9-29-211. Discontinuance

- A. Discontinuance. AHCCCS shall discontinue a person's eligibility if any of the conditions of eligibility under this Article are not met.
- B. Notice. AHCCCS shall follow the discontinuance notice requirements under A.A.C. R9-22-1415, except where it states "Department" replace the term with "Administration."

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-211 repealed; new Section R9-29-211 renumbered from R9-29-222 and amended by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-212. Renewals

- A. QMB and SLMB. AHCCCS shall renew a person's eligibility for QMB or SLMB at least one time every 12 months.
- B. QI-1. A person receiving QI-1 benefits shall reapply every 12 months.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-212 repealed; new Section R9-29-212 made by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-213. Reporting Changes

A person eligible under this Article shall report to an ALTCS or Social Security Insurance Medical Assistance Only (SSI-MAO) office the following changes for the person, the person's spouse, or the person's dependent children:

1. A change of address;
2. An admission to, or discharge from, a public institution, as specified in A.A.C. R9-22-1402;
3. A change in household composition;
4. A change in income;
5. A determination of eligibility for other benefits;
6. A death;
7. A change in marital status;
8. A change in Arizona state residency;
9. A change in citizenship or alien status;
10. Receipt of a SSN;
11. A change in Medicare receipt or eligibility; and
12. For QMB recipients, a change in first- or third-party liability that may be responsible for payment of all or a portion of the person's medical costs.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-213 renumbered to R9-29-205; new Section R9-29-213 renumbered from R9-29-224 by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-214. Repealed**Historical Note**

New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-

214 repealed by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-215. Renumbered

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-215 renumbered to R9-29-206 by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-216. Repealed

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-216 repealed by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-217. Repealed

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-217 repealed by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-218. Repealed

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-218 repealed by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-219. Renumbered

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-219 renumbered to R9-29-208 by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-220. Renumbered

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-220 renumbered to R9-29-209 by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-221. Renumbered

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-221 renumbered to R9-29-210 by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-222. Renumbered

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-222 renumbered to R9-29-211 by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-223. Repealed

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-223 repealed by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-224. Renumbered

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-224 renumbered to R9-29-213 by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

ARTICLE 3. BENEFITS AND SERVICES

R9-29-301. QMB Only

- A.** QMB benefits. For a person determined eligible as a QMB Only, the Administration shall provide payment of:
1. Medicare Part A premium,
 2. Medicare Part B premium, and
 3. Medicare coinsurance and Medicare deductible for Medicare services covered under Title XVIII of the Social Security Act to the provider.
- B.** Payment of QMB Only benefits. The Administration shall not pay coinsurance or deductible to a member.

Historical Note

Adopted effective May 23, 1990 (Supp. 90-2). Amended effective April 14, 1998 (Supp. 98-2). Amended by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Amended by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-302. QMB Dual Member

- A.** Covered services. A person determined to be a QMB Dual eligible member shall receive medical services provided under 9 A.A.C. 22, Article 2, or services provided under 9 A.A.C. 28, Article 2, in addition to the Medicare-related payments under R9-29-301(A).
- B.** Premiums. The Administration pays Medicare part A and B premiums for a QMB Dual member enrolled with a contractor in a plan or AHCCCS Fee-For-Service.
- C.** The Administration's payment responsibilities.
1. The Administration shall pay the following costs for members not enrolled with contractors. When services are received from an AHCCCS registered provider and the service is covered:
 - a. By Medicare only, the Administration shall pay the Medicare coinsurance and deductible.
 - b. By Medicaid only, the Administration shall pay the lesser of billed charges or the Capped Fee-For-Service Schedule rate for the services covered under 9 A.A.C. 22, Article 2 and 9 A.A.C. 28, Article 2.
 - c. By both Medicare and Medicaid, the Administration shall pay Medicare coinsurance and deductible.
 2. When services are received from a non-registered provider and the service is covered, the Administration shall not pay the Medicare coinsurance and deductible.
- D.** The contractor's payment responsibilities. Unless the subcontract with the provider sets forth different terms, when the enrolled member receives services from an AHCCCS registered provider in or out of network and the service is covered:
1. By Medicare only, the contractor shall pay the Medicare coinsurance and deductible.
 2. By Medicaid only, the contractor shall pay the provider in accordance with the contract.
 3. By both Medicare and Medicaid, the contractor shall pay the lesser of:
 - a. The Medicare copay, coinsurance or deductible, or
 - b. The difference between the Health plan contracted rate and the Medicare paid amount.
- E.** Member responsibilities. A QMB Dual eligible member who receives services under 9 A.A.C. 22, Article 2 or 9 A.A.C. 28,

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Article 2 from a registered provider is not liable for any Medicare copay, coinsurance or deductible associated with those services and is not liable for any balance of billed charges.

- F.** Coordination of prescription drug benefit with Medicare Part D. Notwithstanding subsections (A) through (D), services do not include pharmaceutical services to the extent limited under 42 U.S.C. 1396u-5(d). A contractor is not liable for any Medicare copay, coinsurance or deductible associated with pharmaceutical services subject to the limitation under 42 U.S.C. 1396u-5(d).

Historical Note

Adopted effective May 23, 1990 (Supp. 90-2). Amended effective April 14, 1998 (Supp. 98-2). Amended by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Amended by final rulemaking at 12 A.A.R. 864, effective March 7, 2006 (Supp. 06-1). Amended by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-303. Non-QMB Dual Member

- A.** Covered services. A person determined to be a Non-QMB Dual eligible member shall receive medical services and provisions under 9 A.A.C. 22, Article 2, or services and provisions under 9 A.A.C. 28, Article 2.
- B.** Premiums. The Administration pays Medicare part B premiums for a Non-QMB dual member enrolled with a contractor in a plan or AHCCCS Fee-For-Service for the following individuals:
1. An individual described in 42 CFR 431.625;
 2. An individual enrolled in ALTCS but who does not qualify as a QMB, SLMB or QI;
 3. An individual who is eligible for Medicaid under a mandatory or optional Title XIX coverage group for the aged, blind, or disabled (SSI-MAO);
 4. An individual who is eligible for continued coverage while eligibility redetermination is pending as described under 42 CFR 435.1003;
 5. An individual who is in the guaranteed enrollment period described in 42 CFR 435.212 and the state was paying the individual's Part B premium before eligibility terminated.
- C.** The Administration's payment responsibilities.
1. The Administration shall pay the following costs for members not enrolled with contractors. When services are received from an AHCCCS registered provider and the service is covered up to the limitations described within 9 A.A.C. 22, Article 2:
 - a. By Medicare only, the Administration shall not pay the Medicare copay, coinsurance or deductible.
 - b. By Medicaid only, the Administration shall pay the lesser of billed charges or the Capped Fee-For-Service Schedule rate for the services covered under 9 A.A.C. 22, Article 2 and 9 A.A.C. 28, Article 2.
 - c. By both Medicare and Medicaid, the Administration shall pay the Medicare copay, coinsurance or deductible.
 2. When services are received from a non-registered provider and the service is covered, the Administration shall not pay the Medicare copay, coinsurance or deductible.
- D.** The contractor's payment responsibilities.
1. When an enrolled member receives services within the network of contracted providers and the service is covered up to the limitations described within 9 A.A.C. 22, Article 2:
 - a. By Medicare only, the contractor shall not pay the Medicare copay, coinsurance or deductible.
 2. When an enrolled member receives services from a non-contracting provider and the service is covered:
 - a. By Medicare only, the contractor has no responsibility for payment.
 - b. By Medicaid only, and the contractor has not referred the member to the provider or has not authorized the provider to render services and the services are not emergent, the contractor has no responsibility for payment.
 - c. By Medicaid only, and the contractor has referred the member to the provider or has authorized the provider to render services or the services are emergent, the contractor shall pay in accordance with A.A.C. R9-22-705.
 - d. By both Medicare and Medicaid, and the contractor has not referred the member to the provider or has not authorized the provider to render services and the services are not emergent, the contractor has no responsibility for payment.
 - e. By both Medicare and Medicaid, and the contractor has referred the member to the provider or has authorized the provider to render services or the services are emergent, the contractor shall pay the lesser of:
 - i. The Medicare copay, coinsurance or deductible, or
 - ii. Any amount remaining after the Medicare paid amount is deducted from the amount otherwise payable under A.A.C. R9-22-705.
- E.** Member responsibilities.
1. A Non-QMB Dual eligible member who receives covered services under 9 A.A.C. 22, Article 2 or 9 A.A.C. 28, Article 2 from a provider within the contractor's network is not liable for any Medicare copay, coinsurance or deductible associated with those services and is not liable for any balance of billed charges unless services have reached the limitations described within 9 A.A.C. 22, Article 2.
 2. When an enrolled member chooses to receive services out of network that are covered by both Medicare and Medicaid, the member is responsible for any Medicare copay, coinsurance or deductible associated with those services unless the contractor is responsible as described in A.A.C. R9-22-705 and the provider has complied with A.A.C. R9-22-702.
- F.** Coordination of prescription drug benefit with Medicare Part D. Notwithstanding subsections (A) through (D), services do not include pharmaceutical services to the extent limited under 42 U.S.C. 1396u-5(d). A contractor is not liable for any Medicare copay, coinsurance or deductible associated with pharmaceutical services subject to the limitation under 42 U.S.C. 1396u-5(d).

Historical Note

New Section made by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-303 repealed; new Section R9-29-303 made by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-304. SLMB and QI-1

AHCCCS shall pay the Medicare Part B premiums.

Historical Note

New Section made by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

ARTICLE 4. REPEALED**R9-29-401. Repealed****Historical Note**

Adopted effective May 23, 1990 (Supp. 90-2). Amended effective April 14, 1998 (Supp. 98-2). Amended by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-401 repealed by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-402. Repealed**Historical Note**

Adopted effective May 23, 1990 (Supp. 90-2). Repealed effective April 14, 1998 (Supp. 98-2).

R9-29-403. Repealed**Historical Note**

Adopted effective May 23, 1990 (Supp. 90-2). Repealed effective April 14, 1998 (Supp. 98-2).

R9-29-404. Repealed**Historical Note**

Adopted effective May 23, 1990 (Supp. 90-2). Repealed effective April 14, 1998 (Supp. 98-2). Repealed text removed from Section Supp. 01-2.

ARTICLE 5. GRIEVANCE SYSTEM PROCESS**R9-29-501. General Provisions for a Grievance and a Request for Hearing**

A request for hearing under this Chapter shall comply with 9 A.A.C. 34. For the purposes of this Article, “hearing” means an administrative hearing under Title 41, Chapter 6, Article 10.

Historical Note

Adopted effective May 23, 1990 (Supp. 90-2). Amended effective April 14, 1998 (Supp. 98-2). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3372, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Amended by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-502. Repealed**Historical Note**

Adopted effective May 23, 1990 (Supp. 90-2). Amended effective April 14, 1998 (Supp. 98-2). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3372, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4).

R9-29-503. Repealed**Historical Note**

Adopted effective May 23, 1990 (Supp. 90-2). Amended effective April 14, 1998 (Supp. 98-2). Section repealed; new Section adopted by final rulemaking at 6 A.A.R. 3372, effective August 7, 2000 (Supp. 00-3). Amended by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Section R9-29-503 repealed by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-504. Repealed**Historical Note**

Adopted effective May 23, 1990 (Supp. 90-2). Repealed effective April 14, 1998 (Supp. 98-2).

ARTICLE 6. FIRST- AND THIRD-PARTY LIABILITY AND RECOVERIES**R9-29-601. First- and Third-party Liability and Recoveries**

The provisions specified in 9 A.A.C. 22, Article 10 apply to this Section. For the purposes of this Article, “third-party liability” means the resources available from a person, entity, or program that is or may be, by agreement, circumstance, or otherwise, liable to pay all or part of the medical expenses incurred by an applicant or member.

Historical Note

Adopted effective May 23, 1990 (Supp. 90-2). Amended effective April 14, 1998 (Supp. 98-2). Amended by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4). Amended by final rulemaking at 18 A.A.R. 3139, effective January 6, 2013 (Supp. 12-4).

R9-29-602. Repealed**Historical Note**

Adopted effective May 23, 1990 (Supp. 90-2). Amended effective April 14, 1998 (Supp. 98-2). Section repealed by final rulemaking at 9 A.A.R. 5142, effective January 3, 2004 (Supp. 03-4).

36-2972. Rights, authority and responsibilities of the director and the administration

- A. Subject to continued federal financial participation as provided in sections 36-2919 and 36-2958, the director shall plan for and take all steps necessary to implement the qualified medicare beneficiary program under title XIX of the social security act, as amended.
- B. The administration and the director have full operational responsibility for this article. Except as provided in this article or required by federal law or the section 1115 waiver, the provisions of articles 1 and 2 of this chapter are fully applicable to this article and the director and administration have all the rights, powers, duties and responsibilities accorded to the system under articles 1 and 2 of this chapter. Services shall be delivered in accordance with federal law and the section 1115 waiver for articles 1 and 2 of this chapter.
- C. The administration shall coordinate benefits provided under this article to members so that costs for services payable by the system are costs avoided or recovered from a third party payor. The director may require that program contractors, contractors and noncontracting providers are responsible for the coordination of benefits for services provided pursuant to this article. Benefit coordination requirements for noncontracting providers are limited to coordination of benefits with standard health insurance and disability or medicare supplemental health insurance policies and similar programs for health coverage. The director shall require members to assign to the system rights to all types of medical benefits to which the member is entitled.
- D. Notwithstanding section 36-2911, the program contractors or contractors shall pay all premiums, deductibles and coinsurance amounts for the member to obtain coverage or secure services as required by the administration. For members not enrolled with a contractor or program contractor the administration may pay the premiums, deductibles and coinsurance amounts.

36-2973. Qualified medicare beneficiary only; eligibility determination; application; enrollment

A. The administration shall determine the eligibility of all applicants who may be eligible as qualified medicare beneficiaries only. The administration shall ensure that the calculation of income eligibility requirements is in accordance with federal law and the section 1115 waiver. On determination of qualified medicare beneficiary only eligibility, the administration shall enroll the member in the system.

B. The administration may enroll the member who has been determined eligible as a qualified medicare beneficiary only in a fee-for-service arrangement. The director may enter into a contract with a medicare risk contractor that, in accordance with section 1876 of the social security act, has a contract with the health care financing administration and may pay premiums for enrollment of that member.

36-2974. Dual eligibles; qualifications for coverage; enrollment

- A. For purposes of this section all contractors and program contractors are required to provide services to members.
- B. For a member who is dually eligible the director may implement a policy permitting a choice of contractors or program contractors to the extent the director deems feasible consistent with the section 1115 waiver and federal law. If the director does not implement a choice of contractor policy, the director may enroll the member, at the time eligibility is determined, with an available contractor or program contractor located in the geographic area of the member's residence.
- C. The department shall assist the administration in the screening of all persons who are applying to become eligible pursuant to section 36-2901, paragraph 6, subdivision (a) and who are entitled to services under title XVIII but not title XVI of the social security act to determine if the person meets the eligibility criteria of this section. If a person is determined to be eligible pursuant to section 36-2901, paragraph 6, subdivision (a) and this article, the administration shall make the person dually eligible. On determination of dual eligibility the administration shall enroll the person pursuant to this article and notify the person of the dual eligibility.
- D. The administration shall screen all persons who are entitled to services under title XVIII of the social security act and who are applying to become eligible pursuant to section 36-2901, paragraph 6, subdivision (a), as prescribed by title XVI of the social security act or section 36-2931, paragraph 5, to determine if the person meets the eligibility criteria of this section. If a person is determined to be eligible pursuant to section 36-2901, paragraph 6, subdivision (a) or section 36-2931, paragraph 5 and this article, the administration shall make the person dually eligible. On determination of dual eligibility by the administration, the administration shall enroll the person pursuant to this article and notify the person of the dual eligibility.
- E. Calculation of income and resource eligibility requirements by the department and the administration pursuant to this section shall be in accordance with title XIX of the social security act, as amended.
- F. Program contractors and contractors shall pay medicare deductibles, coinsurance and copayment amounts for services provided to dual eligibles pursuant to this article and as required by the administration for services that are provided by or under referral from a primary care physician or primary care practitioner.

36-2975. Specified low income medicare beneficiary; eligibility

The administration shall determine the eligibility of all persons who are specified low income medicare beneficiaries in accordance with federal law. The administration shall pay the monthly premiums under part B of title XVIII of the social security act on behalf of each specified low income medicare beneficiary.

36-2976. Qualifying individuals

A. The administration shall determine the eligibility of all persons who are determined to be qualifying individuals pursuant to section 36-2971, paragraphs 12 and 13.

B. The administration shall pay the medicare part B monthly premiums on behalf of each qualifying individual 1 and shall pay the medicare part B monthly amount that is attributable to home health coverage for each qualifying individual 2.

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

Title 9, Chapter 22, Article 2 (Scope of Services)



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: February 7, 2023

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: January 3, 2023

SUBJECT: ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
Title 9, Chapter 22, Article 2 (Scope of Services)

Summary

This Five-Year Review Report (5YRR) from the Arizona Health Care Cost Containment System (AHCCCS or Administration) relates to rules in Title 9, Chapter 22, Article 2, Scope of Services.

The AHCCCS Administration currently provides Acute Medicaid coverage that can require prior authorization. The medical condition for which the authorization is requested must be supported by medical documentation, and a claim must be submitted with the corresponding information submitted when requesting the authorization. Only medically necessary, cost effective, and federally reimbursable services are covered, however the Administration may waive this requirement.

Proposed Action

Following the approval of the 5YRR in 2018, the Administration received a 1115 Waiver to allow for operation of a community engagement program which would have impacted this chapter by the permutation of operationalizing the program. In early 2019, a number of other State Medicaid Agencies were sued following the implementation of their own community engagement programs and AHCCCS's program was put on hold. Prior to the conclusion of those lawsuits, the COVID-19 Public Health Emergency (PHE) had begun and non-essential (those

not tied to session law or budget bills) rulemakings were put on hold. Beginning in early 2022, AHCCCS began the PHE unwinding process, which allowed the Administration to begin initiating non-essential rulemakings. Therefore, the prior course of action, also identified below, is carried over into this report and will be completed in a rulemaking following GRRC approval of this report.

1. Has the agency analyzed whether the rules are authorized by statute?

The Administration cites both general and specific statutory authority for these rules.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Administration has made no changes to the rules within the last five years and therefore reports no changes to the economic impact comparison.

The Administration identifies stakeholders as AHCCCS Administration Prior Authorization (PA) nurses, health care providers, AHCCCS members, and taxpayers.

3. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?

According to the Administration, the underlying regulatory objectives are the most cost-effective means and impose the least burden to regulated persons.

4. Has the agency received any written criticisms of the rules over the last five years?

The Administration indicates that they have not received any written criticisms of the rules in the last five years.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Administration indicates the rules are generally clear, concise, and understandable with the following exceptions:

R9-22-201: terminology and definitions for FES vs. Non-FES members should be updated

R9-22-204: lettering should be updated and C should be removed because it is no longer a requirement.

R9-22-210: terminology and definitions should be updated

R9-22-210.01: The 72 hr limitation regarding contractor responsibility for emergency inpatient behavioral health services and terminology should be updated.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

The Administration indicates the rules are generally consistent with other rules and statutes with the following exceptions:

R9-22-207: emergency dental provisions need to be updated to align with A.R.S. § 36-2907
R9-22-209: rules need to be updated to comply with federal regulation for prescription drugs in 42 CFR 440.120
R9-22-213: emergency dental provisions need to be updated to align with A.R.S. § 36-2907

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Administration states the rules are generally effective in achieving their objective with the following exception:

R9-22-201: definitions for home health services, occupational therapy, physical therapy, speech therapy, need to be updated to align with AHCCCS policy
R9-22-212: list of durable medical equipment needs to be updated to align with AHCCCS policy

8. Has the agency analyzed the current enforcement status of the rules?

The Administration indicates the rules are generally enforced with the following exceptions:

R9-22-207: emergency dental provisions need to be updated to align with A.R.S. § 36-2907
R9-22-209: rules need to be updated to comply with federal regulation for prescription drugs in 42 CFR 440.120
R9-22-213: emergency dental provisions need to be updated to align with A.R.S. § 36-2907

9. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?

The Administration indicates none of the rules reviewed are more stringent than a corresponding federal law.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

The Administration states that this rule is not applicable.

11. Conclusion

As mentioned above, the Administration indicates that the rules are generally clear, concise, and understandable and effective in achieving their objective.

The Administration is ready to initiate a rulemaking to implement the changes identified above in the 5YRR and will request approval from the Governor's Office for an expedited rulemaking within 180 days following GRRC's approval of this report.

For these reasons, Council staff believe the Administration has submitted an adequate report and recommends approval.

November 28, 2022

VIA EMAIL: grrc@azdoa.gov

Nicole Sornsins, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: AHCCCS Title 9, Chapter 22, Article 2;

Dear Ms. Sornsins:

Please find enclosed AHCCCS's Five-Year Review Report for Title 9, Chapter 22, Article 2 which was due on July 28, 2022, and extended by Council approval to a new deadline of November 28, 2022.

AHCCCS hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Stephanie Elzenga at 602-417-4232 or stephanie.elzenga@azahcccs.gov.

Sincerely,



Kasey Rogg
Assistant Director

Attachments

Arizona Health Care Cost Containment System (AHCCCS)

5 YEAR REVIEW REPORT

A.A.C. Title 9, Chapter 22, Article 2

November 2022

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. § 36-2903.01

Specific Statutory Authority: A.R.S. §§ 36-2903.03, 36-2907

2. The objective of each rule:

Rule	Objective
R9-22-201	This rule sets forth definitions applicable to the Article and establishes certain requirements, limitations and exclusions that are applicable to most, if not all, health care services provided by the program.
R9-22-202	This rule sets forth general requirements that apply to all medically necessary covered services.
R9-22-203	This rule describes the experimental services that are not covered.
R9-22-204	This rule prescribes coverage requirements for and limitations of inpatient hospital services.
R9-22-205	This rule establishes requirements, limitations and exclusions that are applicable to attending physician, practitioner, and primary care services.
R9-22-206	This rule prescribes coverage requirements of organ and tissue transplant services.
R9-22-207	This rule establishes the requirements, limitations and exclusions that are applicable to dental services provided by the program.
R9-22-208	This rule prescribes coverage requirements for laboratory, radiology and medical imaging services.
R9-22-209	This rule establishes the requirements, limitations and exclusions that are applicable to pharmaceutical services provided by the program.
R9-22-210	This rule prescribes coverage requirements for and limitations of emergency medical services for the Non-FES members.
R9-22-210.01	This rule prescribes coverage requirements for and limitations of emergency behavioral health services for the Non-FES members
R9-22-211	This rule establishes the requirements, limitations and exclusions that are applicable to emergency and non-emergency transportation services provided by the program.
R9-22-212	This rule prescribes coverage requirements for and limitations of medical supplies, durable medical equipment, and orthotic and prosthetic devices.
R9-22-213	This rule establishes the requirements applicable to “early and periodic screening, diagnosis, and treatment services” (as defined in federal law) provided by the program.
R9-22-215	This rule establishes the requirements, limitations and exclusions that are applicable to services provided by the program from medical professions other than those set forth in other rules.
R9-22-216	This rule prescribes coverage of services provided in a nursing facility, alternative HCBS setting or HCBS as well as billing standards.
R9-22-217	This rule establishes the requirements, limitations and exclusions that are applicable to services included in the federal emergency services program.

3. **Are the rules effective in achieving their objectives?** Yes ___ No X

Rule	Explanation
R9-22-201	Update definitions of home health services, occupational therapy, physical therapy, speech therapy, to align with AHCCCS policy
R9-22-212	Update list of durable medical equipment to align with AHCCCS policy.

4. **Are the rules consistent with other rules and statutes?** Yes ___ No X

Rule	Explanation
R9-22-207	Update to add emergency dental provisions to align with A.R.S. § 36-2907.
R9-22-209	Update to comply with fed regulation for prescription drugs in 42 CFR 440.120.
R9-22-213	Update to add emergency dental provisions to align with A.R.S. § 36-2907.

5. **Are the rules enforced as written?** Yes ___ No X

Rule	Explanation
R9-22-207	Update to add emergency dental provisions to align with A.R.S. § 36-2907.
R9-22-209	Update to comply with fed regulation for prescription drugs in 42 CFR 440.120.
R9-22-213	Update to add emergency dental provisions to align with A.R.S. § 36-2907.

6. **Are the rules clear, concise, and understandable?** Yes ___ No X

Rule	Explanation
R9-22-201	Update to terminology and definitions for FES vs. Non-FES members for clarity.
R9-22-204	Update lettering because of typo, and remove C because no longer a requirement.
R9-22-210	Update to terminology and definitions.
R9-22-210.01	Clarify the 72 hr limitation regarding contractor responsibility for emergency inpatient behavioral health services applies to prospective eligibility and update terminology.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes ___ No X

8. **Economic, small business, and consumer impact comparison:**

There is no measurable economic or consumer impact because the majority of the recommended changes are for clarification purposes, or to align with AHCCCS policy, and do not actually expand the current scope of service. A couple of the recommended changes, including the emergency dental provisions, do have an economic impact on the Administration’s budget; however, this was already reflected in agency practice because AHCCCS policy has already been updated to reflect this statutory change, therefore there is no economic impact going forward.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes ___ No X

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

Following the 5YRR approval for these articles, AHCCCS received an 1115 Waiver to allow for operation of a community engagement program in July 2018. Many months of work were put into what the requirements would look like and how they would impact existing eligibility regulations. These articles would have been impacted by the permutation of operationalizing the program; however, in early 2019, a number of other State Medicaid Agencies were sued following implementation of their own community engagement program. Knowing that CMS's interpretation of Arizona's 1115 Waiver would be impacted by the outcome of litigation, AHCCCS's program was put on hold. Prior to the conclusion of those lawsuits, and in the first quarter of 2020, the COVID-19 Public Health Emergency (PHE) had begun and non-essential (those not tied to session law or budget bills) rulemakings were put on hold. Beginning in early 2022, AHCCCS began the PHE unwinding process, which allowed us to begin initiating non-essential rulemakings. As a result, two expedited rulemakings were able to be completed and were immediately followed by several essential rulemakings. Therefore, the prior course of action is carried over into this report and will be completed in a rulemaking following GRRC approval of this report.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The underlying regulatory objectives are the most cost-effective means and impose the least burden to regulated persons.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No X

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

Not applicable.

14. **Proposed course of action**

AHCCCS is ready to initiate a rulemaking to allow for implementation of the 5YRR course of action, once approved by GRRC, and will present it to the agency's policy advisor following the appointment of the agency's new Director. AHCCCS will then request approval from the Governor's Office for an expedited or regulatory rulemaking within 120 days following GRRC's approval of this 5YRR.

Arizona Health Care Cost Containment System - Administration

(Supp. 00-2). Section repealed by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3).

R9-22-117. Repealed**Historical Note**

New Section adopted by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Section repealed by final rulemaking at 14 A.A.R. 1598, effective May 31, 2008 (Supp. 08-2).

R9-22-118. Reserved**R9-22-119. Reserved****R9-22-120. Repealed****Historical Note**

New Section made by final rulemaking at 7 A.A.R. 5814, effective December 6, 2001 (Supp. 01-4). Section repealed by final rulemaking at 12 A.A.R. 4488, effective January 6, 2007 (Supp. 06-4).

ARTICLE 2. SCOPE OF SERVICES**R9-22-201. Scope of Services-related Definitions**

In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:

“Anticipatory guidance” means a person responsible for a child receives information and guidance of what the person should expect of the child’s development and how to help the child stay healthy.

“Behavioral health recipient” means a Title XIX or Title XXI acute care member who is eligible for, and is receiving, behavioral health services through ADHS/DBHS.

“Benefit year” means a one-year time period of October 1st through September 30th.

“Emergency behavioral health condition for a non-FES member” means a condition manifesting itself by acute symptoms of sufficient severity, including severe pain, such that a prudent layperson who possesses an average knowledge of health and medicine could reasonably expect the absence of immediate medical attention to result in:

Placing the health of the person, including mental health, in serious jeopardy;

Serious impairment to bodily functions;

Serious dysfunction of any bodily organ or part; or

Serious physical harm to another person.

“Emergency behavioral health services for a non-FES member” means those behavioral health services provided for the treatment of an emergency behavioral health condition.

“Emergency medical condition for a non-FES member” means treatment for a medical condition, including labor and delivery, which manifests itself by acute symptoms of sufficient severity, including severe pain, such that a prudent layperson who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical attention to result in:

Placing the member’s health in serious jeopardy,

Serious impairment to bodily functions, or

Serious dysfunction of any bodily organ or part.

“Emergency medical services for a non-FES member” means services provided for the treatment of an emergency medical condition.

“Hearing aid” means an instrument or device designed for, or represented by the supplier as aiding or compensating for impaired or defective human hearing, and includes any parts, attachments, or accessories of the instrument or device.

“Home health services” means services and supplies that are provided by a home health agency that coordinates in-home intermittent services for curative, rehabilitative care, including home-health aide services, licensed nurse services, and medical supplies, equipment, and appliances.

“Occupational therapy” means medically prescribed treatment provided by or under the supervision of a licensed occupational therapist, to restore or improve an individual’s ability to perform tasks required for independent functioning.

“Pharmaceutical service” means medically necessary medications that are prescribed by a physician, practitioner, or dentist under R9-22-209.

“Physical therapy” means treatment services to restore or improve muscle tone, joint mobility, or physical function provided by or under the supervision of a registered physical therapist.

“Post-stabilization services” means covered services related to an emergency medical or behavioral health condition provided after the condition is stabilized.

“Primary care provider services” means healthcare services provided by and within the scope of practice, as defined by law, of a licensed physician, certified nurse practitioner, or licensed physician assistant.

“Psychosocial rehabilitation services” means services that provide education, coaching, and training to address or prevent residual functional deficits and may include services that may assist a member to secure and maintain employment. Psychosocial rehabilitation services may include:

Living skills training,

Cognitive rehabilitation,

Health promotion,

Supported employment, and

Other services that increase social and communication skills to maximize a member’s ability to participate in the community and function independently.

“RBHA” or “Regional Behavioral Health Authority” means the same as in A.R.S. § 36-3401.

“Residual functional deficit” means a member’s inability to return to a previous level of functioning, usually after experiencing a severe psychotic break or state of decompensation.

“Respiratory therapy” means treatment services to restore, maintain, or improve respiratory functions that are provided by, or under the supervision of, a respiratory therapist licensed according to A.R.S. Title 32, Chapter 35.

“Scope of services” means the covered, limited, and excluded services under Articles 2 and 12 of this Chapter.

“Speech therapy” means medically prescribed diagnostic and treatment services provided by or under the supervision of a certified speech therapist.

Arizona Health Care Cost Containment System - Administration

“Sterilization” means a medically necessary procedure, not for the purpose of family planning, to render an eligible person or member barren in order to:

Prevent the progression of disease, disability, or adverse health conditions; or

Prolong life and promote physical health.

“Substance abuse” means the chronic, habitual, or compulsive use of any chemical matter that, when introduced into the body, is capable of altering human behavior or mental functioning and, with extended use, may cause psychological dependence and impaired mental, social or educational functioning. Nicotine addiction is not considered substance abuse for adults who are 21 years of age or older

Historical Note

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-201 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (B) effective May 30, 1989 (Supp. 89-2). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Section repealed, new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2). Amended by exempt rulemaking at 10 A.A.R. 4588, effective October 12, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 3217, effective October 1, 2005 (Supp. 05-3). Section repealed; new Section made by final rulemaking at 13 A.A.R. 3351, effective November 10, 2007 (Supp. 07-3). Amended by exempt rulemaking at 16 A.A.R. 1638, effective October 1, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 1658, effective August 2, 2011 (Supp. 11-3). Amended by exempt rulemaking at 17 A.A.R. 1707, effective October 1, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 2747, effective October 8, 2013 (Supp. 13-3). Amended by final rulemaking at 20 A.A.R. 3098, effective January 4, 2015 (Supp. 14-4).

R9-22-202. General Requirements

- A.** For the purposes of this Article, the following definitions apply:
1. “Authorization” means written, verbal, or electronic authorization by:
 - a. The Administration for services rendered to a fee-for-service member, or
 - b. The contractor for services rendered to a prepaid capitated member.
 2. Use of the phrase “attending physician” applies only to the fee-for-service population.
- B.** In addition to other requirements and limitations specified in this Chapter, the following general requirements apply:
1. Only medically necessary, cost effective, and federally-reimbursable and state-reimbursable services are covered services.
 2. Covered services for the federal emergency services program (FESP) are under R9-22-217.
 3. The Administration or a contractor may waive the covered services referral requirements of this Article.
 4. Except as authorized by the Administration or a contractor, a primary care provider, attending physician, practi-

tioner, or a dentist shall provide or direct the member’s covered services. Delegation of the provision of care to a practitioner does not diminish the role or responsibility of the primary care provider.

5. A contractor shall offer a female member direct access to preventive and routine services from gynecology providers within the contractor’s network without a referral from a primary care provider.
 6. A member may receive physical and behavioral health services as specified in Articles 2 and 12.
 7. The Administration or a contractor shall provide services under the Section 1115 Waiver as defined in A.R.S. § 36-2901.
 8. An AHCCCS registered provider shall provide covered services within the provider’s scope of practice.
 9. In addition to the specific exclusions and limitations otherwise specified under this Article, the following are not covered:
 - a. A service that is determined by the AHCCCS Chief Medical Officer to be experimental or provided primarily for the purpose of research;
 - b. Services or items furnished gratuitously, and
 - c. Personal care items except as specified under R9-22-212.
 10. Medical or behavioral health services are not covered services if provided to:
 - a. An inmate of a public institution; or
 - b. A person who is in residence at an institution for the treatment of tuberculosis.
- C.** The Administration or a contractor may deny payment of non-emergency services if prior authorization is not obtained as specified in this Article and Article 7 of this Chapter. The Administration or a contractor shall not provide prior authorization for services unless the provider submits documentation of the medical necessity of the treatment along with the prior authorization request.
- D.** Services under A.R.S. § 36-2908 provided during the prior period coverage do not require prior authorization.
- E.** Prior authorization is not required for services necessary to evaluate and stabilize an emergency medical condition. The Administration or a contractor shall not reimburse services that require prior authorization unless the provider documents the diagnosis and treatment.
- F.** A service is not a covered service if provided outside the GSA unless one of the following applies:
1. A member is referred by a primary care provider for medical specialty care outside the GSA. If a member is referred outside the GSA to receive an authorized medically necessary service, the contractor shall also provide all other medically necessary covered services for the member;
 2. There is a net savings in service delivery costs as a result of going outside the GSA that does not require undue travel time or hardship for a member or the member’s family;
 3. The contractor authorizes placement in a nursing facility located out of the GSA; or
 4. Services are provided during prior period coverage or during the prior quarter coverage.
- G.** If a member is traveling or temporarily residing outside of the GSA, covered services are restricted to emergency care services, unless otherwise authorized by the contractor.
- H.** A contractor shall provide at a minimum, directly or through subcontracts, the covered services specified in this Chapter and in contract.

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- I.** The Administration shall determine the circumstances under which a FFS member may receive services, other than emergency services, from service providers outside the member's county of residence or outside the state. Criteria considered by the Administration in making this determination shall include availability and accessibility of appropriate care and cost effectiveness.
- J.** The restrictions, limitations, and exclusions in this Article do not apply to a contractor electing to provide noncovered services.
1. The Administration shall not consider the costs of providing a noncovered service to a member in the development or negotiation of a capitation rate.
 2. A contractor shall pay for noncovered services from administrative revenue or other contractor funds that are unrelated to the provision of services under this Chapter.
 3. If a member requests a service that is not covered or is not authorized by a contractor, or the Administration, an AHCCCS-registered service provider may provide the service according to R9-22-702.
- K.** Subject to CMS approval, the restrictions, limitations, and exclusions specified in the following subsections do not apply to American Indians receiving services through IHS or a tribal health program operating under P.L. 93-638 when those services are eligible for 100 percent federal financial participation:
1. R9-22-205(A)(8),
 2. R9-22-206,
 3. R9-22-207,
 4. R9-22-212(C),
 5. R9-22-212(D),
 6. R9-22-212(E)(8),
 7. R9-22-215(C)(5), (C)(6), and
 8. R9-22-215(C)(4).

Historical Note

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-202 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1985 (Supp. 85-5). Amended effective October 1, 1987; amended effective December 22, 1987 (Supp. 87-4). Amended effective May 30, 1989 (Supp. 89-2).

Amended effective April 13, 1990 (Supp. 90-2).

Amended effective December 13, 1993 (Supp. 93-4).

Amended effective July 1, 1995, under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1994, Ch. 322, § 21; filed with the Office of the Secretary of State June 22, 1995 (Supp. 95-3). Amended effective January 10, 1996, under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Third Special Session, Ch. 1, § 5; filed with the Office of the Secretary of State December 28, 1995 (Supp. 95-4). Section repealed effective September 22, 1997 (Supp. 97-3). New Section made by final rulemaking at 13 A.A.R. 3351, effective November 10, 2007 (Supp. 07-3). Amended by exempt rulemaking at 16 A.A.R. 1638, effective October 1, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 1658, effective August 2, 2011 (Supp. 11-3). Amended by final rulemaking at 20 A.A.R. 1949, effective September 6, 2014 (Supp. 14-3). Amended by final rulemaking at 20 A.A.R. 3098, effective January 4, 2015 (Supp. 14-4). Amended by final rulemaking at 21 A.A.R. 1225, effective July 7, 2015 (Supp. 15-3).

R9-22-203. Experimental Services

- A.** Experimental services are not covered. A service is not experimental if:
1. It is generally and widely accepted as a standard of care in the practice of medicine in the United States and is a safe and effective treatment for the condition for which it is intended or used.
 2. The service does not meet the standard in subsection (A)(1), but the service has been demonstrated to be safe and effective for the condition for which it is intended or used based on the weight of the evidence in peer-reviewed articles in medical journals published in the United States.
 3. The service does not meet the standard in subsection (A)(2) because the condition for which the service is intended or used is rare, but the service has been demonstrated to be safe and effective for the condition for which it is intended or used based on the weight of opinions from specialists who provide the service or related services.
- B.** The following factors shall be considered when evaluating the weight of peer-reviewed articles or the opinions of specialists:
1. The mortality rate and survival rate of the service as compared to the rates for alternative non-experimental services.
 2. The types, severity, and frequency of complications associated with the services as compared with the complications associated with alternative non-experimental services.
 3. The frequency with which the service has been performed in the past.
 4. Whether there is sufficient historical information regarding the service to provide reliable data regarding risks and benefits.
 5. The reputation and experience of the authors and/or specialists and their record in related areas.
 6. The extent to which medical science in the area develops rapidly and the probability that more definite data will be available in the foreseeable future.
 7. Whether the peer reviewed article describes a random controlled trial or an anecdotal clinical case study.

Historical Note

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-203 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1985 (Supp. 85-5). Amended effective October 1, 1987; amended effective December 22, 1987 (Supp. 87-4). Amended effective May 30, 1989 (Supp. 89-2).

Amended effective April 13, 1990 (Supp. 90-2).

Amended effective September 29, 1992 (Supp. 92-3). Amended under an exemption from the provisions of the Administrative Procedure Act effective March 22, 1993; received in the Office of the Secretary of State March 24, 1993 (Supp. 93-1). Amended effective December 13, 1993 (Supp. 93-4). Section repealed effective September 22, 1997 (Supp. 97-3). New Section made by exempt rulemaking at 16 A.A.R. 1638, effective October 1, 2010 (Supp. 10-3). Section amended by final rulemaking at 20 A.A.R. 1956, effective September 6, 2014 (Supp. 14-3).

R9-22-204. Inpatient General Hospital Services

- A.** The following limitations apply to inpatient general hospital services that are provided by FFS providers.

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1. Providers shall obtain prior authorization from the Administration for the following inpatient hospital services:
 - a. Nonemergency and elective admission, including psychiatric hospitalization;
 - b. Elective surgery; and
 - c. Services or items provided to cosmetically reconstruct or improve personal appearance after an illness or injury.
 2. The Administration or a contractor may deny a claim if a provider fails to obtain prior authorization.
 3. Providers are not required to obtain prior authorization from the Administration for the following inpatient hospital services:
 - a. Voluntary sterilization,
 - b. Dialysis shunt placement,
 - c. Arteriovenous graft placement for dialysis,
 - d. Angioplasties or thrombectomies of dialysis shunts,
 - e. Angioplasties or thrombectomies of arteriovenous graft for dialysis,
 - f. Hospitalization for vaginal delivery that does not exceed 48 hours,
 - g. Hospitalization for cesarean section delivery that does not exceed 96 hours, and
 - h. Other services identified by the Administration through the Provider Participation Agreement.
 4. The Administration may perform concurrent review for hospitalizations of non-FES members to determine whether there is medical necessity for the hospitalization. A provider shall notify the Administration no later than 72 hours after an emergency admission.
- C.** Coverage of in-state and out-of-state inpatient hospital services is limited to 25 days per benefit year for members age 21 and older for claims with discharge dates on or before September 30, 2014. The limit applies for all inpatient hospital services with dates of service during the benefit year regardless of whether the member is enrolled in Fee for Service, is enrolled with one or more contractors, or both, during the benefit year.
1. For purposes of calculating the limit:
 - a. Inpatient days are counted towards the limit if paid by the Administration or a contractor;
 - b. Inpatient days will be counted toward the limit in the order of the adjudication date of a paid claim;
 - c. Paid inpatient days are allocated to the benefit year in which the date of service occurs;
 - d. Each 24 hours of paid observation services is counted as one inpatient day if the patient is not admitted to the same hospital directly following the observation services,
 - e. Observation services, which are directly followed by an inpatient admission to the same hospital are not counted towards the inpatient limit; and
 - f. After 25 days of inpatient hospital services have been paid as provided for in this rule Section:
 - i. Outpatient services that are directly followed by an inpatient admission to the same hospital, including observation services, are not covered.
 - ii. Continuous periods of observation services of less than 24 hours that are not directly followed by an inpatient admission to the same hospital are covered.
 - iii. For continuous periods of observation services of 24 hours or more that are not directly followed by an inpatient admission to the same hospital, 23 hours of observations services are covered.
2. The following inpatient days are not included in the inpatient hospital limitation described in this Section:
 - a. Days reimbursed under specialty contracts between AHCCCS and a transplant facility that are included within the component pricing referred to in the contract;
 - b. Days related to Behavioral Health:
 - i. Inpatient days that qualify for the psychiatric tier under R9-22-712.09 and reimbursed by the Administration or its contractors, or
 - ii. Inpatient days with a primary psychiatric diagnosis code reimbursed by the Administration or its contractors, or
 - iii. Inpatient days paid by the Arizona Department of Health Services Division of Behavioral Health Services or a RBHA or TRBHA.
 - c. Days related to treatment for burns and burn late effects at an American College of Surgeons verified burn center;
 - d. Same Day Admit Discharge services are excluded from the 25 day limit; and
 - e. Subject to approval by CMS, days for which the state claims 100% FFP, such as payments for days provided by IHS or 638 facilities.
- Historical Note**
- Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-204 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (A) effective December 22, 1987 (Supp. 87-4). Amended effective December 13, 1993 (Supp. 93-4). Section repealed, new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2). Amended by final rulemaking at 17 A.A.R. 1658, effective August 2, 2011 (Supp. 11-3). Amended by exempt rulemaking at 17 A.A.R. 1707, effective October 1, 2011 (Supp. 11-3). Amended by exempt rulemaking at 18 A.A.R. 1745, effective October 1, 2012 (Supp. 12-2). Amended by final rulemaking at 19 A.A.R. 2747, effective October 8, 2013 (Supp. 13-3). Amended by final rulemaking at 20 A.A.R. 1956, effective September 6, 2014 (Supp. 14-3).
- R9-22-205. Attending Physician, Practitioner, and Primary Care Provider Services**
- A.** A primary care provider, attending physician, or practitioner shall provide primary care provider services within the provider's scope of practice under A.R.S. Title 32. A member may receive primary care provider services in an inpatient or outpatient setting including at a minimum:
1. Periodic health examination and assessment;
 2. Evaluation and diagnostic workup;
 3. Medically necessary treatment;
 4. Prescriptions for medication and medically necessary supplies and equipment;
 5. Referral to a specialist or other health care professional if medically necessary;
 6. Patient education;
 7. Home visits if medically necessary; and

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8. Preventive health services, such as, well visits, immunizations, colonoscopies, mammograms and PAP smears.
- B.** The following limitations and exclusions apply to attending physician and practitioner services and primary care provider services:
1. Specialty care and other services provided to a member upon referral from a primary care provider, or to a member upon referral from the attending physician or practitioner are limited to the service or condition for which the referral is made, or for which authorization is given by the Administration or a contractor.
 2. A member's physical examination is not covered if the sole purpose is to obtain documentation for one or more of the following:
 - a. Qualification for insurance,
 - b. Pre-employment physical evaluation,
 - c. Qualification for sports or physical exercise activities,
 - d. Pilot's examination for the Federal Aviation Administration,
 - e. Disability certification to establish any kind of periodic payments,
 - f. Evaluation to establish third-party liabilities, or
 - g. Physical ability to perform functions that have no relationship to primary objectives of the services listed in subsection (A).
 3. Orthognathic surgery is covered only for a member who is less than 21 years of age;
 4. The following services are excluded from AHCCCS coverage:
 - a. Infertility services, reversal of surgically induced infertility (sterilization), and gender reassignment surgeries;
 - b. Pregnancy termination counseling services;
 - c. Pregnancy terminations, unless required by state or federal law.
 - d. Services or items furnished solely for cosmetic purposes; and
 - e. Hysterectomies unless determined medically necessary.

Historical Note

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-205 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (A), paragraph (15) and added paragraph (20) effective December 22, 1987 (Supp. 87-4). Amended subsection (C)(2) effective May 30, 1989 (Supp. 89-2). Amended under an exemption from the provisions of the Administrative Procedure Act effective March 22, 1993; received in the Office of the Secretary of State March 24, 1993 (Supp. 93-1). Amended effective December 13, 1993 (Supp. 93-4). Section repealed, new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2). Amended by exempt rulemaking at 10 A.A.R. 4588, effective October 12, 2004 (Supp. 04-4). Amended by exempt rulemaking at 16 A.A.R. 1638, effective October 1, 2010 (Supp. 10-3). Amended by final rulemaking at 20 A.A.R. 1949, effective September 6, 2014 (Supp. 14-3).

Editor's Note: The following Section was renumbered and a new Section adopted under an exemption from the provisions of the Administrative Procedure Act which means that this rule was not published as a proposed rule in the Arizona Administrative Register; the rule was not reviewed or approved by the Governor's Regulatory Review Council; and the agency was not required to hold public hearings on the rule. This Section was subsequently amended through the regular rulemaking process.

R9-22-206. Organ and Tissue Transplant Services

- A.** Organ and tissue transplant services are covered for a member if prior authorized and coordinated with the member's contractor, or the Administration. Only the following transplants are covered for individuals 21 years of age or older:
1. Heart, including transplants for the treatment of non-ischemic cardiomyopathy;
 2. Liver, including transplants for patients with hepatitis C;
 3. Kidney (cadaveric and live donor),
 4. Simultaneous Pancreas/Kidney (SPK),
 5. Autologous and Allogeneic related and unrelated Hematopoietic Cell transplants;
 6. Cornea;
 7. Bone;
 8. Lung; and
 9. Pancreas after a kidney transplant (PAK).
- B.** The following transplants are not covered for members 21 years of age or older:
1. Pancreas only transplants if it is not performed simultaneously with or following a kidney transplant. Partial pancreas transplants and autologous and allogeneic pancreas islet cell transplants are not covered even if performed simultaneously with or following a kidney transplant,
 2. Intestine transplants, and
 3. Any other type of transplant not specifically listed in subsection (A).
- C.** When there is a transplant of multiple organs, reimbursement will only be made for those covered.
- D.** Organ and tissue transplant services are not covered for non-qualified aliens or noncitizens members of FESP under A.R.S. § 36-2903.03(D).

Historical Note

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-206 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1985 (Supp. 85-5). Amended effective December 13, 1993 (Supp. 93-4). Former Section R9-22-206 renumbered to R9-22-218, new Section R9-22-206 adopted effective January 1, 1996, under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Third Special Session, Ch. 1, § 5; filed with the Office of the Secretary of State December 28, 1995 (Supp. 95-4). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Amended by exempt rulemaking at 7 A.A.R. 5701, effective December 1, 2001 (Supp. 01-4). Amended by exempt rulemaking at 10 A.A.R. 4588, effective October 12, 2004 (Supp. 04-4). Amended by exempt rulemaking at 16 A.A.R. 1386, effective July 15, 2010 (Supp. 10-3). Amended by exempt rulemaking at 16 A.A.R. 1638, effective October 1, 2010 (Supp. 10-3). Amended by exempt rulemaking at 17 A.A.R. 1122, April 1, 2011 (Supp. 11-2).

R9-22-207. Dental Services

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- A. The Administration or a contractor shall cover dental services for a member less than 21 years of age under R9-22-213.
- B. For individuals age 21 years of age or older, the Administration or a contractor shall cover medical and surgical services furnished by a dentist only to the extent such services may be performed under state law either by a physician or by a dentist and such services would be considered a physician service if furnished by a physician.
1. Except as specified in subsection (C), such services must be related to the treatment of a medical condition such as acute pain, infection, or fracture of the jaw. Covered dental services include examination of the oral cavity, radiographs, complex oral surgical procedures such as treatment of maxillofacial fractures, administration of an appropriate level of anesthesia and the prescription of pain medication and antibiotics.
 2. Such services do not include services that physicians are not generally competent to perform such as dental cleanings, routine dental examinations, dental restorations including crowns and fillings, extractions, pulpotomies, root canals, and the construction or delivery of complete or partial dentures. Diagnosis and treatment of temporomandibular joint dysfunction are not covered except for the reduction of trauma.
- C. For the purposes of this subsection, simple restorations means silver amalgam or composite resin fillings, stainless steel crowns or preformed crowns. In addition, dental services for an individual 21 years of age or older include:
1. The elimination of oral infections and the treatment of oral disease, which includes dental cleanings, treatment of periodontal disease, medically necessary extractions and the provision of simple restorations as a medically necessary pre-requisite to covered transplantation; and
 2. Prophylactic extraction of teeth in preparation for covered radiation treatment of cancer of the jaw, neck or head.

Historical Note

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-207 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-207 repealed, new Section R9-22-207 adopted effective October 1, 1985 (Supp. 85-5). Section repealed, new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2). Amended by exempt rulemaking at 16 A.A.R. 1638, effective October 1, 2010 (Supp. 10-3).

R9-22-208. Laboratory, Radiology, and Medical Imaging Services

Laboratory, radiology, and medical imaging services are covered services if:

1. Prescribed by the member's attending physician, practitioner, primary care provider or a dentist, or prescribed by a physician or practitioner upon referral from the primary care provider or dentist.
2. Provided by licensed health care providers in a:
 - a. Hospital,
 - b. Clinic,
 - c. Physician's office, or
 - d. Other health care facility.

Historical Note

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-

3). Former Section R9-22-208 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-208 repealed, new Section R9-22-208 adopted effective October 1, 1985 (Supp. 85-5). Amended subsection (C) effective December 22, 1987 (Supp. 87-4). Amended effective December 13, 1993 (Supp. 93-4). Section repealed, new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2).

R9-22-209. Pharmaceutical Services

- A. An inpatient or outpatient provider, including a hospital, clinic, other appropriately licensed health care facility, and pharmacy may provide covered pharmaceutical services.
- B. The Administration or a contractor shall require a provider to make pharmaceutical services:
1. Available during customary business hours, and
 2. Located within reasonable travel distance of a member's residence.
- C. Pharmaceutical services are covered if:
1. Prescribed for a member by the member's primary care provider, attending physician, practitioner, or dentist;
 2. Prescribed by a specialist upon referral from the primary care provider or attending physician; or
 3. The contractor or its designee authorizes the service.
- D. The following limitations apply to pharmaceutical services:
1. A medication personally dispensed by a physician, dentist, or a practitioner within the individual's scope of practice is not covered, except in geographically remote areas where there is no participating pharmacy or if accessible pharmacies are closed.
 2. A new prescription or refill in excess of a 30 day supply is not covered unless:
 - a. The member will be out of the provider's service area for an extended period of time and the prescription is limited to the extended time period, not to exceed a 90 day supply; or
 - b. The Contractor authorizes the prescription for an extended time period not to exceed a 90-day supply.
 3. An over-the-counter medication, in place of a covered prescription medication, is covered only if the over-the-counter medication is appropriate, equally effective, safe, and less costly than the covered prescription medication.
- E. A contractor shall monitor and ensure sufficient services to prevent any gap in the pharmaceutical regimen of a member who requires a continuing or complex regimen of pharmaceutical treatment to restore, improve, or maintain physical well being.

Historical Note

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-209 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1985 (Supp. 85-5). Amended effective September 24, 1986 (Supp. 86-5). Amended subsections (A) and (C) effective December 22, 1987 (Supp. 87-4). Amended subsection (C)(3), effective May 30, 1989 (Supp. 89-2). Amended under an exemption from the Administrative Procedure Act effective March 22, 1993; received in the Office of the Secretary of State March 24, 1993 (Supp. 93-1). Amended effective December 13, 1993 (Supp. 93-4). Section repealed, new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000

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(Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2). Amended by final rulemaking at 20 A.A.R. 1949, effective September 6, 2014 (Supp. 14-3).

R9-22-210. Emergency Medical Services for Non-FES Members

A. General provisions.

1. **Applicability.** This Section applies to emergency medical services for non-FES members. Provisions regarding emergency behavioral health services for non-FES members are in R9-22-210.01. Provisions regarding emergency medical and behavioral health services for FES members are in R9-22-217.
 2. **Definitions.**
 - a. For the purposes of this Section, "contractor" has the same meaning as in A.R.S. § 36-2901. Contractor does not include ADHS/DBHS or a subcontractor of ADHS/DBHS.
 - b. For the purposes of this Section and R9-22-210.01, "fiscal agent" means a person who bills and accepts payment for a hospital or emergency room provider.
 3. **Verification.** A provider of emergency medical services shall verify a person's eligibility status with AHCCCS, and if eligible, determine whether the person is enrolled with AHCCCS as non-FES FFS or is enrolled with a contractor.
 4. **Prior authorization.**
 - a. **Emergency medical services.** A provider is not required to obtain prior authorization for emergency medical services.
 - b. **Non-emergency medical services.** If a non-FES member's medical condition does not require emergency medical services, the provider shall obtain prior authorization as required by the terms of the provider agreement under R9-22-714(A) or the provider's subcontract with the contractor, whichever is applicable.
 5. **Prohibition against denial of payment.** Neither the Administration nor a contractor shall:
 - a. Limit what constitutes an emergency medical condition on the basis of lists of diagnoses or symptoms,
 - b. Deny or limit payment because the provider failed to obtain prior authorization for emergency services,
 - c. Deny or limit payment because the provider does not have a subcontract.
 6. **Grounds for denial.** The Administration and a contractor may deny payment for emergency medical services for reasons including but not limited to:
 - a. The claim was not a clean claim;
 - b. The claim was not submitted timely; and
 - c. The provider failed to provide timely notification under subsection (B)(4) to the contractor or the Administration, as appropriate, and the contractor does not have actual notice from any other source that the member has presented for services.
- B. Additional requirements for emergency medical services for non-FES members enrolled with a contractor.**
1. **Responsible entity.** A contractor is responsible for the provision of all emergency medical services to non-FES members enrolled with the contractor.
 2. **Prohibition against denial of payment.** A contractor shall not limit or deny payment for emergency medical services when an employee of the contractor instructs the member to obtain emergency medical services.

3. **Contractor notification.** A contractor shall not deny payment to a hospital, emergency room provider, or fiscal agent for an emergency medical service rendered to a non-FES member based on the failure of the hospital, emergency room provider, or fiscal agent to notify the member's contractor within 10 days from the day that the member presented for the emergency medical service.
4. **Contractor notification.** A hospital, emergency room provider, or fiscal agent shall notify the contractor no later than the 11th day after presentation of the non-FES member for emergency inpatient medical services. A contractor may deny payment for a hospital's, emergency room provider's, or fiscal agent's failure to provide timely notice, under this subsection.

C. Post-stabilization services for non-FES members enrolled with a contractor.

1. After the emergency medical condition of a member enrolled with a contractor is stabilized, a provider shall request prior authorization from the contractor for post-stabilization services.
2. The contractor is financially responsible for medical post-stabilization services obtained within or outside the network that have been prior authorized by the contractor.
3. The contractor is financially responsible for medical post-stabilization services obtained within or outside the network that are not prior authorized by the contractor, but are administered to maintain the member's stabilized condition within one hour of a request to the contractor for prior authorization of further post-stabilization services;
4. The contractor is financially responsible for medical post-stabilization services obtained within or outside the network that are not prior authorized by the contractor, but are administered to maintain, improve, or resolve the member's stabilized condition if:
 - a. The contractor does not respond to a request for prior authorization within one hour;
 - b. The contractor authorized to give the prior authorization cannot be contacted; or
 - c. The contractor representative and the treating physician cannot reach an agreement concerning the member's care and the contractor physician is not available for consultation. In this situation, the contractor shall give the treating physician the opportunity to consult with a contractor physician. The treating physician may continue with care of the member until the contractor physician is reached or:
 - i. A contractor physician with privileges at the treating hospital assumes responsibility for the member's care,
 - ii. A contractor physician assumes responsibility for the member's care through transfer,
 - iii. The contractor's representative and the treating physician reach agreement concerning the member's care, or
 - iv. The member is discharged.
5. **Transfer or discharge.** The attending physician or practitioner actually treating the member for the emergency medical condition shall determine when the member is sufficiently stabilized for transfer or discharge and that decision shall be binding on the contractor.

D. Additional requirements for FFS members.

1. **Responsible entity.** The Administration is responsible for the provision of all emergency medical services to non-FES FFS members.

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2. Grounds for denial. The Administration may deny payment for emergency medical services if a provider fails to provide timely notice to the Administration.
3. Notification. A provider shall notify the Administration no later than 72 hours after a FFS member receiving emergency medical services presents to a hospital for inpatient services. The Administration may deny payment for failure to provide timely notice.
5. Verification. A provider of emergency behavioral health services shall verify a person's eligibility status with AHCCCS, and if eligible, determine whether the person is a member enrolled with AHCCCS as non-FES FFS or is enrolled with a contractor, and determine whether the member is a behavioral health recipient as defined in R9-22-201.

Historical Note

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-210 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-210 repealed, new Section R9-22-210 adopted effective October 1, 1983 (Supp. 83-5). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (B), paragraph (1) effective October 1, 1987 (Supp. 87-4).

Amended effective December 13, 1993 (Supp. 93-4).

Amended effective September 22, 1997 (Supp. 97-3).

Amended by final rulemaking at 5 A.A.R. 867, effective March 4, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by exempt rulemaking at 7 A.A.R. 4593, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2). Amended by final rulemaking at 11 A.A.R. 5480, effective December 6, 2005 (Supp. 05-4).

Amended by final rulemaking at 17 A.A.R. 1658, effective August 2, 2011 (Supp. 11-3). Amended by final rulemaking at 20 A.A.R. 1949, effective September 6, 2014 (Supp. 14-3).

R9-22-210.01. Emergency Behavioral Health Services for Non-FES Members**A. General provisions.**

1. Applicability. This Section applies to emergency behavioral health services for non-FES members. Provisions regarding emergency medical services for non-FES members are in R9-22-210. Provisions regarding emergency medical and behavioral health services for FES members are in R9-22-217.
 2. Definition. For the purposes of this Section, "contractor" has the same meaning as in A.R.S. § 36-2901. Contractor does not include ADHS/DBHS, a subcontractor of ADHS/DBHS, or Children's Rehabilitative Services.
 3. Responsible entity for inpatient emergency behavioral health services.
 - a. Members enrolled with a contractor. ADHS/DBHS, ADHS/DBHS or a subcontractor of ADHS/DBHS is responsible for providing all inpatient emergency behavioral health services to non-FES members with psychiatric or substance abuse diagnoses who are enrolled with the contractor.
 - b. FFS members. ADHS/DBHS or a subcontractor of ADHS/DBHS is responsible for providing all inpatient emergency behavioral health services for non-FES FFS members with psychiatric or substance abuse diagnoses unless services are provided in an IHS or tribally operated 638 facility.
 4. Responsible entity for non-inpatient emergency behavioral health services for non-FES members. ADHS/DBHS or a subcontractor of ADHS/DBHS is responsible for providing all non-inpatient emergency behavioral health services for non-FES members.
 6. Prior authorization.
 - a. Emergency behavioral health services. A provider is not required to obtain prior authorization for emergency behavioral health services.
 - b. Non-emergency behavioral health services. When a non-FES member's behavioral health condition is determined by the provider not to require emergency behavioral health services, the provider shall follow the prior authorization requirements of a contractor and ADHS/DBHS or a subcontractor of ADHS/DBHS.
 7. Prohibition against limitation or denial of payment. A contractor, TRBHA, the Administration, ADHS/DBHS, or a subcontractor of ADHS/DBHS shall not limit or deny payment to an emergency behavioral health provider for emergency behavioral health services to a non-FES member for the following reasons:
 - a. On the basis of lists of diagnoses or symptoms;
 - b. Prior authorization was not obtained;
 - c. The provider does not have a contract;
 - d. An employee of the contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS instructs the member to obtain emergency behavioral health services; or
 - e. The failure of a hospital, emergency room provider, or fiscal agent to notify the member's contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS within 10 days from the day the member presented for the emergency service.
 8. Grounds for denial. A contractor, the Administration, ADHS/DBHS, or a subcontractor of ADHS/DBHS may deny payment for emergency behavioral health services for reasons including but not limited to the following:
 - a. The claim was not a clean claim;
 - b. The claim was not submitted timely; or
 - c. The provider failed to provide timely notification under subsection (A)(9) to the contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS or the Administration.
 9. Notification.
 - a. A hospital, emergency room provider, or fiscal agent shall notify a contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS, whichever is appropriate, no later than the 11th day from presentation of the non-FES member for emergency inpatient behavioral health services.
 - b. A hospital, emergency room provider, or fiscal agent shall notify the Administration no later than 72 hours after a FFS member receiving emergency behavioral health services presents to a hospital for inpatient services.
 10. Transfer or discharge. The attending physician or the provider actually treating the non-FES member for the emergency behavioral health condition shall determine when the member is sufficiently stabilized for transfer or discharge and that decision shall be binding on the contractor and ADHS/DBHS or a subcontractor of ADHS/DBHS.
- B. Post-stabilization requirements for non-FES members.**

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1. A contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS, as appropriate, is financially responsible for behavioral health post-stabilization services obtained within or outside the network that have been prior authorized by the contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS.
 2. The contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS, as appropriate, is financially responsible for behavioral health post-stabilization services obtained within or outside the network that are not prior authorized by the contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS, but are administered to maintain the member's stabilized condition within one hour of a request to the contractor, ADHS/DBHS, or a subcontractor for prior authorization of further post-stabilization services;
 3. The contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS, as appropriate, is financially responsible for behavioral health post-stabilization services obtained within or outside the network that are not prior authorized by the contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS, but are administered to maintain, improve, or resolve the member's stabilized condition if:
 - a. The contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS, does not respond to a request for prior authorization within one hour;
 - b. The contractor, ADHS/DBHS, or a subcontractor of ADHS/DBHS authorized to give the prior authorization cannot be contacted; or
 - c. The representative of the contractor, ADHS/DBHS, or the subcontractor and the treating physician cannot reach an agreement concerning the member's care and the contractor's, ADHS/DBHS' or the subcontractor's physician, is not available for consultation. The treating physician may continue with care of the member until ADHS/DBHS', the contractor's, or the subcontractor's physician is reached, or:
 - i. A contracted physician with privileges at the treating hospital assumes responsibility for the member's care;
 - ii. ADHS/DBHS', a contractor's, or a subcontractor's physician assumes responsibility for the member's care through transfer;
 - iii. A representative of the contractor, ADHS/DBHS, or the subcontractor and the treating physician reach agreement concerning the member's care; or
 - iv. The member is discharged.
- in response to a 911 call or other emergency response system:
- a. If the member's medical condition justifies the medical necessity of the type of ambulance transportation received,
 - b. The transport is to the nearest appropriate provider or medical facility capable of meeting the member's medical needs, and
 - c. No prior authorization is required for reimbursement of these transports.
3. The member's medical condition at the time of transport determines whether the transport is medically necessary.
 4. A ground or air ambulance provider furnishing transport in response to a 911 call or other emergency response system shall notify the member's contractor within 10 working days from the date of transport. Failure of the provider to provide notification is cause for denial.
 5. Notification to the Administration of emergency transportation provided to a FFS member is not required, but the provider shall submit documentation with the claim that justifies the service.
- B.** The Administration or a contractor covers air ambulance services only if at least one criterion in subsection (B)(1) is met and at least one criterion in subsection (B)(2), or the criterion in subsection (B)(3) is met. The criteria are:
1. The air ambulance transport is initiated at the request of:
 - a. An emergency response unit,
 - b. A law enforcement official,
 - c. A clinic or hospital medical staff member, or
 - d. A physician or practitioner, and
 2. The point of pickup:
 - a. Is inaccessible by ground ambulance, or
 - b. Is a great distance from the nearest hospital or other provider with appropriate facilities to treat the member's condition and ground ambulance service will not suffice, or
 3. The medical condition of the member requires immediate intervention from emergency ambulance personnel or providers with the appropriate facilities to treat the member's condition.
- C.** Coverage of medically necessary nonemergency transportation is limited to the cost of transporting the member to an appropriate provider capable of meeting the member's medical needs.
1. As specified in contract, a contractor shall arrange or provide medically necessary nonemergency transportation services for a member who is unable to arrange transportation to a service site or location.
 2. For a fee-for-service member, the Administration shall authorize medically necessary nonemergency transportation for a member who is unable to arrange transportation to a service site or location.
- D.** For the purposes of this subsection, an individual means a person who is not in the business of providing transportation services such as a family or household member, friend, or neighbor. The Administration or a contractor shall cover expenses for transportation in traveling to and returning from an approved and prior authorized health care service site provided by an individual if:
1. The transportation services are authorized by the Administration or the member's contractor or designee,
 2. The individual is an AHCCCS registered provider, and
 3. No other means of appropriate transportation is available.
- E.** The Administration or a contractor shall cover expenses for meals, lodging, and transportation for a member traveling to

Historical Note

New Section made by final rulemaking at 11 A.A.R. 5480, effective December 6, 2005 (Supp. 05-4).
 Amended by final rulemaking at 17 A.A.R. 1658, effective August 2, 2011 (Supp. 11-3). Amended by final rulemaking at 20 A.A.R. 3098, effective January 4, 2015 (Supp. 14-4).

R9-22-211. Transportation Services**A. Emergency ambulance services.**

1. A member shall receive medically necessary emergency transportation in a ground or air ambulance:
 - a. To the nearest appropriate provider or medical facility capable of meeting the member's medical needs, and
 - b. If no other appropriate means of transportation is available.
2. The Administration or a member's contractor shall reimburse a ground or air ambulance transport that originates

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and returning from an approved health care service site outside of the member's service area or county of residence.

- F.** The Administration or a contractor shall cover the expense of meals, lodging, and transportation for:
1. A family member accompanying a member if:
 - a. The member is traveling to or returning from an approved health care service site outside of the member's service area or county of residence; and
 - b. The meals, lodging, and transportation services are authorized by the Administration or the member's contractor or designee.
 2. An escort who is not a family member as follows:
 - a. If the member is travelling to or returning from an approved and prior authorized health care service site, including an inpatient facility, outside of the member's service area or county of residence;
 - b. If the escort services are authorized by the Administration or the member's contractor or designee; and
 - c. Wage paid to an escort as reimbursement shall not exceed the federal minimum wage.
- G.** A provider shall obtain prior authorization from the Administration for transportation services provided for a member for the following:
1. Medically necessary nonemergency transportation services not originated through a 911 call or other emergency response system when the distance traveled exceeds 100 miles (whether one way or round trip); and
 2. All meals, lodging, and services of an escort accompanying the member under this Section.
- H.** A charitable organization routinely providing transportation service at no cost to an ambulatory or chairbound person shall not charge or seek reimbursement from the Administration or a contractor for the provision of the service to a member but may enter into a subcontract with a contractor for medically necessary transportation services provided to a member.

Historical Note

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-211 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (A) effective October 1, 1986 (Supp. 86-5). Amended effective December 13, 1993 (Supp. 93-4). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2). Amended by final rulemaking at 17 A.A.R. 1658, effective August 2, 2011 (Supp. 11-3).

R9-22-212. Durable Medical Equipment, Orthotic and Prosthetic Devices, and Medical Supplies

- A.** Durable medical equipment, orthotic and prosthetic devices, and medical supplies, including incontinence briefs as specified in subsection (E), are covered services to the extent permitted in this Section if provided in compliance with requirements of this Chapter; and
1. Prescribed by the primary care provider, attending physician, or practitioner; or
 2. Prescribed by a specialist upon referral from the primary care provider, attending physician, or practitioner; and
 3. Authorized as required by the Administration, contractor, or contractor's designee.
- B.** Covered medical supplies are consumable items that are designed specifically to meet a medical purpose, are disposable, and are essential for the member's health.

- C.** Covered DME is any item, appliance, or piece of equipment that is not a prosthetic or orthotic; and
1. Is designed for a medical purpose, and is generally not useful to a person in the absence of an illness or injury, and
 2. Can withstand repeated use, and
 3. Is generally reusable by others.
- D.** Prosthetics are devices prescribed by a physician or other licensed practitioner to artificially replace missing, deformed or malfunctioning portion of the body. Only those prosthetics that are medically necessary for rehabilitation are covered, except as otherwise provided in R9-22-215.
- E.** The following limitations on coverage apply:
1. The DME is furnished on a rental or purchase basis, whichever is less expensive. The total expense of renting the DME does not exceed the cost of the DME if purchased.
 2. Reasonable repair or adjustment of purchased DME is covered if necessary to make the DME serviceable and if the cost of repair or adjustment is less than the cost of renting or purchasing another unit.
 3. A change in, or addition to, an original order for DME is covered if approved by the prescriber in subsection (A), or prior authorized by the Administration or contractor, and the change or addition is indicated clearly on the order and initialed by the vendor. No change or addition to the original order for DME may be made after a claim for services is submitted to the member's contractor, or the Administration, without prior written notification of the change or addition to the Administration or the contractor.
 4. Reimbursement for rental fees shall terminate:
 - a. No later than the end of the month in which the prescriber in subsection (A) certifies that the member no longer needs the DME;
 - b. If the member is no longer eligible for AHCCCS services; or
 - c. If the member is no longer enrolled with a contractor, with the exception of transitions of care as specified in R9-22-509.
 5. Except for incontinence briefs for persons over 3 years old and under 21 years old as provided in subsection (E)(6), personal care items including items for personal cleanliness, body hygiene, and grooming are not covered unless needed to treat a medical condition. Personal care items are not covered services if used solely for preventive purposes.
 6. Incontinence briefs, including pull-ups are covered to prevent skin breakdown and enable participation in social, community, therapeutic and educational activities under the following circumstances:
 - a. The member is over 3 years old and under 21 years old;
 - b. The member is incontinent due to a documented disability that causes incontinence of bowel or bladder, or both;
 - c. The PCP or attending physician has issued a prescription ordering the incontinence briefs;
 - d. Incontinence briefs do not exceed 240 briefs per month unless the prescribing physician presents evidence of medical necessity for more than 240 briefs per month for a member diagnosed with chronic diarrhea or spastic bladder;
 - e. The member obtains incontinence briefs from providers in the contractor's network;

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- f. Prior authorization has been obtained as required by the Administration, contractor, or contractor's designee. Contractors may require a new prior authorization to be issued no more frequently than every 12 months. Prior authorization for a renewal of an existing prescription may be provided by the physician through telephone contact with the member rather than an in-person physician visit. Prior authorization will be permitted to ascertain that:
- The member is over age 3 and under age 21;
 - The member has a disability that causes incontinence of bladder or bowel, or both;
 - A physician has prescribed incontinence briefs as medically necessary. A physician prescription supporting medical necessity may be required for specialty briefs or for briefs different from the standard briefs supplied by the contractor; and
 - The prescription is for 240 briefs or fewer per month, unless evidence of medical necessity for over 240 briefs is provided.
7. First aid supplies are not covered unless they are provided in accordance with a prescription.
8. The following services are not covered for individuals 21 years of age or older:
- Hearing aids;
 - Prescriptive lenses unless they are the sole visual prosthetic device used by the member after a cataract extraction;
 - Bone Anchor Hearing Aid (BAHA);
 - Cochlear implant;
 - Percussive vest;
 - Insulin pump;
 - Microprocessor-controlled lower limbs or microprocessor-controlled joints for lower limbs; and
 - Orthotics, which are defined as devices that are prescribed by a physician or other licensed practitioner of the healing arts to support a weak or deformed portion of the body.
- F. Liability and ownership.**
- Purchased DME that is provided to a member and no longer needed by the member may be disposed of in accordance with each contractor's policy.
 - The Administration shall retain title to purchased DME provided to a member who becomes ineligible or no longer requires use of the DME.
 - If customized DME is purchased by the Administration or contractor for a member, the equipment shall remain with the person during times of transition to a different contractor, or upon loss of eligibility. For purposes of this subsection, customized DME refers to equipment that is altered or built to specifications unique to a member's medical needs and that, most likely, cannot be used or reused to meet the needs of another individual.
 - A member shall return DME obtained fraudulently to the Administration or the contractor.
- Historical Note**
- Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-212 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-212 repealed, new Section R9-22-212 adopted effective October 1, 1983 (Supp. 83-5). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (B), paragraph (2), and deleted subsection (C) effective October 1, 1986 (Supp. 86-5). Section repealed, new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2). Amended by final rulemaking at 13 A.A.R. 3272, effective September 11, 2007 (Supp. 07-3). Amended by exempt rulemaking at 16 A.A.R. 1638, effective October 1, 2010 (Supp. 10-3).
- R9-22-213. Early and Periodic Screening, Diagnosis, and Treatment Services (E.P.S.D.T.)**
- A.** The following E.P.S.D.T. services are covered for a member less than 21 years of age:
- Screening services including:
 - Comprehensive health and developmental history;
 - Comprehensive unclothed physical examination;
 - Appropriate immunizations according to age and health history;
 - Laboratory tests; and
 - Health education, including anticipatory guidance;
 - Vision services including:
 - Diagnosis and treatment for defects in vision;
 - Eye examinations for the provision of prescriptive lenses;
 - Prescriptive lenses; and
 - Frames.
 - Hearing services including:
 - Diagnosis and treatment for defects in hearing;
 - Testing to determine hearing impairment; and
 - Hearing aids;
 - Dental services including:
 - Emergency dental services as specified in R9-22-207;
 - Preventive services including screening, diagnosis, and treatment of dental disease; and
 - Therapeutic dental services including fillings, crowns, dentures, and other prosthetic devices;
 - Orthognathic surgery;
 - Medically necessary, nutritional assessment and nutritional therapy as specified in contract to provide complete daily dietary requirements or supplement a member's daily nutritional and caloric intake;
 - Behavioral health services under 9 A.A.C. 22, Article 12;
 - Hospice services do not include home-delivered meals or services provided and covered through Medicare. The following hospice services are covered:
 - Hospice services are covered only for a member who is in the final stages of a terminal illness and has a prognosis of death within six months;
 - Services available to a member receiving hospice care are limited to those allowable under 42 CFR 418.202, October 1, 2006, incorporated by reference and on file with the Administration. This incorporation by reference contains no future editions or amendments;
 - Incontinence briefs as specified under R9-22-212; and
 - Other necessary health care, diagnostic services, treatment, and measures required by 42 U.S.C. 1396d(r)(5).
- B.** Providers of E.P.S.D.T. services shall meet the following standards:
- Ensure that services are provided by or under the direction of the member's primary care provider, attending physician, practitioner, or dentist.
 - Perform tests and examinations under 42 CFR 441 Subpart B, October 1, 2006, which is incorporated by reference and on file with the Administration. This

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- incorporation by reference contains no future editions or amendments.
3. Refer a member as necessary for dental diagnosis and treatment and necessary specialty care.
 4. Refer a member as necessary for behavioral health evaluation and treatment services.
- C.** Contractors shall meet other E.P.S.D.T. requirements as specified in contract.
- D.** A primary care provider, attending physician, or practitioner shall refer a member with special health care needs under R9-7-301 to CRS.

Historical Note

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-213 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-213 repealed, new Section R9-22-213 adopted effective October 1, 1983 (Supp. 83-5). Amended effective October 1, 1985 (Supp. 85-5). Amended effective December 13, 1993 (Supp. 93-4). Amended effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2). Amended by final rulemaking at 13 A.A.R. 3272, effective September 11, 2007 (Supp. 07-3). Amended by final rulemaking at 20 A.A.R. 1949, effective September 6, 2014 (Supp. 14-3).

R9-22-214. Repealed**Historical Note**

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-214 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Former Section R9-22-214 repealed, new Section R9-22-214 adopted effective October 1, 1983 (Supp. 83-5). Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (B), paragraph (4) and added subsection (C), paragraph (2) effective October 1, 1986 (Supp. 86-5). Correction to subsection (C), paragraph (2) (Supp. 87-4). Section repealed effective September 22, 1997 (Supp. 97-3).

R9-22-215. Other Medical Professional Services

- A.** The following medical professional services are covered services if a member receives these services in an inpatient, outpatient, or office:
1. Dialysis;
 2. The following family planning services if provided to delay or prevent pregnancy:
 - a. Medications,
 - b. Supplies,
 - c. Devices, and
 - d. Surgical procedures;
 3. Family planning services are limited to:
 - a. Contraceptive counseling, medications, supplies, and associated medical and laboratory examinations, including HIV blood screening as part of a package of sexually transmitted disease tests provided with a family planning service;
 - b. Sterilization; and
 - c. Natural family planning education or referral;
 4. Midwifery services provided by a certified nurse practitioner in midwifery;

5. Midwifery services for low-risk pregnancies and home deliveries provided by a licensed midwife;
 6. Respiratory therapy;
 7. Ambulatory and outpatient surgery facilities services;
 8. Home health services under A.R.S. § 36-2907(D);
 9. Private or special duty nursing services;
 10. Rehabilitation services including physical therapy, occupational therapy, speech therapy, and audiology within limitations in subsection (C);
 11. Total parenteral nutrition services, which are the provision of total caloric needs by intravenous route for individuals with severe pathology of the alimentary tract; and
 12. Chemotherapy.
- B.** Prior authorization from the Administration for a member is required for services listed in subsections (A)(3)(b), and (A)(4) through (11); except for:
1. Voluntary sterilization;
 2. Dialysis shunt placement;
 3. Arteriovenous graft placement for dialysis;
 4. Angioplasties or thrombectomies of dialysis shunts;
 5. Angioplasties or thrombectomies of arteriovenous grafts for dialysis;
 6. Eye surgery for the treatment of diabetic retinopathy;
 7. Eye surgery for the treatment of glaucoma;
 8. Eye surgery for the treatment of macular degeneration;
 9. Home health visits following an acute hospitalization (limited up to five visits);
 10. Hysteroscopies (up to two, one before and one after) when associated with a family planning diagnosis code and done within 90 days of hysteroscopic sterilization;
 11. Physical therapy subject to the limitation in subsection (C);
 12. Facility services related to wound debridement,
 13. Apnea management and training for premature babies up to the age of 1; and
 14. Other services identified by the Administration through the Provider Participation Agreement.
- C.** The following are not covered services:
1. Occupational and speech therapies provided on an outpatient basis for a member age 21 or older;
 2. Abortion counseling;
 3. Services or items furnished solely for cosmetic purposes;
 4. Services provided by a podiatrist; or
 5. More than 15 outpatient physical therapy visits per benefit year for persons age 21 years or older for the purpose of restoring a skill or level of function and maintaining that skill or level of function once restored.
 6. More than 15 outpatient physical therapy visits per benefit year for persons age 21 years or older for the purpose of acquiring a new skill or a new level of function and maintaining that skill or level of function once acquired.

Historical Note

Adopted as an emergency effective May 20, 1982 pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-3). Former Section R9-22-215 adopted as an emergency now adopted and amended as a permanent rule effective August 30, 1982 (Supp. 82-4). Amended effective October 1, 1985 (Supp. 85-5). Section repealed, new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 6 A.A.R. 179, effective December 13, 1999 (Supp. 99-4). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2). Amended by exempt rulemaking at 16 A.A.R. 1638, effective October 1, 2010 (Supp. 10-3). Amended by final rulemaking at 17 A.A.R. 1658, effective August 2, 2011 (Supp. 11-3). Amended by final

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rulemaking at 20 A.A.R. 1949, effective September 6, 2014 (Supp. 14-3).

R9-22-216. NF, Alternative HCBS Setting, or HCBS

- A.** Services provided in a NF, including room and board, an alternative HCBS setting as defined in R9-28-101, or a HCBS as defined in A.R.S. § 36-2939 are covered for a maximum of 90 days per contract year if the member's medical condition would otherwise require hospitalization.
- B.** Except as otherwise provided in 9 A.A.C. 28, the following services are not itemized for separate billing if provided in a NF, alternative HCBS setting, or HCBS:
1. Nursing services, including:
 - a. Administering medication;
 - b. Tube feedings;
 - c. Personal care services, including but not limited to assistance with bathing and grooming;
 - d. Routine testing of vital signs; and
 - e. Maintenance of a catheter;
 2. Basic patient care equipment and sickroom supplies, including:
 - a. First aid supplies such as bandages, tape, ointments, peroxide, alcohol, and over-the-counter remedies;
 - b. Bathing and grooming supplies;
 - c. Identification device;
 - d. Skin lotion;
 - e. Medication cup;
 - f. Alcohol wipes, cotton balls, and cotton rolls;
 - g. Rubber gloves (non-sterile);
 - h. Laxatives;
 - i. Bed and accessories;
 - j. Thermometer;
 - k. Ice bags;
 - l. Rubber sheeting;
 - m. Passive restraints;
 - n. Glycerin swabs;
 - o. Facial tissue;
 - p. Enemas;
 - q. Heating pad; and
 - r. Incontinence briefs.
 3. Dietary services including preparation and administration of special diets, and adaptive tools for eating;
 4. Any service that is included in a NF's room and board charge or a service that is required of the NF to meet a federal or state licensure standard or county certification requirement;
 5. Physician visits made solely for the purpose of meeting state licensure standards or county certification requirements;
 6. Physical therapy prescribed only as a maintenance regimen; and
 7. Assistive devices and non-customized durable medical equipment.
- C.** A provider shall obtain prior authorization from the Administration for a NF admission for a FFS member.

Historical Note

Adopted effective October 1, 1985 (Supp. 85-5). Section repealed, new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 6 A.A.R. 2435, effective June 9, 2000 (Supp. 00-2). Subsection (C) amended to correct a typographical error (Supp. 00-4). Amended by final rulemaking at 8 A.A.R. 2325, effective May 9, 2002 (Supp. 02-2). Amended by final rulemaking at 13 A.A.R. 3272, effective September 11, 2007 (Supp. 07-3). Amended by final rulemaking at

13 A.A.R. 4122, effective November 6, 2007 (Supp. 07-4).

R9-22-217. Services Included in the Federal Emergency Services Program

- A.** Definition. Notwithstanding the definition in R9-22-201, for the purposes of this Section, an emergency medical or behavioral health condition for a FES member means a medical condition or a behavioral health condition, including labor and delivery, manifesting itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in:
1. Placing the member's health in serious jeopardy,
 2. Serious impairment to bodily functions,
 3. Serious dysfunction of any bodily organ or part, or
 4. Serious physical harm to another person.
- B.** Services. "Emergency services for a FES member" mean those medical or behavioral health services provided for the treatment of an emergency condition. Emergency services include outpatient dialysis services for a FES member with End Stage Renal Disease (ESRD) where a treating physician has certified for the month in which services are received that in the physician's opinion the absence of receiving dialysis at least three times per week would reasonably be expected to result in:
1. Placing the member's health in serious jeopardy, or
 2. Serious impairment of bodily function, or
 3. Serious dysfunction of a bodily organ or part.
- C.** Covered services. Services are considered emergency services if all of the criteria specified in subsection (A) are satisfied at the time the services are rendered. The Administration shall determine whether an emergency condition exists on a case-by-case basis.
- D.** Prior authorization. A provider is not required to obtain prior authorization for emergency services for FES members. Prior authorization for outpatient dialysis services is met when the treating physician has completed and signed a monthly certification as described in subsection (B).
- E.** Services rendered through the Federal Emergency Services Program are subject to all exclusions and limitation on services in this Article including but not limited to the limitations on inpatient hospital services in R9-22-204.

Historical Note

Adopted under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective October 26, 1993 (Supp. 93-4). Section repealed, new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by exempt rulemaking at 7 A.A.R. 5701, effective December 1, 2001 (Supp. 01-4). Amended by exempt rulemaking at 10 A.A.R. 4588, effective October 12, 2004 (Supp. 04-4). Amended by final rulemaking at 11 A.A.R. 5480, effective December 6, 2005 (Supp. 05-4). Amended by final rulemaking at 13 A.A.R. 3351, effective November 10, 2007 (Supp. 07-3). Amended by final rulemaking at 17 A.A.R. 1658, effective August 2, 2011 (Supp. 11-3). Amended by exempt rulemaking at 17 A.A.R. 1868, effective October 1, 2011 (Supp. 11-3). Amended by final rulemaking at 19 A.A.R. 2747, effective October 8, 2013 (Supp. 13-3). Amended by final rulemaking at 20 A.A.R. 3098, effective January 4, 2015 (Supp. 14-4).

R9-22-218. Repealed

Arizona Health Care Cost Containment System - Administration

Historical Note

Section R9-22-218 renumbered from R9-22-206 effective January 1, 1996, under an exemption from A.R.S. Title 41, Chapter 6, pursuant to Laws 1995, Third Special Session, Ch. 1, § 5; filed with the Office of the Secretary of State December 28, 1995 (Supp. 95-4). Section repealed effective September 22, 1997 (Supp. 97-3).

ARTICLE 3. GENERAL ELIGIBILITY REQUIREMENTS**R9-22-301. Reserved****Historical Note**

Adopted effective August 30, 1982 (Supp. 82-4). Former Section R9-22-301 renumbered together with former Section R9-22-102 as Section R9-22-101 and amended effective October 1, 1983 (Supp. 83-5). New Section R9-22-301 adopted effective November 20, 1984 (Supp. 84-6).

Amended effective October 1, 1985 (Supp. 85-5). Amended subsection (B), paragraph (8), subsection (E), paragraph (3), and subsection (J), paragraph (5) effective October 1, 1986 (Supp. 86-5). Amended subsections (C) and (E) effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsections (B) and (C) effective October 1, 1987; amended subsection (D) effective December 22, 1987 (Supp. 87-4). Amended effective May 30, 1989 (Supp. 89-2). Amended effective September 29, 1992 (Supp. 92-3). Amended effective December 13, 1993 (Supp. 93-4). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section reserved by final rulemaking at 19 A.A.R. 3309, effective November 30, 2013 (Supp. 13-4).

R9-22-302. Reserved**Historical Note**

Adopted effective August 30, 1982 (Supp. 82-4). Former Section R9-22-302 repealed, new Section R9-22-302 adopted effective November 20, 1984 (Supp. 84-6). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended effective September 29, 1992 (Supp. 92-3). Amended under an exemption from the provisions of the Administrative Procedure Act, effective July 1, 1993 (Supp. 93-3). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). Section reserved by final rulemaking at 19 A.A.R. 3309, effective November 30, 2013 (Supp. 13-4).

R9-22-303. Prior Quarter Eligibility

- A.** Prior Quarter eligibility shall be effective no earlier than January 1, 2014. An applicant may be eligible during any of the three months prior to application if the applicant:
1. Received one or more covered services described in 9 A.A.C. 22, Article 2 and Article 12, and 9 A.A.C. 28, Article 2 during the month; and
 2. Would have qualified for Medicaid at the time services were received if the person had applied regardless of whether the person is alive when the application is made.
- B.** The Prior Quarter requirements do not apply to:
1. Qualified Medicare Beneficiaries
 2. KidsCare

Historical Note

Adopted effective August 30, 1982 (Supp. 82-4). Former Section R9-22-303 repealed, new Section R9-22-303 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Amended effective January 1, 1987, filed December 31, 1986 (Supp. 86-6). Amended subsection (A) effective

February 26, 1988 (Supp. 88-1). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). New Section made by final rulemaking at 19 A.A.R. 3309, effective November 30, 2013 (Supp. 13-4).

R9-22-304. Verification of Eligibility Information

- A.** Except as provided in subsection (E), if information provided by or on behalf of an applicant or member on an application, renewal form or otherwise does not conflict with information obtained by the agency through an electronic data match, the Administration or its designee shall determine or renew eligibility based on such information.
- B.** The Administration or its designee shall not require an applicant, member, or representative to provide additional verification unless the verification cannot be obtained electronically or the verification obtained electronically conflicts with information provided by or on behalf of the applicant or member.
- C.** If information provided by or on behalf of an applicant or member does conflict with information obtained through an electronic data match, the applicant or member shall provide the Administration or its designee with information or documentation necessary to verify eligibility, including evidence originating from an agency, organization, or an individual with actual knowledge of the information.
- D.** Income information obtained through an electronic data match shall be considered reasonably compatible with income information provided by or on behalf of an individual if both meet or both exceed the applicable income limit.
- E.** The Administration or its designee shall not accept the applicant's or member's statement by itself as verification of:
1. SSN;
 2. Qualified alien status, except as described under 42 USC 1320b-7(d)(4)(A); or
 3. Citizenship, except as described under 42 USC 1396a(ee)(1).
- F.** The Administration or its designee shall give an applicant or member at least 10 days from the date of a written or electronic request for information to provide required verification. The Administration or its designee may deny the application or discontinue eligibility if an applicant or a member does not provide the required information timely.

Historical Note

Adopted effective August 30, 1982 (Supp. 82-4). Former Section R9-22-304 repealed, new Section R9-22-304 adopted effective November 20, 1984 (Supp. 84-6). Amended effective October 1, 1985 (Supp. 85-5). Section repealed by final rulemaking at 5 A.A.R. 294, effective January 8, 1999 (Supp. 99-1). New Section R9-22-304 made by final rulemaking at 20 A.A.R. 192, effective January 7, 2014 (Supp. 14-1).

R9-22-305. Eligibility Requirements

As a condition of eligibility, the Administration or its designee must require applicants, and members to do the following:

1. Take all necessary steps to obtain any annuities, pensions, retirement, disability benefits to which they are entitled, unless they can show good cause for not doing so.
2. Furnish a SSN under 42 CFR 435.910 and 435.920, or in the absence of an SSN, provide proof of a submitted application of SSN. The Administration or its designee will assist in obtaining or verifying the applicant's SSN under 42 CFR 435.910 if an applicant cannot recall the applicant's SSN or has not been issued a SSN. An applicant is not required to furnish an SSN if the applicant is not able to legally obtain a SSN. The Administration or its designee shall determine eligibility notwithstanding the applicant's lack of a SSN, if the applicant is cooperat-

36-2903.01. Additional powers and duties; report; definition

A. The director of the Arizona health care cost containment system administration may adopt rules that provide that the system may withhold or forfeit payments to be made to a noncontracting provider by the system if the noncontracting provider fails to comply with this article, the provider agreement or rules that are adopted pursuant to this article and that relate to the specific services rendered for which a claim for payment is made.

B. The director shall:

1. Prescribe uniform forms to be used by all contractors. The rules shall require a written and signed application by the applicant or an applicant's authorized representative, or, if the person is incompetent or incapacitated, a family member or a person acting responsibly for the applicant may obtain a signature or a reasonable facsimile and file the application as prescribed by the administration.

2. Enter into an interagency agreement with the department to establish a streamlined eligibility process to determine the eligibility of all persons defined pursuant to section 36-2901, paragraph 6, subdivision (a). At the administration's option, the interagency agreement may allow the administration to determine the eligibility of certain persons, including those defined pursuant to section 36-2901, paragraph 6, subdivision (a).

3. Enter into an intergovernmental agreement with the department to:

(a) Establish an expedited eligibility and enrollment process for all persons who are hospitalized at the time of application.

(b) Establish performance measures and incentives for the department.

(c) Establish the process for management evaluation reviews that the administration shall perform to evaluate the eligibility determination functions performed by the department.

(d) Establish eligibility quality control reviews by the administration.

(e) Require the department to adopt rules, consistent with the rules adopted by the administration for a hearing process, that applicants or members may use for appeals of eligibility determinations or redeterminations.

(f) Establish the department's responsibility to place sufficient eligibility workers at federally qualified health centers to screen for eligibility and at hospital sites and level one trauma centers to ensure that persons seeking hospital services are screened on a timely basis for eligibility for the system, including a process to ensure that applications for the system can be accepted on a twenty-four hour basis, seven days a week.

(g) Withhold payments based on the allowable sanctions for errors in eligibility determinations or redeterminations or failure to meet performance measures required by the intergovernmental agreement.

(h) Recoup from the department all federal fiscal sanctions that result from the department's inaccurate eligibility determinations. The director may offset all or part of a sanction if the department submits a corrective action plan and a strategy to remedy the error.

4. By rule establish a procedure and time frames for the intake of grievances and requests for hearings, for the continuation of benefits and services during the appeal process and for a grievance process at the contractor level. Notwithstanding sections 41-1092.02, 41-1092.03 and 41-1092.05, the administration shall develop rules to establish the procedure and time frame for the informal resolution of grievances and appeals. A grievance that is not related to a claim for payment of system covered services shall be filed in writing with and received by the administration or the prepaid capitated provider or program contractor not later than sixty days after the date of the adverse action, decision or policy implementation being grieved. A grievance that is related to a claim for payment of system covered services must be filed in writing and received by the administration or the prepaid capitated provider or program contractor within twelve months after the date of service, within twelve months

after the date that eligibility is posted or within sixty days after the date of the denial of a timely claim submission, whichever is later. A grievance for the denial of a claim for reimbursement of services may contest the validity of any adverse action, decision, policy implementation or rule that related to or resulted in the full or partial denial of the claim. A policy implementation may be subject to a grievance procedure, but it may not be appealed for a hearing. The administration is not required to participate in a mandatory settlement conference if it is not a real party in interest. In any proceeding before the administration, including a grievance or hearing, persons may represent themselves or be represented by a duly authorized agent who is not charging a fee. A legal entity may be represented by an officer, partner or employee who is specifically authorized by the legal entity to represent it in the particular proceeding.

5. Apply for and accept federal funds available under title XIX of the social security act (P.L. 89-97; 79 Stat. 344; 42 United States Code section 1396 (1980)) in support of the system. The application made by the director pursuant to this paragraph shall be designed to qualify for federal funding primarily on a prepaid capitated basis. Such funds may be used only for the support of persons defined as eligible pursuant to title XIX of the social security act or the approved section 1115 waiver.

6. At least thirty days before the implementation of a policy or a change to an existing policy relating to reimbursement, provide notice to interested parties. Parties interested in receiving notification of policy changes shall submit a written request for notification to the administration.

7. In addition to the cost sharing requirements specified in subsection D, paragraph 4 of this section:

(a) Charge monthly premiums up to the maximum amount allowed by federal law to all populations of eligible persons who may be charged.

(b) Implement this paragraph to the extent permitted under the federal deficit reduction act of 2005 and other federal laws, subject to the approval of federal waiver authority and to the extent that any changes in the cost sharing requirements under this paragraph would permit this state to receive any enhanced federal matching rate.

C. The director is authorized to apply for any federal funds available for the support of programs to investigate and prosecute violations arising from the administration and operation of the system. Available state funds appropriated for the administration and operation of the system may be used as matching funds to secure federal funds pursuant to this subsection.

D. The director may adopt rules or procedures to do the following:

1. Authorize advance payments based on estimated liability to a contractor or a noncontracting provider after the contractor or noncontracting provider has submitted a claim for services and before the claim is ultimately resolved. The rules shall specify that any advance payment shall be conditioned on the execution before payment of a contract with the contractor or noncontracting provider that requires the administration to retain a specified percentage, which shall be at least twenty percent, of the claimed amount as security and that requires repayment to the administration if the administration makes any overpayment.

2. Defer liability, in whole or in part, of contractors for care provided to members who are hospitalized on the date of enrollment or under other circumstances. Payment shall be on a capped fee-for-service basis for services other than hospital services and at the rate established pursuant to subsection G of this section for hospital services or at the rate paid by the health plan, whichever is less.

3. Deputize, in writing, any qualified officer or employee in the administration to perform any act that the director by law is empowered to do or charged with the responsibility of doing, including the authority to issue final administrative decisions pursuant to section 41-1092.08.

4. Notwithstanding any other law, require persons eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2931 and section 36-2981, paragraph 6 to be financially responsible for any cost sharing requirements established in a state plan or a section 1115 waiver and approved by the centers for medicare and

medicaid services. Cost sharing requirements may include copayments, coinsurance, deductibles, enrollment fees and monthly premiums for enrolled members, including households with children enrolled in the Arizona long-term care system.

E. The director shall adopt rules that further specify the medical care and hospital services that are covered by the system pursuant to section 36-2907.

F. In addition to the rules otherwise specified in this article, the director may adopt necessary rules pursuant to title 41, chapter 6 to carry out this article. Rules adopted by the director pursuant to this subsection shall consider the differences between rural and urban conditions on the delivery of hospitalization and medical care.

G. For inpatient hospital admissions and outpatient hospital services on and after March 1, 1993, the administration shall adopt rules for the reimbursement of hospitals according to the following procedures:

1. For inpatient hospital stays from March 1, 1993 through September 30, 2014, the administration shall use a prospective tiered per diem methodology, using hospital peer groups if analysis shows that cost differences can be attributed to independently definable features that hospitals within a peer group share. In peer grouping the administration may consider such factors as length of stay differences and labor market variations. If there are no cost differences, the administration shall implement a stop loss-stop gain or similar mechanism. Any stop loss-stop gain or similar mechanism shall ensure that the tiered per diem rates assigned to a hospital do not represent less than ninety percent of its 1990 base year costs or more than one hundred ten percent of its 1990 base year costs, adjusted by an audit factor, during the period of March 1, 1993 through September 30, 1994. The tiered per diem rates set for hospitals shall represent no less than eighty-seven and one-half percent or more than one hundred twelve and one-half percent of its 1990 base year costs, adjusted by an audit factor, from October 1, 1994 through September 30, 1995 and no less than eighty-five percent or more than one hundred fifteen percent of its 1990 base year costs, adjusted by an audit factor, from October 1, 1995 through September 30, 1996. For the periods after September 30, 1996 no stop loss-stop gain or similar mechanisms shall be in effect. An adjustment in the stop loss-stop gain percentage may be made to ensure that total payments do not increase as a result of this provision. If peer groups are used, the administration shall establish initial peer group designations for each hospital before implementation of the per diem system. The administration may also use a negotiated rate methodology. The tiered per diem methodology may include separate consideration for specialty hospitals that limit their provision of services to specific patient populations, such as rehabilitative patients or children. The initial per diem rates shall be based on hospital claims and encounter data for dates of service November 1, 1990 through October 31, 1991 and processed through May of 1992. The administration may also establish a separate reimbursement methodology for claims with extraordinarily high costs per day that exceed thresholds established by the administration.

2. For rates effective on October 1, 1994, and annually through September 30, 2011, the administration shall adjust tiered per diem payments for inpatient hospital care by the data resources incorporated market basket index for prospective payment system hospitals. For rates effective beginning on October 1, 1999, the administration shall adjust payments to reflect changes in length of stay for the maternity and nursery tiers.

3. Through June 30, 2004, for outpatient hospital services, the administration shall reimburse a hospital by applying a hospital specific outpatient cost-to-charge ratio to the covered charges. Beginning on July 1, 2004 through June 30, 2005, the administration shall reimburse a hospital by applying a hospital specific outpatient cost-to-charge ratio to covered charges. If the hospital increases its charges for outpatient services filed with the Arizona department of health services pursuant to chapter 4, article 3 of this title, by more than 4.7 percent for dates of service effective on or after July 1, 2004, the hospital specific cost-to-charge ratio will be reduced by the amount that it exceeds 4.7 percent. If charges exceed 4.7 percent, the effective date of the increased charges will be the effective date of the adjusted Arizona health care cost containment system cost-to-charge ratio. The administration shall develop the methodology for a capped fee-for-service schedule and a statewide cost-to-charge ratio. Any covered outpatient service not included in the capped fee-for-service schedule shall be reimbursed by applying the statewide cost-to-charge ratio that is based on the services not included in the capped fee-for-service schedule. Beginning on July 1, 2005, the administration shall reimburse clean claims with dates of service on or after July 1, 2005, based on the capped fee-for-service schedule or the statewide cost-to-charge

ratio established pursuant to this paragraph. The administration may make additional adjustments to the outpatient hospital rates established pursuant to this section based on other factors, including the number of beds in the hospital, specialty services available to patients and the geographic location of the hospital.

4. Except if submitted under an electronic claims submission system, a hospital bill is considered received for purposes of this paragraph on initial receipt of the legible, error-free claim form by the administration if the claim includes the following error-free documentation in legible form:

- (a) An admission face sheet.
- (b) An itemized statement.
- (c) An admission history and physical.
- (d) A discharge summary or an interim summary if the claim is split.
- (e) An emergency record, if admission was through the emergency room.
- (f) Operative reports, if applicable.
- (g) A labor and delivery room report, if applicable.

Payment received by a hospital from the administration pursuant to this subsection or from a contractor either by contract or pursuant to section 36-2904, subsection I is considered payment by the administration or the contractor of the administration's or contractor's liability for the hospital bill. A hospital may collect any unpaid portion of its bill from other third-party payors or in situations covered by title 33, chapter 7, article 3.

5. For services rendered on and after October 1, 1997, the administration shall pay a hospital's rate established according to this section subject to the following:

- (a) If the hospital's bill is paid within thirty days of the date the bill was received, the administration shall pay ninety-nine percent of the rate.
- (b) If the hospital's bill is paid after thirty days but within sixty days of the date the bill was received, the administration shall pay one hundred percent of the rate.
- (c) If the hospital's bill is paid any time after sixty days of the date the bill was received, the administration shall pay one hundred percent of the rate plus a fee of one percent per month for each month or portion of a month following the sixtieth day of receipt of the bill until the date of payment.

6. In developing the reimbursement methodology, if a review of the reports filed by a hospital pursuant to section 36-125.04 indicates that further investigation is considered necessary to verify the accuracy of the information in the reports, the administration may examine the hospital's records and accounts related to the reporting requirements of section 36-125.04. The administration shall bear the cost incurred in connection with this examination unless the administration finds that the records examined are significantly deficient or incorrect, in which case the administration may charge the cost of the investigation to the hospital examined.

7. Except for privileged medical information, the administration shall make available for public inspection the cost and charge data and the calculations used by the administration to determine payments under the tiered per diem system, provided that individual hospitals are not identified by name. The administration shall make the data and calculations available for public inspection during regular business hours and shall provide copies of the data and calculations to individuals requesting such copies within thirty days of receipt of a written request. The administration may charge a reasonable fee for the provision of the data or information.

8. The prospective tiered per diem payment methodology for inpatient hospital services shall include a mechanism for the prospective payment of inpatient hospital capital related costs. The capital payment shall

include hospital specific and statewide average amounts. For tiered per diem rates beginning on October 1, 1999, the capital related cost component is frozen at the blended rate of forty percent of the hospital specific capital cost and sixty percent of the statewide average capital cost in effect as of January 1, 1999 and as further adjusted by the calculation of tier rates for maternity and nursery as prescribed by law. Through September 30, 2011, the administration shall adjust the capital related cost component by the data resources incorporated market basket index for prospective payment system hospitals.

9. For graduate medical education programs:

(a) Beginning September 30, 1997, the administration shall establish a separate graduate medical education program to reimburse hospitals that had graduate medical education programs that were approved by the administration as of October 1, 1999. The administration shall separately account for monies for the graduate medical education program based on the total reimbursement for graduate medical education reimbursed to hospitals by the system in federal fiscal year 1995-1996 pursuant to the tiered per diem methodology specified in this section. The graduate medical education program reimbursement shall be adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement. Subject to legislative appropriation, on an annual basis, each qualified hospital shall receive a single payment from the graduate medical education program that is equal to the same percentage of graduate medical education reimbursement that was paid by the system in federal fiscal year 1995-1996. Any reimbursement for graduate medical education made by the administration shall not be subject to future settlements or appeals by the hospitals to the administration. The monies available under this subdivision shall not exceed the fiscal year 2005-2006 appropriation adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement, except for monies distributed for expansions pursuant to subdivision (b) of this paragraph.

(b) The monies available for graduate medical education programs pursuant to this subdivision shall not exceed the fiscal year 2006-2007 appropriation adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement. Graduate medical education programs eligible for such reimbursement are not precluded from receiving reimbursement for funding under subdivision (c) of this paragraph. Beginning July 1, 2006, the administration shall distribute any monies appropriated for graduate medical education above the amount prescribed in subdivision (a) of this paragraph in the following order or priority:

(i) For the direct costs to support the expansion of graduate medical education programs established before July 1, 2006 at hospitals that do not receive payments pursuant to subdivision (a) of this paragraph. These programs must be approved by the administration.

(ii) For the direct costs to support the expansion of graduate medical education programs established on or before October 1, 1999. These programs must be approved by the administration.

(c) The administration shall distribute to hospitals any monies appropriated for graduate medical education above the amount prescribed in subdivisions (a) and (b) of this paragraph for the following purposes:

(i) For the direct costs of graduate medical education programs established or expanded on or after July 1, 2006. These programs must be approved by the administration.

(ii) For a portion of additional indirect graduate medical education costs for programs that are located in a county with a population of less than five hundred thousand persons at the time the residency position was created or for a residency position that includes a rotation in a county with a population of less than five hundred thousand persons at the time the residency position was established. These programs must be approved by the administration.

(d) The administration shall develop, by rule, the formula by which the monies are distributed.

(e) Each graduate medical education program that receives funding pursuant to subdivision (b) or (c) of this paragraph shall identify and report to the administration the number of new residency positions created by the funding provided in this paragraph, including positions in rural areas. The program shall also report information related to the number of funded residency positions that resulted in physicians locating their practices in this state. The administration shall report to the joint legislative budget committee by February 1 of each year on the number of new residency positions as reported by the graduate medical education programs.

(f) Local, county and tribal governments and any university under the jurisdiction of the Arizona board of regents may provide monies in addition to any state general fund monies appropriated for graduate medical education in order to qualify for additional matching federal monies for providers, programs or positions in a specific locality and costs incurred pursuant to a specific contract between the administration and providers or other entities to provide graduate medical education services as an administrative activity. Payments by the administration pursuant to this subdivision may be limited to those providers designated by the funding entity and may be based on any methodology deemed appropriate by the administration, including replacing any payments that might otherwise have been paid pursuant to subdivision (a), (b) or (c) of this paragraph had sufficient state general fund monies or other monies been appropriated to fully fund those payments. These programs, positions, payment methodologies and administrative graduate medical education services must be approved by the administration and the centers for medicare and medicaid services. The administration shall report to the president of the senate, the speaker of the house of representatives and the director of the joint legislative budget committee on or before July 1 of each year on the amount of money contributed and number of residency positions funded by local, county and tribal governments, including the amount of federal matching monies used.

(g) Any funds appropriated but not allocated by the administration for subdivision (b) or (c) of this paragraph may be reallocated if funding for either subdivision is insufficient to cover appropriate graduate medical education costs.

10. Notwithstanding section 41-1005, subsection A, paragraph 9, the administration shall adopt rules pursuant to title 41, chapter 6 establishing the methodology for determining the prospective tiered per diem payments that are in effect through September 30, 2014.

11. For inpatient hospital services rendered on or after October 1, 2011, the prospective tiered per diem payment rates are permanently reset to the amounts payable for those services as of October 1, 2011 pursuant to this subsection.

12. The administration shall adopt a diagnosis-related group based hospital reimbursement methodology consistent with title XIX of the social security act for inpatient dates of service on and after October 1, 2014. The administration may make additional adjustments to the inpatient hospital rates established pursuant to this section for hospitals that are publicly operated or based on other factors, including the number of beds in the hospital, the specialty services available to patients, the geographic location and diagnosis-related group codes that are made publicly available by the hospital pursuant to section 36-437. The administration may also provide additional reimbursement for extraordinarily high cost cases that exceed a threshold above the standard payment. The administration may also establish a separate payment methodology for specific services or hospitals serving unique populations.

H. The director may adopt rules that specify enrollment procedures, including notice to contractors of enrollment. The rules may provide for varying time limits for enrollment in different situations. The administration shall specify in contract when a person who has been determined eligible will be enrolled with that contractor and the date on which the contractor will be financially responsible for health and medical services to the person.

I. The administration may make direct payments to hospitals for hospitalization and medical care provided to a member in accordance with this article and rules. The director may adopt rules to establish the procedures by which the administration shall pay hospitals pursuant to this subsection if a contractor fails to make timely payment to a hospital. Such payment shall be at a level determined pursuant to section 36-2904, subsection H

or I. The director may withhold payment due to a contractor in the amount of any payment made directly to a hospital by the administration on behalf of a contractor pursuant to this subsection.

J. The director shall establish a special unit within the administration for the purpose of monitoring the third-party payment collections required by contractors and noncontracting providers pursuant to section 36-2903, subsection B, paragraph 10 and subsection F and section 36-2915, subsection E. The director shall determine by rule:

1. The type of third-party payments to be monitored pursuant to this subsection.

2. The percentage of third-party payments that is collected by a contractor or noncontracting provider and that the contractor or noncontracting provider may keep and the percentage of such payments that the contractor or noncontracting provider may be required to pay to the administration. Contractors and noncontracting providers must pay to the administration one hundred percent of all third-party payments that are collected and that duplicate administration fee-for-service payments. A contractor that contracts with the administration pursuant to section 36-2904, subsection A may be entitled to retain a percentage of third-party payments if the payments collected and retained by a contractor are reflected in reduced capitation rates. A contractor may be required to pay the administration a percentage of third-party payments that are collected by a contractor and that are not reflected in reduced capitation rates.

K. The administration shall establish procedures to apply to the following if a provider that has a contract with a contractor or noncontracting provider seeks to collect from an individual or financially responsible relative or representative a claim that exceeds the amount that is reimbursed or should be reimbursed by the system:

1. On written notice from the administration or oral or written notice from a member that a claim for covered services may be in violation of this section, the provider that has a contract with a contractor or noncontracting provider shall investigate the inquiry and verify whether the person was eligible for services at the time that covered services were provided. If the claim was paid or should have been paid by the system, the provider that has a contract with a contractor or noncontracting provider shall not continue billing the member.

2. If the claim was paid or should have been paid by the system and the disputed claim has been referred for collection to a collection agency or referred to a credit reporting bureau, the provider that has a contract with a contractor or noncontracting provider shall:

(a) Notify the collection agency and request that all attempts to collect this specific charge be terminated immediately.

(b) Advise all credit reporting bureaus that the reported delinquency was in error and request that the affected credit report be corrected to remove any notation about this specific delinquency.

(c) Notify the administration and the member that the request for payment was in error and that the collection agency and credit reporting bureaus have been notified.

3. If the administration determines that a provider that has a contract with a contractor or noncontracting provider has billed a member for charges that were paid or should have been paid by the administration, the administration shall send written notification by certified mail or other service with proof of delivery to the provider that has a contract with a contractor or noncontracting provider stating that this billing is in violation of federal and state law. If, twenty-one days or more after receiving the notification, a provider that has a contract with a contractor or noncontracting provider knowingly continues billing a member for charges that were paid or should have been paid by the system, the administration may assess a civil penalty in an amount equal to three times the amount of the billing and reduce payment to the provider that has a contract with a contractor or noncontracting provider accordingly. Receipt of delivery signed by the addressee or the addressee's employee is prima facie evidence of knowledge. Civil penalties collected pursuant to this subsection shall be deposited in the state general fund. Section 36-2918, subsections C, D and F, relating to the imposition, collection and enforcement of civil penalties, apply to civil penalties imposed pursuant to this paragraph.

L. The administration may conduct postpayment review of all claims paid by the administration and may recoup any monies erroneously paid. The director may adopt rules that specify procedures for conducting postpayment review. A contractor may conduct a postpayment review of all claims paid by the contractor and may recoup monies that are erroneously paid.

M. Subject to title 41, chapter 4, article 4, the director or the director's designee may employ and supervise personnel necessary to assist the director in performing the functions of the administration.

N. The administration may contract with contractors for obstetrical care who are eligible to provide services under title XIX of the social security act.

O. Notwithstanding any other law, on federal approval the administration may make disproportionate share payments to private hospitals, county operated hospitals, including hospitals owned or leased by a special health care district, and state operated institutions for mental disease beginning October 1, 1991 in accordance with federal law and subject to legislative appropriation. If at any time the administration receives written notification from federal authorities of any change or difference in the actual or estimated amount of federal funds available for disproportionate share payments from the amount reflected in the legislative appropriation for such purposes, the administration shall provide written notification of such change or difference to the president and the minority leader of the senate, the speaker and the minority leader of the house of representatives, the director of the joint legislative budget committee, the legislative committee of reference and any hospital trade association within this state, within three working days not including weekends after receipt of the notice of the change or difference. In calculating disproportionate share payments as prescribed in this section, the administration may use either a methodology based on claims and encounter data that is submitted to the administration from contractors or a methodology based on data that is reported to the administration by private hospitals and state operated institutions for mental disease. The selected methodology applies to all private hospitals and state operated institutions for mental disease qualifying for disproportionate share payments.

P. Disproportionate share payments made pursuant to subsection O of this section include amounts for disproportionate share hospitals designated by political subdivisions of this state, tribal governments and universities under the jurisdiction of the Arizona board of regents. Subject to the approval of the centers for medicare and medicaid services, any amount of federal funding allotted to this state pursuant to section 1923(f) of the social security act and not otherwise spent under subsection O of this section shall be made available for distribution pursuant to this subsection. Political subdivisions of this state, tribal governments and universities under the jurisdiction of the Arizona board of regents may designate hospitals eligible to receive disproportionate share payments in an amount up to the limit prescribed in section 1923(g) of the social security act if those political subdivisions, tribal governments or universities provide sufficient monies to qualify for the matching federal monies for the disproportionate share payments.

Q. Notwithstanding any law to the contrary, the administration may receive confidential adoption information to determine whether an adopted child should be terminated from the system.

R. The adoption agency or the adoption attorney shall notify the administration within thirty days after an eligible person receiving services has placed that person's child for adoption.

S. If the administration implements an electronic claims submission system, it may adopt procedures pursuant to subsection G of this section requiring documentation different than prescribed under subsection G, paragraph 4 of this section.

T. In addition to any requirements adopted pursuant to subsection D, paragraph 4 of this section, notwithstanding any other law, subject to approval by the centers for medicare and medicaid services, beginning July 1, 2011, members eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2931 and section 36-2981, paragraph 6 shall pay the following:

1. A monthly premium of fifteen dollars, except that the total monthly premium for an entire household shall not exceed sixty dollars.

2. A copayment of five dollars for each physician office visit.
3. A copayment of ten dollars for each urgent care visit.
4. A copayment of thirty dollars for each emergency department visit.

U. Subject to the approval of the centers for medicare and medicaid services, political subdivisions of this state, tribal governments and any university under the jurisdiction of the Arizona board of regents may provide to the Arizona health care cost containment system administration monies in addition to any state general fund monies appropriated for critical access hospitals in order to qualify for additional federal monies. Any amount of federal monies received by this state pursuant to this subsection shall be distributed as supplemental payments to critical access hospitals.

V. For the purposes of this section, "disproportionate share payment" means a payment to a hospital that serves a disproportionate share of low-income patients as described by 42 United States Code section 1396r-4.

36-2903.03. United States citizenship and qualified alien requirements for eligibility; report; definition

A. A person who is applying for eligibility under this chapter shall provide verification of United States citizenship or documented verification of qualified alien status. Beginning July 1, 2006, an applicant who is applying for services pursuant to this chapter shall provide satisfactory documentary evidence of citizenship or qualified alien status as required by the federal deficit reduction act of 2005 (P.L. 109-171; 120 Stat. 4; 42 United States Code section 1396b) or any other applicable federal law or regulation.

B. A qualified alien may apply for eligibility pursuant to section 36-2901, paragraph 6, subdivision (a) and, if otherwise eligible for title XIX, may receive all services pursuant to section 36-2907 if the qualified alien meets at least one of the following requirements:

1. Is designated as one of the exception groups under 8 United States Code section 1613(b).
2. Has been a qualified alien for at least five years.
3. Has been continuously present in the United States since August 21, 1996.

C. Notwithstanding any other law, persons who were residing in the United States under color of law on or before August 21, 1996, and who were receiving services under this article based on eligibility criteria established under the supplemental security income program, may apply for state funded services and, if otherwise eligible for supplemental security income-medical assistance only coverage except for United States citizenship or qualified alien requirements, may be enrolled with the system and receive all services pursuant to section 36-2907.

D. A person who is a qualified alien who does not meet the requirements of subsection B of this section or who is a noncitizen who does not claim and provide verification of qualified alien status may apply for title XIX eligibility under section 36-2901, paragraph 6, subdivision (a) and, if otherwise eligible for title XIX, may receive only emergency services pursuant to section 1903(v) of the social security act.

E. In determining the eligibility for all qualified aliens pursuant to this chapter, the income and resources of any person who executed an affidavit of support pursuant to section 213A of the immigration and nationality act on behalf of the qualified alien and the income and resources of the spouse, if any, of the sponsoring individual shall be counted at the time of application and for the redetermination of eligibility for the duration of the attribution period as specified in federal law.

F. A person who is a qualified alien or a noncitizen and who is not eligible for title XIX may receive only emergency services.

G. On or before September 30 of each year, the administration shall submit a report to the governor, the president of the senate, the speaker of the house of representatives and the staff director of the joint legislative budget committee that includes the following information:

1. The number of individuals for whom the administration verified immigration status using the systematic alien verification for entitlements program administered by the United States citizenship and immigration services.
2. The number of documents that were discovered to be fraudulent by using the systematic alien verification for entitlements program.
3. A list of the types of fraudulent documents discovered.
4. The number of citizens of the United States who were referred by the administration for prosecution pursuant to violations of state or federal law and the number of individuals referred by the administration for prosecution who were not citizens.

H. The administration shall provide copies of the report to the secretary of state and the director of the Arizona state library, archives and public records.

I. For purposes of this section, "qualified alien" means an individual who is one of the following:

1. Defined as a qualified alien under 8 United States Code section 1641.
2. Defined as a qualified alien by the attorney general of the United States under the authority of Public Law 104-208, section 501.
3. An Indian described in 8 United States Code section 1612(b)(2)(E).

36-2907. Covered health and medical services; modifications; related delivery of service requirements; definition

A. Subject to the limitations and exclusions specified in this section, contractors shall provide the following medically necessary health and medical services:

1. Inpatient hospital services that are ordinarily furnished by a hospital for the care and treatment of inpatients and that are provided under the direction of a physician or a primary care practitioner. For the purposes of this section, inpatient hospital services exclude services in an institution for tuberculosis or mental diseases unless authorized under an approved section 1115 waiver.
2. Outpatient health services that are ordinarily provided in hospitals, clinics, offices and other health care facilities by licensed health care providers. Outpatient health services include services provided by or under the direction of a physician or a primary care practitioner, including occupational therapy.
3. Other laboratory and X-ray services ordered by a physician or a primary care practitioner.
4. Medications that are ordered on prescription by a physician or a dentist licensed pursuant to title 32, chapter 11. Persons who are dually eligible for title XVIII and title XIX services must obtain available medications through a medicare licensed or certified medicare advantage prescription drug plan, a medicare prescription drug plan or any other entity authorized by medicare to provide a medicare part D prescription drug benefit.
5. Medical supplies, durable medical equipment, insulin pumps and prosthetic devices ordered by a physician or a primary care practitioner. Suppliers of durable medical equipment shall provide the administration with complete information about the identity of each person who has an ownership or controlling interest in their business and shall comply with federal bonding requirements in a manner prescribed by the administration.
6. For persons who are at least twenty-one years of age, treatment of medical conditions of the eye, excluding eye examinations for prescriptive lenses and the provision of prescriptive lenses.
7. Early and periodic health screening and diagnostic services as required by section 1905(r) of title XIX of the social security act for members who are under twenty-one years of age.
8. Family planning services that do not include abortion or abortion counseling. If a contractor elects not to provide family planning services, this election does not disqualify the contractor from delivering all other covered health and medical services under this chapter. In that event, the administration may contract directly with another contractor, including an outpatient surgical center or a noncontracting provider, to deliver family planning services to a member who is enrolled with the contractor that elects not to provide family planning services.
9. Podiatry services that are performed by a podiatrist who is licensed pursuant to title 32, chapter 7 and ordered by a primary care physician or primary care practitioner.
10. Nonexperimental transplants approved for title XIX reimbursement.
11. For persons who are at least twenty-one years of age, emergency dental care and extractions in an annual amount of not more than one thousand dollars per member.
12. Ambulance and nonambulance transportation, except as provided in subsection G of this section.
13. Hospice care.
14. Orthotics, if all of the following apply:

(a) The use of the orthotic is medically necessary as the preferred treatment option consistent with medicare guidelines.

(b) The orthotic is less expensive than all other treatment options or surgical procedures to treat the same diagnosed condition.

(c) The orthotic is ordered by a physician or primary care practitioner.

B. The limitations and exclusions for health and medical services provided under this section are as follows:

1. Circumcision of newborn males is not a covered health and medical service.

2. For eligible persons who are at least twenty-one years of age:

(a) Outpatient health services do not include speech therapy.

(b) Prosthetic devices do not include hearing aids, dentures, bone-anchored hearing aids or cochlear implants. Prosthetic devices, except prosthetic implants, may be limited to twelve thousand five hundred dollars per contract year.

(c) Percussive vests are not covered health and medical services.

(d) Durable medical equipment is limited to items covered by medicare.

(e) Nonexperimental transplants do not include pancreas-only transplants.

(f) Bariatric surgery procedures, including laparoscopic and open gastric bypass and restrictive procedures, are not covered health and medical services.

C. The system shall pay noncontracting providers only for health and medical services as prescribed in subsection A of this section and as prescribed by rule.

D. The director shall adopt rules necessary to limit, to the extent possible, the scope, duration and amount of services, including maximum limitations for inpatient services that are consistent with federal regulations under title XIX of the social security act (P.L. 89-97; 79 Stat. 344; 42 United States Code section 1396 (1980)). To the extent possible and practicable, these rules shall provide for the prior approval of medically necessary services provided pursuant to this chapter.

E. The director shall make available home health services in lieu of hospitalization pursuant to contracts awarded under this article. For the purposes of this subsection, "home health services" means the provision of nursing services, home health aide services or medical supplies, equipment and appliances that are provided on a part-time or intermittent basis by a licensed home health agency within a member's residence based on the orders of a physician or a primary care practitioner. Home health agencies shall comply with the federal bonding requirements in a manner prescribed by the administration.

F. The director shall adopt rules for the coverage of behavioral health services for persons who are eligible under section 36-2901, paragraph 6, subdivision (a). The administration acting through the regional behavioral health authorities shall establish a diagnostic and evaluation program to which other state agencies shall refer children who are not already enrolled pursuant to this chapter and who may be in need of behavioral health services. In addition to an evaluation, the administration acting through regional behavioral health authorities shall also identify children who may be eligible under section 36-2901, paragraph 6, subdivision (a) or section 36-2931, paragraph 5 and shall refer the children to the appropriate agency responsible for making the final eligibility determination.

G. The director shall adopt rules for the provision of transportation services and rules providing for copayment by members for transportation for other than emergency purposes. Subject to approval by the centers for

medicare and medicaid services, nonemergency medical transportation shall not be provided except for stretcher vans and ambulance transportation. Prior authorization is required for transportation by stretcher van and for medically necessary ambulance transportation initiated pursuant to a physician's direction. Prior authorization is not required for medically necessary ambulance transportation services rendered to members or eligible persons initiated by dialing telephone number 911 or other designated emergency response systems.

H. The director may adopt rules to allow the administration, at the director's discretion, to use a second opinion procedure under which surgery may not be eligible for coverage pursuant to this chapter without documentation as to need by at least two physicians or primary care practitioners.

I. If the director does not receive bids within the amounts budgeted or if at any time the amount remaining in the Arizona health care cost containment system fund is insufficient to pay for full contract services for the remainder of the contract term, the administration, on notification to system contractors at least thirty days in advance, may modify the list of services required under subsection A of this section for persons defined as eligible other than those persons defined pursuant to section 36-2901, paragraph 6, subdivision (a). The director may also suspend services or may limit categories of expense for services defined as optional pursuant to title XIX of the social security act (P.L. 89-97; 79 Stat. 344; 42 United States Code section 1396 (1980)) for persons defined pursuant to section 36-2901, paragraph 6, subdivision (a). Such reductions or suspensions do not apply to the continuity of care for persons already receiving these services.

J. Additional, reduced or modified hospitalization and medical care benefits may be provided under the system to enrolled members who are eligible pursuant to section 36-2901, paragraph 6, subdivision (b), (c), (d) or (e).

K. All health and medical services provided under this article shall be provided in the geographic service area of the member, except:

1. Emergency services and specialty services provided pursuant to section 36-2908.

2. That the director may permit the delivery of health and medical services in other than the geographic service area in this state or in an adjoining state if the director determines that medical practice patterns justify the delivery of services or a net reduction in transportation costs can reasonably be expected. Notwithstanding the definition of physician as prescribed in section 36-2901, if services are procured from a physician or primary care practitioner in an adjoining state, the physician or primary care practitioner shall be licensed to practice in that state pursuant to licensing statutes in that state similar to title 32, chapter 13, 15, 17 or 25 and shall complete a provider agreement for this state.

L. Covered outpatient services shall be subcontracted by a primary care physician or primary care practitioner to other licensed health care providers to the extent practicable for purposes including, but not limited to, making health care services available to underserved areas, reducing costs of providing medical care and reducing transportation costs.

M. The director shall adopt rules that prescribe the coordination of medical care for persons who are eligible for system services. The rules shall include provisions for the transfer of patients, the transfer of medical records and the initiation of medical care.

N. For the purposes of this section, "ambulance" has the same meaning prescribed in section 36-2201.

ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

Title 9, Chapter 28, Article 1 (Definitions) and Article 2 (Covered Services)



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: February 7, 2023

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: January 3, 2023

SUBJECT: ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
Title 9, Chapter 28, Article 1 (Definitions) and Article 2 (Covered Services)

Summary

This Five-Year Review Report (5YRR) from the Arizona Health Care Cost Containment System (AHCCCS or Administration) relates to rules in Title 9, Chapter 28, Article 1 Definitions and Article 2 Covered Services for the Arizona Long Term Care System (ALTCS).

The ALTCS program is authorized by Title XIX of the Social Security Act. This program is a federal- and state-funded program for individuals who are aged 65 and over, blind, or disabled and who need ongoing nursing facility level of care. The rules in Title 9, Chapter 28, Article 1 offers definitions to make the rules more clear, concise, and understandable. The rules in Title 9, Chapter 28, Article 2 identifies the scope of services provided in an institutional setting or in the member's home.

Proposed Action

Following the approval of the 5YRR in 2018, the Administration received a 1115 Waiver to allow for operation of a community engagement program which would have impacted this chapter by the permutation of operationalizing the program. In early 2019, a number of other State Medicaid Agencies were sued following the implementation of their own community engagement programs and AHCCCS's program was put on hold. Prior to the conclusion of those lawsuits, the COVID-19 Public Health Emergency (PHE) had begun and non-essential (those

not tied to session law or budget bills) rulemakings were put on hold. Beginning in early 2022, AHCCCS began the PHE unwinding process, which allowed the Administration to begin initiating non-essential rulemakings. Therefore, the prior course of action, also identified below, is carried over into this report and will be completed in a rulemaking following GRRC approval of this report.

1. Has the agency analyzed whether the rules are authorized by statute?

The Administration cites both general and specific statutory authority for these rules.

2. Summary of the agency's economic impact comparison and identification of stakeholders:

The Administration has made no changes to the rules within the last five years and therefore reports no changes to the economic impact comparison.

Stakeholders are identified as the Administration, the Department of Economic Security Division of Developmental Disability, members enrolled in Arizona's Long Term Case program (ALTCS), and ALTCS program contractors.

3. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?

The Administration states that the rules are the most cost effective and efficient method of complying with federal law and state statute.

4. Has the agency received any written criticisms of the rules over the last five years?

The Administration indicates that they have not received any written criticisms of the rules in the last five years for either article.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Administration indicates the rules are generally clear, concise, and understandable with the following exceptions:

R9-28-102: ICFMR to ICFIID should be updated to conform with AHCCCS policy.

R9-28-103: ICFMR to ICFIID should be updated to conform with AHCCCS policy.

R9-28-204: Terminology should be updated to align with current AHCCCS policy and regulations.

R9-28-205: List of durable medical equipment should be updated to align with AHCCCS policy.

R9-28-206: List of durable medical equipment should be updated to align with AHCCCS policy.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

The Administration indicates the rules are generally consistent with other rules and statutes with the following exceptions:

R9-28-101: Behavioral Health Residential Facilities (BHRF) definition should be updated.

Out-dated cross references should be updated.

R9-28-204: IMD day limit should be updated to conform with Medicaid Managed Care regulations

R9-28-206: Emergency dental provisions should be updated to align with A.R.S. § 36-2939

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Administration states the rules are effective in achieving their objectives.

8. Has the agency analyzed the current enforcement status of the rules?

The Administration indicates the rules are generally enforced with the following exceptions:

R9-28-204: IMD day limit should be updated to conform with Medicaid Managed Care regulations

R9-28-206: Emergency dental provisions should be updated to align with A.R.S. § 36-2939

9. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?

The Administration indicates none of the rules reviewed are more stringent than a corresponding federal law.

10. For rules adopted after July 29, 2010, do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

The Administration states that this rule is not applicable.

11. Conclusion

As mentioned above, the Administration indicates that the rules are generally clear, concise, and understandable and effective in achieving their objective.

The Administration is ready to initiate a rulemaking to implement the changes identified above in the 5YRR and will request approval from the Governor's Office for an expedited rulemaking within 120 days following GRRC's approval of this report.

For these reasons, Council staff believe the Administration has submitted an adequate report and recommends approval.

November 28, 2022

VIA EMAIL: grrc@azdoa.gov

Nicole Sornsins, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

RE: AHCCCS Title 9, Chapter 28, Articles 1 & 2;

Dear Ms. Sornsins:

Please find enclosed AHCCCS's Five-Year Review Report for Title 9, Chapter 28, Articles 1 and 2 which was due on July 28, 2022, and extended by Council approval to a new deadline of November 28, 2022.

AHCCCS hereby certifies compliance with A.R.S. 41-1091.

For questions about this report, please contact Stephanie Elzenga at 602-417-4232 or stephanie.elzenga@azahcccs.gov.

Sincerely,



Kasey Rogg
Assistant Director

Attachments

Arizona Health Care Cost Containment System (AHCCCS)

5 YEAR REVIEW REPORT

A.A.C. Title 9, Chapter 28, Article 1

November 2022

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. §§ 36-2932; 36-2903.01

Specific Statutory Authority: A.R.S. § 36-2939

2. The objective of each rule:

Rule	Objective
R9-28-101	This rule sets forth definitions applicable to the ALTCS program.
R9-28-102	This rule sets forth definitions applicable to covered services in the ALTCS program.
R9-28-103	This rule sets forth definitions applicable to the Preadmission Screening in the ALTCS program.
R9-28-106	This rule sets forth definitions applicable to Request for Proposal and the Contract Process in the ALTCS program.
R9-28-111	This rule sets forth definitions applicable to behavioral health services in the ALTCS program.

3. Are the rules effective in achieving their objectives? Yes X No ___

4. Are the rules consistent with other rules and statutes? Yes ___ No X

Rule	Explanation
R9-28-101	No longer have separate licensure for Level 2 and Level 3. These were combined and are referred to as Behavioral Health Residential Facilities (BHRF), therefore the definition should be updated accordingly. Out-dated cross references in other definitions will be updated.

5. Are the rules enforced as written? Yes X No ___

6. Are the rules clear, concise, and understandable? Yes ___ No X

Rule	Explanation
R9-28-102	Update terminology of ICFMR to ICFIID to conform with AHCCCS policy.
R9-28-103	Update terminology of ICFMR to ICFIID to conform with AHCCCS policy.

7. Has the agency received written criticisms of the rules within the last five years? Yes ___ No X

8. **Economic, small business, and consumer impact comparison:**

There is no measurable economic or consumer impact because the majority of the recommended changes are for clarification purposes, or to align with AHCCCS policy, and do not actually expand the current scope of service. A couple of the recommended changes, including the emergency dental provisions, do have an economic impact on the Administration's budget; however, this was already reflected in agency practice because AHCCCS policy has already been updated to reflect this statutory change, therefore there is no economic impact going forward.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes ___ No X

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

Following the 5YRR approval for these articles, AHCCCS received an 1115 Waiver to allow for operation of a community engagement program in July 2018. Many months of work were put into what the requirements would look like and how they would impact existing eligibility regulations. These articles would have been impacted by the permutation of operationalizing the program; however, in early 2019, a number of other State Medicaid Agencies were sued following implementation of their own community engagement program. Knowing that CMS's interpretation of Arizona's 1115 Waiver would be impacted by the outcome of litigation, AHCCCS's program was put on hold. Prior to the conclusion of those lawsuits, and in the first quarter of 2020, the COVID-19 Public Health Emergency (PHE) had begun and non-essential (those not tied to session law or budget bills) rulemakings were put on hold. Beginning in early 2022, AHCCCS began the PHE unwinding process, which allowed us to begin initiating non-essential rulemakings. As a result, two expedited rulemakings were able to be completed and were immediately followed by several essential rulemakings. Therefore, the prior course of action is carried over into this report and will be completed in a rulemaking following GRRC approval of this report.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The underlying regulatory objectives are the most cost-effective means and impose the least burden to regulated persons.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No X

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

Not applicable.

14. Proposed course of action

AHCCCS is ready to initiate a rulemaking to allow for implementation of the 5YRR course of action, once approved by GRRC, and will present it to the agency's policy advisor following the appointment of the agency's new Director. AHCCCS will then request approval from the Governor's Office for an expedited or regulatory rulemaking within 120 days following GRRC's approval of this 5YRR.

Arizona Health Care Cost Containment System

(AHCCCS)

5 YEAR REVIEW REPORT

A.A.C. Title 9, Chapter 28, Article 2

November 2022

1. Authorization of the rule by existing statutes

General Statutory Authority: A.R.S. §§ 36-2932(M); 36-2903.01

Specific Statutory Authority: A.R.S. § 36-2939

2. The objective of each rule:

Rule	Objective
R9-28-201	This rule sets forth definitions applicable to the Article and establishes certain requirements, limitations and exclusions that are applicable to most, if not all, health care services provided by the program.
R9-28-202	This rule prescribes medical services covered in the ALTCS program.
R9-28-203	This rule describes who can receive Children's Rehabilitative Services.
R9-28-204	This rule describes institutional services available in the ALTCS Program.
R9-28-205	This rule establishes requirements, limitations and exclusions that are applicable to home and community based services.
R9-28-206	This rule describes the institutional and HCBS services covered in the ALTCS Program and the limitations applicable to those services.

3. Are the rules effective in achieving their objectives? Yes X No ___

4. Are the rules consistent with other rules and statutes? Yes X No ___

Rule	Explanation
R9-28-204	Update IMD day limit to conform with Medicaid Managed Care regulations.
R9-28-206	Update to include emergency dental provisions to align with A.R.S. § 36-2939.

5. Are the rules enforced as written? Yes ___ No X

Rule	Explanation
R9-28-204	Update IMD day limit to conform with Medicaid Managed Care regulations.
R9-28-206	Update to include emergency dental provisions to align with A.R.S. § 36-2939.

6. Are the rules clear, concise, and understandable? Yes X No ___

Rule	Explanation
R9-28-204	Update terminology to align with current AHCCCS policy and references to other regulations.
R9-28-205	Update list of durable medical equipment to align with AHCCCS policy.
R9-28-206	Update list of durable medical equipment to align with AHCCCS policy.

7. **Has the agency received written criticisms of the rules within the last five years?** Yes ___ No X

8. **Economic, small business, and consumer impact comparison:**

There is no measurable economic or consumer impact because the majority of the recommended changes are for clarification purposes, or to align with AHCCCS policy, and do not actually expand the current scope of service. A couple of the recommended changes, including the emergency dental provisions, do have an economic impact on the Administration's budget; however, this was already reflected in agency practice because AHCCCS policy has already been updated to reflect this statutory change, therefore there is no economic impact going forward.

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10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

Following the 5YRR approval for these articles, AHCCCS received an 1115 Waiver to allow for operation of a community engagement program in July 2018. Many months of work were put into what the requirements would look like and how they would impact existing eligibility regulations. These articles would have been impacted by the permutation of operationalizing the program; however, in early 2019, a number of other State Medicaid Agencies were sued following implementation of their own community engagement program. Knowing that CMS's interpretation of Arizona's 1115 Waiver would be impacted by the outcome of litigation, AHCCCS's program was put on hold. Prior to the conclusion of those lawsuits, and in the first quarter of 2020, the COVID-19 Public Health Emergency (PHE) had begun and non-essential (those not tied to session law or budget bills) rulemakings were put on hold. Beginning in early 2022, AHCCCS began the PHE unwinding process, which allowed us to begin initiating non-essential rulemakings. As a result, two expedited rulemakings were able to be completed and were immediately followed by several essential rulemakings. Therefore, the prior course of action is carried over into this report and will be completed in a rulemaking following GRRC approval of this report.

11. **A determination that the probable benefits of the rule outweigh within this state the probable costs of the rule, and the rule imposes the least burden and costs to regulated persons by the rule, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective:**

The underlying regulatory objectives are the most cost-effective means and impose the least burden to regulated persons.

12. Are the rules more stringent than corresponding federal laws? Yes ___ No X

13. For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:

Not applicable.

14. Proposed course of action

AHCCCS is ready to initiate a rulemaking to allow for implementation of the 5YRR course of action, once approved by GRRC, and will present it to the agency's policy advisor following the appointment of the agency's new Director. AHCCCS will then request approval from the Governor's Office for an expedited or regulatory rulemaking within 120 days following GRRC's approval of this 5YRR.

Arizona Health Care Cost Containment System – Arizona Long-term Care System

ARTICLE 1. DEFINITIONS

R9-28-101. General Definitions

A. Location of definitions. Definitions applicable to Chapter 28 are found in the following:

Definition Section or Citation

“210” 42 CFR 435.211

“217” 42 CFR 435.217

“236” 42 CFR 435.236

“Acute” R9-28-301

“ADHS” R9-22-101

“ADL” R9-28-101

“Administration” A.R.S. § 36-2931

“Advance notice” R9-28-411

“Aged” R9-28-402

“Aggregate” R9-22-701

“Aggression” R9-28-301

“AHCCCS” R9-22-101

“AHCCCS registered provider” R9-22-101

“ALTCS” R9-28-101

“ALTCS acute care services” R9-28-401

“Alternative HCBS setting” R9-28-101

“Ambulance” A.R.S. § 36-2201

“Ambulation” R9-28-301

“Applicant” R9-22-101

“Assessor” R9-28-301

“Auto-assignment algorithm” or “Algorithm” R9-22-1701

“Bathing” R9-28-301

“Bathing or showering” R9-28-301

“Bed hold” R9-28-102

“Behavior intervention” R9-28-102

“Behavior management services” R9-22-1201

“Behavioral health evaluation” R9-22-1201

“Behavioral health medical practitioner” R9-22-1201

“Behavioral health professional” R9-20-101

“Behavioral health service” R9-20-101

“Behavioral health technician” R9-20-101

“Billed charges” R9-22-701

“Blind” 42 U.S.C. 1382c(a)(2)

“Capped fee-for-service” R9-22-101

“Case management plan” R9-28-101

“Case management” R9-28-1101

“Case manager” R9-28-101

“Case record” R9-22-101

“Categorically-eligible” R9-22-101

“Certification” R9-28-501

“Certified psychiatric nurse practitioner” R9-22-1201

“CFR” R9-28-101

“Child” R9-22-1503

“Clarity of communication” R9-28-301

“Clean claim” A.R.S. § 36-2904

“Clinical supervision” R9-22-201

“CMS” R9-22-101

“Community mobility” R9-28-301

“Community spouse” R9-28-401

“Consecutive days” R9-28-801

“Continence” R9-28-301

“Contract” R9-22-101

“Contract year” R9-22-101

“Contractor” A.R.S. § 36-2901

“Cost avoid” R9-22-1201 or R9-22-1001

“County of fiscal responsibility” R9-28-701

“Covered services” R9-28-101

“CPT” R9-22-701

“Crawling and standing” R9-28-301

“CSRD” R9-28-401

“Current” R9-28-301

“Day” R9-22-101 or R9-22-1101

“De novo hearing” 42 CFR 431.201

“Department” A.R.S. § 36-2901

“Developmental disability” or “DD” A.R.S. § 36-551

“Diagnostic services” R9-22-101

“Director” R9-22-101

“Disabled” R9-28-402

“Disenrollment” R9-22-1701

“Disruptive behavior” R9-28-301

“DME” R9-22-101

“Dressing” R9-28-301

“Eating” R9-28-301

“Eating or drinking” R9-28-301

“Emergency medical services for the

non-FES member” R9-22-201

“Emotional and cognitive functioning” R9-28-301

“Employed” R9-28-1320

“Encounter” R9-22-701

“Enrollment” R9-22-1701

“EPD”

R9-28-301

“E.P.S.D.T. services”

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440.40(b)

“Estate” A.R.S. § 14-1201

“Experimental services” R9-22-203

“Expressive verbal communication” R9-28-301

“Facility” R9-22-101

“Factor” 42 CFR 447.10

“Fair consideration” R9-28-401

“FBR” R9-22-101

“Federal financial participation” or “FFP” 42 CFR 400.203

“Fee-For-Service” or “FFS” R9-22-101

“File” R9-28-801 “First continuous period of institutionaliza-
tion” R9-28-401

“Food preparation” R9-28-301

“Frequency” R9-28-301

“Functional assessment” R9-28-301

“Grievance” R9-34-202

“Grooming” R9-28-301

“GSA” R9-22-101

“Guardian” A.R.S. § 14-5311

“Hand use” R9-28-301

“HCBS” or “Home and community based

services” A.R.S. § 36-2931

“Health care practitioner” R9-22-1201

“History” R9-28-301

“Home” R9-28-101 and R9-28-801

“Home health services” R9-22-201

“Hospice” A.R.S. § 36-401

“Hospital” R9-22-101

“ICF-MR” or “Intermediate care facility for the

mentally retarded” 42 U.S.C. 1396d(d)

“IADL” R9-28-101

“IHS” R9-22-101

“IMD” or “Institution for mental

diseases” 42 CFR 435.1010

“Immediate risk of institutionalization” R9-28-301

“Individual Representative” R9-28-509

“Institutionalized” R9-28-401

“Institutionalized spouse” R9-28-101

“Interested Party” R9-28-106

“Intergovernmental agreement” or “IGA” R9-28-1101

“Intervention” R9-28-301

“JCAHO” R9-28-101

“License” or “licensure” R9-22-101

“Medical assessment” R9-28-301

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“Medical or nursing services and treatments” or “services and treatments”R9-28-301	“Toileting”R9-28-301	
“Medical record”R9-22-101	“Transferring”R9-28-301	
“Medical services”A.R.S. § 36-401	“TRBHA”	R9-22-1201
“Medically eligible”R9-28-401	“Tribal contractor”	R9-28-1101
“Medically necessary”R9-22-101	“Tribal facility”	A.R.S. § 36-2981
“Member” A.R.S. § 36-2931 and R9-28-901	“Utilization management/review” R9-22-501	
“Mental disorder”A.R.S. § 36-501	“Ventilator dependent”R9-28-102	
“MMMNA”R9-28-401	“Verbal or physical threatening”R9-28-301	
“Mobility”R9-28-301	“Vision”R9-28-301	
“Natural Support Services” R9-28-101	“Wandering”R9-28-301	
“Noncontracting provider”A.R.S. § 36-2931	“Wheelchair mobility”R9-28-301	
“Nursing facility” or “NF”42 U.S.C. 1396r(a)	B. General definitions. In addition to definitions contained in A.R.S. §§ 36-551, 36-2901, 36-2931, and 9 A.A.C. 22, Article 1, the following words and phrases have the following mean- ings unless the context of the Chapter explicitly requires another meaning:	
“Occupational therapy”R9-22-201	“ADL” or “Activities of Daily Living” mean activities a mem- ber must perform daily for the member’s regular day-to-day necessities, including but not limited to mobility, transferring, bathing, dressing, grooming, eating, and toileting.	
“Orientation”R9-28-301	“ALTCS” means the Arizona Long-term Care System as authorized by A.R.S. § 36-2932.	
“Partial care”R9-22-1201	“Alternative HCBS setting” means a living arrangement approved by the Director and licensed or certified by a regula- tory agency of the state, where a member may reside and receive HCBS, including:	
“PAS”R9-28-103	For a person with a developmental disability specified in A.R.S. § 36-551:	
“Personal hygiene”R9-28-301	Community residential setting defined in A.R.S. § 36-551;	
“Pharmaceutical service”R9-22-201	Group home defined in A.R.S. § 36-551;	
“Physical therapy”R9-22-201	State-operated group home under A.R.S. § 36-591;	
“Physically disabled”R9-28-301	Group foster home under R6-5-5903;	
“Physician”R9-22-101	Licensed residential facility for a person with trau- matic brain injury under A.R.S. § 36-2939;	
“Physician consultant”R9-28-301	Behavioral health adult therapeutic home under 9 A.A.C. 20, Articles 1 and 15;	
“Post-stabilization care services”42 CFR 438.114	Level 2 and Level 3 behavioral health residential agencies under 9 A.A.C. 20, Articles 1, 4, 5, and 6; and	
“Practitioner”R9-22-101	Rural substance abuse transitional centers under 9 A.A.C. 20, Articles 1 and 14; and	
“Primary care provider” or “(PCP)”R9-22-101	For a person who is Elderly and Physically Disabled (EPD) under R9-28-301, and the facility, setting, or insti- tution is registered with AHCCCS:	
“Primary care provider services”R9-22-201	Adult foster care defined in A.R.S. § 36-401 and as authorized in A.R.S. § 36-2939;	
“Prior authorization”R9-22-101	Assisted living home or assisted living center, units only, under A.R.S. § 36-401, and as authorized in A.R.S. § 36-2939;	
“Prior period coverage” or “PPC”R9-22-101	Licensed residential facility for a person with a trau- matic brain injury specified in A.R.S. § 36-2939;	
“Program contractor”A.R.S. § 36-2931	Behavioral health adult therapeutic home under 9 A.A.C. 20, Articles 1 and 15;	
“Provider”A.R.S. § 36-2931	Level 2 and Level 3 behavioral health residential agencies under 9 A.A.C. 20, Articles 1, 4, 5, and 6; and	
“Psychiatrist”R9-22-1201	Rural substance abuse transitional centers under 9 A.A.C. 20, Articles 1 and 14.	
“Psychologist”R9-22-1201	“Case management plan” means a service plan developed by a case manager that involves the overall management of a mem- ber’s care, and the continued monitoring and reassessment of the member’s need for services.	
“Psychosocial rehabilitation services”R9-22-201		
“Qualified behavioral health service provider”R9-28-1101		
“Quality management”R9-22-501		
“Radiology”R9-22-101		
“Reassessment”R9-28-103		
“Recover”R9-28-901		
“Redetermination”R9-28-401		
“Referral”R9-22-101		
“Regional behavioral health authority” or “RBHA”A.R.S. § 36-3401		
“Reinsurance”R9-22-701		
“Representative”R9-28-401		
“Resistiveness”R9-28-301		
“Respiratory therapy”R9-22-201		
“Respite care”R9-28-102		
“RFP”R9-22-101		
“Room and board”R9-28-102		
“Rolling and sitting”R9-28-301		
“Running or wandering away”R9-28-301		
“Scope of services”R9-28-102		
“Section 1115 Waiver”A.R.S. § 36-2901		
“Self-injurious behavior”R9-28-301		
“Sensory”R9-28-301		
“Seriously mentally ill” or “SMI”A.R.S. § 36-550		
“Social worker”R9-28-301		
“Special diet”R9-28-301		
“Speech therapy”R9-22-201		
“Spouse”R9-28-401		
“SSA”42 CFR 1000.10		
“SSI”42 CFR 435.4		
“Subcontract”R9-22-101		
“TEFRA lien” R9-28-801		
“Therapeutic leave”R9-28-501		

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“Case manager” means a person who is either a degreed social worker, a licensed registered nurse, or has a minimum of two years of experience in providing case management services to a person who is EPD.

“CFR” means Code of Federal Regulations, unless otherwise specified in this Chapter.

“Covered services” means the health and medical services described in Articles 2 and 11 of this Chapter as being eligible for reimbursement by AHCCCS.

“Home” means a residential dwelling that is owned, rented, leased, or occupied by a member, at no cost to the member, including a house, a mobile home, an apartment, or other similar shelter. A home is not a facility, a setting, or an institution, or a portion of any of these that is licensed or certified by a regulatory agency of the state as a:

Health care institution under A.R.S. § 36-401;
Residential care institution under A.R.S. § 36-401;
Community residential setting under A.R.S. § 36-551; or
Behavioral health facility under 9 A.A.C. 20, Articles 1, 4, 5, and 6.

“IADL” or “Instrumental Activities of Daily Living” mean activities related to independent living that a member must perform, including but not limited to:

Preparing meals,
Managing money,
Shopping for groceries or personal items,
Performing light or heavy housework, and
Use of the telephone.

“IHS” means the Indian Health Service.

“Institutionalized spouse” means the same as defined in 42 U.S.C. 1396r-5.

“JCAHO” means the Joint Commission on Accreditation of Healthcare Organizations.

“Natural Support Services” are services provided voluntarily by a person not legally obligated to provide those services. The services are specified in the service plan as described under R9-28-510 and cannot supplant other covered services.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Amended effective July 13, 1992 (Supp. 92-3). Amended effective November 5, 1993 (Supp. 93-4). Section repealed; new Section adopted effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 5 A.A.R. 369, effective January 6, 1999 (Supp. 99-1). Amended by final rulemaking at 5 A.A.R. 874, effective March 4, 1999 (Supp. 99-1). Subsection (A)(69) amended to correct a printing error, filed in the Office of the Secretary of State August 13, 1999 (Supp. 99-3). Amended by final rulemaking at 6 A.A.R. 200, effective December 13, 1999 (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 2461, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 6 A.A.R. 3365, effective August 7, 2000 (Supp. 00-3). Amended by exempt rulemaking at 7 A.A.R. 4691, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 444, effective January 10, 2002 (Supp. 02-1). Amended by final rulemaking at 8 A.A.R. 2356, effective May 9, 2002 (Supp. 02-2). Amended by final rulemaking at 8 A.A.R. 3340, effective July 15, 2002 (Supp. 02-3). Amended by final rulemaking at 9 A.A.R. 3810, effective

October 4, 2003 (Supp. 03-3). Amended by final rulemaking at 10 A.A.R. 1312, effective May 1, 2004 (Supp. 04-1). Amended by final rulemaking at 11 A.A.R. 3165, effective October 1, 2005 (Supp. 05-3). Amended by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4). Amended by final rulemaking at 13 A.A.R. 1090, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 2090, effective July 5, 2008 (Supp. 08-2). Amended by final rulemaking at 18 A.A.R. 3380, effective January 1, 2013 (Supp. 12-4).

R9-28-102. Covered Services Related Definitions

Definitions. The following words and phrases, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, and 9 A.A.C. 22, Article 1, have the following meanings unless the context of the Chapter explicitly requires another meaning:

“Bed hold” means a 24 hour per day unit of service that is authorized by an ALTCS case manager or designee during a period of short-term hospitalization or therapeutic leave that meets the requirement specified in 42 CFR 483.12.

“Behavior intervention” means the planned interruption of a member’s inappropriate behavior using techniques such as reinforcement, training, behavior modification, and other systematic procedures intended to result in more acceptable behavior.

“Respite care” means a short-term service provided in a NF or a home and community based service setting to an individual if necessary to relieve a family member or other person caring for the individual.

“Room and board” means lodging and meals.

“Scope of services” means the covered, limited, and excluded services under Articles 2 and 12 of this Chapter.

“Ventilator dependent,” for purposes of ALTCS eligibility, means an individual is medically dependent on a ventilator for life support at least six hours per day and has been dependent on ventilator support as an inpatient in a hospital, NF, or ICF-MR for at least 30 consecutive days.

Historical Note

Adopted effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 6 A.A.R. 2461, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 9 A.A.R. 3810, effective October 4, 2003 (Supp. 03-3).

R9-28-103. Preadmission Screening Related Definitions

Definitions. The following words and phrases, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, and 9 A.A.C. 22, Article 1, have the following meanings unless the context of the Chapter explicitly requires another meaning:

“Developmental disability” is defined in A.R.S. § 36-551.

“PAS” means preadmission screening, which is the process of determining an individual’s risk of institutionalization at a NF or ICF-MR level of care, as specified in Article 3 of this Chapter.

“Reassessment” means the process of redetermining PAS eligibility for ALTCS services as appropriate, for all members.

Historical Note

Adopted effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 6 A.A.R. 2461, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 9 A.A.R. 3810, effective October 4, 2003 (Supp. 03-3).

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Amended by final rulemaking at 10 A.A.R. 1312, effective May 1, 2004 (Supp. 04-1).

R9-28-104. Repealed

Adopted effective December 8, 1997 (Supp. 97-4). Amended effective November 4, 1998 (Supp. 98-4). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 369, effective January 6, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Amended by final rulemaking at 6 A.A.R. 2461, effective June 9, 2000 (Supp. 00-2). Repealed by final rulemaking at 14 A.A.R. 2090, effective July 5, 2008 (Supp. 08-2).

R9-28-105. Repealed**Historical Note**

Adopted effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4).

R9-28-106. Request for Proposals and Contract Process Related Definitions

Definitions. The following words and phrases, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, and 9 A.A.C. 22 Article 1, have the following meanings unless the context of the Chapter explicitly requires another meaning: “Interested Party” means an actual or prospective offeror whose economic interest may be affected substantially and directly by the issuance of a request for proposals, the award of a contract, or the failure to award a contract.

Historical Note

Adopted effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1).

R9-28-107. Repealed**Historical Note**

Adopted effective December 8, 1997 (Supp. 97-4). Amended effective November 4, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 2461, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 9 A.A.R. 3810, effective October 4, 2003 (Supp. 03-3). Section repealed by final rulemaking at 11 A.A.R. 3165, effective October 1, 2005 (Supp. 05-3).

R9-28-108. Repealed**Historical Note**

Adopted effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 6 A.A.R. 3365, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 820, effective April 3, 2004 (Supp. 04-1).

R9-28-109. Repealed**Historical Note**

Adopted effective December 8, 1997 (Supp. 97-4). Section repealed by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1).

R9-28-110. Reserved

R9-28-111. Behavioral Health Services Related Definitions
Definitions. The words and phrases in this Chapter, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, have the same meaning as specified in 9 A.A.C. 22, Article 1.

Historical Note

Adopted effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 6 A.A.R. 200, effective December 13, 1999 (Supp. 99-4).

ARTICLE 2. COVERED SERVICES**R9-28-201. General Requirements**

In addition to the exclusions and limitations specified in this Article, services provided to a member are covered services if:

1. Medically necessary, cost effective, and federally reimbursable;
2. Coordinated by a case manager in accordance with requirements specified in R9-28-510;
3. The provider obtains prior authorization as required by a member’s program contractor or by the Administration:
 - a. Failure of the provider to obtain prior authorization is cause for denial.
 - b. Services provided during prior period coverage are exempt from prior authorization requirements;
4. Provided in facilities or areas of facilities that are licensed or certified under Article 5 of this Chapter, or meet other requirements described in Article 5 of this Chapter;
5. Rendered by AHCCCS registered providers as permitted under this Chapter and within their scope of practice; and
6. Provided at an appropriate level of care, as determined by the case manager or the primary care provider.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Section repealed; new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 2356, effective May 9, 2002 (Supp. 02-2).

R9-28-202. Scope of Services

- A. The Administration or a contractor shall cover medical services specified in 9 A.A.C. 22, Article 2 for a member, subject to the limitations and exclusions specified in Article 2, unless otherwise specified in this Chapter.
- B. In addition, for members living in an HCBS setting, incontinence briefs for a member 21 years of age and older, including pull-ups, are covered in order to:
 1. Treat a medical condition; and
 2. Prevent skin breakdown when all the following are met:
 - a. The member is incontinent due to a documented medical condition that causes incontinence of bowel and/or bladder,
 - b. The PCP or attending physician has issued a prescription ordering the incontinence briefs,
 - c. Incontinence briefs do not exceed 180 briefs per month unless the prescribing physician presents evidence of medical necessity for more than 180 briefs per month,
 - d. The member obtains incontinence briefs from vendors within the Contractor’s network, and
 - e. Prior authorization has been obtained if required by the Administration, Contractor, or Contractor’s designee, as appropriate. Contractors shall not require prior authorization more frequently than every twelve months.
- C. Incontinence brief coverage for a member under age 21 is described under R9-22-212.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Amended under an exemption from the provisions of the Administrative Procedure Act effective

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Amended by final rulemaking at 10 A.A.R. 1312, effective May 1, 2004 (Supp. 04-1).

R9-28-104. Repealed

Adopted effective December 8, 1997 (Supp. 97-4). Amended effective November 4, 1998 (Supp. 98-4). Section repealed, new Section adopted by final rulemaking at 5 A.A.R. 369, effective January 6, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Amended by final rulemaking at 6 A.A.R. 2461, effective June 9, 2000 (Supp. 00-2). Repealed by final rulemaking at 14 A.A.R. 2090, effective July 5, 2008 (Supp. 08-2).

R9-28-105. Repealed**Historical Note**

Adopted effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1). Section repealed by final rulemaking at 11 A.A.R. 4286, effective December 5, 2005 (Supp. 05-4).

R9-28-106. Request for Proposals and Contract Process Related Definitions

Definitions. The following words and phrases, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, and 9 A.A.C. 22 Article 1, have the following meanings unless the context of the Chapter explicitly requires another meaning: “Interested Party” means an actual or prospective offeror whose economic interest may be affected substantially and directly by the issuance of a request for proposals, the award of a contract, or the failure to award a contract.

Historical Note

Adopted effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 6 A.A.R. 896, effective February 8, 2000 (Supp. 00-1).

R9-28-107. Repealed**Historical Note**

Adopted effective December 8, 1997 (Supp. 97-4). Amended effective November 4, 1998 (Supp. 98-4). Amended by final rulemaking at 6 A.A.R. 2461, effective June 9, 2000 (Supp. 00-2). Amended by final rulemaking at 9 A.A.R. 3810, effective October 4, 2003 (Supp. 03-3). Section repealed by final rulemaking at 11 A.A.R. 3165, effective October 1, 2005 (Supp. 05-3).

R9-28-108. Repealed**Historical Note**

Adopted effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 6 A.A.R. 3365, effective August 7, 2000 (Supp. 00-3). Section repealed by final rulemaking at 10 A.A.R. 820, effective April 3, 2004 (Supp. 04-1).

R9-28-109. Repealed**Historical Note**

Adopted effective December 8, 1997 (Supp. 97-4). Section repealed by final rulemaking at 10 A.A.R. 1308, effective May 1, 2004 (Supp. 04-1).

R9-28-110. Reserved

R9-28-111. Behavioral Health Services Related Definitions
Definitions. The words and phrases in this Chapter, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, have the same meaning as specified in 9 A.A.C. 22, Article 1.

Historical Note

Adopted effective December 8, 1997 (Supp. 97-4). Amended by final rulemaking at 6 A.A.R. 200, effective December 13, 1999 (Supp. 99-4).

ARTICLE 2. COVERED SERVICES**R9-28-201. General Requirements**

In addition to the exclusions and limitations specified in this Article, services provided to a member are covered services if:

1. Medically necessary, cost effective, and federally reimbursable;
2. Coordinated by a case manager in accordance with requirements specified in R9-28-510;
3. The provider obtains prior authorization as required by a member’s program contractor or by the Administration:
 - a. Failure of the provider to obtain prior authorization is cause for denial.
 - b. Services provided during prior period coverage are exempt from prior authorization requirements;
4. Provided in facilities or areas of facilities that are licensed or certified under Article 5 of this Chapter, or meet other requirements described in Article 5 of this Chapter;
5. Rendered by AHCCCS registered providers as permitted under this Chapter and within their scope of practice; and
6. Provided at an appropriate level of care, as determined by the case manager or the primary care provider.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Section repealed; new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 2356, effective May 9, 2002 (Supp. 02-2).

R9-28-202. Scope of Services

- A. The Administration or a contractor shall cover medical services specified in 9 A.A.C. 22, Article 2 for a member, subject to the limitations and exclusions specified in Article 2, unless otherwise specified in this Chapter.
- B. In addition, for members living in an HCBS setting, incontinence briefs for a member 21 years of age and older, including pull-ups, are covered in order to:
 1. Treat a medical condition; and
 2. Prevent skin breakdown when all the following are met:
 - a. The member is incontinent due to a documented medical condition that causes incontinence of bowel and/or bladder,
 - b. The PCP or attending physician has issued a prescription ordering the incontinence briefs,
 - c. Incontinence briefs do not exceed 180 briefs per month unless the prescribing physician presents evidence of medical necessity for more than 180 briefs per month,
 - d. The member obtains incontinence briefs from vendors within the Contractor’s network, and
 - e. Prior authorization has been obtained if required by the Administration, Contractor, or Contractor’s designee, as appropriate. Contractors shall not require prior authorization more frequently than every twelve months.
- C. Incontinence brief coverage for a member under age 21 is described under R9-22-212.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Amended under an exemption from the provisions of the Administrative Procedure Act effective

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March 22, 1993; received in the Office of the Secretary of State March 24, 1993 (Supp. 93-1). Amended effective November 5, 1993 (Supp. 93-4). Section repealed; new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 2356, effective May 9, 2002 (Supp. 02-2). Amended by final rulemaking at 21 A.A.R. 1243, effective July 7, 2015 (Supp. 15-3).

R9-28-203. Coverage for CRS Services

- A.** Beginning October 1, 2013, ALTCS DD members who need active treatment for one or more of the qualifying medical condition(s) in A.A.C. R9-22-1303 shall receive CRS services through the CRS contractor as described under Chapter 22, Article 13.
- B.** Beginning October 1, 2013, AHCCCS ALTCS EPD members who need active treatment for one or more of the qualifying medical conditions in A.A.C. R9-22-1303 shall not receive CRS services through the CRS contractor as described under Chapter 22, Article 13. These members shall receive treatment for those conditions through their assigned ALTCS EPD contractor. However, an American Indian member with a CRS condition(s) who is enrolled with a tribal contractor or Native American Community Health (NACH) shall obtain CRS services through the CRS contractor.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Amended effective July 13, 1992 (Supp. 92-3). Amended under an exemption from the provisions of the Administrative Procedure Act effective March 22, 1993; received in the Office of the Secretary of State March 24, 1993 (Supp. 93-1). Repealed effective September 22, 1997 (Supp. 97-3). New Section R9-28-203 made by final rulemaking at 19 A.A.R. 2963, effective November 10, 2013 (Supp. 13-3).

R9-28-204. Institutional Services

- A.** Institutional services are provided in:
1. A NF;
 2. An ICF-MR; or
 3. A facility identified in R9-28-1105(A)(1)(b), (B), or (C).
- B.** The Administration and a contractor shall include the following services in the per diem rate for a facility listed in subsection (A):
1. Nursing care services;
 2. Rehabilitative services prescribed as a maintenance regimen;
 3. Restorative services, such as range of motion;
 4. Social services;
 5. Nutritional and dietary services;
 6. Recreational therapies and activities;
 7. Medical supplies and non-customized durable medical equipment under 9 A.A.C. 22, Article 2;
 8. Overall management and evaluation of a member's care plan;
 9. Observation and assessment of a member's changing condition;
 10. Room and board services, including supporting services such as food and food preparation, personal laundry, and housekeeping;
 11. Non-prescription and stock pharmaceuticals; and
 12. Respite care services not to exceed 600 hours per benefit year.
- C.** Each facility listed in subsection (A) is responsible for coordinating the delivery of at least the following auxiliary services:
1. Under 9 A.A.C. 22, Article 2:
 - a. Attending physician, practitioner, and primary care provider services;
 - b. Pharmaceutical services;
 - c. Diagnostic services under A.A.C. R9-22-208;
 - d. Emergency medical services; and
 - e. Emergency and medically necessary transportation services.
 2. Therapy services under R9-28-206.
- D.** Limitations. The following limitations apply:
1. A private room in a NF, ICF-MR, or facility identified in R9-28-1105(A)(1)(b), (B), or (C) is covered only if:
 - a. The member or has a medical condition that requires isolation, and
 - b. The member's primary care provider or attending physician provides written authorization;
 2. Each ICF-MR shall meet the standards in A.R.S. § 36-2939(B)(1), and in 42 CFR 483, Subpart I, February 28, 1992, incorporated by reference and on file with the Administration and available from the U.S. Government Printing Office, 732 N. Capitol St., N.W., Washington, D.C. 20401. This incorporation contains no future editions or amendments;
 3. Bed hold days as authorized by the Administration or its designee for a fee-for-service provider shall meet the following criteria:
 - a. Short-term hospitalization leave for a member age 21 and over is limited to 12 days per AHCCCS benefit year, and is available if a member is admitted to a hospital for a short stay. After the short-term hospitalization, the member is returned to the institutional facility from which leave is taken, and to the same bed if the level of care required can be provided in that bed; and
 - b. Therapeutic leave for a member age 21 and older is limited to nine days per AHCCCS benefit year. A physician order is required for therapeutic leave from the facility for one or more overnight stays to enhance psycho-social interaction, or as a trial basis for discharge planning. After the therapeutic leave, the member is returned to the same bed within the institutional facility;
 - c. Therapeutic leave and short-term hospitalization leave are limited to any combination of 21 days per benefit year for a member under age 21;
 4. The Administration or a contractor shall cover services that are not part of a per diem rate but are ALTCS covered services included in this Article, and deemed necessary by a member's case manager or the case manager's designee if:
 - a. The services are ordered by the member's primary care provider; and
 - b. The services are specified in a case management plan under R9-28-510;
 5. A member age 21 through 64 is eligible for behavioral health services provided in a facility under subsection (A)(3) that has more than 16 beds, for up to 30 days per admission and no more than 60 days per benefit year as allowed under the Administration's Section 1115 Waiver with CMS and except as specified by 42 CFR 441.151, May 22, 2001, incorporated by reference, on file with the Administration and available from the U.S. Government Printing Office, 732 N. Capitol St., N.W., Washington, D.C. 20401. This incorporation contains no future editions or amendments; and
 6. The limitations in subsection (D)(5) do not apply to a member:

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- a. Under age 21 or age 65 or over, or
- b. In a facility with 16 beds or less.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended subsections (A) and (D) effective June 6, 1989 (Supp. 89-2). Amended effective November 5, 1993 (Supp. 93-4). Section repealed; new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by exempt rulemaking at 7 A.A.R. 4691, effective October 1, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 2356, effective May 9, 2002 (Supp. 02-2). Amended by exempt rulemaking at 17 A.A.R. 1876, effective October 1, 2011 (Supp. 11-3). Exemption to amend rules to expire December 31, 2013 under Laws 2012, Chapter 299, Section 8 therefore this Section was amended by final rulemaking at 19 A.A.R. 2758, effective October 8, 2013 (Supp. 13-3).

R9-28-205. Home and Community Based Services (HCBS)

- A. Subject to the availability of federal funds, HCBS are covered services if provided to a member residing in the member's own home or an alternative residential setting. Room and board services are not covered in a HCBS setting.
- B. The case manager shall authorize and specify in a case management plan any additions, deletions, or changes in home and community based services provided to a member or in accordance with R9-28-510.
- C. Home and community based services include the following:
 1. Home health services provided on a part-time or intermittent basis. These services include:
 - a. Nursing care;
 - b. Home health aide;
 - c. Medical supplies, equipment, and appliances;
 - d. Physical therapy;
 - e. Occupational therapy;
 - f. Respiratory therapy; and
 - g. Speech and audiology services;
 2. Private duty nursing services;
 3. Medical supplies and durable medical equipment, including customized DME, as described in 9 A.A.C. 22, Article 2;
 4. Transportation services to obtain covered medically necessary services;
 5. Adult day health services provided to a member in an adult day health care facility licensed under 9 A.A.C. 10, Article 5, including:
 - a. Supervision of activities specified in the member's care plan;
 - b. Personal care;
 - c. Personal living skills training;
 - d. Meals and health monitoring;
 - e. Preventive, therapeutic, and restorative health related services; and
 - f. Behavioral health services, provided either directly or through referral, if medically necessary;
 6. Personal care services;
 7. Homemaker services;
 8. Home delivered meals, that provide at least one-third of the recommended dietary allowance, for a member who does not have a developmental disability under A.R.S. § 36-551;
 9. Respite care services for no more than 600 hours per benefit year;
 10. Habilitation services including:
 - a. Physical therapy;
 - b. Occupational therapy;

- c. Speech and audiology services;
 - d. Training in independent living;
 - e. Special development skills that are unique to the member;
 - f. Sensory-motor development;
 - g. Behavior intervention; and
 - h. Orientation and mobility training;
11. Developmentally disabled day care provided in a group setting during a portion of a 24-hour period, including:
 - a. Supervision of activities specified in the member's care plan;
 - b. Personal care;
 - c. Activities of daily living skills training; and
 - d. Habilitation services;
 12. Supported employment services provided to a member in the ALTCS transitional program under R9-28-306 who is developmentally disabled under A.R.S. § 36-551.

Historical Note

Adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 2356, effective May 9, 2002 (Supp. 02-2). Amended by exempt rulemaking at 17 A.A.R. 1876, effective October 1, 2011 (Supp. 11-3). Exemption to amend rules to expire December 31, 2013 under Laws 2012, Chapter 299, Section 8 therefore this Section was amended by final rulemaking at 19 A.A.R. 2758, effective October 8, 2013 (Supp. 13-3).

R9-28-206. ALTCS Services that may be Provided to a Member Residing in either an Institutional or HCBS Setting

The Administration shall cover the following services if the services are provided to a member within the limitations listed:

1. Occupational and physical therapies, speech and audiology services, and respiratory therapy:
 - a. The duration, scope, and frequency of each therapeutic modality or service is prescribed by the member's primary care provider or attending physician;
 - b. The therapy or service is authorized by the member's contractor or the Administration; and
 - c. The therapy or service is included in the members case management plan;
 - d. AHCCCS will not cover more than 15 outpatient physical therapy visits for the contract year with the exception of the required Medicare coinsurance and deductible payment as described in 9 A.A.C. 29, Article 3.
2. Medical supplies, durable medical equipment, and customized durable medical equipment, which conform with the requirements and limitations of 9 A.A.C. 22, Article 2 and as described under R9-28-202 for persons in HCBS settings;
3. Ventilator dependent services:
 - a. Inpatient or institutional services are limited to services provided in a general hospital, special hospital, NF, or ICF-MR. Services provided in a general or special hospital are included in the hospital's unit tier rate under 9 A.A.C. 22, Article 7;
 - b. A ventilator dependent member may receive the array of home and community based services under R9-28-205 as appropriate.
4. Hospice services:
 - a. Hospice services are covered only for a member who is in the final stages of a terminal illness and has a prognosis of death within six months;
 - b. Covered hospice services for a member are those allowable under 42 CFR 418.202, December 20, 1994, incorporated by reference and on file with the

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Administration and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments; and

- c. Covered hospice services do not include:
 - i. Medical services provided that are not related to the terminal illness, or
 - ii. Home delivered meals.
- d. Medicare is the primary payor of hospice services for a member if applicable.

Historical Note

Adopted effective October 1, 1988, filed September 1, 1988 (Supp. 88-3). Amended effective June 6, 1989 (Supp. 89-2). Amended effective July 13, 1992 (Supp. 92-3). Amended effective November 5, 1993 (Supp. 93-4). Section repealed; new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 8 A.A.R. 2356, effective May 9, 2002 (Supp. 02-2). Amended by exempt rulemaking at 16 A.A.R. 1664, effective October 1, 2010 (Supp. 10-3). Amended by final rulemaking at 21 A.A.R. 1243, effective July 7, 2015 (Supp. 15-3).

ARTICLE 3. PREADMISSION SCREENING (PAS)**R9-28-301. Definitions**

- A. Common definitions. In addition to definitions contained in A.R.S. Title 36, Chapter 29, and 9 A.A.C. 28, Article 1, the words and phrases in this Article have the following meanings for an individual who is elderly or physically disabled (EPD) or developmentally disabled (DD) unless the context explicitly requires another meaning:

“Applicant” is defined in A.A.C. R9-22-101.

“Assessor” means a social worker as defined in this subsection or a licensed registered nurse (RN) who:

- Is employed by the Administration to conduct PAS assessments,
- Completes a minimum of 30 hours of classroom training in both EPD and DD PAS for a total of 60 hours, and
- Receives intensive oversight and monitoring by the Administration during the first 30 days of employment and ongoing oversight by the Administration during all periods of employment.

“Current” means belonging to the present time.

“Disruptive behavior” means inappropriate behavior by the applicant or member including urinating or defecating in inappropriate places, sexual behavior inappropriate to time, place, or person or excessive whining, crying, or screaming that interferes with an applicant’s or member’s normal activities or the activities of others and requires intervention to stop or interrupt the behavior.

“Frequency” means the number of times a specific behavior occurs within a specified interval.

“Functional assessment” means an evaluation of information about an applicant’s or member’s ability to perform activities related to:

- Developmental milestones,
- Activities of daily living,
- Communication, and
- Behavior.

“Immediate risk of institutionalization” means the status of an applicant or member under A.R.S. § 36-2934(A)(5) and as specified in A.R.S. § 36-2936 and in the Administration’s Section 1115 Waiver with Centers for Medicare and Medicaid Services (CMS).

“Intervention” means therapeutic treatment, including the use of medication, behavior modification, and physical

restraints to control behavior. Intervention may be formal or informal and includes actions taken by friends or family to control the behavior.

“Medical assessment” means an evaluation of an applicant’s or member’s medical condition and the applicant’s or member’s need for medical services.

“Medical or nursing services and treatments” or “services and treatments” means specific, ongoing medical, psychiatric, or nursing intervention used actively to resolve or prevent deterioration of a medical condition. Durable medical equipment and activities of daily living assistive devices are not treatment unless the equipment or device is used specifically and actively to resolve the existing medical condition.

“Physician consultant” means a physician who contracts with the Administration.

“Social worker” means an individual with two years of case management-related experience or a baccalaureate or master’s degree in:

- Social work,
- Rehabilitation,
- Counseling,
- Education,
- Sociology,
- Psychology, or
- Other closely related field.

“Special diet” means a diet planned by a dietitian, nutritionist, or nurse that includes high fiber, low sodium, or pureed food.

“Toileting” means the process involved in an applicant’s or member’s managing of the elimination of urine and feces in an appropriate place.

“Vision” means the ability to perceive objects with the eyes.

- B. EPD. In addition to definitions contained in subsection (A), the following also apply to an applicant or member who is EPD:

“Aggression” means physically attacking another, including:

- Throwing an object,
- Punching,
- Biting,
- Pushing,
- Pinching,
- Pulling hair,
- Scratching, and
- Physically threatening behavior.

“Bathing” means the process of washing, rinsing, and drying all parts of the body, including an applicant’s or member’s ability to transfer to a tub or shower and to obtain bath water and equipment.

“Continence” means the applicant’s or member’s ability to control the discharge of body waste from bladder and bowel.

“Dressing” means the physical process of choosing, putting on, securing fasteners, and removing clothing and footwear. Dressing includes choosing a weather-appropriate article of clothing but excludes aesthetic concerns. Dressing includes the applicant’s or member’s ability to put on artificial limbs, braces, and other appliances that are needed daily.

“Eating” means the process of putting food and fluids by any means into the digestive system.

“Emotional and cognitive functioning” means an applicant’s or member’s orientation and mental state, as evi-

36-2903.01. Additional powers and duties; report; definition

A. The director of the Arizona health care cost containment system administration may adopt rules that provide that the system may withhold or forfeit payments to be made to a noncontracting provider by the system if the noncontracting provider fails to comply with this article, the provider agreement or rules that are adopted pursuant to this article and that relate to the specific services rendered for which a claim for payment is made.

B. The director shall:

1. Prescribe uniform forms to be used by all contractors. The rules shall require a written and signed application by the applicant or an applicant's authorized representative, or, if the person is incompetent or incapacitated, a family member or a person acting responsibly for the applicant may obtain a signature or a reasonable facsimile and file the application as prescribed by the administration.

2. Enter into an interagency agreement with the department to establish a streamlined eligibility process to determine the eligibility of all persons defined pursuant to section 36-2901, paragraph 6, subdivision (a). At the administration's option, the interagency agreement may allow the administration to determine the eligibility of certain persons, including those defined pursuant to section 36-2901, paragraph 6, subdivision (a).

3. Enter into an intergovernmental agreement with the department to:

(a) Establish an expedited eligibility and enrollment process for all persons who are hospitalized at the time of application.

(b) Establish performance measures and incentives for the department.

(c) Establish the process for management evaluation reviews that the administration shall perform to evaluate the eligibility determination functions performed by the department.

(d) Establish eligibility quality control reviews by the administration.

(e) Require the department to adopt rules, consistent with the rules adopted by the administration for a hearing process, that applicants or members may use for appeals of eligibility determinations or redeterminations.

(f) Establish the department's responsibility to place sufficient eligibility workers at federally qualified health centers to screen for eligibility and at hospital sites and level one trauma centers to ensure that persons seeking hospital services are screened on a timely basis for eligibility for the system, including a process to ensure that applications for the system can be accepted on a twenty-four hour basis, seven days a week.

(g) Withhold payments based on the allowable sanctions for errors in eligibility determinations or redeterminations or failure to meet performance measures required by the intergovernmental agreement.

(h) Recoup from the department all federal fiscal sanctions that result from the department's inaccurate eligibility determinations. The director may offset all or part of a sanction if the department submits a corrective action plan and a strategy to remedy the error.

4. By rule establish a procedure and time frames for the intake of grievances and requests for hearings, for the continuation of benefits and services during the appeal process and for a grievance process at the contractor level. Notwithstanding sections 41-1092.02, 41-1092.03 and 41-1092.05, the administration shall develop rules to establish the procedure and time frame for the informal resolution of grievances and appeals. A grievance that is not related to a claim for payment of system covered services shall be filed in writing with and received by the administration or the prepaid capitated provider or program contractor not later than sixty days after the date of the adverse action, decision or policy implementation being grieved. A grievance that is related to a claim for payment of system covered services must be filed in writing and received by the administration or the prepaid capitated provider or program contractor within twelve months after the date of service, within twelve months

after the date that eligibility is posted or within sixty days after the date of the denial of a timely claim submission, whichever is later. A grievance for the denial of a claim for reimbursement of services may contest the validity of any adverse action, decision, policy implementation or rule that related to or resulted in the full or partial denial of the claim. A policy implementation may be subject to a grievance procedure, but it may not be appealed for a hearing. The administration is not required to participate in a mandatory settlement conference if it is not a real party in interest. In any proceeding before the administration, including a grievance or hearing, persons may represent themselves or be represented by a duly authorized agent who is not charging a fee. A legal entity may be represented by an officer, partner or employee who is specifically authorized by the legal entity to represent it in the particular proceeding.

5. Apply for and accept federal funds available under title XIX of the social security act (P.L. 89-97; 79 Stat. 344; 42 United States Code section 1396 (1980)) in support of the system. The application made by the director pursuant to this paragraph shall be designed to qualify for federal funding primarily on a prepaid capitated basis. Such funds may be used only for the support of persons defined as eligible pursuant to title XIX of the social security act or the approved section 1115 waiver.

6. At least thirty days before the implementation of a policy or a change to an existing policy relating to reimbursement, provide notice to interested parties. Parties interested in receiving notification of policy changes shall submit a written request for notification to the administration.

7. In addition to the cost sharing requirements specified in subsection D, paragraph 4 of this section:

(a) Charge monthly premiums up to the maximum amount allowed by federal law to all populations of eligible persons who may be charged.

(b) Implement this paragraph to the extent permitted under the federal deficit reduction act of 2005 and other federal laws, subject to the approval of federal waiver authority and to the extent that any changes in the cost sharing requirements under this paragraph would permit this state to receive any enhanced federal matching rate.

C. The director is authorized to apply for any federal funds available for the support of programs to investigate and prosecute violations arising from the administration and operation of the system. Available state funds appropriated for the administration and operation of the system may be used as matching funds to secure federal funds pursuant to this subsection.

D. The director may adopt rules or procedures to do the following:

1. Authorize advance payments based on estimated liability to a contractor or a noncontracting provider after the contractor or noncontracting provider has submitted a claim for services and before the claim is ultimately resolved. The rules shall specify that any advance payment shall be conditioned on the execution before payment of a contract with the contractor or noncontracting provider that requires the administration to retain a specified percentage, which shall be at least twenty percent, of the claimed amount as security and that requires repayment to the administration if the administration makes any overpayment.

2. Defer liability, in whole or in part, of contractors for care provided to members who are hospitalized on the date of enrollment or under other circumstances. Payment shall be on a capped fee-for-service basis for services other than hospital services and at the rate established pursuant to subsection G of this section for hospital services or at the rate paid by the health plan, whichever is less.

3. Deputize, in writing, any qualified officer or employee in the administration to perform any act that the director by law is empowered to do or charged with the responsibility of doing, including the authority to issue final administrative decisions pursuant to section 41-1092.08.

4. Notwithstanding any other law, require persons eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2931 and section 36-2981, paragraph 6 to be financially responsible for any cost sharing requirements established in a state plan or a section 1115 waiver and approved by the centers for medicare and

medicaid services. Cost sharing requirements may include copayments, coinsurance, deductibles, enrollment fees and monthly premiums for enrolled members, including households with children enrolled in the Arizona long-term care system.

E. The director shall adopt rules that further specify the medical care and hospital services that are covered by the system pursuant to section 36-2907.

F. In addition to the rules otherwise specified in this article, the director may adopt necessary rules pursuant to title 41, chapter 6 to carry out this article. Rules adopted by the director pursuant to this subsection shall consider the differences between rural and urban conditions on the delivery of hospitalization and medical care.

G. For inpatient hospital admissions and outpatient hospital services on and after March 1, 1993, the administration shall adopt rules for the reimbursement of hospitals according to the following procedures:

1. For inpatient hospital stays from March 1, 1993 through September 30, 2014, the administration shall use a prospective tiered per diem methodology, using hospital peer groups if analysis shows that cost differences can be attributed to independently definable features that hospitals within a peer group share. In peer grouping the administration may consider such factors as length of stay differences and labor market variations. If there are no cost differences, the administration shall implement a stop loss-stop gain or similar mechanism. Any stop loss-stop gain or similar mechanism shall ensure that the tiered per diem rates assigned to a hospital do not represent less than ninety percent of its 1990 base year costs or more than one hundred ten percent of its 1990 base year costs, adjusted by an audit factor, during the period of March 1, 1993 through September 30, 1994. The tiered per diem rates set for hospitals shall represent no less than eighty-seven and one-half percent or more than one hundred twelve and one-half percent of its 1990 base year costs, adjusted by an audit factor, from October 1, 1994 through September 30, 1995 and no less than eighty-five percent or more than one hundred fifteen percent of its 1990 base year costs, adjusted by an audit factor, from October 1, 1995 through September 30, 1996. For the periods after September 30, 1996 no stop loss-stop gain or similar mechanisms shall be in effect. An adjustment in the stop loss-stop gain percentage may be made to ensure that total payments do not increase as a result of this provision. If peer groups are used, the administration shall establish initial peer group designations for each hospital before implementation of the per diem system. The administration may also use a negotiated rate methodology. The tiered per diem methodology may include separate consideration for specialty hospitals that limit their provision of services to specific patient populations, such as rehabilitative patients or children. The initial per diem rates shall be based on hospital claims and encounter data for dates of service November 1, 1990 through October 31, 1991 and processed through May of 1992. The administration may also establish a separate reimbursement methodology for claims with extraordinarily high costs per day that exceed thresholds established by the administration.

2. For rates effective on October 1, 1994, and annually through September 30, 2011, the administration shall adjust tiered per diem payments for inpatient hospital care by the data resources incorporated market basket index for prospective payment system hospitals. For rates effective beginning on October 1, 1999, the administration shall adjust payments to reflect changes in length of stay for the maternity and nursery tiers.

3. Through June 30, 2004, for outpatient hospital services, the administration shall reimburse a hospital by applying a hospital specific outpatient cost-to-charge ratio to the covered charges. Beginning on July 1, 2004 through June 30, 2005, the administration shall reimburse a hospital by applying a hospital specific outpatient cost-to-charge ratio to covered charges. If the hospital increases its charges for outpatient services filed with the Arizona department of health services pursuant to chapter 4, article 3 of this title, by more than 4.7 percent for dates of service effective on or after July 1, 2004, the hospital specific cost-to-charge ratio will be reduced by the amount that it exceeds 4.7 percent. If charges exceed 4.7 percent, the effective date of the increased charges will be the effective date of the adjusted Arizona health care cost containment system cost-to-charge ratio. The administration shall develop the methodology for a capped fee-for-service schedule and a statewide cost-to-charge ratio. Any covered outpatient service not included in the capped fee-for-service schedule shall be reimbursed by applying the statewide cost-to-charge ratio that is based on the services not included in the capped fee-for-service schedule. Beginning on July 1, 2005, the administration shall reimburse clean claims with dates of service on or after July 1, 2005, based on the capped fee-for-service schedule or the statewide cost-to-charge

ratio established pursuant to this paragraph. The administration may make additional adjustments to the outpatient hospital rates established pursuant to this section based on other factors, including the number of beds in the hospital, specialty services available to patients and the geographic location of the hospital.

4. Except if submitted under an electronic claims submission system, a hospital bill is considered received for purposes of this paragraph on initial receipt of the legible, error-free claim form by the administration if the claim includes the following error-free documentation in legible form:

- (a) An admission face sheet.
- (b) An itemized statement.
- (c) An admission history and physical.
- (d) A discharge summary or an interim summary if the claim is split.
- (e) An emergency record, if admission was through the emergency room.
- (f) Operative reports, if applicable.
- (g) A labor and delivery room report, if applicable.

Payment received by a hospital from the administration pursuant to this subsection or from a contractor either by contract or pursuant to section 36-2904, subsection I is considered payment by the administration or the contractor of the administration's or contractor's liability for the hospital bill. A hospital may collect any unpaid portion of its bill from other third-party payors or in situations covered by title 33, chapter 7, article 3.

5. For services rendered on and after October 1, 1997, the administration shall pay a hospital's rate established according to this section subject to the following:

- (a) If the hospital's bill is paid within thirty days of the date the bill was received, the administration shall pay ninety-nine percent of the rate.
- (b) If the hospital's bill is paid after thirty days but within sixty days of the date the bill was received, the administration shall pay one hundred percent of the rate.
- (c) If the hospital's bill is paid any time after sixty days of the date the bill was received, the administration shall pay one hundred percent of the rate plus a fee of one percent per month for each month or portion of a month following the sixtieth day of receipt of the bill until the date of payment.

6. In developing the reimbursement methodology, if a review of the reports filed by a hospital pursuant to section 36-125.04 indicates that further investigation is considered necessary to verify the accuracy of the information in the reports, the administration may examine the hospital's records and accounts related to the reporting requirements of section 36-125.04. The administration shall bear the cost incurred in connection with this examination unless the administration finds that the records examined are significantly deficient or incorrect, in which case the administration may charge the cost of the investigation to the hospital examined.

7. Except for privileged medical information, the administration shall make available for public inspection the cost and charge data and the calculations used by the administration to determine payments under the tiered per diem system, provided that individual hospitals are not identified by name. The administration shall make the data and calculations available for public inspection during regular business hours and shall provide copies of the data and calculations to individuals requesting such copies within thirty days of receipt of a written request. The administration may charge a reasonable fee for the provision of the data or information.

8. The prospective tiered per diem payment methodology for inpatient hospital services shall include a mechanism for the prospective payment of inpatient hospital capital related costs. The capital payment shall

include hospital specific and statewide average amounts. For tiered per diem rates beginning on October 1, 1999, the capital related cost component is frozen at the blended rate of forty percent of the hospital specific capital cost and sixty percent of the statewide average capital cost in effect as of January 1, 1999 and as further adjusted by the calculation of tier rates for maternity and nursery as prescribed by law. Through September 30, 2011, the administration shall adjust the capital related cost component by the data resources incorporated market basket index for prospective payment system hospitals.

9. For graduate medical education programs:

(a) Beginning September 30, 1997, the administration shall establish a separate graduate medical education program to reimburse hospitals that had graduate medical education programs that were approved by the administration as of October 1, 1999. The administration shall separately account for monies for the graduate medical education program based on the total reimbursement for graduate medical education reimbursed to hospitals by the system in federal fiscal year 1995-1996 pursuant to the tiered per diem methodology specified in this section. The graduate medical education program reimbursement shall be adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement. Subject to legislative appropriation, on an annual basis, each qualified hospital shall receive a single payment from the graduate medical education program that is equal to the same percentage of graduate medical education reimbursement that was paid by the system in federal fiscal year 1995-1996. Any reimbursement for graduate medical education made by the administration shall not be subject to future settlements or appeals by the hospitals to the administration. The monies available under this subdivision shall not exceed the fiscal year 2005-2006 appropriation adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement, except for monies distributed for expansions pursuant to subdivision (b) of this paragraph.

(b) The monies available for graduate medical education programs pursuant to this subdivision shall not exceed the fiscal year 2006-2007 appropriation adjusted annually by the increase or decrease in the index published by the global insight hospital market basket index for prospective hospital reimbursement. Graduate medical education programs eligible for such reimbursement are not precluded from receiving reimbursement for funding under subdivision (c) of this paragraph. Beginning July 1, 2006, the administration shall distribute any monies appropriated for graduate medical education above the amount prescribed in subdivision (a) of this paragraph in the following order or priority:

(i) For the direct costs to support the expansion of graduate medical education programs established before July 1, 2006 at hospitals that do not receive payments pursuant to subdivision (a) of this paragraph. These programs must be approved by the administration.

(ii) For the direct costs to support the expansion of graduate medical education programs established on or before October 1, 1999. These programs must be approved by the administration.

(c) The administration shall distribute to hospitals any monies appropriated for graduate medical education above the amount prescribed in subdivisions (a) and (b) of this paragraph for the following purposes:

(i) For the direct costs of graduate medical education programs established or expanded on or after July 1, 2006. These programs must be approved by the administration.

(ii) For a portion of additional indirect graduate medical education costs for programs that are located in a county with a population of less than five hundred thousand persons at the time the residency position was created or for a residency position that includes a rotation in a county with a population of less than five hundred thousand persons at the time the residency position was established. These programs must be approved by the administration.

(d) The administration shall develop, by rule, the formula by which the monies are distributed.

(e) Each graduate medical education program that receives funding pursuant to subdivision (b) or (c) of this paragraph shall identify and report to the administration the number of new residency positions created by the funding provided in this paragraph, including positions in rural areas. The program shall also report information related to the number of funded residency positions that resulted in physicians locating their practices in this state. The administration shall report to the joint legislative budget committee by February 1 of each year on the number of new residency positions as reported by the graduate medical education programs.

(f) Local, county and tribal governments and any university under the jurisdiction of the Arizona board of regents may provide monies in addition to any state general fund monies appropriated for graduate medical education in order to qualify for additional matching federal monies for providers, programs or positions in a specific locality and costs incurred pursuant to a specific contract between the administration and providers or other entities to provide graduate medical education services as an administrative activity. Payments by the administration pursuant to this subdivision may be limited to those providers designated by the funding entity and may be based on any methodology deemed appropriate by the administration, including replacing any payments that might otherwise have been paid pursuant to subdivision (a), (b) or (c) of this paragraph had sufficient state general fund monies or other monies been appropriated to fully fund those payments. These programs, positions, payment methodologies and administrative graduate medical education services must be approved by the administration and the centers for medicare and medicaid services. The administration shall report to the president of the senate, the speaker of the house of representatives and the director of the joint legislative budget committee on or before July 1 of each year on the amount of money contributed and number of residency positions funded by local, county and tribal governments, including the amount of federal matching monies used.

(g) Any funds appropriated but not allocated by the administration for subdivision (b) or (c) of this paragraph may be reallocated if funding for either subdivision is insufficient to cover appropriate graduate medical education costs.

10. Notwithstanding section 41-1005, subsection A, paragraph 9, the administration shall adopt rules pursuant to title 41, chapter 6 establishing the methodology for determining the prospective tiered per diem payments that are in effect through September 30, 2014.

11. For inpatient hospital services rendered on or after October 1, 2011, the prospective tiered per diem payment rates are permanently reset to the amounts payable for those services as of October 1, 2011 pursuant to this subsection.

12. The administration shall adopt a diagnosis-related group based hospital reimbursement methodology consistent with title XIX of the social security act for inpatient dates of service on and after October 1, 2014. The administration may make additional adjustments to the inpatient hospital rates established pursuant to this section for hospitals that are publicly operated or based on other factors, including the number of beds in the hospital, the specialty services available to patients, the geographic location and diagnosis-related group codes that are made publicly available by the hospital pursuant to section 36-437. The administration may also provide additional reimbursement for extraordinarily high cost cases that exceed a threshold above the standard payment. The administration may also establish a separate payment methodology for specific services or hospitals serving unique populations.

H. The director may adopt rules that specify enrollment procedures, including notice to contractors of enrollment. The rules may provide for varying time limits for enrollment in different situations. The administration shall specify in contract when a person who has been determined eligible will be enrolled with that contractor and the date on which the contractor will be financially responsible for health and medical services to the person.

I. The administration may make direct payments to hospitals for hospitalization and medical care provided to a member in accordance with this article and rules. The director may adopt rules to establish the procedures by which the administration shall pay hospitals pursuant to this subsection if a contractor fails to make timely payment to a hospital. Such payment shall be at a level determined pursuant to section 36-2904, subsection H

or I. The director may withhold payment due to a contractor in the amount of any payment made directly to a hospital by the administration on behalf of a contractor pursuant to this subsection.

J. The director shall establish a special unit within the administration for the purpose of monitoring the third-party payment collections required by contractors and noncontracting providers pursuant to section 36-2903, subsection B, paragraph 10 and subsection F and section 36-2915, subsection E. The director shall determine by rule:

1. The type of third-party payments to be monitored pursuant to this subsection.

2. The percentage of third-party payments that is collected by a contractor or noncontracting provider and that the contractor or noncontracting provider may keep and the percentage of such payments that the contractor or noncontracting provider may be required to pay to the administration. Contractors and noncontracting providers must pay to the administration one hundred percent of all third-party payments that are collected and that duplicate administration fee-for-service payments. A contractor that contracts with the administration pursuant to section 36-2904, subsection A may be entitled to retain a percentage of third-party payments if the payments collected and retained by a contractor are reflected in reduced capitation rates. A contractor may be required to pay the administration a percentage of third-party payments that are collected by a contractor and that are not reflected in reduced capitation rates.

K. The administration shall establish procedures to apply to the following if a provider that has a contract with a contractor or noncontracting provider seeks to collect from an individual or financially responsible relative or representative a claim that exceeds the amount that is reimbursed or should be reimbursed by the system:

1. On written notice from the administration or oral or written notice from a member that a claim for covered services may be in violation of this section, the provider that has a contract with a contractor or noncontracting provider shall investigate the inquiry and verify whether the person was eligible for services at the time that covered services were provided. If the claim was paid or should have been paid by the system, the provider that has a contract with a contractor or noncontracting provider shall not continue billing the member.

2. If the claim was paid or should have been paid by the system and the disputed claim has been referred for collection to a collection agency or referred to a credit reporting bureau, the provider that has a contract with a contractor or noncontracting provider shall:

(a) Notify the collection agency and request that all attempts to collect this specific charge be terminated immediately.

(b) Advise all credit reporting bureaus that the reported delinquency was in error and request that the affected credit report be corrected to remove any notation about this specific delinquency.

(c) Notify the administration and the member that the request for payment was in error and that the collection agency and credit reporting bureaus have been notified.

3. If the administration determines that a provider that has a contract with a contractor or noncontracting provider has billed a member for charges that were paid or should have been paid by the administration, the administration shall send written notification by certified mail or other service with proof of delivery to the provider that has a contract with a contractor or noncontracting provider stating that this billing is in violation of federal and state law. If, twenty-one days or more after receiving the notification, a provider that has a contract with a contractor or noncontracting provider knowingly continues billing a member for charges that were paid or should have been paid by the system, the administration may assess a civil penalty in an amount equal to three times the amount of the billing and reduce payment to the provider that has a contract with a contractor or noncontracting provider accordingly. Receipt of delivery signed by the addressee or the addressee's employee is prima facie evidence of knowledge. Civil penalties collected pursuant to this subsection shall be deposited in the state general fund. Section 36-2918, subsections C, D and F, relating to the imposition, collection and enforcement of civil penalties, apply to civil penalties imposed pursuant to this paragraph.

L. The administration may conduct postpayment review of all claims paid by the administration and may recoup any monies erroneously paid. The director may adopt rules that specify procedures for conducting postpayment review. A contractor may conduct a postpayment review of all claims paid by the contractor and may recoup monies that are erroneously paid.

M. Subject to title 41, chapter 4, article 4, the director or the director's designee may employ and supervise personnel necessary to assist the director in performing the functions of the administration.

N. The administration may contract with contractors for obstetrical care who are eligible to provide services under title XIX of the social security act.

O. Notwithstanding any other law, on federal approval the administration may make disproportionate share payments to private hospitals, county operated hospitals, including hospitals owned or leased by a special health care district, and state operated institutions for mental disease beginning October 1, 1991 in accordance with federal law and subject to legislative appropriation. If at any time the administration receives written notification from federal authorities of any change or difference in the actual or estimated amount of federal funds available for disproportionate share payments from the amount reflected in the legislative appropriation for such purposes, the administration shall provide written notification of such change or difference to the president and the minority leader of the senate, the speaker and the minority leader of the house of representatives, the director of the joint legislative budget committee, the legislative committee of reference and any hospital trade association within this state, within three working days not including weekends after receipt of the notice of the change or difference. In calculating disproportionate share payments as prescribed in this section, the administration may use either a methodology based on claims and encounter data that is submitted to the administration from contractors or a methodology based on data that is reported to the administration by private hospitals and state operated institutions for mental disease. The selected methodology applies to all private hospitals and state operated institutions for mental disease qualifying for disproportionate share payments.

P. Disproportionate share payments made pursuant to subsection O of this section include amounts for disproportionate share hospitals designated by political subdivisions of this state, tribal governments and universities under the jurisdiction of the Arizona board of regents. Subject to the approval of the centers for medicare and medicaid services, any amount of federal funding allotted to this state pursuant to section 1923(f) of the social security act and not otherwise spent under subsection O of this section shall be made available for distribution pursuant to this subsection. Political subdivisions of this state, tribal governments and universities under the jurisdiction of the Arizona board of regents may designate hospitals eligible to receive disproportionate share payments in an amount up to the limit prescribed in section 1923(g) of the social security act if those political subdivisions, tribal governments or universities provide sufficient monies to qualify for the matching federal monies for the disproportionate share payments.

Q. Notwithstanding any law to the contrary, the administration may receive confidential adoption information to determine whether an adopted child should be terminated from the system.

R. The adoption agency or the adoption attorney shall notify the administration within thirty days after an eligible person receiving services has placed that person's child for adoption.

S. If the administration implements an electronic claims submission system, it may adopt procedures pursuant to subsection G of this section requiring documentation different than prescribed under subsection G, paragraph 4 of this section.

T. In addition to any requirements adopted pursuant to subsection D, paragraph 4 of this section, notwithstanding any other law, subject to approval by the centers for medicare and medicaid services, beginning July 1, 2011, members eligible pursuant to section 36-2901, paragraph 6, subdivision (a), section 36-2931 and section 36-2981, paragraph 6 shall pay the following:

1. A monthly premium of fifteen dollars, except that the total monthly premium for an entire household shall not exceed sixty dollars.

2. A copayment of five dollars for each physician office visit.
3. A copayment of ten dollars for each urgent care visit.
4. A copayment of thirty dollars for each emergency department visit.

U. Subject to the approval of the centers for medicare and medicaid services, political subdivisions of this state, tribal governments and any university under the jurisdiction of the Arizona board of regents may provide to the Arizona health care cost containment system administration monies in addition to any state general fund monies appropriated for critical access hospitals in order to qualify for additional federal monies. Any amount of federal monies received by this state pursuant to this subsection shall be distributed as supplemental payments to critical access hospitals.

V. For the purposes of this section, "disproportionate share payment" means a payment to a hospital that serves a disproportionate share of low-income patients as described by 42 United States Code section 1396r-4.

36-2932. Arizona long-term care system; powers and duties of the director; expenditure limitation

A. The Arizona long-term care system is established. The system includes the management and delivery of hospitalization, medical care, institutional services and home and community based services to members through the administration, the program contractors and providers pursuant to this article together with federal participation under title XIX of the social security act. The director in the performance of all duties shall consider the use of existing programs, rules and procedures in the counties and department where appropriate in meeting federal requirements.

B. The administration has full operational responsibility for the system, which shall include the following:

1. Contracting with and certification of program contractors in compliance with all applicable federal laws.
2. Approving the program contractors' comprehensive service delivery plans pursuant to section 36-2940.
3. Providing by rule for the ability of the director to review and approve or disapprove program contractors' requests for proposals for providers and provider subcontracts.
4. Providing technical assistance to the program contractors.
5. Developing a uniform accounting system to be implemented by program contractors and providers of institutional services and home and community based services.
6. Conducting quality control on eligibility determinations and preadmission screenings.
7. Establishing and managing a comprehensive system for assuring the quality of care delivered by the system as required by federal law.
8. Establishing an enrollment system.
9. Establishing a member case management tracking system.
10. Establishing and managing a method to prevent fraud by applicants, members, eligible persons, program contractors, providers and noncontracting providers as required by federal law.
11. Coordinating benefits as provided in section 36-2946.
12. Establishing standards for the coordination of services.
13. Establishing financial and performance audit requirements for program contractors, providers and noncontracting providers.
14. Prescribing remedies as required pursuant to 42 United States Code section 1396r. These remedies may include the appointment of temporary management by the director, acting in collaboration with the director of the department of health services, in order to continue operation of a nursing care institution providing services pursuant to this article.
15. Establishing a system to implement medical child support requirements, as required by federal law. The administration may enter into an intergovernmental agreement with the department of economic security to implement this paragraph.
16. Establishing requirements and guidelines for the review of trusts for the purposes of establishing eligibility for the system pursuant to section 36-2934.01 and posteligibility treatment of income pursuant to subsection L of this section.

17. Accepting the delegation of authority from the department of health services to enforce rules that prescribe minimum certification standards for adult foster care providers pursuant to section 36-410, subsection B. The administration may contract with another entity to perform the certification functions.

18. Assessing civil penalties for improper billing as prescribed in section 36-2903.01, subsection K.

C. For nursing care institutions and hospices that provide services pursuant to this article, the director shall contract periodically as deemed necessary and as required by federal law for a financial audit of the institutions and hospices that is certified by a certified public accountant in accordance with generally accepted auditing standards or conduct or contract for a financial audit or review of the institutions and hospices. The director shall notify the nursing care institution and hospice at least sixty days before beginning a periodic audit. The administration shall reimburse a nursing care institution or hospice for any additional expenses incurred for professional accounting services obtained in response to a specific request by the administration. On request, the director of the administration shall provide a copy of an audit performed pursuant to this subsection to the director of the department of health services or that person's designee.

D. Notwithstanding any other provision of this article, the administration may contract by an intergovernmental agreement with an Indian tribe, a tribal council or a tribal organization for the provision of long-term care services pursuant to section 36-2939, subsection A, paragraphs 1, 2, 3 and 4 and the home and community based services pursuant to section 36-2939, subsection B, paragraph 2 and subsection C, subject to the restrictions in section 36-2939, subsections D and E for eligible members.

E. The director shall require as a condition of a contract that all records relating to contract compliance are available for inspection by the administration subject to subsection F of this section and that these records are maintained for five years. The director shall also require that these records are available on request of the secretary of the United States department of health and human services or its successor agency.

F. Subject to applicable law relating to privilege and protection, the director shall adopt rules prescribing the types of information that are confidential and circumstances under which that information may be used or released, including requirements for physician-patient confidentiality. Notwithstanding any other law, these rules shall provide for the exchange of necessary information among the program contractors, the administration and the department for the purposes of eligibility determination under this article.

G. The director shall adopt rules to specify methods for the transition of members into, within and out of the system. The rules shall include provisions for the transfer of members, the transfer of medical records and the initiation and termination of services.

H. The director shall adopt rules that provide for withholding or forfeiting payments made to a program contractor if it fails to comply with a provision of its contract or with the director's rules.

I. The director shall:

1. Establish by rule the time frames and procedures for all grievances and requests for hearings consistent with section 36-2903.01, subsection B, paragraph 4.

2. Apply for and accept federal monies available under title XIX of the social security act in support of the system. In addition, the director may apply for and accept grants, contracts and private donations in support of the system.

3. Not less than thirty days before the administration implements a policy or a change to an existing policy relating to reimbursement, provide notice to interested parties. Parties interested in receiving notification of policy changes shall submit a written request for notification to the administration.

J. The director may apply for federal monies available for the support of programs to investigate and prosecute violations arising from the administration and operation of the system. Available state monies appropriated for

the administration of the system may be used as matching monies to secure federal monies pursuant to this subsection.

K. The director shall adopt rules that establish requirements of state residency and qualified alien status as prescribed in section 36-2903.03. The administration shall enforce these requirements as part of the eligibility determination process. The rules shall also provide for the determination of the applicant's county of residence for the purpose of assignment of the appropriate program contractor.

L. The director shall adopt rules in accordance with the state plan regarding posteligibility treatment of income and resources that determine the portion of a member's income that shall be available for payment for services under this article. The rules shall provide that a portion of income may be retained for:

1. A personal needs allowance for members receiving institutional services of at least fifteen per cent of the maximum monthly supplemental security income payment for an individual or a personal needs allowance for members receiving home and community based services based on a reasonable assessment of need.
2. The maintenance needs of a spouse or family at home in accordance with federal law. The minimum resource allowance for the spouse or family at home is twelve thousand dollars adjusted annually by the same percentage as the percentage change in the consumer price index for all urban consumers (all items; United States city average) between September 1988 and the September before the calendar year involved.
3. Expenses incurred for noncovered medical or remedial care that are not subject to payment by a third party payor.

M. In addition to the rules otherwise specified in this article, the director may adopt necessary rules pursuant to title 41, chapter 6 to carry out this article. Rules adopted by the director pursuant to this subsection may consider the differences between rural and urban conditions on the delivery of services.

N. The director shall not adopt any rule or enter into or approve any contract or subcontract that does not conform to federal requirements or that may cause the system to lose any federal monies to which it is otherwise entitled.

O. The administration, program contractors and providers may establish and maintain review committees dealing with the delivery of care. Review committees and their staff are subject to the same requirements, protections, privileges and immunities prescribed pursuant to section 36-2917.

P. If the director determines that the financial viability of a nursing care institution or hospice is in question, the director may require a nursing care institution and a hospice providing services pursuant to this article to submit quarterly financial statements within thirty days after the end of its financial quarter unless the director grants an extension in writing before that date. Quarterly financial statements submitted to the department shall include the following:

1. A balance sheet detailing the institution's assets, liabilities and net worth.
2. A statement of income and expenses, including current personnel costs and full-time equivalent statistics.

Q. The director may require monthly financial statements if the director determines that the financial viability of a nursing care institution or hospice is in question. The director shall prescribe the requirements of these statements.

R. The total amount of state monies that may be spent in any fiscal year by the administration for long-term care shall not exceed the amount appropriated or authorized by section 35-173 for that purpose. This article shall not be construed to impose a duty on an officer, agent or employee of this state to discharge a responsibility or to create any right in a person or group if the discharge or right would require an expenditure of state monies in excess of the expenditure authorized by legislative appropriation for that specific purpose.

36-2939. Long-term care system services

A. The following services shall be provided by the program contractors to members who are determined to need institutional services pursuant to this article:

1. Nursing facility services other than services in an institution for tuberculosis or mental disease.
2. Notwithstanding any other law, behavioral health services if these services are not duplicative of long-term care services provided as of January 30, 1993 under this subsection and are authorized by the program contractor through the long-term care case management system. If the administration is the program contractor, the administration may authorize these services.
3. Hospice services. For the purposes of this paragraph, "hospice" means a program of palliative and supportive care for terminally ill members and their families or caregivers.
4. Case management services as provided in section 36-2938.
5. Health and medical services as provided in section 36-2907.
6. Dental services in an annual amount of not more than one thousand dollars per member.

B. In addition to the services prescribed in subsection A of this section, the department, as a program contractor, shall provide the following services if appropriate to members who have a developmental disability as defined in section 36-551 and are determined to need institutional services pursuant to this article:

1. Intermediate care facility services for a member who has a developmental disability as defined in section 36-551. For purposes of this article, a facility shall meet all federally approved standards and may only include the Arizona training program facilities, a state owned and operated service center, state owned or operated community residential settings and private facilities that contract with the department.
2. Home and community based services that may be provided in a member's home, at an alternative residential setting as prescribed in section 36-591 or at other behavioral health alternative residential facilities licensed by the department of health services and approved by the director of the Arizona health care cost containment system administration and that may include:
 - (a) Home health, which means the provision of nursing services, home health aide services or medical supplies, equipment and appliances, that are provided on a part-time or intermittent basis by a licensed home health agency within a member's residence based on a physician's orders and in accordance with federal law. Physical therapy, occupational therapy, or speech and audiology services provided by a home health agency may be provided in accordance with federal law. Home health agencies shall comply with federal bonding requirements in a manner prescribed by the administration.
 - (b) Home health aide, which means a service that provides intermittent health maintenance, continued treatment or monitoring of a health condition and supportive care for activities of daily living provided within a member's residence.
 - (c) Homemaker, which means a service that provides assistance in the performance of activities related to household maintenance within a member's residence.
 - (d) Personal care, which means a service that provides assistance to meet essential physical needs within a member's residence.
 - (e) Day care for persons with developmental disabilities, which means a service that provides planned care supervision and activities, personal care, activities of daily living skills training and habilitation services in a group setting during a portion of a continuous twenty-four-hour period.

- (f) Habilitation, which means the provision of physical therapy, occupational therapy, speech or audiology services or training in independent living, special developmental skills, sensory-motor development, behavior intervention, and orientation and mobility in accordance with federal law.
- (g) Respite care, which means a service that provides short-term care and supervision available on a twenty-four-hour basis.
- (h) Transportation, which means a service that provides or assists in obtaining transportation for the member.
- (i) Other services or licensed or certified settings approved by the director.

C. In addition to services prescribed in subsection A of this section, home and community based services may be provided in a member's home, in an adult foster care home as prescribed in section 36-401, in an assisted living home or assisted living center as defined in section 36-401 or in a level one or level two behavioral health alternative residential facility approved by the director by program contractors to all members who do not have a developmental disability as defined in section 36-551 and are determined to need institutional services pursuant to this article. Members residing in an assisted living center must be provided the choice of single occupancy. The director may also approve other licensed residential facilities as appropriate on a case-by-case basis for traumatic brain injured members. Home and community based services may include the following:

1. Home health, which means the provision of nursing services, home health aide services or medical supplies, equipment and appliances, that are provided on a part-time or intermittent basis by a licensed home health agency within a member's residence based on a physician's orders and in accordance with federal law. Physical therapy, occupational therapy, or speech and audiology services provided by a home health agency may be provided in accordance with federal law. Home health agencies shall comply with federal bonding requirements in a manner prescribed by the administration.
2. Home health aide, which means a service that provides intermittent health maintenance, continued treatment or monitoring of a health condition and supportive care for activities of daily living provided within a member's residence.
3. Homemaker, which means a service that provides assistance in the performance of activities related to household maintenance within a member's residence.
4. Personal care, which means a service that provides assistance to meet essential physical needs within a member's residence.
5. Adult day health, which means a service 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 may also include preventive, therapeutic and restorative health related services that do not include behavioral health services.
6. Habilitation, which means the provision of physical therapy, occupational therapy, speech or audiology services or training in independent living, special developmental skills, sensory-motor development, behavior intervention, and orientation and mobility in accordance with federal law.
7. Respite care, which means a service that provides short-term care and supervision available on a twenty-four-hour basis.
8. Transportation, which means a service that provides or assists in obtaining transportation for the member.
9. Home delivered meals, which means a service that provides for a nutritious meal that contains at least one-third of the recommended dietary allowance for an individual and that is delivered to the member's residence.
10. Other services or licensed or certified settings approved by the director.

D. The amount of money expended by program contractors on home and community based services pursuant to subsection C of this section shall be limited by the director in accordance with the federal monies made available to this state for home and community based services pursuant to subsection C of this section. The director shall establish methods for the allocation of monies for home and community based services to program contractors and shall monitor expenditures on home and community based services by program contractors.

E. Notwithstanding subsections A, B, C and F of this section, no service may be provided that does not qualify for federal monies available under title XIX of the social security act or the section 1115 waiver.

F. In addition to services provided pursuant to subsections A, B and C of this section, the director may implement a demonstration project to provide home and community based services to special populations, including persons with disabilities who are eighteen years of age or younger, are medically fragile, reside at home and would be eligible for supplemental security income for the aged, blind or disabled or the state supplemental payment program, except for the amount of their parent's income or resources. In implementing this project, the director may provide for parental contributions for the care of their child.

G. Subject to section 36-562, the administration by rule shall prescribe a deductible schedule for programs provided to members who are eligible pursuant to subsection B of this section, except that the administration shall implement a deductible based on family income. In determining deductible amounts and whether a family is required to have deductibles, the department shall use adjusted gross income. Families whose adjusted gross income is at least four hundred percent and less than or equal to five hundred percent of the federal poverty guidelines shall have a deductible of two percent of adjusted gross income. Families whose adjusted gross income is more than five hundred percent of adjusted gross income shall have a deductible of four percent of adjusted gross income. Only families whose children are under eighteen years of age and who are members who are eligible pursuant to subsection B of this section may be required to have a deductible for services. For the purposes of this subsection, "deductible" means an amount a family, whose children are under eighteen years of age and who are members who are eligible pursuant to subsection B of this section, pays for services, other than departmental case management and acute care services, before the department will pay for services other than departmental case management and acute care services.

INDUSTRIAL COMMISSION OF ARIZONA

Title 20, Chapter 5, Article 14



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - ONE-YEAR REVIEW REPORT

MEETING DATE: February 7, 2023

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: January 17, 2023

SUBJECT: INDUSTRIAL COMMISSION OF ARIZONA
Title 20, Chapter 5, Article 14

Summary

This One-Year Review Report (1YRR) from the Industrial Commission of Arizona (Commission) relates to four (4) rules in Title 20, Chapter 5, Article 14 related to Municipal Firefighter Cancer Reimbursement Fund and Firefight and Fire Investigator Cancer Claim Reporting. Specifically, SB1827 (Laws 2021, Ch. 411) granted the Department a one-time exemption from the rulemaking requirements of that Administrative Procedures Act to adopt rules necessary to carry out Title 23, Chapter 11, Article 1 to administer the Municipal Firefighter Cancer Reimbursement Fund (Fund). Arizona cities and towns are required to pay annual assessments into the Fund and Municipal Payors (as defined in A.R.S. § 23-1701) are authorized to seek reimbursement from the Fund for eligible compensation and benefits paid by Municipal Payors to municipal firefighters and municipal fire investigators under A.R.S. § 23-901.09.

Pursuant to A.R.S. § 23-1702(E), the Commission was required to adopt rules necessary to carry out Title 23, Chapter 11, Article 1, on or before January 1, 2022. The enacted rules set forth the types of claims covered under the rules, the process required to seek reimbursement, the timeline for the Commission to process reimbursements, the record retention timeline for claims seeking reimbursement, the right of inspection by the Commission, and the timeframe in which reimbursement overpayments must be reconciled with the Commission.

Subsequently, A.R.S. § 23-971 was enacted in 2021, requiring insurance carriers, self-insured employers, and self-insurance pools that provide workers' compensation coverage to firefighters and fire investigators to "compile and report to the [C]ommission claim and claim reserve information for all cancer-related claims filed by or on behalf of firefighters and fire investigators." A.R.S. § 23-971(A)-(B). The Commission is required to aggregate and make the data available to insurance carriers, rating organizations, employers, public safety workers and workers' compensation pools "to assist with the setting of workers' compensation insurance rates and to ensure the adequate reserving for cancer claims for the class codes associated with firefighters and fire investigators." A.R.S. § 23-971(D). The enacted rules: (1) specify who may complete cancer-related claim reporting under A.R.S. § 23-971 on behalf of an insurance carrier, self-insured employer, or self-insurance pool; (2) establish the method by which cancer-related claim data is to be submitted to the Commission; (3) prescribe the durations of time that a cancer-related claim must be reported; (4) establish an annual reporting cycle with a designated reporting deadline; and (5) define the general and specific data elements that must be included in annual reporting to ensure accuracy and consistency. The Commission indicates the enacted rules added detail and clarity to the general requirements in A.R.S. § 23-971, which reduces the burden and uncertainty associated with cancer-related claim reporting.

Pursuant to A.R.S. § 41-1095, "for an agency that the legislature has granted a one-time rulemaking exemption, within one year after a rule has been adopted the agency shall review the rule adopted under the rulemaking exemption to determine whether any rule adopted under the rulemaking exemption should be amended or repealed." Furthermore, "the agency shall prepare and obtain council approval of a written report summarizing its findings, its supporting reasons and any proposed course of action." *Id.* The Commission submits this 1YRR for the Council's consideration in compliance with A.R.S. § 41-1095.

Proposed Action

The Commission is proposing no additional course of action related to these rules.

1. Has the agency analyzed whether the rules are authorized by statute?

The Commission cites both general and specific statutory authority for the rules under review. The session law authorizing a one-time exemption from the APA is SB1827 (Laws 2021, Ch. 411). A copy of the session law is included in the final materials for the Council's reference

2. Summary of the agency's economic impact comparison and identification of stakeholders:

According to the Commission, the rules reduce regulatory burden and uncertainty by establishing a streamlined process and timeline for seeking reimbursement from the Municipal Firefighter Cancer Reimbursement Fund and for reporting cancer-related claim data to the

Commission. The rules promote clarity and efficiency, and have minimal, if any, adverse economic impact on small businesses or consumers.

Stakeholders are identified as the Commission, Municipal Payors (self-insured cities and towns, self-insurance pools used by cities or towns, and workers' compensation insurers used by cities or towns), insurance carriers, self-insured employers, firefighters, and fire investigators.

3. Has the agency analyzed the costs and benefits of the rulemaking and determined that the rules impose the least burden and costs to those who are regulated?

The Commission states that the benefits of the rules outweigh the probable costs. No less intrusive or less costly alternative methods were considered.

4. Has the agency received any written criticisms of the rules since the rule was adopted?

The Commission indicates it has not received any written criticisms of the rules since they were adopted.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Commission states the rules under review are clear, concise, and understandable.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

The Commission states the rules under review are consistent with other rules and statutes.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Commission indicates the rules are currently effective in achieving their objectives. Specifically, the Commission states, in its inaugural year, ten cities have requested reimbursement on a total of 84 claims. The total reimbursement amount exceeds two-million dollars.

The Commission states, to date, 195 cancer claims have been reported. The Commission indicates the data collected has allowed the Commission to track the total number of cancer claims reported, the age of the applicant at the time of the reported cancer claim, the number of cancer claims accepted or denied, the number of cancer claims by county, and the number of cancer claims by type of cancer.

8. Has the agency analyzed the current enforcement status of the rules?

The Commission states the rules under review are currently enforced as written.

9. Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?

The Commission indicates the rules in Article 14 implement state law, specifically A.R.S. §§ 23-971 & 23-1702. There is no corresponding federal law.

10. Has the agency completed any additional process required by law?

Not applicable.

11. Do the rules require a permit or license and, if so, does the agency comply with A.R.S. § 41-1037?

Not applicable. The rules reviewed do not require a permit, license, or agency authorization.

12. Conclusion

Council staff finds that the Commission submitted an adequate report that meets the requirements of A.R.S. § 41-1095. As indicated above, SB1827 (Laws 2021, Ch. 411) granted the Department a one-time exemption from the rulemaking requirements of that Administrative Procedures Act to adopt rules necessary to carry out Title 23, Chapter 11, Article 1 to administer the Fund. The enacted rules set forth the types of claims covered under the rules, the process required to seek reimbursement, the timeline for the Commission to process reimbursements, the record retention timeline for claims seeking reimbursement, the right of inspection by the Commission, and the timeframe in which reimbursement overpayments must be reconciled with the Commission. The enacted rules also: (1) specify who may complete cancer-related claim reporting under A.R.S. § 23-971 on behalf of an insurance carrier, self-insured employer, or self-insurance pool; (2) establish the method by which cancer-related claim data is to be submitted to the Commission; (3) prescribe the durations of time that a cancer-related claim must be reported; (4) establish an annual reporting cycle with a designated reporting deadline; and (5) define the general and specific data elements that must be included in annual reporting to ensure accuracy and consistency. The Commission indicates the enacted rules added detail and clarity to the general requirements in A.R.S. § 23-971, which reduces the burden and uncertainty associated with cancer-related claim reporting.

Council staff recommends approval of this report.

**THE INDUSTRIAL COMMISSION OF ARIZONA
OFFICE OF THE DIRECTOR**



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December 20, 2022

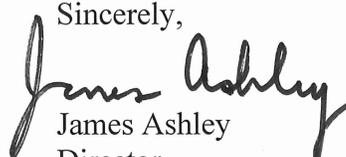
Sent via e-mail to grrc@azdoa.gov
Nicole Sornsins, Chair
Governor's Regulatory Review Council
Arizona Department of Administration
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

Re: A.A.C. Title 20, Chapter 5, Article 14, One-Year Review Report

Dear Ms. Sornsins:

The Industrial Commission of Arizona (the "Commission") submits for approval by the Governor's Regulatory Review Council (the "Council") the attached One-Year Review Report on 20 A.A.C. 5, Article 14. The Commission has timely filed this report on or before January 1, 2023. The Commission believes that the Report complies with the requirements of A.R.S. § 41-1056.

The Commission has reviewed all rules in Article 14 and, with this letter, I certify that the Commission is in compliance with A.R.S. § 41-1091. Should you have any questions concerning the One-Year Review Report, please contact Chief Counsel Gaetano Testini (602) 542-5905.

Sincerely,

James Ashley
Director

Enclosures

ONE-YEAR-REVIEW REPORT

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 14. MUNICIPAL FIREFIGHTER CANCER

REIMBURSEMENT FUND AND FIREFIGHTER AND FIRE

INVESTIGATOR CANCER CLAIM REPORTING

ONE-YEAR-REVIEW REPORT
TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE
CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA
ARTICLE 14. MUNICIPAL FIREFIGHTER CANCER
REIMBURSEMENT FUND AND FIREFIGHTER AND FIRE
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1.	ONE-YEAR REVIEW SUMMARY	1
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4.	GENERAL AND SPECIFIC STATUTES	13
5.	ECONOMIC IMPACT STATEMENT	Attached

ONE-YEAR REVIEW SUMMARY

The Industrial Commission of Arizona (the “Commission”) was created in 1925 as a result of legislation implementing the constitutional provisions establishing a workers’ compensation system. From 1925 to 1969, the workers’ compensation system consisted of the State Compensation Fund, which was then a part of the Commission, and self-insured employers which generally comprised the mining and the railroad companies. In 1969, the workers’ compensation system reorganized and expanded to include private insurance companies. The State Compensation Fund was split off from the Commission and established as a separate agency responsible for providing workers’ compensation insurance coverage. The Commission retained both its responsibility as the file of record and its authority over the processing of workers’ compensation claims. Since that time, the role of the Commission has grown to include other labor-related issues such as occupational safety and health, youth employment laws, resolution of wage-related disputes, minimum wage, vocational rehabilitation, workers’ compensation coverage for claimants of uninsured employers, and self-insured employers.

Certification Regarding Compliance with A.R.S. § 41-1091

In the cover letter for this report, the Commission’s Director certifies that the Commission has complied with A.R.S. § 41-1091 by posting directories of its currently applicable rules and substantive policy statements on the Commission’s website, as required by A.R.S. § 23-1091.01(1) & (2).

About Article 14

Pursuant to A.R.S. § 23-1702(E), the Commission was required to adopt rules necessary to carry out Title 23, Chapter 11, Article 1, on or before January 1, 2022. (Municipal Firefighter Cancer Reimbursement). The enacted rules set forth the types of claims covered under the rules, the process required to seek reimbursement, the timeline for the Commission to process reimbursements, the record retention timeline for claims seeking reimbursement, the right of inspection by the Commission, and the timeframe in which reimbursement overpayments must be reconciled with the Commission.

Subsequently, A.R.S. § 23-971 was enacted in 2021 requiring insurance carriers, self-insured employers, and self-insurance pools that provide workers' compensation coverage to firefighters and fire investigators to "compile and report to the [C]ommission claim and claim reserve information for all cancer-related claims filed by or on behalf of firefighters and fire investigators." A.R.S. § 23-971(A)-(B). The Commission is required to aggregate and make the data available to insurance carriers, rating organizations, employers, public safety workers and workers' compensation pools "to assist with the setting of workers' compensation insurance rates and to ensure the adequate reserving for cancer claims for the class codes associated with firefighters and fire investigators." A.R.S. § 23-971(D). The enacted rules: (1) specify who may complete cancer-related claim reporting under A.R.S. § 23-971 on behalf of an insurance carrier, self-insured employer, or self-insurance pool; (2) establish the method by which cancer-related claim data is to be submitted to the Commission; (3) prescribe the durations of time that a cancer-related claim must be reported; (4) establish an annual reporting cycle with a designated reporting deadline; and (5) define the general and specific data elements that must be included in annual reporting to ensure accuracy and consistency. The enacted rules added detail and clarity to the general requirements in A.R.S. § 23-971, which reduces the burden and uncertainty associated with cancer-related claim reporting.

ONE-YEAR-REVIEW REPORT
TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE
CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA
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REIMBURSEMENT FUND AND FIREFIGHTER AND FIRE
INVESTIGATOR CANCER CLAIM REPORTING

1. General and specific statutes authorizing the rules, including any statute that authorizes the agency to make rules.

The rules in Article 14 have general authorization under A.R.S. § 23-107(A)(1). Pursuant to A.R.S. § 23-107(A)(1), the Commission “has full power, jurisdiction, and authority to formulate and adopt rules . . . for effecting the purposes of [A.R.S. Title 23, Chapter 1, Article 1].”

The rules in Article 14 have specific authorization under A.R.S. §§ 23-1702(E) and 23-971. Pursuant to A.R.S. § 23-1702(E), the Commission " shall adopt rules pursuant to title 41, chapter 6 to carry out this chapter." Pursuant to A.R.S. § 23-971(B)(4), the information required ... shall include ..."Any other information requested by the Commission."

2. Objective of the rules, including the purposes for the existence of the rules.

1401. Application of the Article and Definitions

This rule sets forth which claims the rules apply to and incorporates and supplements definitions from A.R.S. §§ 23-1701 and 23-901.09.

1402. Reimbursement Claims

This rule sets forth the procedure for seeking reimbursement from the Municipal Firefighter Cancer Reimbursement Fund.

1403. Recordkeeping and Record Inspections

This rule sets forth the recordkeeping requirements for reimbursement claims.

1404. Fund Overpayments

This rule sets forth the obligations of a municipal payor in the event of an overpayment.

1405. Cancer Claim Reporting Method; Frequency; Deadlines; Duration

This rule sets forth the procedure for reporting cancer-related claims as mandated by A.R.S. § 23-971.

1406. Cancer Reporting; Required General Data Elements

This rule sets forth the general data elements that must be included when reporting cancer-related claims as mandated by A.R.S. § 23-971.

1407. Cancer Reporting; Required Claim-Specific Data Elements

This rule sets forth the specific data elements that must be included when reporting cancer-related claims as mandated by A.R.S. § 23-971.

3. Effectiveness of the rules in achieving their objectives, including a summary of any available data supporting the conclusion reached

In its inaugural year, ten cities have requested reimbursement on a total of 84 claims. The total reimbursement amount exceeds two-million dollars.

To date, 195 cancer claims have been reported. The data collected has allowed the Commission to track the total number of cancer claims reported, the age of the applicant at the time of the reported cancer claim, the number of cancer claims accepted or denied, the number of cancer claims by county, and the number of cancer claims by type of cancer.

4. Written criticisms of the rules received by the agency

The agency has not received written criticisms of the rules.

5. Consistency of the rules with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency

There are no inconsistencies with the rules in Article 14.

6. Agency enforcement policy, including whether the rules are currently being enforced and, if so, whether there are any problems with enforcement

The rules are currently being enforced and there have been no problems with enforcement.

7. Clarity, conciseness, and understandability of the rules

The rules are clear, concise and understandable.

8. A comparison of the estimated economic, small business, and consumer impact of the rules

With respect to the Municipal Firefighter Cancer Reimbursement Fund the rules reduce regulatory burdens on Municipal Payors (self-insured cities and towns, self-insurance pools used by cities or towns, and workers' compensation insurers used by cities or towns) by providing a streamlined process and timeline for seeking reimbursement from the Fund. The rules provide an efficient processing of reimbursement claims. The rules benefit Municipal Payors who have reimbursement claims under A.R.S. Title 23, Chapter 11, Article 1 and do not have an adverse economic impact on small businesses or consumers.

With respect to the Cancer-Related Claims Reporting the rules reduce regulatory burden and uncertainty by establishing a streamlined process and timeline for reporting cancer-related claim data to the Commission. The rules promote clarity, efficiency, and consistency for the cancer-related claim reporting process. The rules have minimal, if any, adverse economic impact on small businesses or consumers.

9. Any analysis submitted to the agency by another person regarding the rules' impact on this state's business competitiveness as compared to the competitiveness of businesses in other states

No business competitiveness analysis has been submitted to the Commission regarding Article 14.

10. If applicable, whether the agency completed additional processes required by law

Not applicable.

11. A determination after analysis that probable benefits outweigh probable costs and that the rules impose the least burden and costs on persons regulated

With respect to the Municipal Firefighter Cancer Reimbursement Fund the rules provide an avenue for municipal payors to recover money paid for specific types of cancer claims. While some municipal payors may not have qualifying claims in a specific year, the program acts as an insurance policy when a significant claim is incurred; as such the benefits outweigh the probable costs.

With respect to the Cancer-Related Claims Reporting the affected parties have a statutory obligation to report the data to the Commission. The rules provide a streamlined, clear, efficient and consistent process and timeline for reporting cancer-related claim data to the Commission. The collected aggregate data is available for the stakeholders. The data collected has not been available to stakeholders prior to the implementation of the program; as such the benefits outweigh the probable costs.

12. A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law

The rules in Article 14 implement state law, specifically A.R.S. §§ 23-971 & 23-1702. There is no corresponding federal law.

13. For rules adopted after July 29, 2010, that require issuance of a regulatory permit, license or agency authorization, whether the rule complies with A.R.S. § 41-1037

This analysis applies only to rules adopted after July 29, 2010.

**TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE
CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA**

**ARTICLE 14. MUNICIPAL FIREFIGHTER CANCER REIMBURSEMENT FUND AND
FIREFIGHTER AND FIRE INVESTIGATOR CANCER CLAIM REPORTING**

Section

R20-5-1401. Application of the Article and Definitions

R20-5-1402. Reimbursement Claims

R20-5-1403. Recordkeeping and Record Inspections

R20-5-1404. Fund Overpayments

R20-5-1405. Cancer Claim Reporting Method; Frequency; Deadlines; Duration

R20-5-1406. Cancer Reporting; Required General Data Elements

R20-5-1407. Cancer Reporting; Required Claim-Specific Data Elements

R20-5-1401. Application of the Article and Definitions

A. This Article applies to reimbursement claims submitted to the Municipal Firefighter Cancer Reimbursement Fund under Arizona Revised Statutes (“A.R.S.”), Title 23, Chapter 11, and firefighter and fire investigator cancer claim reporting under A.R.S. § 23-971.

B. The definitions in A.R.S. §§ 23-1701 and 23-901.09 apply in this Article.

C. “Cancer-related claims” as used in A.R.S. § 23-971 and this Article shall mean Arizona workers’ compensation claims involving any disease, infirmity, or impairment of health that is caused by cancer.

D. “Fiscal year” or “reporting period” shall mean the 12-month cycle that begins on July 1 and ends on June 30.

E. “Loss valuation date” shall mean the last day of the reporting period and the date on which firefighter and fire investigator cancer claim data shall be determined for reporting purposes.

F. An “open” claim shall mean a workers’ compensation claim that is eligible for temporary compensation and/or active medical treatment. A “closed” claim shall mean a workers’ compensation claim in which temporary compensation and active medical treatment have been terminated.

R20-5-1402. Reimbursement Claims

A. A Municipal Payor seeking reimbursement from the Fund shall submit a reimbursement claim in writing on the Municipal Firefighter Cancer Reimbursement Form approved by the Commission.

B. The Municipal Firefighter Cancer Reimbursement Form shall include the following attestations, which shall be made by an authorized representative of a Municipal Payor seeking reimbursement from the Fund:

1. The reimbursement request includes only eligible compensation and benefits paid under A.R.S. § 23-1702(A) on municipal firefighter or municipal fire investigator workers’ compensation claims accepted under A.R.S. § 23-901.09.

2. The reimbursement request only includes amounts actually paid by the Municipal Payor for compensation and benefits under A.R.S. § 23-1702(A) during the immediately preceding fiscal year.

3. The reimbursement request does not include amounts paid for expenses relating to case management, vocational rehabilitation, or similar nonmedical costs.
4. The information included in, or submitted with, the Municipal Firefighter Cancer Reimbursement Form is true and correct.

C. The Municipal Firefighter Cancer Reimbursement Form shall not be changed, amended, or otherwise altered without the prior written approval of the Commission.

D. A Municipal Payor seeking reimbursement from the Fund for compensation and benefits paid during a fiscal year shall submit a reimbursement claim to the Commission between July 1 and August 31 immediately following the applicable fiscal year.

E. Failure to timely submit a reimbursement claim for compensation and benefits paid during a fiscal year before the claim submission deadline in subsection D will be deemed a waiver of the right of the Municipal Payor to request reimbursement for amounts paid during the applicable fiscal year. Failure to include all eligible compensation or benefits in a reimbursement claim before the claim submission deadline in subsection D will be deemed a waiver of the right of the Municipal Payor to request reimbursement for any omitted amounts paid during the applicable fiscal year.

F. The Commission shall process reimbursements pursuant to A.R.S. § 23-1702(C) on or before December 31 of each year.

G. The maximum annual amount of aggregate reimbursements paid by the Fund shall in no event exceed the total amount of monies in the Fund as of close of business on June 30 of the applicable fiscal year.

R20-5-1403. Recordkeeping and Record Inspections

A. Municipal Payors seeking reimbursement from the Fund shall maintain all records supporting amounts included in a reimbursement claim for at least ten years after the reimbursement claim is filed.

B. Municipal Payor records supporting amounts included in a reimbursement claim shall always be open for inspection by the Commission or representatives of the Commission to ascertain information necessary for its administration of A.R.S. §§ 23-1701 through 23-1703. Upon request, a Municipal Payor shall make such records available to the Commission within 30 days.

R20-5-1404. Fund Overpayments

A. A Municipal Payor that discovers an error in a reimbursement claim which may result or has resulted in an overpayment from the Fund shall notify the Commission of the error within three business days of discovery of the error.

B. Overpayments made by the Fund to Municipal Payors that are discovered through inspection of records, or otherwise, shall be returned to the Fund by the applicable Municipal Payor within 30 days of notification by the Commission.

R20-5-1405. Cancer Claim Reporting Method; Frequency; Deadlines; Duration

A. Cancer-related claim reporting under A.R.S. § 23-971 and this Article shall be performed electronically through the commission's electronic claims portal. Insurance carriers, self-insured employers, self-insurance pools, or a designee (including third-party administrators or an adjuster) are

authorized to complete required claim reporting. Duplicate reporting of the same claim information is prohibited.

B. Subject to the claim reporting durations specified in subsection D of this section, insurance carriers, self-insured employers, and self-insurance pools subject to A.R.S. § 23-971 shall annually report the data elements specified in R20-5-1407 and R20-5-1408 for cancer-related claims filed by or on behalf of firefighters and fire investigators.

C. Claim data reported pursuant to subsection B of this section shall be determined as of the loss valuation date for the applicable reporting period.

D. Claim reporting shall be completed within 31 days after each applicable reporting period, *i.e.*, no later than July 31 of each year.

E. Claim reporting under A.R.S. § 23-971 is subject to the following claim reporting durations:

1. Denied Claims: Reported one time following the reporting period during which the claim is denied by a notice of claim status. Reporting is not required for claims denied prior to July 1, 2021.
2. Claims Accepted on or after July 1, 2021: Reported for the longer of: (a) the duration the claim remains open plus two additional annual reports after the claim is closed; or (b) ten annual reports after acceptance of the claim.
3. Claims Accepted before July 1, 2021: If the claim was open on July 1, 2021, the claim shall be reported for the duration the claim remains open plus two additional annual reports after the claim is closed. If the claim was closed as of July 1, 2021, and was accepted on or after July 1, 2011, the claim shall be reported for two annual reports. If the claim was closed as of July 1, 2021, and was accepted prior to July 1, 2011, reporting is not required.
4. Reopened Claims: Reported for the longer of: (1) the duration the claim remains open (following acceptance of the petition to reopen), plus two additional annual reports after the claim is closed; or (2) ten annual reports after acceptance of the petition to reopen.
5. Claims that Develop into Cancer-Related Claims: If a claim develops into a cancer-related claim, reporting should begin following the reporting period in which the claim developed into a cancer-related claim. In these circumstances, the claim shall be reported for the longer of: (1) the duration the claim remains open plus two additional annual reports after the claim is closed; or (2) ten annual reports.
6. Non-Cancer-Related Claims: If a cancer-related claim develops into a claim that no longer meets the definition of a cancer-related claim, no further annual reporting is required.
7. Informational Claims: Claims that have been filed but have not been accepted or denied as of the applicable loss valuation date shall not be reported.

R20-5-1406. Cancer Reporting; Required General Data Elements

A. Name of Data Provider (*i.e.*, What entity is reporting the data?): The name of the insurance carrier, self-insured employer, self-insurance pool, or designee submitting the cancer-related claim data.

- B.** Data Provider Type Code: Insurance Carrier; Self-Insured Employer; Self-Insurance Pool; Third-Party Administrator; or Other Designee.
- C.** Name of Person Submitting Data: The name of the individual submitting the cancer-related claim data.
- D.** Name of Data Provider Primary Contact: The name of the individual designated by the Data Provider who can be contacted regarding the data submission. (May be the same as the “Name of Person Submitting the Data.”)
- E.** Data Provider Primary Contact Phone Number: The phone number of the Data Provider Primary Contact.
- F.** Data Provider Primary Contact Email Address: The email address of the Data Provider Primary Contact.
- G.** Loss valuation date: The last day of the 12-month reporting period.
- H.** Total Number of New Cancer-Related Claims: Total number of cancer-related claims filed by or on behalf of firefighters and fire investigators during the applicable reporting period (whether or not the claims are included in the detailed reporting).
 - 1.** Accepted: Total number of new cancer-related claims accepted during the applicable reporting period.
 - 2.** Denied: Total number of cancer-related claims denied during the applicable reporting period.
 - 3.** Pending: Total number of cancer-related claims pending decision on the applicable loss valuation date.

R20-5-1407. Cancer Reporting; Required Claim-Specific Data Elements

- A.** Unique Claim Identifier: The unique, alphanumeric claim identifier (up to 20 characters, but no less than 7 characters) assigned by the carrier, self-insured employer, or self-insurance pool to a specific claim. The claim identifier shall remain the same throughout the life of the claim. Usage of the commission’s claim number is prohibited. Usage of claimant name, personally-identifiable information, or carrier/self-insured employer/self-insurance pool name in identifier is prohibited.
- B.** Transaction Type Code: The code that identifies a report as an initial report (01) or subsequent report (02).
- C.** Occupational Descriptor Code: (01) = Firefighter (02) = Fire Investigator.
- D.** Sex Code: The sex of the injured worker. (M = Male, F = Female, N = Not Reported.)
- E.** Birth Year: The 4-digit birth year of the injured worker.
- F.** Year Claim Reported: The 4-digit year the claim was reported to the carrier/self-insured employer/self-insurance pool.
- G.** Year of Loss: The 4-digit year when the injury (cancer) became manifest.
- H.** Year of Hire: The 4-digit year when the injured worker was hired by the employer as a firefighter or fire investigator (either full-time or part-time). If unknown, enter (U).

I. Name of Carrier, Self-Insured Employer, or Self-Insurance Pool: Complete business name of insurance carrier or self-insured employer/pool responsible for the claim.

J. Employer Name: The complete business name of the employer (including a DBA, if applicable) related to the claim.

K. County Code: The code corresponding to Arizona county primarily served by the employer. (01) = Apache; (2) = Cochise; (3) = Coconino; (4) = Gila; (5) = Graham; (6) = Greenlee; (7) = La Paz; (8) = Maricopa; (9) = Mohave; (10) = Navajo; (11) = Pima; (12) = Pinal; (13) = Santa Cruz; (14) = Yavapai; (15) = Yuma.

L. Claim Acceptance Date: The date the claim was first accepted as compensable. If the claim was denied, enter (D).

M. Claim Denial Code: The code corresponding to the reason a claim was denied. (01) = Claim not compensable; (02) No coverage; (03) Other reason. If the claim was accepted, enter (A).

N. Claims Status Code: The code corresponding to the claim's status as of the loss valuation date. (01) = claim is open (not reopened) on the loss valuation date; (02) = claim is closed on the loss valuation date; (03) = claim is reopened on the loss valuation date. If the claim was denied, enter (D).

O. Benefit Code: The code that identifies under which provision of the law benefits are being paid on the loss valuation date. (01) = Death; (02) = Permanent Total Disability; (03) Permanent Partial Disability - Unscheduled; (04) Permanent Partial Disability – No Loss; (05) Temporary Total Disability; (06) Temporary Partial Disability; (07) Claim Denied.

P. Settlement Code: (00) = Claim not subject to settlement during the reporting period; (01) = Full and final settlement during the reporting period; (03) Stipulated award during the reporting period; (05) Noncompensable settlement during the reporting period; (06) = Compromise settlement during the reporting period; (09) Other settlement during the reporting period; (10) Multiple settlements during the reporting period.

Q. Lump Sum Indicator: Indicates whether the claim has been settled by a lump sum amount. N = No; Y = Yes.

R. Closed Date: If the claim closed during the reporting period, report the date of claim closure. (Required if the claim closed during the reporting period.)

S. Reopened Date: If the claim re-opened during reporting period, report the date of claim reopening. (Required if the claim reopened during the reporting period.)

T. Primary Type of Cancer Code: The primary type of cancer involved in the claim on the loss valuation date. Options are brain (01), bladder (02), rectal (03), colon (04), lymphoma (05), leukemia (06), adenocarcinoma (07), mesothelioma of the respiratory tract (08), buccal cavity (09), pharynx (10), esophagus (11), large intestine (12), lung (13), kidney (14), prostate (15), skin (16), stomach (17), ovarian (18), breast (19), testicular (20), non-Hodgkin's lymphoma (21), multiple myeloma (22), and malignant melanoma (23). Non-listed cancers may be designated as "other" (30).

U. Secondary Type of Cancer Code: If applicable, the secondary type of cancer involved in the claim on the loss valuation date. Options are brain (01), bladder (02), rectal (03), colon (04), lymphoma (05), leukemia (06), adenocarcinoma (07), mesothelioma of the respiratory tract (08), buccal cavity (09), pharynx (10), esophagus (11), large intestine (12), lung (13), kidney (14), prostate (15), skin (16),

stomach (17), ovarian (18), breast (19), testicular (20), non-Hodgkin's lymphoma (21), multiple myeloma (22), and malignant melanoma (23). Non-listed cancers may be designated as "other" (30). (Required if applicable.)

V. Amounts Paid (as of loss valuation date):

1. **Indemnity Paid:** The total amount of paid indemnity for the claim as of the loss valuation date. These losses consist of all paid benefits due to an employee's lost wages or inability to work, including compensation paid to a deceased claimant prior to death, burial expense, claimant's attorney fees, vocational rehabilitation benefits, indemnity settlement payments, and employer's liability losses and expenses. Allocated loss adjustment expense ("ALAE") for other than employer's liability coverage shall be excluded from indemnity losses.
2. **Medical Paid:** The total amount of medical losses paid for the claim as of the loss valuation date, including medical settlement payments.
3. **ALAE Paid:** The total amount of ALAE paid for the claim as of the loss valuation date.
4. **Death Benefits Paid:** The total amount of death benefits paid for the claim as of the loss valuation date.

W. Incurred Amounts (as of loss valuation date):

1. **Incurred Indemnity Amount:** The total of "Indemnity Paid" plus the current outstanding reserve indemnity benefits, excluding loss adjustment expenses (*e.g.*, ALAE and unallocated loss adjustment expense ("ULAE")).
2. **Incurred Medical Amount:** The total of "Medical Paid" plus the current outstanding reserve medical benefits, excluding loss adjustment expenses (*e.g.*, ALAE and ULAE).
3. **Incurred ALAE Amount:** The total of "ALAE Paid" plus the current outstanding reserve ALAE.
4. **Incurred Death Benefits Amount:** The total of "Death Benefits Paid" plus the current outstanding reserve death benefits, excluding loss adjustment expenses (*e.g.*, ALAE and ULAE).

GENERAL AND SPECIFIC STATUTES

23-107. General powers

A. The commission has full power, jurisdiction and authority to:

1. Formulate and adopt rules and regulations for effecting the purposes of this article.
2. Administer and enforce all laws for the protection of life, health, safety and welfare of employees in every case and under every law when such duty is not specifically delegated to any other board or officer, and, when such duty is specifically delegated, to counsel, advise and assist in the administration and enforcement of such laws and for such purposes may conduct investigations.
3. Promote the voluntary arbitration, mediation and conciliation of disputes between employers and employees.
4. License and supervise the work of private employment offices, bring together employers seeking employees and working people seeking employment, and make known the opportunities for employment in the state.
5. Collect, collate and publish all statistical and other information relating to employees, employers, employments and places of employment with other appropriate statistics.
6. Act as the regulatory agency insuring that workers' compensation carriers are processing claims in accordance with chapter 6 of this title.
7. Provide nonpublic, confidential or privileged documents, materials or other information to another state, local or federal regulatory agency for the purpose of the legitimate administrative needs of the programs administered by that agency if the recipient agency agrees and warrants that it has the authority to maintain and will maintain the confidentiality and privileged status of the documents, materials or other information.
8. Receive nonpublic documents, materials and other information from another state, local or federal regulatory agency to properly administer programs of the commission. The commission

shall maintain as confidential or privileged any document, material or other information that is identified by the exchange agency as confidential or privileged under the laws of the jurisdiction that is the source of the document, material or other information.

9. Enter into agreements that govern the exchange of nonpublic documents, materials and other information that are consistent with paragraphs 7 and 8. The commission may request nondisclosure of information that is identified as privileged or confidential. Any disclosure pursuant to paragraph 7 or 8 or this paragraph is not a waiver of any applicable privilege or claim of confidentiality in the documents, materials or other information.

23-971. Firefighter and fire investigator cancer claim information; data sharing; definitions

A. All insurance carriers, self-insuring employers and workers' compensation pools securing workers' compensation for firefighters and fire investigators pursuant to this chapter shall compile and report to the commission claim and claim reserve information for all cancer-related claims filed by or on behalf of firefighters and fire investigators.

B. The information required by subsection A of this section shall include all of the following:

1. The type of cancer.
2. The total claim costs.
3. The claim reserved by the insurance carrier, self-insuring employer or workers' compensation pool.
4. Any other information requested by the commission.

C. Notwithstanding subsections A and B of this section, the commission may not require or obtain any personally identifiable information for any claimant.

D. The commission shall compile and make available to insurance carriers, rating organizations, employers, public safety workers and workers' compensation pools the claim-related information collected pursuant to this section to assist with the setting of workers' compensation insurance rates and to ensure the adequate reserving for cancer claims for the class codes associated with firefighters and fire investigators.

E. For the purposes of this section, "firefighter" and "fire investigator" have the same meanings prescribed in section 23-901.09.

23-1702. Municipal firefighter cancer reimbursement fund; exemption; rulemaking; annual report

A. The municipal firefighter cancer reimbursement fund is established consisting of monies deposited in the fund pursuant to section 23-1703. The commission shall administer the fund.

Monies in the fund shall be used to reimburse municipal payors for the compensation and benefits paid by municipal payors to municipal firefighters and municipal fire investigators under section 23-901.09 for:

1. Compensation for temporary partial disability, permanent partial disability and lost earning capacity as prescribed in section 23-1044.
2. Compensation for temporary total disability and permanent total disability as prescribed in section 23-1045.
3. Medical, surgical and hospital benefits as prescribed in section 23-1062.
4. Death benefits as prescribed in section 23-1046.

B. The fund consists of the following:

1. Fees from cities and towns deposited pursuant to section 23-1703.
2. Monies received from any other source, including federal monies, investment income and private grants, gifts, contributions and devises.

C. The commission shall annually distribute the monies in the fund on a prorated basis based on the amount of the individual compensation and benefits paid by a municipal payor for compensation and benefits to a municipal firefighter or municipal fire investigator for a disease, infirmity or impairment as prescribed in section 23-901.09 in proportion to the statewide aggregate of all compensation and benefits paid to municipal firefighters and municipal fire investigators pursuant to section 23-901.09 for the fiscal year. The annual distributions may not exceed the statewide aggregate of all compensation and benefits paid by municipal payors to municipal firefighters and municipal fire investigators pursuant to section 23-901.09 for the relevant fiscal year. Monies remaining undistributed at the end of a fiscal year shall remain in the fund and be available for annual distributions in future fiscal years. The commission may not reimburse monies for expenses relating to case management, vocational rehabilitation or similar nonmedical costs. The prorated share shall be distributed to the municipal payors entitled to a share without regard to the order in which the respective compensation and benefits were paid in the fiscal year.

D. Monies in the fund are continuously appropriated and are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

E. The commission shall adopt rules pursuant to title 41, chapter 6 to carry out this chapter.

F. On or before April 1 of each year, the commission shall submit a report to the legislature and the municipal payors reimbursed from the fund on the financial status of the fund. The report shall include all of the following:

1. The total number of fund reimbursement claims the commission received in the immediately preceding fiscal year.
2. For the immediately preceding fiscal year, the number of fund reimbursement claims, the total dollar amount of fund reimbursement claims paid by the fund and the amount paid to each municipal payor reimbursed by the fund.
3. The amount of any anticipated surplus in the fund.

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9. All documentary evidence shall be submitted no later than 10 business days before the scheduled hearing.
10. The hearing shall be recorded, but not transcribed, unless one or more of the parties files a request for review under A.R.S. § 23-942 and A.R.S. § 23-943.
11. The presiding ALJ shall issue a short form decision within five business days after the matter is deemed submitted.

Historical Note

New Section made by final rulemaking at 22 A.A.R. 1730, effective October 1, 2016 (Supp. 16-2).

ARTICLE 14. MUNICIPAL FIREFIGHTER CANCER REIMBURSEMENT FUND AND FIREFIGHTER AND FIRE INVESTIGATOR CANCER CLAIM REPORTING

R20-5-1401. Application of the Article and Definitions

- A. This Article applies to reimbursement claims submitted to the Municipal Firefighter Cancer Reimbursement Fund under Arizona Revised Statutes (“A.R.S.”), Title 23, Chapter 11, and firefighter and fire investigator cancer claim reporting under A.R.S. § 23-971.
- B. The definitions in A.R.S. §§ 23-1701 and 23-901.09 apply in this Article.
- C. “Cancer-related claims” as used in A.R.S. § 23-971 and this Article shall mean Arizona workers’ compensation claims involving any disease, infirmity, or impairment of health that is caused by cancer.
- D. “Fiscal year” or “reporting period” shall mean the 12-month cycle that begins on July 1 and ends on June 30.
- E. “Loss valuation date” shall mean the last day of the reporting period and the date on which firefighter and fire investigator cancer claim data shall be determined for reporting purposes.
- F. An “open” claim shall mean a workers’ compensation claim that is eligible for temporary compensation and/or active medical treatment. A “closed” claim shall mean a workers’ compensation claim in which temporary compensation and active medical treatment have been terminated.

Historical Note

New Section made by final exempt rulemaking at 27 A.A.R. 2920 (December 17, 2021), effective January 1, 2022 (Supp. 21-4). Amended by final rulemaking at 28 A.A.R. 1483 (June 24, 2022), with an immediate effective date of June 10, 2022 (Supp. 22-2).

R20-5-1402. Reimbursement Claims

- A. A Municipal Payor seeking reimbursement from the Fund shall submit a reimbursement claim in writing on the Municipal Firefighter Cancer Reimbursement Form approved by the Commission.
- B. The Municipal Firefighter Cancer Reimbursement Form shall include the following attestations, which shall be made by an authorized representative of a Municipal Payor seeking reimbursement from the Fund:
 1. The reimbursement request includes only eligible compensation and benefits paid under A.R.S. § 23-1702(A) on municipal firefighter or municipal fire investigator workers’ compensation claims accepted under A.R.S. § 23-901.09.
 2. The reimbursement request only includes amounts actually paid by the Municipal Payor for compensation and benefits under A.R.S. § 23-1702(A) during the immediately preceding fiscal year.

3. The reimbursement request does not include amounts paid for expenses relating to case management, vocational rehabilitation, or similar nonmedical costs.
4. The information included in, or submitted with, the Municipal Firefighter Cancer Reimbursement Form is true and correct.

- C. The Municipal Firefighter Cancer Reimbursement Form shall not be changed, amended, or otherwise altered without the prior written approval of the Commission.
- D. A Municipal Payor seeking reimbursement from the Fund for compensation and benefits paid during a fiscal year shall submit a reimbursement claim to the Commission between July 1 and August 31 immediately following the applicable fiscal year.
- E. Failure to timely submit a reimbursement claim for compensation and benefits paid during a fiscal year before the claim submission deadline in subsection (D) will be deemed a waiver of the right of the Municipal Payor to request reimbursement for amounts paid during the applicable fiscal year. Failure to include all eligible compensation or benefits in a reimbursement claim before the claim submission deadline in subsection (D) will be deemed a waiver of the right of the Municipal Payor to request reimbursement for any omitted amounts paid during the applicable fiscal year.
- F. The Commission shall process reimbursements pursuant to A.R.S. § 23-1702(C) on or before December 31 of each year.
- G. The maximum annual amount of aggregate reimbursements paid by the Fund shall in no event exceed the total amount of monies in the Fund as of close of business on June 30 of the applicable fiscal year.

Historical Note

New Section made by final exempt rulemaking at 27 A.A.R. 2920 (December 17, 2021), effective January 1, 2022 (Supp. 21-4).

R20-5-1403. Recordkeeping and Record Inspections

- A. Municipal Payors seeking reimbursement from the Fund shall maintain all records supporting amounts included in a reimbursement claim for at least ten years after the reimbursement claim is filed.
- B. Municipal Payor records supporting amounts included in a reimbursement claim shall always be open for inspection by the Commission or representatives of the Commission to ascertain information necessary for its administration of A.R.S. §§ 23-1701 through 23-1703. Upon request, a Municipal Payor shall make such records available to the Commission within 30 days.

Historical Note

New Section made by final exempt rulemaking at 27 A.A.R. 2920 (December 17, 2021), effective January 1, 2022 (Supp. 21-4).

R20-5-1404. Fund Overpayments

- A. A Municipal Payor that discovers an error in a reimbursement claim which may result or has resulted in an overpayment from the Fund shall notify the Commission of the error within three business days of discovery of the error.
- B. Overpayments made by the Fund to Municipal Payors that are discovered through inspection of records, or otherwise, shall be returned to the Fund by the applicable Municipal Payor within 30 days of notification by the Commission.

Historical Note

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New Section made by final exempt rulemaking at 27
A.A.R. 2920 (December 17, 2021), effective January 1,
2022 (Supp. 21-4).

R20-5-1405. Cancer Claim Reporting Method; Frequency; Deadlines; Duration

- A.** Cancer-related claim reporting under A.R.S. § 23-971 and this Article shall be performed electronically through the commission's electronic claims portal. Insurance carriers, self-insured employers, self-insurance pools, or a designee (including third-party administrators or an adjuster) are authorized to complete required claim reporting. Duplicate reporting of the same claim information is prohibited.
- B.** Subject to the claim reporting durations specified in subsection (D), insurance carriers, self-insured employers, and self-insurance pools subject to A.R.S. § 23-971 shall annually report the data elements specified in R20-5-1407 and R20-5-1408 for cancer-related claims filed by or on behalf of firefighters and fire investigators.
- C.** Claim data reported pursuant to subsection (B) shall be determined as of the loss valuation date for the applicable reporting period.
- D.** Claim reporting shall be completed within 31 days after each applicable reporting period, *i.e.*, no later than July 31 of each year.
- E.** Claim reporting under A.R.S. § 23-971 is subject to the following claim reporting durations:
1. Denied Claims: Reported one time following the reporting period during which the claim is denied by a notice of claim status. Reporting is not required for claims denied prior to July 1, 2021.
 2. Claims Accepted on or after July 1, 2021: Reported for the longer of: (a) the duration the claim remains open plus two additional annual reports after the claim is closed; or (b) ten annual reports after acceptance of the claim.
 3. Claims Accepted before July 1, 2021: If the claim was open on July 1, 2021, the claim shall be reported for the duration the claim remains open plus two additional annual reports after the claim is closed. If the claim was closed as of July 1, 2021, and was accepted on or after July 1, 2011, the claim shall be reported for two annual reports. If the claim was closed as of July 1, 2021, and was accepted prior to July 1, 2011, reporting is not required.
 4. Reopened Claims: Reported for the longer of: (1) the duration the claim remains open (following acceptance of the petition to reopen), plus two additional annual reports after the claim is closed; or (2) ten annual reports after acceptance of the petition to reopen.
 5. Claims that Develop into Cancer-Related Claims: If a claim develops into a cancer-related claim, reporting should begin following the reporting period in which the claim developed into a cancer-related claim. In these circumstances, the claim shall be reported for the longer of: (1) the duration the claim remains open plus two additional annual reports after the claim is closed; or (2) ten annual reports.
 6. Non-Cancer-Related Claims: If a cancer-related claim develops into a claim that no longer meets the definition of a cancer-related claim, no further annual reporting is required.
 7. Informational Claims: Claims that have been filed but have not been accepted or denied as of the applicable loss valuation date shall not be reported.

Historical Note

New Section made by final rulemaking at 28 A.A.R.
1483 (June 24, 2022), with an immediate effective date of
June 10, 2022 (Supp. 22-2).

R20-5-1406. Cancer Reporting; Required General Data Elements

- A.** Name of Data Provider (*i.e.*, What entity is reporting the data?): The name of the insurance carrier, self-insured employer, self-insurance pool, or designee submitting the cancer-related claim data.
- B.** Data Provider Type Code: Insurance Carrier; Self-Insured Employer; Self-Insurance Pool; Third-Party Administrator; or Other Designee.
- C.** Name of Person Submitting Data: The name of the individual submitting the cancer-related claim data.
- D.** Name of Data Provider Primary Contact: The name of the individual designated by the Data Provider who can be contacted regarding the data submission. (May be the same as the "Name of Person Submitting the Data.")
- E.** Data Provider Primary Contact Phone Number: The phone number of the Data Provider Primary Contact.
- F.** Data Provider Primary Contact Email Address: The email address of the Data Provider Primary Contact.
- G.** Loss valuation date: The last day of the 12-month reporting period.
- H.** Total Number of New Cancer-Related Claims: Total number of cancer-related claims filed by or on behalf of firefighters and fire investigators during the applicable reporting period (whether or not the claims are included in the detailed reporting).
1. Accepted: Total number of new cancer-related claims accepted during the applicable reporting period.
 2. Denied: Total number of cancer-related claims denied during the applicable reporting period.
 3. Pending: Total number of cancer-related claims pending decision on the applicable loss valuation date.

Historical Note

New Section made by final rulemaking at 28 A.A.R.
1483 (June 24, 2022), with an immediate effective date of
June 10, 2022 (Supp. 22-2).

R20-5-1407. Cancer Reporting; Required Claim-Specific Data Elements

- A.** Unique Claim Identifier: The unique, alphanumeric claim identifier (up to 20 characters, but no less than seven characters) assigned by the carrier, self-insured employer, or self-insurance pool to a specific claim. The claim identifier shall remain the same throughout the life of the claim. Usage of the commission's claim number is prohibited. Usage of claimant name, personally-identifiable information, or carrier/self-insured employer/self-insurance pool name in identifier is prohibited.
- B.** Transaction Type Code: The code that identifies a report as an initial report (01) or subsequent report (02).
- C.** Occupational Descriptor Code: (01) = Firefighter (02) = Fire Investigator.
- D.** Sex Code: The sex of the injured worker. (M = Male, F = Female, N = Not Reported.)
- E.** Birth Year: The 4-digit birth year of the injured worker.
- F.** Year Claim Reported: The 4-digit year the claim was reported to the carrier/self-insured employer/self-insurance pool.
- G.** Year of Loss: The 4-digit year when the injury (cancer) became manifest.

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- H.** Year of Hire: The 4-digit year when the injured worker was hired by the employer as a firefighter or fire investigator (either full-time or part-time). If unknown, enter (U).
- I.** Name of Carrier, Self-Insured Employer, or Self-Insurance Pool: Complete business name of insurance carrier or self-insured employer/pool responsible for the claim.
- J.** Employer Name: The complete business name of the employer (including a DBA, if applicable) related to the claim.
- K.** County Code: The code corresponding to Arizona county primarily served by the employer (01) = Apache; (2) = Cochise; (3) = Coconino; (4) = Gila; (5) = Graham; (6) = Greenlee; (7) = La Paz; (8) = Maricopa; (9) = Mohave; (10) = Navajo; (11) = Pima; (12) = Pinal; (13) = Santa Cruz; (14) = Yavapai; (15) = Yuma.
- L.** Claim Acceptance Date: The date the claim was first accepted as compensable. If the claim was denied, enter (D).
- M.** Claim Denial Code: The code corresponding to the reason a claim was denied. (01) = Claim not compensable; (02) No coverage; (03) Other reason. If the claim was accepted, enter (A).
- N.** Claims Status Code: The code corresponding to the claim's status as of the loss valuation date. (01) = claim is open (not reopened) on the loss valuation date; (02) = claim is closed on the loss valuation date; (03) = claim is reopened on the loss valuation date. If the claim was denied, enter (D).
- O.** Benefit Code: The code that identifies under which provision of the law benefits are being paid on the loss valuation date. (01) = Death; (02) = Permanent Total Disability; (03) Permanent Partial Disability - Unscheduled; (04) Permanent Partial Disability - No Loss; (05) Temporary Total Disability; (06) Temporary Partial Disability; (07) Claim Denied.
- P.** Settlement Code: (00) = Claim not subject to settlement during the reporting period; (01) = Full and final settlement during the reporting period; (03) Stipulated award during the reporting period; (05) Noncompensable settlement during the reporting period; (06) = Compromise settlement during the reporting period; (09) Other settlement during the reporting period; (10) Multiple settlements during the reporting period.
- Q.** Lump Sum Indicator: Indicates whether the claim has been settled by a lump sum amount. N = No; Y = Yes.
- R.** Closed Date: If the claim closed during the reporting period, report the date of claim closure. (Required if the claim closed during the reporting period.)
- S.** Reopened Date: If the claim re-opened during reporting period, report the date of claim reopening. (Required if the claim reopened during the reporting period.)
- T.** Primary Type of Cancer Code: The primary type of cancer involved in the claim on the loss valuation date. Options are brain (01), bladder (02), rectal (03), colon (04), lymphoma (05), leukemia (06), adenocarcinoma (07), mesothelioma of the respiratory tract (08), buccal cavity (09), pharynx (10), esophagus (11), large intestine (12), lung (13), kidney (14), prostate (15), skin (16), stomach (17), ovarian (18), breast (19), testicular (20), non-Hodgkin's lymphoma (21), multiple myeloma (22), and malignant melanoma (23). Non-listed cancers may be designated as "other" (30).
- U.** Secondary Type of Cancer Code: If applicable, the secondary type of cancer involved in the claim on the loss valuation date. Options are brain (01), bladder (02), rectal (03), colon (04), lymphoma (05), leukemia (06), adenocarcinoma (07), mesothelioma of the respiratory tract (08), buccal cavity (09), pharynx (10), esophagus (11), large intestine (12), lung (13), kidney (14), prostate (15), skin (16), stomach (17), ovarian (18), breast (19), testicular (20), non-Hodgkin's lymphoma (21), multiple myeloma (22), and malignant melanoma (23). Non-listed cancers may be designated as "other" (30). (Required if applicable.)
- V.** Amounts Paid (as of loss valuation date):
1. Indemnity Paid: The total amount of paid indemnity for the claim as of the loss valuation date. These losses consist of all paid benefits due to an employee's lost wages or inability to work, including compensation paid to a deceased claimant prior to death, burial expense, claimant's attorney fees, vocational rehabilitation benefits, indemnity settlement payments, and employer's liability losses and expenses. Allocated loss adjustment expense ("ALAE") for other than employer's liability coverage shall be excluded from indemnity losses.
 2. Medical Paid: The total amount of medical losses paid for the claim as of the loss valuation date, including medical settlement payments.
 3. ALAE Paid: The total amount of ALAE paid for the claim as of the loss valuation date.
 4. Death Benefits Paid: The total amount of death benefits paid for the claim as of the loss valuation date.
- W.** Incurred Amounts (as of loss valuation date):
1. Incurred Indemnity Amount: The total of "Indemnity Paid" plus the current outstanding reserve indemnity benefits, excluding loss adjustment expenses (e.g., ALAE and unallocated loss adjustment expense ("ULAE")).
 2. Incurred Medical Amount: The total of "Medical Paid" plus the current outstanding reserve medical benefits, excluding loss adjustment expenses (e.g., ALAE and ULAE).
 3. Incurred ALAE Amount: The total of "ALAE Paid" plus the current outstanding reserve ALAE.
 4. Incurred Death Benefits Amount: The total of "Death Benefits Paid" plus the current outstanding reserve death benefits, excluding loss adjustment expenses (e.g., ALAE and ULAE).

Historical Note

New Section made by final rulemaking at 28 A.A.R. 1483 (June 24, 2022), with an immediate effective date of June 10, 2022 (Supp. 22-2).

State of Arizona
Senate
Fifty-fifth Legislature
First Regular Session
2021

CHAPTER 411
SENATE BILL 1827

AN ACT

AMENDING TITLE 23, ARIZONA REVISED STATUTES, BY ADDING CHAPTER 11; AMENDING SECTION 42-5029, ARIZONA REVISED STATUTES; REPEALING SECTION 42-5041, ARIZONA REVISED STATUTES; AMENDING SECTION 43-1011, ARIZONA REVISED STATUTES; AMENDING LAWS 2016, CHAPTER 125, SECTION 21, AS AMENDED BY LAWS 2017, CHAPTER 215, SECTION 1; AMENDING LAWS 2016, CHAPTER 125, SECTION 22, AS AMENDED BY LAWS 2017, CHAPTER 215, SECTION 2; AMENDING LAWS 2016, CHAPTER 125, SECTION 26, AS AMENDED BY LAWS 2017, CHAPTER 215, SECTION 3; AMENDING LAWS 2016, CHAPTER 125, SECTION 28, AS AMENDED BY LAWS 2017, CHAPTER 215, SECTION 4; APPROPRIATING MONIES; RELATING TO REVENUE BUDGET RECONCILIATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 23, Arizona Revised Statutes, is amended by adding
3 chapter 11, to read:

4 CHAPTER 11

5 MUNICIPAL FIREFIGHTER CANCER REIMBURSEMENT

6 ARTICLE 1. GENERAL PROVISIONS

7 23-1701. Definitions

8 IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

9 1. "COMMISSION" MEANS THE INDUSTRIAL COMMISSION OF ARIZONA.

10 2. "FIREFIGHTER" HAS THE SAME MEANING PRESCRIBED IN SECTION
11 23-901.09.

12 3. "FIRE INVESTIGATOR" HAS THE SAME MEANING PRESCRIBED IN SECTION
13 23-901.09.

14 4. "FUND" MEANS THE MUNICIPAL FIREFIGHTER CANCER REIMBURSEMENT
15 FUND.

16 5. "MUNICIPAL PAYOR" MEANS ANY OF THE FOLLOWING:

17 (a) A WORKERS' COMPENSATION INSURER USED BY A CITY OR TOWN.

18 (b) A SELF-INSURANCE PROGRAM APPROVED PURSUANT TO SECTION 23-961
19 USED BY A CITY OR TOWN.

20 (c) A PUBLIC AGENCY POOL THAT IS ESTABLISHED PURSUANT TO SECTION
21 11-952.01 AND THAT IS USED BY A CITY OR TOWN.

22 23-1702. Municipal firefighter cancer reimbursement fund;
23 exemption; rulemaking; annual report

24 A. THE MUNICIPAL FIREFIGHTER CANCER REIMBURSEMENT FUND IS
25 ESTABLISHED CONSISTING OF MONIES DEPOSITED IN THE FUND PURSUANT TO SECTION
26 23-1703. THE COMMISSION SHALL ADMINISTER THE FUND. MONIES IN THE FUND
27 SHALL BE USED TO REIMBURSE MUNICIPAL PAYORS FOR THE COMPENSATION AND
28 BENEFITS PAID BY MUNICIPAL PAYORS TO MUNICIPAL FIREFIGHTERS AND MUNICIPAL
29 FIRE INVESTIGATORS UNDER SECTION 23-901.09 FOR:

30 1. COMPENSATION FOR TEMPORARY PARTIAL DISABILITY, PERMANENT PARTIAL
31 DISABILITY AND LOST EARNING CAPACITY AS PRESCRIBED IN SECTION 23-1044.

32 2. COMPENSATION FOR TEMPORARY TOTAL DISABILITY AND PERMANENT TOTAL
33 DISABILITY AS PRESCRIBED IN SECTION 23-1045.

34 3. MEDICAL, SURGICAL AND HOSPITAL BENEFITS AS PRESCRIBED IN SECTION
35 23-1062.

36 4. DEATH BENEFITS AS PRESCRIBED IN SECTION 23-1046.

37 B. THE FUND CONSISTS OF THE FOLLOWING:

38 1. FEES FROM CITIES AND TOWNS DEPOSITED PURSUANT TO SECTION
39 23-1703.

40 2. MONIES RECEIVED FROM ANY OTHER SOURCE, INCLUDING FEDERAL MONIES,
41 INVESTMENT INCOME AND PRIVATE GRANTS, GIFTS, CONTRIBUTIONS AND DEVISES.

42 C. THE COMMISSION SHALL ANNUALLY DISTRIBUTE THE MONIES IN THE FUND
43 ON A PRORATED BASIS BASED ON THE AMOUNT OF THE INDIVIDUAL COMPENSATION AND
44 BENEFITS PAID BY A MUNICIPAL PAYOR FOR COMPENSATION AND BENEFITS TO A
45 MUNICIPAL FIREFIGHTER OR MUNICIPAL FIRE INVESTIGATOR FOR A DISEASE,

1 INFIRMITY OR IMPAIRMENT AS PRESCRIBED IN SECTION 23-901.09 IN PROPORTION
2 TO THE STATEWIDE AGGREGATE OF ALL COMPENSATION AND BENEFITS PAID TO
3 MUNICIPAL FIREFIGHTERS AND MUNICIPAL FIRE INVESTIGATORS PURSUANT TO
4 SECTION 23-901.09 FOR THE FISCAL YEAR. THE COMMISSION MAY NOT REIMBURSE
5 MONIES FOR EXPENSES RELATING TO CASE MANAGEMENT, VOCATIONAL REHABILITATION
6 OR SIMILAR NONMEDICAL COSTS. THE PRORATED SHARE SHALL BE DISTRIBUTED TO
7 THE MUNICIPAL PAYORS ENTITLED TO A SHARE WITHOUT REGARD TO THE ORDER IN
8 WHICH THE RESPECTIVE COMPENSATION AND BENEFITS WERE PAID IN THE FISCAL
9 YEAR.

10 D. MONIES IN THE FUND ARE CONTINUOUSLY APPROPRIATED AND ARE EXEMPT
11 FROM THE PROVISIONS OF SECTION 35-190 RELATING TO LAPSING OF
12 APPROPRIATIONS.

13 E. ON OR BEFORE JANUARY 1, 2022, THE COMMISSION SHALL ADOPT RULES
14 PURSUANT TO TITLE 41, CHAPTER 6 TO CARRY OUT THIS CHAPTER.

15 F. ON OR BEFORE APRIL 1 OF EACH YEAR, THE COMMISSION SHALL SUBMIT A
16 REPORT TO THE LEGISLATURE AND THE MUNICIPAL PAYORS REIMBURSED FROM THE
17 FUND ON THE FINANCIAL STATUS OF THE FUND. THE REPORT SHALL INCLUDE ALL OF
18 THE FOLLOWING:

19 1. THE TOTAL NUMBER OF FUND REIMBURSEMENT CLAIMS THE COMMISSION
20 RECEIVED IN THE IMMEDIATELY PRECEDING FISCAL YEAR.

21 2. FOR THE IMMEDIATELY PRECEDING FISCAL YEAR, THE NUMBER OF FUND
22 REIMBURSEMENT CLAIMS APPROVED, THE TOTAL DOLLAR AMOUNT OF FUND
23 REIMBURSEMENT CLAIMS PAID BY THE FUND AND THE AMOUNT PAID TO EACH
24 MUNICIPAL PAYOR REIMBURSED BY THE FUND.

25 3. THE AMOUNT OF ANY ANTICIPATED SURPLUS IN THE FUND.

26 23-1703. Assessment

27 A. FROM AND AFTER JUNE 30, 2021, THE COMMISSION SHALL ASSESS AND
28 COLLECT FEES FROM CITIES AND TOWNS FOR DEPOSIT IN THE FUND. THE FEE SHALL
29 BE ASSESSED TO EACH CITY AND TOWN THAT RECEIVES STATE SHARED REVENUES
30 PURSUANT TO SECTIONS 42-5029 AND 43-206. THE TOTAL AMOUNT OF FEES FOR ALL
31 CITIES AND TOWNS MAY NOT EXCEED \$15,000,000 IN EACH FISCAL YEAR. THE
32 SHARE OF FEES ASSESSED IN EACH FISCAL YEAR TO EACH CITY AND TOWN SHALL BE
33 BASED ON THE POPULATION OF THE CITY OR TOWN AS DETERMINED BY THE MOST
34 RECENT POPULATION ESTIMATES OF THE UNITED STATES CENSUS BUREAU AS OF
35 JULY 1 IN PROPORTION TO THE TOTAL POPULATION OF ALL INCORPORATED CITIES
36 AND TOWNS.

37 B. THE COMMISSION SHALL ASSESS THE FEES UNDER THIS SECTION NOT
38 LATER THAN JULY 31 OF EACH YEAR, AND THE FEES ARE PAYABLE IMMEDIATELY ON
39 ASSESSMENT. IF A CITY OR TOWN FAILS TO PAY THE ASSESSMENT IN FULL ON OR
40 BEFORE SEPTEMBER 30, THE COMMISSION SHALL NOTIFY THE STATE TREASURER WHO
41 SHALL WITHHOLD THE DELINQUENT AMOUNT FROM THE DISTRIBUTION OF MONIES TO
42 THE APPROPRIATE CITY OR TOWN PURSUANT TO SECTIONS 42-5029 AND 43-206 AND
43 SHALL CONTINUE TO WITHHOLD MONIES UNTIL THE CITY OR TOWN HAS PAID THE
44 ENTIRE AMOUNT OF THE ASSESSMENT.

1 C. ALL MONIES PAID TO THE COMMISSION OR WITHHELD BY THE STATE
2 TREASURER FOR THE FEES ASSESSED PURSUANT TO THIS SECTION SHALL BE
3 DEPOSITED IN THE FUND.

4 D. CITIES AND TOWNS MAY MEET THEIR OBLIGATION FOR THE ASSESSMENT
5 FROM ANY SOURCE OF CITY OR TOWN REVENUE DESIGNATED BY THE APPROPRIATE CITY
6 OR TOWN. CITY AND TOWN PAYMENTS MADE PURSUANT TO THIS SECTION ARE
7 EXCLUDED FROM THE APPLICABLE EXPENDITURE LIMITATIONS.

8 Sec. 2. Section 42-5029, Arizona Revised Statutes, is amended to
9 read:

10 42-5029. Remission and distribution of monies; withholding;
11 definition

12 A. The department shall deposit, pursuant to sections 35-146 and
13 35-147, all revenues collected under this article and articles 4, 5 and 8
14 of this chapter pursuant to section 42-1116, separately accounting for:

15 1. Payments of estimated tax under section 42-5014, subsection D.

16 2. Revenues collected pursuant to section 42-5070.

17 3. Revenues collected under this article and article 5 of this
18 chapter from and after June 30, 2000 from sources located on Indian
19 reservations in this state.

20 4. Revenues collected pursuant to section 42-5010, subsection G and
21 section 42-5155, subsection D.

22 5. Revenues collected pursuant to section 42-5010.01 and section
23 42-5155, subsection E.

24 B. The department shall credit payments of estimated tax to an
25 estimated tax clearing account and each month shall transfer all monies in
26 the estimated tax clearing account to a fund designated as the transaction
27 privilege and severance tax clearing account. The department shall credit
28 all other payments to the transaction privilege and severance tax clearing
29 account, separately accounting for the monies designated as distribution
30 base under sections 42-5010, 42-5164 and 42-5205. Each month the
31 department shall report to the state treasurer the amount of monies
32 collected pursuant to this article and articles 4, 5 and 8 of this
33 chapter.

34 C. On notification by the department, the state treasurer shall
35 distribute the monies deposited in the transaction privilege and severance
36 tax clearing account in the manner prescribed by this section and by
37 sections 42-5164 and 42-5205, after deducting warrants drawn against the
38 account pursuant to sections 42-1118 and 42-1254.

39 D. Of the monies designated as distribution base, ~~and subject to~~
40 ~~the requirements of section 42-5041~~, the department shall:

41 1. Pay twenty-five percent to the various incorporated
42 municipalities in this state in proportion to their population to be used
43 by the municipalities for any municipal purpose.

1 2. Pay 38.08 percent to the counties in this state by averaging the
2 following proportions:

3 (a) The proportion that the population of each county bears to the
4 total state population.

5 (b) The proportion that the distribution base monies collected
6 during the calendar month in each county under this article, section
7 42-5164, subsection B and section 42-5205, subsection B bear to the total
8 distribution base monies collected under this article, section 42-5164,
9 subsection B and section 42-5205, subsection B throughout the state for
10 the calendar month.

11 3. Pay an additional 2.43 percent to the counties in this state as
12 follows:

13 (a) Average the following proportions:

14 (i) The proportion that the assessed valuation used to determine
15 secondary property taxes of each county, after deducting that part of the
16 assessed valuation that is exempt from taxation at the beginning of the
17 month for which the amount is to be paid, bears to the total assessed
18 valuations used to determine secondary property taxes of all the counties
19 after deducting that portion of the assessed valuations that is exempt
20 from taxation at the beginning of the month for which the amount is to be
21 paid. Property of a city or town that is not within or contiguous to the
22 municipal corporate boundaries and from which water is or may be withdrawn
23 or diverted and transported for use on other property is considered to be
24 taxable property in the county for purposes of determining assessed
25 valuation in the county under this item.

26 (ii) The proportion that the distribution base monies collected
27 during the calendar month in each county under this article, section
28 42-5164, subsection B and section 42-5205, subsection B bear to the total
29 distribution base monies collected under this article, section 42-5164,
30 subsection B and section 42-5205, subsection B throughout the state for
31 the calendar month.

32 (b) If the proportion computed under subdivision (a) of this
33 paragraph for any county is greater than the proportion computed under
34 paragraph 2 of this subsection, the department shall compute the
35 difference between the amount distributed to that county under paragraph 2
36 of this subsection and the amount that would have been distributed under
37 paragraph 2 of this subsection using the proportion computed under
38 subdivision (a) of this paragraph and shall pay that difference to the
39 county from the amount available for distribution under this paragraph.
40 Any monies remaining after all payments under this subdivision shall be
41 distributed among the counties according to the proportions computed under
42 paragraph 2 of this subsection.

43 4. After any distributions required by sections 42-5030,
44 42-5030.01, 42-5031, 42-5032, 42-5032.01 and 42-5032.02, and after making
45 any transfer to the water quality assurance revolving fund as required by

1 section 49-282, subsection B, credit the remainder of the monies
2 designated as distribution base to the state general fund. From this
3 amount the legislature shall annually appropriate to:

4 (a) The department of revenue sufficient monies to administer and
5 enforce this article and articles 5 and 8 of this chapter.

6 (b) The department of economic security monies to be used for the
7 purposes stated in title 46, chapter 1.

8 (c) The firearms safety and ranges fund established by section
9 17-273, fifty thousand dollars derived from the taxes collected from the
10 retail classification pursuant to section 42-5061 for the current fiscal
11 year.

12 E. If approved by the qualified electors voting at a statewide
13 general election, all monies collected pursuant to section 42-5010,
14 subsection G and section 42-5155, subsection D shall be distributed each
15 fiscal year pursuant to this subsection. The monies distributed pursuant
16 to this subsection are in addition to any other appropriation, transfer or
17 other allocation of public or private monies from any other source and
18 shall not supplant, replace or cause a reduction in other school district,
19 charter school, university or community college funding sources. The
20 monies shall be distributed as follows:

21 1. If there are outstanding state school facilities revenue bonds
22 pursuant to title 15, chapter 16, article 7, each month one-twelfth of the
23 amount that is necessary to pay the fiscal year's debt service on
24 outstanding state school improvement revenue bonds for the current fiscal
25 year shall be transferred each month to the school improvement revenue
26 bond debt service fund established by section 15-2084. The total amount
27 of bonds for which these monies may be allocated for the payment of debt
28 service shall not exceed a principal amount of eight hundred million
29 dollars exclusive of refunding bonds and other refinancing obligations.

30 2. After any transfer of monies pursuant to paragraph 1 of this
31 subsection, twelve per cent of the remaining monies collected during the
32 preceding month shall be transferred to the technology and research
33 initiative fund established by section 15-1648 to be distributed among the
34 universities for the purpose of investment in technology and
35 research-based initiatives.

36 3. After the transfer of monies pursuant to paragraph 1 of this
37 subsection, three per cent of the remaining monies collected during the
38 preceding month shall be transferred to the workforce development account
39 established in each community college district pursuant to section 15-1472
40 for the purpose of investment in workforce development programs.

41 4. After transferring monies pursuant to paragraphs 1, 2 and 3 of
42 this subsection, one-twelfth of the amount a community college that is
43 owned, operated or chartered by a qualifying Indian tribe on its own
44 Indian reservation would receive pursuant to section 15-1472, subsection
45 D, paragraph 2 if it were a community college district shall be

1 distributed each month to the treasurer or other designated depository of
2 a qualifying Indian tribe. Monies distributed pursuant to this paragraph
3 are for the exclusive purpose of providing support to one or more
4 community colleges owned, operated or chartered by a qualifying Indian
5 tribe and shall be used in a manner consistent with section 15-1472,
6 subsection B. For the purposes of this paragraph, "qualifying Indian
7 tribe" has the same meaning as defined in section 42-5031.01,
8 subsection D.

9 5. After transferring monies pursuant to paragraphs 1, 2 and 3 of
10 this subsection, one-twelfth of the following amounts shall be transferred
11 each month to the department of education for the increased cost of basic
12 state aid under section 15-971 due to added school days and associated
13 teacher salary increases enacted in 2000:

14 (a) In fiscal year 2001-2002, \$15,305,900.

15 (b) In fiscal year 2002-2003, \$31,530,100.

16 (c) In fiscal year 2003-2004, \$48,727,700.

17 (d) In fiscal year 2004-2005, \$66,957,200.

18 (e) In fiscal year 2005-2006 and each fiscal year thereafter,
19 \$86,280,500.

20 6. After transferring monies pursuant to paragraphs 1, 2 and 3 of
21 this subsection, seven million eight hundred thousand dollars is
22 appropriated each fiscal year, to be paid in monthly installments, to the
23 department of education to be used for school safety as provided in
24 section 15-154 and two hundred thousand dollars is appropriated each
25 fiscal year, to be paid in monthly installments to the department of
26 education to be used for the character education matching grant program as
27 provided in section 15-154.01.

28 7. After transferring monies pursuant to paragraphs 1, 2 and 3 of
29 this subsection, no more than seven million dollars may be appropriated by
30 the legislature each fiscal year to the department of education to be used
31 for accountability purposes as described in section 15-241 and title 15,
32 chapter 9, article 8.

33 8. After transferring monies pursuant to paragraphs 1, 2 and 3 of
34 this subsection, one million five hundred thousand dollars is appropriated
35 each fiscal year, to be paid in monthly installments, to the failing
36 schools tutoring fund established by section 15-241.

37 9. After transferring monies pursuant to paragraphs 1, 2 and 3 of
38 this subsection, twenty-five million dollars shall be transferred each
39 fiscal year to the state general fund to reimburse the general fund for
40 the cost of the income tax credit allowed by section 43-1072.01.

41 10. After the payment of monies pursuant to paragraphs 1 through 9
42 of this subsection, the remaining monies collected during the preceding
43 month shall be transferred to the classroom site fund established by
44 section 15-977. The monies shall be allocated as follows in the manner
45 prescribed by section 15-977:

1 (a) Forty per cent shall be allocated for teacher compensation
2 based on performance.

3 (b) Twenty per cent shall be allocated for increases in teacher
4 base compensation and employee related expenses.

5 (c) Forty per cent shall be allocated for maintenance and operation
6 purposes.

7 F. The department shall credit the remainder of the monies in the
8 transaction privilege and severance tax clearing account to the state
9 general fund, subject to any distribution required by section 42-5030.01.

10 G. Notwithstanding subsection D of this section, if a court of
11 competent jurisdiction finally determines that tax monies distributed
12 under this section were illegally collected under this article or articles
13 5 and 8 of this chapter and orders the monies to be refunded to the
14 taxpayer, the department shall compute the amount of such monies that was
15 distributed to each city, town and county under this section. Each
16 city's, town's and county's proportionate share of the costs shall be
17 based on the amount of the original tax payment each municipality and
18 county received. Each month the state treasurer shall reduce the amount
19 otherwise distributable to the city, town and county under this section by
20 one thirty-sixth of the total amount to be recovered from the city, town
21 or county until the total amount has been recovered, but the monthly
22 reduction for any city, town or county shall not exceed ten percent of the
23 full monthly distribution to that entity. The reduction shall begin for
24 the first calendar month after the final disposition of the case and shall
25 continue until the total amount, including interest and costs, has been
26 recovered.

27 H. On receiving a certificate of default from the greater Arizona
28 development authority pursuant to section 41-2257 or 41-2258 and to the
29 extent not otherwise expressly prohibited by law, the state treasurer
30 shall withhold from the next succeeding distribution of monies pursuant to
31 this section due to the defaulting political subdivision the amount
32 specified in the certificate of default and immediately deposit the amount
33 withheld in the greater Arizona development authority revolving fund. The
34 state treasurer shall continue to withhold and deposit the monies until
35 the greater Arizona development authority certifies to the state treasurer
36 that the default has been cured. In no event may the state treasurer
37 withhold any amount that the defaulting political subdivision certifies to
38 the state treasurer and the authority as being necessary to make any
39 required deposits then due for the payment of principal and interest on
40 bonds of the political subdivision that were issued before the date of the
41 loan repayment agreement or bonds and that have been secured by a pledge
42 of distributions made pursuant to this section.

43 I. Except as provided by sections 42-5033 and 42-5033.01, the
44 population of a county, city or town as determined by the most recent
45 United States decennial census plus any revisions to the decennial census

1 certified by the United States bureau of the census shall be used as the
2 basis for apportioning monies pursuant to subsection D of this section.

3 J. Except as otherwise provided by this subsection, on notice from
4 the department of revenue pursuant to section 42-6010, subsection B, the
5 state treasurer shall withhold from the distribution of monies pursuant to
6 this section to the affected city or town the amount of the penalty for
7 business location municipal tax incentives provided by the city or town to
8 a business entity that locates a retail business facility in the city or
9 town. The state treasurer shall continue to withhold monies pursuant to
10 this subsection until the entire amount of the penalty has been withheld.
11 The state treasurer shall credit any monies withheld pursuant to this
12 subsection to the state general fund as provided by subsection D,
13 paragraph 4 of this section. The state treasurer shall not withhold any
14 amount that the city or town certifies to the department of revenue and
15 the state treasurer as being necessary to make any required deposits or
16 payments for debt service on bonds or other long-term obligations of the
17 city or town that were issued or incurred before the location incentives
18 provided by the city or town.

19 K. On notice from the auditor general pursuant to section 9-626,
20 subsection D, the state treasurer shall withhold from the distribution of
21 monies pursuant to this section to the affected city the amount computed
22 pursuant to section 9-626, subsection D. The state treasurer shall
23 continue to withhold monies pursuant to this subsection until the entire
24 amount specified in the notice has been withheld. The state treasurer
25 shall credit any monies withheld pursuant to this subsection to the state
26 general fund as provided by subsection D, paragraph 4 of this section.

27 L. Except as otherwise provided by this subsection, on notice from
28 the attorney general pursuant to section 41-194.01, subsection B,
29 paragraph 1 that an ordinance, regulation, order or other official action
30 adopted or taken by the governing body of a county, city or town violates
31 state law or the Constitution of Arizona, the state treasurer shall
32 withhold the distribution of monies pursuant to this section to the
33 affected county, city or town and shall continue to withhold monies
34 pursuant to this subsection until the attorney general certifies to the
35 state treasurer that the violation has been resolved. The state treasurer
36 shall redistribute the monies withheld pursuant to this subsection among
37 all other counties, cities and towns in proportion to their population as
38 provided by subsection D of this section. The state treasurer shall not
39 withhold any amount that the county, city or town certifies to the
40 attorney general and the state treasurer as being necessary to make any
41 required deposits or payments for debt service on bonds or other long-term
42 obligations of the county, city or town that were issued or incurred
43 before committing the violation.

1 M. For the purposes of this section, "community college district"
2 means a community college district that is established pursuant to
3 sections 15-1402 and 15-1403 and that is a political subdivision of this
4 state and, unless otherwise specified, includes a community college
5 tuition financing district established pursuant to section 15-1409.

6 Sec. 3. Repeal

7 Section 42-5041, Arizona Revised Statutes, is repealed.

8 Sec. 4. Section 43-1011, Arizona Revised Statutes, is amended to
9 read:

10 43-1011. Taxes and tax rates

11 A. There shall be levied, collected and paid for each taxable year
12 on the entire taxable income of every resident of this state and on the
13 entire taxable income of every nonresident that is derived from sources
14 within this state taxes determined in the following manner:

15 1. For taxable years beginning from and after December 31, 1996
16 through December 31, 1997:

17 (a) In the case of a single person or a married person filing
18 separately:

<u>If taxable income is:</u>	<u>The tax is:</u>
19 \$0 – \$10,000	2.90% of taxable income
20 \$10,001 – \$25,000	\$290, plus 3.30% of the excess 21 over \$10,000
22 \$25,001 – \$50,000	\$785, plus 3.90% of the excess 23 over \$25,000
24 \$50,001 – \$150,000	\$1,760, plus 4.80% of the excess 25 over \$50,000
26 \$150,001 and over	\$6,560, plus 5.17% of the excess 27 over \$150,000

28 (b) In the case of a married couple filing a joint return or a
29 single person who is a head of a household:

<u>If taxable income is:</u>	<u>The tax is:</u>
30 \$0 – \$20,000	2.90% of taxable income
31 \$20,001 – \$50,000	\$580, plus 3.30% of the excess 32 over \$20,000
33 \$50,001 – \$100,000	\$1,570, plus 3.90% of the excess 34 over \$50,000
35 \$100,001 – \$300,000	\$3,520, plus 4.80% of the excess 36 over \$100,000
37 \$300,001 and over	\$13,120, plus 5.17% of the 38 excess over \$300,000

39 2. For taxable years beginning from and after December 31, 1997
40 through December 31, 1998:
41
42

1 (a) In the case of a single person or a married person filing
2 separately:

3 <u>If taxable income is:</u>	<u>The tax is:</u>
4 \$0 – \$10,000	2.88% of taxable income
5 \$10,001 – \$25,000	\$288, plus 3.24% of the excess 6 over \$10,000
7 \$25,001 – \$50,000	\$774, plus 3.82% of the excess 8 over \$25,000
9 \$50,001 – \$150,000	\$1,729, plus 4.74% of the excess 10 over \$50,000
11 \$150,001 and over	\$6,469, plus 5.10% of the excess 12 over \$150,000

13 (b) In the case of a married couple filing a joint return or a
14 single person who is a head of a household:

15 <u>If taxable income is:</u>	<u>The tax is:</u>
16 \$0 – \$20,000	2.88% of taxable income
17 \$20,001 – \$50,000	\$576, plus 3.24% of the excess 18 over \$20,000
19 \$50,001 – \$100,000	\$1,548, plus 3.82% of the excess 20 over \$50,000
21 \$100,001 – \$300,000	\$3,458, plus 4.74% of the excess 22 over \$100,000
23 \$300,001 and over	\$12,938, plus 5.10% of the 24 excess over \$300,000

25 3. For taxable years beginning from and after December 31, 1998
26 through December 31, 2005:

27 (a) In the case of a single person or a married person filing
28 separately:

29 <u>If taxable income is:</u>	<u>The tax is:</u>
30 \$0 – \$10,000	2.87% of taxable income
31 \$10,001 – \$25,000	\$287, plus 3.20% of the excess 32 over \$10,000
33 \$25,001 – \$50,000	\$767, plus 3.74% of the excess 34 over \$25,000
35 \$50,001 – \$150,000	\$1,702, plus 4.72% of the excess 36 over \$50,000
37 \$150,001 and over	\$6,422, plus 5.04% of the excess 38 over \$150,000

39 (b) In the case of a married couple filing a joint return or a
40 single person who is a head of a household:

41 <u>If taxable income is:</u>	<u>The tax is:</u>
42 \$0 – \$20,000	2.87% of taxable income
43 \$20,001 – \$50,000	\$574, plus 3.20% of the excess 44 over \$20,000

1	\$50,001 – \$100,000	\$1,534, plus 3.74% of the excess
2		over \$50,000
3	\$100,001 – \$300,000	\$3,404, plus 4.72% of the excess
4		over \$100,000
5	\$300,001 and over	\$12,844, plus 5.04% of the
6		excess over \$300,000

7 4. For taxable years beginning from and after December 31, 2005
 8 through December 31, 2006:

9 (a) In the case of a single person or a married person filing
 10 separately:

11	<u>If taxable income is:</u>	<u>The tax is:</u>
12	\$0 – \$10,000	2.73% of taxable income
13	\$10,001 – \$25,000	\$273, plus 3.04% of the excess
14		over \$10,000
15	\$25,001 – \$50,000	\$729, plus 3.55% of the excess
16		over \$25,000
17	\$50,001 – \$150,000	\$1,617, plus 4.48% of the excess
18		over \$50,000
19	\$150,001 and over	\$6,097, plus 4.79% of the excess
20		over \$150,000

21 (b) In the case of a married couple filing a joint return or a
 22 single person who is a head of a household:

23	<u>If taxable income is:</u>	<u>The tax is:</u>
24	\$0 – \$20,000	2.73% of taxable income
25	\$20,001 – \$50,000	\$546, plus 3.04% of the excess
26		over \$20,000
27	\$50,001 – \$100,000	\$1,458, plus 3.55% of the excess
28		over \$50,000
29	\$100,001 – \$300,000	\$3,233, plus 4.48% of the excess
30		over \$100,000
31	\$300,001 and over	\$12,193, plus 4.79% of the
32		excess over \$300,000

33 5. Subject to subsections B and C of this section, for taxable
 34 years beginning from and after December 31, 2006 through December 31,
 35 2018:

36 (a) In the case of a single person or a married person filing
 37 separately:

38	<u>If taxable income is:</u>	<u>The tax is:</u>
39	\$0 – \$10,000	2.59% of taxable income
40	\$10,001 – \$25,000	\$259, plus 2.88% of the excess
41		over \$10,000
42	\$25,001 – \$50,000	\$691, plus 3.36% of the excess
43		over \$25,000
44	\$50,001 – \$150,000	\$1,531, plus 4.24% of the excess
45		over \$50,000

1	\$150,001 and over	\$5,771, plus 4.54% of the excess
2		over \$150,000
3	(b) In the case of a married couple filing a joint return or a	
4	single person who is a head of a household:	
5	<u>If taxable income is:</u>	<u>The tax is:</u>
6	\$0 – \$20,000	2.59% of taxable income
7	\$20,001 – \$50,000	\$518, plus 2.88% of the excess
8		over \$20,000
9	\$50,001 – \$100,000	\$1,382, plus 3.36% of the excess
10		over \$50,000
11	\$100,001 – \$300,000	\$3,062, plus 4.24% of the excess
12		over \$100,000
13	\$300,001 and over	\$11,542, plus 4.54% of the
14		excess over \$300,000

15 6. Subject to ~~subsection~~ SUBSECTIONS D AND E of this section, for
 16 taxable years beginning from and after December 31, 2018:

17 (a) In the case of a single person or a married person filing
 18 separately:

19	<u>If taxable income is:</u>	<u>The tax is:</u>
20	\$0 – \$26,500	2.59% of taxable income
21	\$26,501 – \$53,000	\$686, plus 3.34% of the amount
22		over \$26,500
23	\$53,001 – \$159,000	\$1,571, plus 4.17% of the
24		amount over \$53,000
25	\$159,001 and over	\$5,991, plus 4.50% of the amount
26		over \$159,000

27 (b) In the case of a married couple filing a joint return or a
 28 single person who is a head of a household:

29	<u>If taxable income is:</u>	<u>The tax is:</u>
30	\$0 – \$53,000	2.59% of taxable income
31	\$53,001 – \$106,000	\$1,373, plus 3.34% of the amount
32		over \$53,000
33	\$106,001 – \$318,000	\$3,143, plus 4.17% of the amount
34		over \$106,000
35	\$318,001 and over	\$11,983, plus 4.50% of the
36		amount over \$318,000

37 B. For the taxable year beginning from and after December 31, 2014
 38 through December 31, 2015, the department shall adjust the income dollar
 39 amounts for each rate bracket prescribed by subsection A, paragraph 5 of
 40 this section according to the average annual change in the metropolitan
 41 Phoenix consumer price index published by the United States department of
 42 labor, bureau of labor statistics. The revised dollar amounts shall be
 43 raised to the nearest whole dollar. The income dollar amounts for each
 44 rate bracket may not be revised below the amounts prescribed in the prior
 45 taxable year.

1 C. For each taxable year beginning from and after December 31, 2015
2 through December 31, 2018, the department shall adjust the income dollar
3 amounts for each rate bracket prescribed by subsection A, paragraph 5 of
4 this section according to the average annual change in the metropolitan
5 Phoenix consumer price index published by the United States department of
6 labor, bureau of labor statistics. The revised dollar amounts shall be
7 raised to the nearest whole dollar. The income dollar amounts for each
8 rate bracket may not be revised below the amounts prescribed in the prior
9 taxable year.

10 D. For each taxable year beginning from and after December 31,
11 2019, the department shall adjust the income dollar amount for each rate
12 bracket prescribed by subsection A, paragraph 6 of this section according
13 to the average annual change in the metropolitan Phoenix consumer price
14 index published by the United States department of labor, bureau of labor
15 statistics. The revised dollar amounts shall be raised to the nearest
16 whole dollar. The income dollar amounts for each rate bracket may not be
17 revised below the amounts prescribed in the prior taxable year.

18 E. FOR EACH TAXABLE YEAR BEGINNING FROM AND AFTER DECEMBER 31,
19 2020, FOR TAXABLE INCOME THAT IS SUBJECT TO THE INCOME TAX SURCHARGE
20 IMPOSED BY SECTION 43-1013, THE COMBINED TAX RATE OF THE INCOME TAX
21 SURCHARGE IMPOSED BY SECTION 43-1013 AND THE HIGHEST TAX RATE IMPOSED BY
22 SUBSECTION A, PARAGRAPH 6, 7, 8 OR 9 OF THIS SECTION MAY NOT EXCEED FOUR
23 AND ONE-HALF PERCENT. IF THE COMBINED TAX RATE EXCEEDS FOUR AND ONE-HALF
24 PERCENT, THE HIGHEST TAX RATE IMPOSED BY SUBSECTION A, PARAGRAPH 6, 7, 8
25 OR 9 OF THIS SECTION SHALL BE REDUCED SO THAT THE COMBINED TAX RATE IS
26 FOUR AND ONE-HALF PERCENT. THE DEPARTMENT MAY ADOPT RULES PURSUANT TO
27 TITLE 41, CHAPTER 6 TO CARRY OUT THIS SUBSECTION.

28 Sec. 5. Laws 2016, chapter 125, section 21, as amended by Laws
29 2017, chapter 215, section 1, is amended to read:

30 Sec. 21. Veterans' income tax settlement fund; exemption from
31 lapsing

32 A. The veterans' income tax settlement fund is established
33 consisting of monies appropriated by the legislature and other monies
34 donated or accruing to the fund. Monies in the fund are continuously
35 appropriated to the department of revenue for the purposes of Laws 2016,
36 chapter 125, sections 19 through 27.

37 B. The department of revenue shall administer the fund. On notice
38 from the department, the state treasurer shall invest and divest monies in
39 the fund as provided by section 35-313, Arizona Revised Statutes, and
40 monies earned from investment shall be credited to the fund. Monies in
41 the fund are exempt from the provisions of section 35-190, Arizona Revised
42 Statutes, relating to lapsing of appropriations, except that unexpended
43 and unencumbered monies remaining in the fund on June 30, ~~2021~~ 2023 revert
44 to the state general fund.

1 C. Five percent of the monies in the fund at the beginning of each
2 fiscal year are appropriated separately to both the department of revenue
3 and the department of veterans' services for administrative costs incurred
4 under Laws 2016, chapter 125, sections 19 through 27 ~~of this act~~ during
5 the fiscal year. Any unexpended and unencumbered balance of either
6 appropriation remaining at the end of the fiscal year reverts to the fund.

7 Sec. 6. Laws 2016, chapter 125, section 22, as amended by Laws
8 2017, chapter 215, section 2, is amended to read:

9 Sec. 22. Income tax settlement claims; requirements;
10 procedure; approval or denial of claim

11 A. A veteran or, if the veteran is deceased, the veteran's
12 surviving spouse, personal representative, executor or other official
13 representative of the estate, as designated pursuant to applicable state
14 or tribal law or tradition, may file a claim for a settlement payment for
15 any period of active duty in the armed forces of the United States during
16 which the veteran:

17 1. Was an enrolled member of a tribe.

18 2. Maintained a domicile within the boundaries of the veteran's
19 reservation or the reservation of the veteran's spouse or within the
20 boundaries of lands held in trust by the United States for the benefit of
21 the veteran, the veteran's spouse or the tribe of the veteran or spouse.

22 3. Had Arizona state income tax withheld from the veteran's active
23 duty military pay on or after July 1, 1977 and before January 1, 2006, and
24 the amount withheld:

25 (a) Has not already been refunded to the veteran or the deceased
26 veteran's estate.

27 (b) Cannot be claimed as a refund by filing a state income tax
28 return because the period for filing a claim for refund has lapsed under
29 the applicable statute of limitations.

30 B. The claim for a settlement payment must include evidence of the
31 veteran's eligibility for and the amount of the claim as follows:

32 1. The claimant must provide a copy of the veteran's certificate of
33 release or discharge from active duty (DD Form 214) or other proof of
34 service provided by the United States department of defense and approved
35 by the department of veterans' services. If a claimant does not have a
36 copy of the veteran's DD Form 214 or other proof of service, the claimant
37 may request that the department of veterans' services request the
38 veteran's DD Form 214 or other proof of service from the United States
39 department of defense.

40 2. The claimant must provide a statement, signed by the claimant,
41 that the veteran is or was duly registered on the tribal rolls of a tribe
42 during the period or periods of the veteran's active duty in the armed
43 forces.

1 3. The claimant must provide evidence of domicile within the
2 boundaries of the veteran's reservation or the reservation of the
3 veteran's spouse or within the boundaries of lands held in trust by the
4 United States for the benefit of the veteran, the veteran's spouse or the
5 tribe of the veteran or spouse during the taxable years the state income
6 tax was withheld from active duty military pay. If the veteran's address
7 shown on the veteran's DD Form 214 or other proof of service:

8 (a) Is on the veteran's tribal land, that evidence is sufficient
9 for the purposes of this paragraph.

10 (b) Is not on the veteran's tribal land or if the veteran has no
11 DD Form 214 and the claimant cannot otherwise establish that the veteran's
12 domicile was on the veteran's tribal land, the claimant must provide a
13 signed statement, under penalty of perjury, that the veteran was domiciled
14 on tribal land during the period or periods the state income tax was
15 withheld. The statement must include the veteran's address on the tribal
16 land for each period, and an official designated by the tribe must attest
17 that each address is on tribal land.

18 4. The claimant must provide evidence of the amount of state income
19 tax withheld from active duty military pay by providing copies of the
20 United States internal revenue service Form W-2 covering active duty
21 military pay for the year or years during which state personal income tax
22 was withheld. If the claimant does not have copies of the applicable Form
23 W-2 for one or more of those years, the claimant may request that the
24 department of revenue obtain the veteran's Form W-2, or other withholding
25 information in a form approved by the department of revenue, from the
26 United States department of defense.

27 5. The claimant must provide a signed statement attesting, under
28 penalty of perjury, that the veteran has not received a refund of the
29 state income tax withheld for the years for which the claimant is filing a
30 claim for a settlement payment.

31 C. A claim for settlement payment under this section must be filed
32 by the eligible veteran or, if the veteran is deceased, by the veteran's
33 surviving spouse, successor or other personal representative. The
34 following apply if the claim is made for a deceased veteran:

35 1. The claimant must include a copy of the veteran's death
36 certificate or other proof of death.

37 2. If the veteran's estate exceeds ~~thirty thousand dollars~~ \$30,000,
38 only the surviving spouse, personal representative, executor or other
39 official representative of the estate, as designated pursuant to
40 applicable state or tribal law or tradition, may file the claim.

41 3. If the claimant is a successor who is not the surviving spouse,
42 personal representative, executor or other official representative of the
43 estate, the claimant must include a dated and notarized statement, signed
44 under penalty of perjury, that:

1 (a) The value of the entire probate estate of the deceased veteran,
2 wherever located, minus liens and encumbrances, does not exceed ~~thirty~~
3 ~~thousand dollars~~ \$30,000.

4 (b) At least thirty days have elapsed since the veteran's death.

5 (c) The successor is entitled to receive the settlement payment.

6 4. If the claimant is a personal representative, executor or other
7 official representative of the estate, the claimant must include:

8 (a) A signed, dated and notarized statement that the claimant has
9 been duly appointed as the personal representative, executor or other
10 representative of the veteran's estate pursuant to applicable state or
11 tribal law or tradition.

12 (b) A copy of the claimant's appointment.

13 D. A claim for a settlement payment shall be denied for any amount
14 of withholding tax that can be claimed as a refund by filing a state
15 income tax return pursuant to title 43, Arizona Revised Statutes. A state
16 income tax return may be filed by a veteran to claim the refund by the
17 later of December 31 of the year three years after:

18 1. The veteran separated from military service.

19 2. The year in which Arizona withholding tax was withheld from the
20 veteran's active duty pay.

21 E. A claim for a settlement payment must be made on a claim form
22 prescribed by the department of revenue and filed with the department of
23 veterans' services.

24 F. The department of veterans' services shall not accept claims
25 submitted from and after December 31, ~~2019~~ 2022.

26 G. Within two hundred ten days after receiving a complete and
27 correct claim form, the department of veterans' services shall determine
28 whether the claim meets the requirements of subsection B, paragraphs 1, 2
29 and 3 of this section, transmit qualifying claim forms to the department
30 of revenue and notify the claimant of the department's approval or denial.
31 The failure of the department of veterans' services to respond within two
32 hundred ten days after receiving a complete and correct claim form is
33 considered to be a denial.

34 H. Within two hundred ten days after receiving the claim form from
35 the department of veterans' services, the department of revenue shall
36 determine whether the claim meets the requirements of subsection A,
37 paragraph 3 and subsection B, paragraphs 4 and 5 of this section and
38 notify the claimant and the department of veterans' services of its
39 approval or denial. The failure of the department of revenue to respond
40 within two hundred ten days after receiving the claim form is considered
41 to be a denial.

1 Sec. 7. Laws 2016, chapter 125, section 26, as amended by Laws
2 2017, chapter 215, section 3, is amended to read:

3 Sec. 26. Veterans' income tax settlement; annual reports

4 The director of the department of revenue shall report the following
5 information to the senate appropriations and finance committees and to the
6 house of representatives appropriations and ways and means committees on
7 or before October 1 in each of years 2017 through ~~2021~~ 2023:

8 1. Estimates of the amount of state income tax withholdings subject
9 to payments under Laws 2016, chapter 125, sections 22 and 23.

10 2. The number of veterans affected by withholdings subject to
11 payments under Laws 2016, chapter 125, sections 22 and 23.

12 3. Expenditures from the veterans' income tax settlement fund
13 during the previous fiscal year.

14 4. Anticipated expenditures from the veterans' income tax
15 settlement fund during the current fiscal year.

16 5. Anticipated appropriations to the fund necessary to meet
17 expected payments in the next fiscal year.

18 Sec. 8. Laws 2016, chapter 125, section 28, as amended by Laws
19 2017, chapter 215, section 4, is amended to read:

20 Sec. 28. Repeal

21 ~~Laws 2016, chapter 125, sections 19 through 26~~ THE FOLLOWING are
22 repealed from and after December 31, ~~2021~~ 2023:

23 1. LAWS 2016, CHAPTER 125, SECTION 19.

24 2. LAWS 2016, CHAPTER 125, SECTION 20.

25 3. LAWS 2016, CHAPTER 125, SECTION 21, AS AMENDED BY LAWS 2017,
26 CHAPTER 215, SECTION 1 AND THIS ACT.

27 4. LAWS 2016, CHAPTER 125, SECTION 22, AS AMENDED BY LAWS 2017,
28 CHAPTER 215, SECTION 2 AND THIS ACT.

29 5. LAWS 2016, CHAPTER 125, SECTION 23.

30 6. LAWS 2016, CHAPTER 125, SECTION 24.

31 7. LAWS 2016, CHAPTER 125, SECTION 25.

32 8. LAWS 2016, CHAPTER 125, SECTION 26, AS AMENDED BY LAWS 2017,
33 CHAPTER 215, SECTION 3 AND THIS ACT.

34 Sec. 9. Department of gaming regulatory assessment;
35 pari-mutuel pool

36 Notwithstanding any other law, in fiscal year 2021-2022, the
37 department of gaming shall establish and collect a regulatory assessment
38 from each commercial racing permittee, payable from amounts deducted from
39 pari-mutuel pools by the permittee, in addition to the amounts the
40 permittee is authorized to deduct pursuant to section 5-111, subsection B,
41 Arizona Revised Statutes, from amounts wagered on live and simulcast races
42 from in-state and out-of-state wagering handled by the permittee, in the
43 amount of 0.5 percent of the amounts wagered.

1 Sec. 13. Exemption from rulemaking

2 A. Notwithstanding any other law, for the purposes of title 23,
3 chapter 11, Arizona Revised Statutes, as added by this act, the industrial
4 commission of Arizona is exempt from the rulemaking requirements of title
5 41, chapter 6, Arizona Revised Statutes, for one year after the effective
6 date of this act, except that the commission shall provide the public with
7 a reasonable opportunity to comment on proposed rules and shall publish
8 otherwise exempt rules.

9 B. Notwithstanding any other law, for the purposes of section
10 43-1011, subsection E, Arizona Revised Statutes, as added by this act, the
11 department of revenue is exempt from the rulemaking requirements of title
12 41, chapter 6, Arizona Revised Statutes, for one year after the effective
13 date of this act.

14 Sec. 14. Legislative intent

15 The legislature intends that:

16 1. Title 23, chapter 11, Arizona Revised Statutes, as added by this
17 act, does not convey any responsibility of firefighter cancer compensation
18 and benefits claims onto this state. All costs incurred shall be paid for
19 by monies collected from cities and towns pursuant to section 23-1703,
20 Arizona Revised Statutes, as added by this act.

21 2. Any monies in the municipal firefighter cancer reimbursement
22 fund established by section 23-1702, Arizona Revised Statutes, as added by
23 this act, are not subject to transfer from the municipal firefighter
24 cancer reimbursement fund to the state general fund in any fiscal year.

25 Sec. 15. Retroactivity

26 A. Title 23, chapter 11, Arizona Revised Statutes, as added by this
27 act, section 42-5029, Arizona Revised Statutes, as amended by this act,
28 and section 42-5041, Arizona Revised Statutes, as repealed by this act,
29 apply retroactively to from and after June 30, 2021.

30 B. The following apply retroactively to from and after December 31,
31 2019:

32 1. Laws 2016, chapter 125, section 21, as amended by Laws 2017,
33 chapter 215, section 1 and this act.

34 2. Laws 2016, chapter 125, section 22, as amended by Laws 2017,
35 chapter 215, section 2 and this act.

36 3. Laws 2016, chapter 125, section 26, as amended by Laws 2017,
37 chapter 215, section 3 and this act.

38 4. Laws 2016, chapter 125, section 28, as amended by Laws 2017,
39 chapter 215, section 4 and this act.

APPROVED BY THE GOVERNOR JUNE 30, 2021.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JUNE 30, 2021.

23-107. General powers

A. The commission has full power, jurisdiction and authority to:

1. Formulate and adopt rules and regulations for effecting the purposes of this article.
2. Administer and enforce all laws for the protection of life, health, safety and welfare of employees in every case and under every law when such duty is not specifically delegated to any other board or officer, and, when such duty is specifically delegated, to counsel, advise and assist in the administration and enforcement of such laws and for such purposes may conduct investigations.
3. Promote the voluntary arbitration, mediation and conciliation of disputes between employers and employees.
4. License and supervise the work of private employment offices, bring together employers seeking employees and working people seeking employment, and make known the opportunities for employment in the state.
5. Collect, collate and publish all statistical and other information relating to employees, employers, employments and places of employment with other appropriate statistics.
6. Act as the regulatory agency insuring that workers' compensation carriers are processing claims in accordance with chapter 6 of this title.
7. Provide nonpublic, confidential or privileged documents, materials or other information to another state, local or federal regulatory agency for the purpose of the legitimate administrative needs of the programs administered by that agency if the recipient agency agrees and warrants that it has the authority to maintain and will maintain the confidentiality and privileged status of the documents, materials or other information.
8. Receive nonpublic documents, materials and other information from another state, local or federal regulatory agency to properly administer programs of the commission. The commission shall maintain as confidential or privileged any document, material or other information that is identified by the exchange agency as confidential or privileged under the laws of the jurisdiction that is the source of the document, material or other information.
9. Enter into agreements that govern the exchange of nonpublic documents, materials and other information that are consistent with paragraphs 7 and 8. The commission may request nondisclosure of information that is identified as privileged or confidential. Any disclosure pursuant to paragraph 7 or 8 or this paragraph is not a waiver of any applicable privilege or claim of confidentiality in the documents, materials or other information.

B. Upon petition by any person that any employment or place of employment is not safe or is injurious to the welfare of any employee, the commission has power and authority, with or without notice, to make investigations necessary to determine the matter complained of.

C. The members of the commission may confer and meet with officers of other states and officers of the United States on matters pertaining to their official duties.

D. Notwithstanding any other law, the commission may protect from public inspection the financial information that is received from a private entity that applies to self-insure or that renews its self-insurance plan pursuant to section 23-961, subsection A if the information is kept confidential by the private entity in its ordinary and regular course of business.

23-1702. Municipal firefighter cancer reimbursement fund; exemption; rulemaking; annual report

A. The municipal firefighter cancer reimbursement fund is established consisting of monies deposited in the fund pursuant to section 23-1703. The commission shall administer the fund. Monies in the fund shall be used to reimburse municipal payors for the compensation and benefits paid by municipal payors to municipal firefighters and municipal fire investigators under section 23-901.09 for:

1. Compensation for temporary partial disability, permanent partial disability and lost earning capacity as prescribed in section 23-1044.
2. Compensation for temporary total disability and permanent total disability as prescribed in section 23-1045.
3. Medical, surgical and hospital benefits as prescribed in section 23-1062.
4. Death benefits as prescribed in section 23-1046.

B. The fund consists of the following:

1. Fees from cities and towns deposited pursuant to section 23-1703.
2. Monies received from any other source, including federal monies, investment income and private grants, gifts, contributions and devises.

C. The commission shall annually distribute the monies in the fund on a prorated basis based on the amount of the individual compensation and benefits paid by a municipal payor for compensation and benefits to a municipal firefighter or municipal fire investigator for a disease, infirmity or impairment as prescribed in section 23-901.09 in proportion to the statewide aggregate of all compensation and benefits paid to municipal firefighters and municipal fire investigators pursuant to section 23-901.09 for the fiscal year. The annual distributions may not exceed the statewide aggregate of all compensation and benefits paid by municipal payors to municipal firefighters and municipal fire investigators pursuant to section 23-901.09 for the relevant fiscal year. Monies remaining undistributed at the end of a fiscal year shall remain in the fund and be available for annual distributions in future fiscal years. The commission may not reimburse monies for expenses relating to case management, vocational rehabilitation or similar nonmedical costs. The prorated share shall be distributed to the municipal payors entitled to a share without regard to the order in which the respective compensation and benefits were paid in the fiscal year.

D. Monies in the fund are continuously appropriated and are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

E. The commission shall adopt rules pursuant to title 41, chapter 6 to carry out this chapter.

F. On or before April 1 of each year, the commission shall submit a report to the legislature and the municipal payors reimbursed from the fund on the financial status of the fund. The report shall include all of the following:

1. The total number of fund reimbursement claims the commission received in the immediately preceding fiscal year.
2. For the immediately preceding fiscal year, the number of fund reimbursement claims, the total dollar amount of fund reimbursement claims paid by the fund and the amount paid to each municipal payor reimbursed by the fund.
3. The amount of any anticipated surplus in the fund.



Youth \$10 \$10

Administrative Fees

Table with 3 columns: Fee Name, Resident, Nonresident. Rows include Duplicate License Fee and Application Fee.

NOTICE OF FINAL EXEMPT RULEMAKING
TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE
CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

[R21-235]

PREAMBLE

- 1. Article, Part, or Section Affected (as applicable) Rulemaking Action
2. Citations to agency's statutory rulemaking authority to include the authorizing statute and the implementing statutes
3. The effective date of the rules
4. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package
5. The agency's contact person who can answer questions about the rulemaking
6. An agency's justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking



payments; (7) recordkeeping and record inspection requirements pertaining to reimbursement claims; and (8) requirements pertaining to overpayments by the Fund.

7. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

The Commission did not review or rely on any study relevant to the proposed rules.

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

9. The preliminary summary of the economic, small business and consumer impact:

A.R.S. Title 23, Chapter 11, Article 1 (Municipal Firefighter Cancer Reimbursement) – signed into law in 2021 – established the Fund, requires Arizona cities and towns to pay annual assessments into the Fund, and authorizes Municipal Payors (as defined in A.R.S. § 23-1701) to seek reimbursement from the Fund for eligible compensation and benefits paid by Municipal Payors to municipal firefighters and municipal fire investigators under A.R.S. § 23-901.09. The Commission is statutorily tasked with administering the Fund.

The Commission anticipates that the proposed rules will reduce regulatory burden on Municipal Payors (self-insured cities and towns, self-insurance pools used by cities or towns, and workers’ compensation insurers used by cities or towns) by providing a streamlined process and timeline for seeking reimbursement from the Fund. The proposed rules will serve to accelerate the efficient processing of reimbursement claims. The Commission anticipates that the proposed rules will benefit Municipal Payors who have reimbursement claims under A.R.S. Title 23, Chapter 11, Article 1 and Commission staff that will be tasked with administering the Fund. The Commission does not anticipate that the proposed rules will have an adverse economic impact on small businesses or consumers.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

No changes were made to the proposed rulemaking.

11. An agency’s summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

No written or oral comments were received by the Commission.

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

The proposed rules do not require issuance of a regulatory permit or license.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

There is no federal law directly applicable to the subject of the proposed rulemaking.

c. Whether a person submitted an analysis to the agency that compares the rule’s impact of the competitiveness of business in this state to the impact on business in other states:

An analysis was not submitted.

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

Not applicable

14. The full text of the rules follows:

TITLE 20. COMMERCE, FINANCIAL INSTITUTIONS, AND INSURANCE

CHAPTER 5. INDUSTRIAL COMMISSION OF ARIZONA

ARTICLE 14. MUNICIPAL FIREFIGHTER CANCER REIMBURSEMENT FUND AND FIREFIGHTER AND FIRE INVESTIGATOR CANCER CLAIM REPORTING

Section

- R20-5-1401. Application of the Article and Definitions
- R20-5-1402. Reimbursement Claims
- R20-5-1403. Recordkeeping and Record Inspections
- R20-5-1404. Fund Overpayments

ARTICLE 14. MUNICIPAL FIREFIGHTER CANCER REIMBURSEMENT FUND AND FIREFIGHTER AND FIRE INVESTIGATOR CANCER CLAIM REPORTING

R20-5-1401. Application of the Article and Definitions

A. This Article applies to reimbursement claims submitted to the Municipal Firefighter Cancer Reimbursement Fund under Arizona Revised Statutes (“A.R.S.”), Title 23, Chapter 11.



- B.** The definitions in A.R.S. § 23-1701 apply in this Article.
- C.** “Fiscal year” shall mean the 12-month cycle that begins on July 1 and ends on June 30.

R20-5-1402. Reimbursement Claims

- A.** A Municipal Payor seeking reimbursement from the Fund shall submit a reimbursement claim in writing on the Municipal Firefighter Cancer Reimbursement Form approved by the Commission.
- B.** The Municipal Firefighter Cancer Reimbursement Form shall include the following attestations, which shall be made by an authorized representative of a Municipal Payor seeking reimbursement from the Fund:
 - 1.** The reimbursement request includes only eligible compensation and benefits paid under A.R.S. § 23-1702(A) on municipal firefighter or municipal fire investigator workers’ compensation claims accepted under A.R.S. § 23-901.09.
 - 2.** The reimbursement request only includes amounts actually paid by the Municipal Payor for compensation and benefits under A.R.S. § 23-1702(A) during the immediately preceding fiscal year.
 - 3.** The reimbursement request does not include amounts paid for expenses relating to case management, vocational rehabilitation, or similar nonmedical costs.
 - 4.** The information included in, or submitted with, the Municipal Firefighter Cancer Reimbursement Form is true and correct.
- C.** The Municipal Firefighter Cancer Reimbursement Form shall not be changed, amended, or otherwise altered without the prior written approval of the Commission.
- D.** A Municipal Payor seeking reimbursement from the Fund for compensation and benefits paid during a fiscal year shall submit a reimbursement claim to the Commission between July 1 and August 31 immediately following the applicable fiscal year.
- E.** Failure to timely submit a reimbursement claim for compensation and benefits paid during a fiscal year before the claim submission deadline in subsection D will be deemed a waiver of the right of the Municipal Payor to request reimbursement for amounts paid during the applicable fiscal year. Failure to include all eligible compensation or benefits in a reimbursement claim before the claim submission deadline in subsection D will be deemed a waiver of the right of the Municipal Payor to request reimbursement for any omitted amounts paid during the applicable fiscal year.
- F.** The Commission shall process reimbursements pursuant to A.R.S. § 23-1702(C) on or before December 31 of each year.
- G.** The maximum annual amount of aggregate reimbursements paid by the Fund shall in no event exceed the total amount of monies in the Fund as of close of business on June 30 of the applicable fiscal year.

R20-5-1403. Recordkeeping and Record Inspections

- A.** Municipal Payors seeking reimbursement from the Fund shall maintain all records supporting amounts included in a reimbursement claim for at least ten years after the reimbursement claim is filed.
- B.** Municipal Payor records supporting amounts included in a reimbursement claim shall always be open for inspection by the Commission or representatives of the Commission to ascertain information necessary for its administration of A.R.S. §§ 23-1701 through 23-1703. Upon request, a Municipal Payor shall make such records available to the Commission within 30 days.

R20-5-1404. Fund Overpayments

- A.** A Municipal Payor that discovers an error in a reimbursement claim which may result or has resulted in an overpayment from the Fund shall notify the Commission of the error within three business days of discovery of the error.
- B.** Overpayments made by the Fund to Municipal Payors that are discovered through inspection of records, or otherwise, shall be returned to the Fund by the applicable Municipal Payor within 30 days of notification by the Commission.

F

CONSIDERATION AND DISCUSSION OF PETITION RELATED TO DEPARTMENT OF
AGRICULTURE RULES IN TITLE 3, CHAPTER 2, ARTICLE 9 REGARDING CAGE-FREE EGGS
SUBMITTED PURSUANT TO A.R.S. § 41-1033(G)



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM

MEETING DATE: February 7, 2023

TO: Members of the Governor's Regulatory Review Council (Council)

FROM: Council Staff

DATE: January 6, 2023

SUBJECT: A.R.S. 41-1033(G) Petition Related to Department of Agriculture Rules in Title 3, Chapter 2, Article 9 Regarding Cage-Free Eggs

Summary

On December 16, 2022, Council staff received a petition (Petition) from Aditya Dynar on behalf of the Pacific Legal Foundation (PLF). PLF raises several issues with the rulemaking approved by Council on April 5, 2022 related to the amendments made by the Department of Agriculture in Title 3, Chapter 2, Article 9 (Animal Services Division)¹ and states that the rule should be void under A.R.S. § 41-1033(K). Specifically, petitioner states "The rule amend[ing] A.A.C. §§ R3-2-901–R3-2-907 to incorporate by reference a private industry code requiring that 'all eggs sold in the state must come from laying hens...housed in a cage-free manner,'" "suffers from four fatal defects listed in A.R.S. § 41-1033(G): (1) The rule is unconstitutional; (2) It is 'not specifically authorized by statute' and 'exceeds the agency's statutory authority'; (3) It does not 'specifically fulfill a public health, safety or welfare concern'; and (4) It 'is unduly burdensome.'" (See Petition at 2).

Relevant Statutes

A.R.S. § 41-1033(G) allows a person to "petition the council to request a review of an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement that the petitioner alleges is not specifically authorized by statute, exceeds the

¹ Although this rulemaking addressed amendments to five rules in the Article, petitioner has not stated with specificity which rule she is seeking to void, only that it is related to "cage-free eggs."

agency's statutory authority, is unduly burdensome or is not demonstrated to be necessary to specifically fulfill a public health, safety or welfare concern. On receipt of a properly submitted petition pursuant to this section, the council shall review the existing agency practice, substantive policy statement, final rule or regulatory licensing requirement as prescribed by this section.”

If the Council receives information pursuant to A.R.S. § 41-1033(G), and at least three Council members request of the Chairperson that the matter be heard in a public meeting:

1. Within ninety days after receipt of the third council member's request, the council shall determine whether the agency practice or substantive policy statement constitutes a rule, whether the final rule meets the requirements prescribed in section 41-1030 or whether an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement exceeds the agency's statutory authority, is not specifically authorized by statute or meets the guidelines prescribed in subsection G of this section.
2. Within ten days after receipt of the third council member's request, the council shall notify the agency that the matter has been or will be placed on an agenda.
3. Not later than thirty days after receiving notice from the council, the agency shall submit a statement not more than five double-spaced pages to the council that addresses whether the existing agency practice, substantive policy statement constitutes a rule or whether the final rule meets the requirements prescribed in section 41-1030 or whether an existing agency practice, substantive policy statement, final rule or regulatory licensing requirement exceeds the agency's statutory authority, is not specifically authorized by statute or meets the guidelines prescribed in subsection G of this section.

See A.R.S. § 41-1033(H).

Analysis and Conclusion

A.R.S. § 41-1033 does not provide requirements or standards to guide the Council in determining whether this petition should be given a hearing. Therefore, Council members should make their own assessments as to what information is relevant in determining whether this petition may be heard.

In Council staff's view, the petition lacks specificity as the Petition fails to identify which specific rule and/or subsection should be “void” and only cites the Notice of Final Rulemaking from the Arizona Administrative Register. Second, the concerns raised in the Petition were previously considered and addressed at the March 29, 2022 study session and April 5, 2022 council meeting. At the March 29, 2022 Study Session, a representative from the Arizona Farm Bureau mentioned issues such as whether the Department had the authority to make rules that could impact out of state egg producers and the Commerce Clause as well as the argument that

the amendments do not fulfill a fulfills a public health, safety, or welfare concern. (See <https://archive.org/details/3.29.2022-ss> at 23:24). In response to these comments, a representative from the United Egg Producers, Chad Gregory, shared why there was so much support surrounding this rulemaking package. (<https://archive.org/details/3.29.2022-ss> at 49:20). He mentioned reasons such as which states have already passed cage free only laws and which states are currently pending these laws; the fact that the industry is trending towards cage free; and that this rulemaking allows the industry to have input on the timelines to which they will be required to be fully cage free.

Because PLF is asking that the Council reconsider their vote from the April 5, 2022 Council Meeting and because the petition lacks specificity, as previously mentioned, it is Council staff's recommendation that the Council does not request that this petition be heard at a future Council Meeting.

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Arizona Governor's Regulatory Review Council

In the Matter of:

**A.R.S. § 41-1033(G) Petition
to Review a Final Rule
Relating to Cage-Free Eggs**

Petitioner:

Pacific Legal Foundation

Respondent:

Arizona Department of Agriculture

GRRC File No. _____

**PETITION TO REVIEW
A FINAL RULE**

Pacific Legal Foundation (PLF) respectfully petitions the Governor’s Regulatory Review Council (GRRC) under A.R.S. § 41-1033(G) to repeal a final rule of the Department of Agriculture (AZDA) relating to cage-free eggs. The AZDA cage-free-egg rule became final on October 1, 2022. 28 A.A.R. 802 (Apr. 22, 2022). GRRC should declare the rule “void” under A.R.S. § 41-1033(K).

The rule amended A.A.C. §§ R3-2-901–R3-2-907 to incorporate by reference a private industry code requiring that “all eggs sold in the state must come from laying hens ... housed in a cage-free manner.” 28 A.A.R. 803. The rule suffers from four fatal defects listed in A.R.S. § 41-1033(G): (1) The rule is unconstitutional; (2) It is “not specifically authorized by statute” and “exceeds the agency’s statutory authority”; (3) It does not “specifically fulfill a public health, safety or welfare concern”; and (4) It “is unduly burdensome.” Therefore, the rule should be “void[ed].” A.R.S. § 41-1033(K).

I. The Cage-Free-Egg Rule Is Not Specifically Authorized by Statute

AZDA claims authority to incorporate by reference a private industry standard written by “United Egg Producers” (UEP). 28 A.A.R. 802. AZDA claims authority to do so under A.R.S. §§ 3-107, 3-710. However, neither section delegates to AZDA the “specifi[c] authori[ty],” A.R.S. § 41-1033(G), to incorporate by reference a private industry standard.

Section 3-107 gives the AZDA director only generic rulemaking authority to “adopt administrative rules to effect its program and policies.” A.R.S. § 3-107(A)(1). And Section 3-710 says AZDA can “prescribe minimum standards for egg processing plants and sanitary standards for processing shell eggs,” and “adopt rules for poultry husbandry and the production of eggs sold in this state.” A.R.S. §§ 3-710(I), (J). The legislature’s careful wording precludes reading those sections as delegating incorporation-by-reference authority to AZDA. A comparison is helpful. A.R.S. § 3-2046(B), for example, gives AZDA the specific authority to “incorporate by reference existing federal meat inspection regulations.” The legislature knows how to grant specific authority when it wants to. There is no *specific authority* in A.R.S. §§ 3-107, 3-710 for AZDA to incorporate the UEP cage-free-egg standard. Incorporating by reference the UEP standard, therefore, is “not specifically authorized by statute” and it “exceeds AZDA’s statutory authority.” A.R.S. § 41-1033(G).

II. The Cage-Free-Egg Rule Is Unconstitutional

The Arizona Supreme Court has severely limited the incorporation-by-reference practice. *Roberts v. State*, 253 Ariz. 259 (2022). In *Roberts* the Arizona Department of Administration had incorporated by reference portions of federal labor law and applied it to state employees. The Court rejected such incorporation by reference because it violated the Arizona Constitution’s separation of powers. Ariz. Const. art. 3. And mere legislative silence, the Court explained, cannot impliedly delegate incorporation-by-reference authority to state agencies. *Id.* at ¶36. *See also A.L.A. Schechter Poultry Corp. v. United States*, 295 U.S. 495 (1935) (striking down as violating the nondelegation doctrine a federal statute that enabled the President to adopt a private industry code for the poultry industry). AZDA’s cage-free-egg rule suffers from the same defect.

The rule is also unconstitutional under the dormant Commerce Clause, U.S. Const. art. I, § 8, cl. 3, because it applies to “*all* eggs sold” in Arizona. 28 A.A.R. 803 (emphasis added). That is, it burdens out-of-state egg producers’ sale of eggs in Arizona. Such a burden on interstate commerce is unconstitutional. *Pike v. Bruce Church, Inc.*, 397 U.S. 137 (1970) (striking down AZDA’s cantaloupe packaging regulation as unconstitutional under the dormant Commerce Clause). So too here. AZDA’s cage-free-egg rule should therefore be voided. A.R.S. § 41-1033(K).

III. The Rule Does Not Specifically Fulfill a Public Health, Safety, or Welfare Concern

Even if GRRC were to conclude that there is specific statutory authority and that the incorporation by reference is not unconstitutional, GRRC must still evaluate whether the cage-free-egg rule *specifically* fulfills a public health, safety, or welfare concern. A.R.S. § 41-1033(G). It does not. Thus, while AZDA cited “market trends” and “pressure from consumers and retailers” regarding “hen welfare,” 28 A.A.R. 803, it failed to “demonstrat[e]” that the rule is “necessary to specifically fulfill a public health, safety or welfare concern.” A.R.S. § 41-1033(G).

“Public health” means the “health of the community at large.” *Black’s Law Dictionary* 865 (Deluxe 11th ed.). AZDA supplied no evidence of any discernible or beneficial impact on the health of the community. On the contrary, there appears to be no difference in nutritional value between conventional and cage-free eggs. *Compassion Over Killing v. FDA*, 849 F.3d 849, 853 (9th Cir. 2017)

(citing FDA’s observation that there is no “persuasive evidence that eggs from caged hens are ... less nutritious ... than eggs from uncaged hens”).

“Public safety” means the “welfare and protection of the *general public*.” *Black’s Law Dictionary* at 1488 (emphasis added). And “public welfare” means a “society’s well-being in matters of health, safety, order, morality, economics, and politics.” *Id.* at 1910. Promoting the public’s health, safety, or welfare must “serv[e] a beneficial public purpose.” *City of Phoenix v. Collins*, 22 Ariz. App. 145, 148 (1974). AZDA supplied *no* evidence that the cage-free-egg rule promotes the *general public’s* safety or welfare at all. As noted, AZDA specifically justifies the rule based on market trends and hen welfare. *Neither* justification pertains to the *public’s* safety or welfare.

IV. The Rule Is Unduly Burdensome

Finally, because the rule imposes costs on producers and consumers that are far greater than any purported benefits to them, the rule is also “unduly burdensome” within the meaning of A.R.S. § 41-1033(G).

AZDA admits that the rule “will increase the costs of production.” 28 A.A.R. 804. Labor costs “could increase as much as 41%.” *Id.* It “will [also] increase producer’s capital expenditures and the costs of facilities and equipment.” *Id.* AZDA admitted that one in-state producer will have to spend “hundreds of millions of dollars into converting its existing production facilities to cage-free.” *Id.* On the consumer side, AZDA said that the rule “will increase consumer egg costs.” *Id.* These burdens far outweigh any purported benefits of the rule. GRRC should therefore declare the rule void.

Conclusion

GRRC should declare void the 2022 amendments to A.A.C. §§ R3-2-901–R3-2-907.

Respectfully submitted, on December 15, 2022.

/s/ Aditya Dynar
Aditya Dynar
Attorney for Pacific Legal Foundation

NOTICES OF FINAL RULEMAKING

This section of the *Arizona Administrative Register* contains Notices of Final Rulemaking. Final rules have been through the regular rulemaking process as defined in the Administrative Procedures Act. These rules were either approved by the Governor’s Regulatory Review Council or the Attorney General’s Office. Certificates of Approval are on file with the Office.

The final published notice includes a preamble and text of the rules as filed by the agency.

Economic Impact Statements are not published but are filed by the agency with their final notice.

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the interpretation of the final rules should be addressed to the agency that promulgated them. Refer to item #5 to contact the person charged with the rulemaking.

The codified version of these rules will be published in the *Arizona Administrative Code*.

NOTICE OF FINAL RULEMAKING

TITLE 3. AGRICULTURE

**CHAPTER 2. DEPARTMENT OF AGRICULTURE
ANIMAL SERVICES DIVISION**

[R22-62]

PREAMBLE

- 1. Article, Part, or Section Affected (as applicable)**

	<u>Rulemaking Action</u>
R3-2-901	Amend
R3-2-903	Amend
R3-2-905	Amend
R3-2-906	Amend
R3-2-907	Amend

- 2. Citations to the agency’s statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):**
 Authorizing statute: A.R.S. § 3-107
 Implementing statute: A.R.S. § 3-710

- 3. The effective date of the rule:**
 October 1, 2022
 - a. If the agency selected a date earlier than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**
 Not applicable

 - b. If the agency selected a date later than the 60 day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**
 The effective date is October 1, 2022 to allow sufficient time for companies to comply with the rule.

- 4. Citations to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**
 Notice of Rulemaking Docket Opening: 28 A.A.R. 123, January 7, 2022
 Notice of Proposed Rulemaking: 28 A.A.R. 5, January 7, 2022

- 5. The agency’s contact person who can answer questions about the rulemaking:**
 Name: Roland Mader
 Address: Department of Agriculture
 1688 W. Adams St.
 Phoenix, AZ 85007
 Telephone: (602) 542-0884
 Fax: (602) 542-4194
 Email: rmader@azda.gov

- 6. An agency’s justification and reason why a rule should be made, amended, repealed or renumbered, to include an explanation about the rulemaking:**
 Arizona Revised Statutes § 3-710(J) gives the Arizona Department of Agriculture (the “Department”) the express authority to regulate “poultry husbandry” for eggs produced and sold in Arizona. See A.R.S. § 3-710(J). “Poultry husbandry” includes the facility systems and spacing requirements. The Department previously adopted the United Egg Producers (UEP) Animal Husbandry Guidelines as the production standards in Arizona. See Notice of Final Rulemaking, Vol. 15, Issue 22 A.A.R., Pg. 863, May 29, 2009. The amendments establish updated poultry husbandry standards, including increased minimum floor space requirements for

laying hens reducing stocking densities. Additionally, and in light of the public's growing concerns about animal welfare, including the hens' ability to move freely and express their natural behaviors, the amendments establish a transition from traditional caged production methods to cage-free production.

Under the proposed amendments, all caged egg-laying hens in the state shall be required to be raised according to the United Egg Producers ("UEP") Animal Husbandry Guidelines until September 30, 2022. From October 1, 2022, until December 31, 2024, all eggs sold in the state must come from laying hens raised according to the UEP Animal Husbandry Guidelines and housed in a cage with at least one square foot of usable floor space per laying hen. From January 1, 2025, forward, all laying hens in the state must be housed in a cage-free manner, and all eggs sold in the state must come from hens housed in a cage-free manner. An exemption would be made for egg producers whose operation has fewer than 20,000 egg-producing hens. The amendments are intended to represent the best management practices in the shell egg industry that ensure the production of high-quality, cruelty-free eggs. The amendments also reflect market trends, which producers anticipate will shift to cage-free eggs by 2025. The Department crafted this regulation to minimize its regulatory burden. The rule anticipates using specific certifications to ensure that out-of-state producers have no additional burden or advantage over in-state producers.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

- A. Augustine, C. and Peterson S., "An Assessment of the Economic Impacts of the Prevention of Farm Animal Cruelty Act." (January 31, 2016) (Available at: <https://www.humanesociety.org/sites/default/files/docs/2016-cl-white-paper-cfap.pdf>).
- B. Brannan, K.E. and Anderson, K.E., "Examination of the impact of range, cage-free, modified systems, and conventional cage environments on the labor inputs committed to bird care for three brown egg layer strains." *Journal of Applied Poultry Research*, Volume 30, Issue 1 (2021).
- C. Bell, D.(2006). *A Review of Recent Publications on Animal Welfare Issues for Table Egg Laying Hens*. University of California, Riverside.
- D. Carman, H, (2012). "Economic Aspects of Alternative California Egg Production Systems." Paper prepared for The Association of California Egg Farmers, August 30, 2012.
- E. Carter, CA, Schaefer, KA, and Scheitrum, D, (2020). "Piecemeal Farm Regulation and the U.S. Commerce Clause." *American Journal of Agricultural Economics*, Vol. 103(3), pp 1141-1163.
- F. Chang, Jae Bong, et al. (2010). "The Price of Happy Hens: A Hedonic Analysis of Retail Egg Prices." *Journal of Agricultural and Resource Economics*, vol. 35, no. 3, Western Agricultural Economics Association, 2010, pp. 406-23, <http://www.jstor.org/stable/23243063>.
- G. Clements, Mark (2022). "The World's Top 10 Egg Producers." *WATTPoultry International*, Volume 61, Number 2, page 5 (available at https://www.poultryinternationaldigital.com/poultryinternational/february_2022/MobilePagedReplica.action?pm=2&folio=4#pg8).
- H. Declaration Of Devrim Ikizler.
- I. European Food Safety Authority. 2007. Report of the Task Force on Zoonoses Data Collection on the Analysis of the baseline study on the prevalence of Salmonella in holdings of laying hen flocks of Gallus gallus. *The EFSA Journal* 97. Available at <https://efsa.onlinelibrary.wiley.com/doi/epdf/10.2903/j.efsa.2007.97r>. Last accessed February 14, 2022.
- J. Geng, A. L., Liu, H. G., Zhang, Y., Zhang, J., Wang, H. H., Chu, Q., & Yan, Z. X. (2020). Effects of indoor stocking density on performance, egg quality, and welfare status of a native chicken during 22 to 38 weeks. *Poultry Science*, 99(1),163-171.
- K. Matthews, WA., and Sumner, DA, (2015). "Effects of Housing System on the Costs of Commercial Egg Production." *Poultry Science* Volume 94, Number 3 (2015): 552-557.
- L. O'Keefe, Terrence (2021). "Ranking the largest US egg-producing companies in 2021." *Egg Industry*, Volume 126, Number 1, page 6 (available at https://www.eggindustrydigital.com/eggindustry/january_2021/MobilePagedReplica.action?utm_source=Omeda&utm_medium=Email&utm_content=DE-Egg+Industry&utm_campaign=DE+Egg+Industry_20210129_1300&oly_enc_id=4891F5381367F2Y&pm=2&folio=8#pg10).
- M. O'Keefe, T, (2019). "US Consumers Not Sold on Cage-Free Eggs." *WattPoultry.com*. (available at <https://www.wattagnet.com/blogs/14-food-safety-and-processing-perspective/post/38931-us-consumers-not-sold-on-cage-free-eggs>).
- N. Siedman Research Institute. *Economic Insights on the Move to Cage Free Egg Production in Arizona* (February 7, 2022).
- O. Summary Research Results, Coalition for Sustainable Egg Supply, accessed February 2, 2022, from https://www2.sustainableeggcoalition.org/document_center/download/final-results/SummaryResearchResultsReport.pdf ("Physiological data did not demonstrate the presence of acute or chronic stress in any housing system.").
- P. Sumner, DA, et al., (2011). "Economic and Market Issues on the Sustainability of Egg Production in the United States: Analysis of Alternative Production Systems." *Poultry Science* Volume 90, Number 1 (2011): 241-250.
- Q. Sumner, D. A., J. T. Rosen-Molina, W. A. Matthews, J. A. Mench, and K. R. Richter. "Economic Effects of Proposed Restrictions on Egg-Laying Hen Housing in California." *University of California Agricultural Issues Center Report*, July 2008.
- R. USDA World Agricultural Supply and Demand Estimates (WASDE) available at < <https://www.usda.gov/oc/commodity/wasde>>.
- S. Vanhonacker, F. and Verbeke, W. (2009) "Buying higher welfare poultry products? Profiling Flemish consumers who do and do not." *Poultry Science*, 88(12): 2702-2711.

8. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

The rulemaking does not diminish any previous authority of a political subdivision of this state.

9. A summary of the economic, small business, and consumer impact:

Over the past decade, alternative production systems have increased in the commercial table egg industry. Increased pressure from consumers and retailers concerned about the welfare of the laying hens in caged housing environments, including the inability to move around and express natural behaviors, are the primary drivers of this change. These animal welfare concerns have prompted most food retailers and restaurants to pledge that, by 2025, they will only purchase and sell cage-free eggs. Similarly, surrounding states, including California, Utah, Colorado, Nevada, Oregon, and Washington, have passed legislation requiring that all eggs pro-

duced or sold in their states come from chickens raised using cage-free production methods in the next 1-5 years.

Interest groups also filed a ballot initiative in Arizona, Ballot Initiative I-01-2022 (the “Initiative”), requiring (among other things) that all eggs produced or sold in Arizona after May 1, 2023, come from hens housed in cage-free production environments. Given the success of recent animal welfare ballot initiatives in Arizona and elsewhere, this Initiative presents a probably regulatory alternative. Thus, when deciding whether to pursue the rulemaking, the Department considered – among the many other relevant factors – the Initiative’s potential economic effects on the state.

The transition to cage-free housing will increase the costs of production as compared to conventional caged production systems. Labor inputs, which comprise about five to seven percent of the costs of egg production, could increase as much as 41%. The economic studies forecast that the cost differential between cage free and conventional production is somewhere between \$.01 per egg, to just over \$.02 per egg. Experts also forecast that the cage free conversion will result in a long-run wholesale price increase of \$.39 per dozen, or \$.0325 per egg. Thus, producers can expect to recoup some of their costs through increased wholesale prices to retailers, etc. Retailers will likely pass some of the increased costs to consumers.

The transition to cage-free will increase producer’s capital expenditures and the costs of facilities and equipment. One in-state producer estimates that it will have to invest hundreds of millions of dollars into converting its existing production facilities to cage-free. These construction activities will create jobs and benefit the local economy. Importantly, because the transition from conventional caged egg production to cage-free production requires the investment of significant capital, to minimize the burden on small businesses, the Department excluded from the rulemaking all operations that house under 20,000 laying hens. Therefore, the proposed rulemaking will have little, if any, impact on small businesses within Arizona.

The Department estimates that the rulemaking will increase consumer egg costs between \$2.71 and \$8.79 per-person, per year. According to USDA WASDE data, the average yearly egg consumption for the years 2010-2021 is 270.675 eggs per year per person. If the average person eats 270.675 eggs per year, and the increased costs of cage-free eggs are between 1 and 3.25 cents per egg, then the estimated annual economic impact per consumer is between \$2.71 and \$8.79 per year. Economists further predict that the Rulemaking will reduce consumer surplus by \$4.81 to \$11.05 per Arizona household (2.2 persons), per year. Considering that the average U.S. consumer spent \$7,316.00 on food per year in 2019-2020, that is less than a one-tenth of a percent increase in the costs of their overall food expenditures.

Recent economic reports also indicate that eggs at retail outlets are currently trending 29% higher than the previous year. This suggests that retailers and brokers have a greater impact on the cost of eggs to consumers than the actual costs of producing the eggs. It further suggests that retailers may be able to absorb some of the costs to maintain demand. Thus, the transition from conventional to cage-free egg production will have little effect on Arizona consumers.

Another important difference between the proposed rulemaking and the Initiative is timing. Forcing Arizona to transition to cage-free eggs by May 1, 2023, creates significant concerns about the adequacy of the cage-free egg supply. For example, Hickman’s Egg Ranch informs the Department that it cannot convert the remainder of its production facilities to cage-free housing by May 31, 2023, as required by the Initiative, and may have to euthanize a portion of its flock to avoid criminal penalties if the Initiative passes. Moreover, as noted above, other states that are “net importers” of shell eggs are converting to cage free in the next three to four years, and Arizona will be competing with consumers from those states. Accordingly, the Department believes it is important to work with producers and give them sufficient time to convert their production and meet the consumer demands for cage-free eggs. The proposed rulemaking gives egg producers additional time to convert their operations to cage-free production.

As compared to the Initiative, the rulemaking’s regulatory scheme will significantly reduce the Department’s regulatory costs. The Initiative charges the Department with enforcing cage-free requirements but precludes the use of any third-party inspection processes. Thus, the Department would need to send inspectors to inspect producers outside Arizona, requiring the Department to hire additional egg inspectors and significantly increasing inspection costs. On the other hand, the rulemaking enables the Department to rely on third party certifications, including USDA certifications, to ensure producers are compliant. This will modestly increase inspection costs for producers, but will reduce the Department’s regulatory burden.

On balance, the Department believes the benefits to public and animal welfare, outweigh the potential economic costs of the rule. The increased costs per consumer represent a small portion of their food budget. Moreover, there is a distinct possibility that voters could pass an initiative either through customer demands or the Initiative, the costs to the producers and the public are driven by the market, not by the regulatory process. The proposed rulemaking gives producers the certainty and time to plan for and execute the transition at less cost. There are no less intrusive or less costly methods of achieving the rulemaking’s objectives, and its benefits to Arizona agriculture outweigh any costs.

10. A description of any changes between the proposed rulemaking, to include supplemental notices, and the final rulemaking:

The Department made three substantive changes to the text of the rule published in the Notice of Proposed Rulemaking. All of the changes are minor and the final rule is not substantially different from the proposed rule contained in the Notice of Proposed Rule Making. The changes are:

- A. Based on the feedback from the public comments the Department has modified R3-2-901 to include a definition for egg products to clarify what is covered by this rule. The definition clarifies that the rule does not apply to cooked eggs.
- B. R3-2-907(A) and (B) was modified to cover an unintended gap in dates changed from June 30 to September 30, 2022.
- C. The Department modified R3-2-907(H) to allow egg producers more flexibility in evidencing compliance with the rule by allowing alternative language for labeling. The Department believes this small change alleviates some of the burden placed on producers without resulting in greater or additional penalties for violation.

11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to the comments:

The Department received over 1,700 written comments and fourteen oral comments regarding this rulemaking. The comment in favor outweighs the comment opposing the rulemaking greatly. We received 114 comments opposing and 1659 comments in favor of this rulemaking, for any one comment against the rulemaking we received over 16 comment in favor of the rulemaking. Due to the large number of comments, the Department has chosen to categorize and group identical and similar comments for response.

Neutral comments with suggestions to the text of the rule:

The Department received two oral comments from distributors. Both companies were commenting with the identical two concerns. Both distributors asked for clarification for a further definition for egg products to get a clear understanding of what the rule covers. The second concern from both companies addressed the labeling requirement, they would like more flexibility in labeling of eggs and egg products and for the rule to allow alternate labeling options.

Agency Response: Both concerns were addressed and additional text was added to the rule as described in item 10.

Comments Supporting the Rulemaking:

The Department received an overwhelming support from several egg producers, egg association and supplier companies as well as other Arizona agricultural operations, Arizona's biggest dairy coop, and Cattle association. The Department also received support from Senators that express support and approval of your Proposed Rulemaking for R3-2-907. These regulatory amendments, which build on the Department's existing regulations regarding the poultry husbandry requirements for eggs produced and sold in Arizona, provide an orderly transition from conventional to cage-free egg production for all eggs produced or sold in Arizona. This regulation ensures an adequate and affordable supply of shell eggs and egg products for Arizona consumers into the foreseeable future. The Department received comments from individuals and animal rights groups in support of this rulemaking. The comments addressed, the support for animal welfare and the relative small cost for the producers. The benefit of this rule outweighs the cost to the public and the producers.

Agency Response: The Department appreciates the support given by these companies, organizations, and individuals and agrees that prescribing guidelines for eggs produced and sold in the state takes steps to ensure the welfare of egg-laying hens and ensures that local producers are competitive in the marketplace as well.

Comments Opposing the Rulemaking:

The prevailing sentiment in comments of opposition is statutory. Let the market decide.

Comments were received that the Department doesn't have the authority to promulgate rules for animal husbandry standards. One comment by an animal right group stated the exemptions for producers with less than twenty thousand hens are too broad and the rule should not exempt those producers. Statute exempts producers with less than twenty thousand hens.

One organization raised the concern about the availability of eggs in the state when this rule would be in effect.

Agency Response:

The Department has a brought responsibility to set and implement animal husbandry standards A.R.S. 3-710J. The director shall adopt rules for poultry husbandry and the production of eggs sold in this state.

This rule ensures that enough time is provided to producers to make changes to their operations and to convert to cage free production.

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

Not applicable

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

Not applicable

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No analysis was conducted.

13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:

The rule incorporates the following standards:

- A. "United Egg Producers Animal Husbandry Guidelines" means the United Egg Producers Animal Husbandry Guidelines for U.S. Egg Laying Flocks, 2017 Edition, defined in R3-2-901, and referred to in R3-2-907.
- B. The 2017 edition of the United Egg Producers' Animal Husbandry Guidelines for U.S. Egg-Laying Flocks: Guidelines for Cage-Free Housing, referred to in R3-2-907.

14. Whether the rule was previously made, amended or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:

Not applicable

15. The full text of the rules follows:

TITLE 3. AGRICULTURE
CHAPTER 2. DEPARTMENT OF AGRICULTURE
ANIMAL SERVICES DIVISION

ARTICLE 9. EGG AND EGG PRODUCTS CONTROL

Section	
R3-2-901.	Definitions
R3-2-903.	Sampling: Schedule and Methods for Evidence
R3-2-905.	Inspection Fee Rate
R3-2-906.	Violations and Penalties
R3-2-907.	Poultry Husbandry; Standards for Production of Eggs and Biosecurity Requirements

ARTICLE 9. EGG AND EGG PRODUCTS CONTROL

R3-2-901. Definitions and Interpretation Guidance

- A.** In addition to the definitions provided in A.R.S. §§ 3-701, 3-703 and 3-704, the following shall apply to this Article:
1. “Business owner or operator” means any person who owns ten percent or more of a business, or a person who controls the operations of a business.
 2. “Check” means an individual egg that has a broken shell or crack in the shell but with its shell membranes intact and its contents do not leak. A “check” is considered to be lower in quality than a “dirty.”
 3. “Dirty” means a shell that is unbroken and that has dirt or foreign material adhering to its surface, which has prominent stains, or moderate stains covering more than 1/32 of the shell surface if localized, or 1/16 of the shell surface if scattered.
 4. “Egg-laying hen” means any hen that produces eggs for human consumption.
 5. “Egg products”:
 - a. Means eggs, in raw or pasteurized form, that are removed from the shell in a liquid, frozen, dried, or freeze-dried state, but are not fully cooked.
 - b. May consist of whole eggs, yolks, whites, or any blend of yolk and white, with or without additives, if eggs are the main ingredient.
 6. “Housed in a cage-free manner” means confined in a housing system that provides egg-laying hens with all of the following:
 - a. The amount of usable floor space per egg-laying hen equal to or greater than that required by the 2017 edition of the United Egg Producers’ Animal Husbandry Guidelines for U.S. Egg-Laying Flocks: Guidelines for Cage-Free Housing.
 - b. An indoor or outdoor controlled environment, which can consist of multi-tiered aviaries, partially-slatted systems, single-level all litter floor systems, or other systems, and which allows egg-laying hens to have:
 - i. unrestricted freedom to roam;
 - ii. an environment that allows them to exhibit natural behaviors, including, at a minimum, scratch areas, perches, nest boxes, and dust bathing areas; and
 - iii. an environment in which farm employees can provide care while standing within the hens’ usable floor space.
 7. “Leaker” means an individual egg that has a crack or break in the shell and shell membranes to the extent that the egg contents are exuding or free to exude through the shell.
 8. “Lot” means any quantity of two or more eggs.
 9. “Lot Consolidation” means the removal of damaged eggs from cartons labeled by a producer or producer dealer and replacement of the damaged eggs with eggs of the same grade, size, brand, expiration date and source.
 10. “Multi-tiered aviaries” means cage-free housing systems in which egg-laying hens have unfettered access to multiple elevated flat platforms that provide the egg-laying hens with usable floor space both on top of and underneath the platforms.
 11. “Partially-slatted systems” means cage-free housing systems in which egg-laying hens have unfettered access to elevated flat platforms under which manure drops through the flooring to a pit or litter removal belt below.
 12. “Pasteurized in-shell eggs” means eggs that have been pasteurized with the shell intact by any method approved by the Federal Food and Drug Administration or the department.
 13. “Repacking” means changing the identity of a lot of eggs by removing them from the original container labeled by a packer and placing them into another container not labeled by the packer at the point of origin with the same grade, size, lot number, source and/or brand.
 14. “Single-level all-litter floor systems” means cage-free housing systems bedded with litter, in which egg-laying hens have limited or no access to elevated flat platforms.
 15. “Spot-check” sample means any sample less than a representative sample described in the chart in R3-2-903(B).
 16. “Ultimate consumer” means a person consuming eggs or egg products and a restaurant using eggs in the preparation of a meal.
 17. “Usable floor space” means the total square footage of floor space provided to each egg-laying hen, as calculated by dividing the total square footage of floor space provided to the egg-laying hens in an enclosure by the number of egg-laying hens in that enclosure. “Usable floor space” shall include both ground space and elevated level flat platforms upon which hens can roost, but shall not include perches or ramps.
 18. “UEP” means United Egg Producers.
 19. “United Egg Producers Animal Husbandry Guidelines” means the United Egg Producers Animal Husbandry Guidelines for U.S. Egg Laying Flocks, 2017 Edition. This material is incorporated by reference, does not include any later amendments or editions, and is available for inspection at the Department of Agriculture, 1688 W. Adams St., Phoenix, AZ 85007, or the United Egg Producers at 1720 Windward Concourse, Ste. 230, Alpharetta, GA 30005.

20. “United Egg Producers Certified” means a company that has achieved United Egg Producers Certified status pursuant to the requirements prescribed by the United Egg Producers Animal Husbandry Guidelines.
21. “United Egg Producers Certified logo” means the official symbol and accompanying language used to identify eggs produced by United Egg Producers Certified companies.
22. “United Egg Producers Cage Free Certified logo” means the official symbol and accompanying language used to identify cage-free eggs produced by United Egg Producers Certified companies.

- B.** Wherever appropriate, and if not expressly indicated, words in the singular form shall be construed to include the plural and vice versa. Nouns and pronouns in masculine, feminine and neuter genders shall be construed to include any other gender.
- C.** Examples shall not be construed to limit, expressly or by implication, the matter they illustrate.
- D.** The word “includes” and its derivatives means “includes, but is not limited to” and corresponding derivative expressions.

R3-2-903. Sampling: Schedule and Methods for Evidence

- A.** An inspector may conduct random spot-check sampling of a lot of eggs to determine whether the lot meets minimum quality and weight standards and is in compliance with R3-2-907(~~B~~).
- B.** Representative egg sampling, under A.R.S. § 3-710(G), shall be based on Table II. A lot that does not meet minimum quality or weight standards or is not in compliance with R3-2-907(~~B~~) shall receive a warning notice hold tag.
1. An inspector may draw additional samples to determine whether the lot meets the minimum requirements.
 2. When loose eggs are out of the case, the sample shall be based on a carton.
 3. Eggs shall be sampled on a 30-dozen-case basis. When eggs are packed in other lot quantities, an inspector shall convert the quantity of eggs to the equivalent 30-dozen case basis to establish the official sample size.

R3-2-905. Inspection Fee Rate

- A.** All dealers, producer-dealers, manufacturers, and producers shall pay an inspection fee at the rate of 3.0 mills (.00300) per dozen on all shell eggs sold as prescribed in A.R.S. § 3-716(A).
- B.** All dealers, producer-dealers, manufacturers, and producers shall pay an inspection fee at the rate of 3.0 mills (.00300) per pound on all egg products sold as prescribed in A.R.S. § 3-716(A).
- C.** For scheduled continuous grading, certification, and inspection services. The following rates apply to continuous grading service on a resident basis and continuous grading service on a nonresident basis per grader:
1. Regular rate: \$38.00/hour
 2. Overtime rate: \$57.00/hour
 3. Holiday rate: \$58.00/hour
- D.** For plant survey, unscheduled temporary, certification, auditing and appeal grading services. The following rates apply to temporary and auditing service per grader:
1. Regular rate: \$57.00/hour
 2. Overtime rate: \$85.00/hour
 3. Holiday rate: \$87.00/hour

R3-2-906. Violations and Penalties

- A.** A dealer, producer-dealer, manufacturer, producer, or retailer, at each individual location, is subject to the penalties in subsection (B) for any of the following violations:
1. Category A:
 - a. Making a false or misleading statement relating to advertising or selling eggs and egg products;
 - b. Acting as a dealer, producer-dealer, producer, or manufacturer without a valid license;
 - c. Selling shell eggs with an incorrect or incomplete expiration date, or without an expiration date;
 - d. Selling grade AA or grade A eggs after the expiration date on the carton, case, or container. Selling pasteurized in-shell eggs without or past the “Best By” or “Use by” date;
 - e. Failing to maintain records and reports required by this Article;
 - f. Failing to label a carton, case, or container with one size, one grade, one brand name, or, if applicable as required under R3-2-907(~~B~~), the United Egg Producer Certified logo;
 - g. Moving eggs or an egg case, carton, or container with a warning tag or notice, or removing a warning tag or notice without permission from the Director;
 - h. Refusing to submit egg or egg product, an egg case, carton, container, subcontainer, lot, load, or display of eggs to inspection; or
 - i. Refusing to stop, at the request of an authorized representative of the Department, any vehicle transporting eggs or egg products;
 - j. Selling eggs that have not been produced in accordance with the standards prescribed under R3-2-907(~~B~~);
 - k. Failing to raise egg-laying hens in this state in accordance with the standards prescribed under R3-2-907(~~A~~).
 2. Category B:
 - a. Extending the expiration date of shell eggs as defined in A.R.S. § 3-701(13); or
 - b. Advertising, representing, or selling out-of-state eggs as local eggs.
 3. Category C:
 - a. Failing to ensure that shell eggs for human consumption are kept refrigerated at an ambient temperature not higher than 45° F;
 - b. Failing to ensure that frozen egg products for human consumption, labeled for storage at 0° F or below, are kept under refrigeration at a temperature of 0° F or lower;

- c. Failing to ensure that liquid egg products for human consumption are kept refrigerated at a temperature not higher than 40° F; or
 - d. Failing to meet the sanitary standards egg processing of R3-2-908.
- B.** Any violation of this Article or of A.R.S. Title 3, Chapter 5, Article 1 not listed in subsection (A) is subject to a Category A civil penalty.
- C.** Under A.R.S. § 3-739, the civil penalty for a violation of subsection (A) is in Table III.

R3-2-907. Poultry Husbandry; Standards for Production of Eggs and Biosecurity Requirements

- A.** ~~Until September 30, 2022, all~~ egg-laying hens in this state shall be raised according to ~~United Egg Producers~~ UEP Animal Husbandry Guidelines.
- B.** ~~Until September 30, 2022, all~~ eggs sold in this state produced by hens shall be from hens raised according to the ~~United Egg Producers~~ UEP Animal Husbandry Guidelines. All eggs shall display the ~~United Egg Producers~~ UEP Certified logo on their cases, cartons, and containers, or the egg dealer shall annually provide the Department with a copy of a current independent third-party audit that demonstrates that the eggs were produced by hens raised according to UEP Animal Husbandry Guidelines.
- C.** Beginning October 1, 2022, all egg-laying hens in this state shall be housed in accordance with the UEP Animal Husbandry Guidelines and shall be provided with no less than one square foot of usable floor space per egg-laying hen.
- D.** Beginning October 1, 2022, all eggs and egg products sold in this state shall be from hens that are housed in accordance with the UEP Animal Husbandry Guidelines and provided with no less than one square foot of usable floor space per egg-laying hen.
- E.** Beginning no later than January 1, 2025, all egg-laying hens in this state shall be housed in a cage-free manner.
- F.** Beginning no later than January 1, 2025, all eggs and egg products sold in this state shall be from hens housed in a cage-free manner.
- G.** Subsections (A) ~~and (B) through (F)~~ of this rule do not apply to egg producers or business owners or operators operating or controlling the operation of one or more egg ranches each having fewer than 20,000 egg-laying hens producing eggs. Subsections (A) ~~and (B) through (E)~~ of this rule also do not apply to any hens that are raised cage-free or any eggs produced by hens that are raised cage-free.
- H.** Beginning no later than October 1, 2022, in order to sell eggs or egg products within the state, a business owner or operator must have a certificate from the Supervisor certifying that the eggs or egg products are produced in compliance with Subsections subsections (C) through (F), or are exempt under subsection (G). The Supervisor will certify that eggs and egg products are produced in compliance with subsections (C) through (G) if the eggs or egg products are accompanied by documentation from a government or private third-party inspection and continuous process verification service that the Supervisor deems acceptable establishing that the eggs or egg products were produced in compliance with this Section. The immediate container of eggs and egg products shall be plainly and conspicuously marked with the words "ARS 710J" in bold-faced type not less than one-eighth inch in height; or in another manner pre-approved by the department.
- I.** It shall be a defense to any action to enforce this Rule that a business owner or operator relied in good faith upon a written certification by the supplier that the eggs or egg products at issue were derived from an egg-laying hen which was housed in compliance with this Section.
- J.** All producers and producer dealers with operations within the state shall have a written biosecurity plan in place. At a minimum each producer and producer dealer shall:
1. Restrict access to all areas where poultry are housed or kept.
 2. Take steps to ensure that contaminated material is not transported into any poultry barns.
 3. Cover and secure feed in a manner that prevents wild bird, rodents or other animals from accessing the feed.
 4. Cover and properly contain poultry carcasses, used litter, or other disease-containing organic materials that prevents wild birds, rodents or other animals from accessing the material and movement of the materials by the wind.
 5. Keep houses in good repair and all areas to which the birds have access should be kept free of materials hazardous to the birds.
- K.** The biosecurity plan shall contain the following:
1. Methods for the disposal and handling of poultry manure.
 2. Procedures for prevention, control and eradication of vectors for poultry diseases.
 3. Procedures for the detection, control and treatment of poultry diseases.
 4. Methods for the disposal and handling of culled birds and entire flocks under normal cyclic operations and following emergency depletion as a result of disease.
 5. A facility poultry disease control and prevention plan which includes standard operating procedures with respect to specific measures to control and prevent disease including but not limited to structural and operational disease control and prevention provisions.
 6. Procedures to prevent cross contamination between nest run and in line eggs.
 7. Procedures to prevent the introduction and transmittal of diseases by vehicles and any other forms of transportation.
 8. Signed agreements with all employees containing biosecurity procedures regarding contact with outside poultry and wild birds.
- L.** A producer and producer dealer shall allow the Department to enter the premises during normal working hours to inspect the biosecurity plan documents and the biosecurity that is implemented.